

Malawi

Defence Force Act

Chapter 12:01

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Malawi

Defence Force Act

Chapter 12:01

Commenced on 1 September 2004

[This is the version of this document as it was at 31 December 2014 to 1 February 2018.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the establishment, administration, recruitment, conditions of service, training, command and discipline of the Defence Force of Malawi and for connected matters

Part I – Preliminary

1. Short title

This Act may be cited as the Defence Force Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**acting rank**” means rank of any description (however called) such that under regulations made under [section 190](#) a commanding officer has power to order the holder to revert from that rank; and “acting warrant officer” and acting non-commissioned officer” shall be construed accordingly;

“**active service**” shall be construed in accordance with [section 3](#);

“**aircraft**” means any machine for flying, whether propelled by mechanical means or not, and includes balloons of any description;

“**aircraft material**” includes—

- (a) parts or components of, or accessories for aircraft, whether for the time being in the aircraft or not;
- (b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft;
- (c) any other gear, apparatus or instruments in, or for use in, aircraft;
- (d) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

“**air signal**” means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;

“**appropriate superior authority**” means the commander or such officer, not below the rank of lieutenant colonel or corresponding rank as may be prescribed;

“**arrest**” includes open arrest;

“**before the enemy**”, in relation to a person, means that he 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 of Inquiry Rules**” means rules made under [section 13](#);

“**civil court**” means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside Malawi;

“**civil offence**” has the meaning assigned to it in [section 80 \(2\)](#);

“**colour service**” means service in the Regular Force under this Act;

“**Commander**” means the person appointed as the Commander of the Defence Force under section 161 of the Constitution;

“**commanding officer**”, in relation to a member of the Defence Force, means the prescribed officer having powers of command over that member;

“**competent military authority**” means the Defence Council or any officer as may be prescribed;

“**corps**” means such body of the Defence Force as may from time to time be declared by the Defence Council to be a corps for the purposes of this Act and regulations made there under;

“**cooperating forces**” means the military forces of another country acting in cooperation with the Defence Force under this Act;

“**corresponding civil offence**” has the meaning assigned to it in [section 80 \(2\)](#);

“**corresponding rank**”, in relation to—

- (a) the Defence Force and any cooperating force means such rank in the Defence Force as may be declared by the Defence Council to correspond to a rank in the cooperating force;
- (b) services within the Defence Force means such rank in one service as may be declared by the Defence Council to correspond to a rank in another service;

“**court-martial**”, except where it is expressed to be under service law, means a court-martial under this Act;

“**court of appeal**” means the Supreme Court of Appeal for Malawi established under the Constitution;

“**damage**” includes destruction;

“**date of attestation**”, in relation to any person, means the date on which he is attested in accordance with the provisions of this Act;

“**decoration**” includes medal, medal ribbon, clasp and good conduct badge;

“**Defence Council**” means the Defence Council constituted under [section 10](#);

“**Defence Force**” means the Defence Force of Malawi established under Chapter XV of the Constitution;

“**Deputy Commander**” means a person appointed as the Deputy Commander of the Defence Force under [section 191 \(2\)](#);

“**desertion**” shall be construed in accordance with [section 46 \(2\)](#);

“**detachment**” means a part of a unit which is so separated from the unit to which it belongs that the officer commanding that unit cannot effectively exercise his disciplinary powers as commanding officer over it;

“**enemy**” includes all persons engaged in armed operations against the Defence Force or any cooperating forces and also includes all armed mutineers, armed rebels and armed rioters;

“**field rank**” means the rank of major and any higher rank, and “**field officer**” means a person holding a filed rank;

“**Imprisonment and Detention Regulations**” means Regulations made by the Defence Council under [section 137](#);

“**inland waters**” has the meaning assigned thereto in the Inland Waters Shipping Act;

[Cap. 71:01]

“**Medical Board**” means a medical board established under regulations made under this Act;

“**member**” includes an officer and a soldier;

“**military police**” means the police unit within the Defence Force established under [section 191](#);

“**Militia**” means persons, other than members of the Regular Force or Reserve Force, trained for military service but called to serve only on emergencies and forming part of the Defence Force as referred to in [section 4\(1\)](#);

“**officer**” means a person granted a commission in the Defence Force, but does not include any person who is—

- (a) appointed to honorary commissioned rank;
- (b) a holder of an honorary appointment;

“**oath**” includes affirmation and references to swearing shall be construed also as references to affirmations;

“**provost officer**” means a provost marshal or officer subject to service law appointed to exercise the functions conferred by or under service law on provost officers;

“**public property**” means any property belonging to any department of the Government or held for the purposes of any such department;

“**recruiting officer**” means a person authorized as such under [section 18](#);

“**Regular Force**” means the Regular Force component of the Defence Force referred to in [section 4\(1\)](#);

“**Reserve Force**” means the Reserve Force component of the Defence Force referred to in [section 4\(1\)](#);

“**Rules of Procedure**” means the Rules of procedure made under [section 136](#);

“**service**”, when used adjectivally, means belonging to or connected with the Defence Force or any part of the Defence Force or any cooperating forces;

“**service law**” means this Act;

“**soldier**” does not include an officer but, with the modifications contained in this Act in relation to warrant officers, includes a warrant officer and a non-commissioned officer;

“**steals**” has the meaning assigned to it in section 271 of the Penal Code;

[Cap. 7:01]

“**stoppages**” means the recovery, by deductions from the pay of the offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

“**unit**” means—

- (a) any independent portion of the Defence Force which is not higher in the organization of the Defence Force than a battalion or any equivalent body of troops; or
- (b) any other body of the Defence Force declared by the Defence Council to be a unit;

“**vessel**” means any water craft, of whatever description and by whatever name or term called, used or capable of being used as means of transport;

“**visiting force**” means any body of the forces of a designated country, which for the time being is lawfully present in Malawi in time of peace under a treaty, agreement or arrangement to which the Government is a party.

- (2) References in this Act to officers and soldiers of the Defence Force shall, except in Part VII, be construed as including references to officers and soldiers attached or seconded to the Defence Force.

3. Active service

- (1) In this Act the expression “on active service”, in relation to any unit, means that it is engaged in operations against an enemy or during a state of emergency, and, in relation to a person, means that he is serving in or with a unit which is on active service.
- (2) Subject to Chapter XVI of the Constitution, where it appears to the President that, by reason of the imminence of active service, it is necessary in the public interest that a unit should be deemed 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) Subject to section 45 of the Constitution, where it appears to the President that it is necessary in the public interest that the period specified in a declaration under subsection (2) should be prolonged or, if previously prolonged under this section, should be further prolonged, he may declare that such 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 any 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 longer necessity for the unit to continue to be treated as being on active service, he may declare that as from the coming into force of the declaration the unit shall cease to be deemed to be on active service.
- (5) Any declaration under this section shall be by proclamation, which shall be published in the *Gazette*.

4. Establishment and maintenance of the Defence Force

- (1) There shall be established and maintained in Malawi a Defence Force to be known as the Malawi Defence Force (in this Act referred to as the “Defence Force”) which shall consist of the following components—
 - (a) the Regular Force;
 - (b) the Reserve Force; and
 - (c) the Militia.
- (2) Each of the components of the Defence Force specified in subsection (1) includes the army, the air-wing and the marine.
- (3) Subject to Chapter XVI of the Constitution, the components specified in subsection (1) may be formed into units as the Defence Council may from time to time determine.

5. Employment of the Defence Force

The Defence Force shall be charged with the defence of, and maintenance of order in, Malawi and with such other duties as are in accordance with the Constitution and this Act.

6. Employment of the Defence Force outside Malawi

The President may in accordance with Chapter XVI of the Constitution order that the whole or any of the Defence Force be employed out of or beyond Malawi.

7. Co-operation with other forces

- (1) If the whole or any part of the Defence Force is required to act in cooperation with any cooperating force, the President may place the Defence Force or that part of the Defence Force under the command of the officer commanding the cooperating force if that officer is senior in rank to all the officers of the Defence Force or of that part of the Defence Force.
- (2) Where any part of the Defence Force is acting in cooperation with any cooperating force, the commander or an appropriate superior authority of that part of the Defence Force may, in agreement with the commander or an appropriate superior authority of the cooperating force, define the powers of command and order of precedence of any officer or non-commissioned officer of that part of the Defence Force in relation to an officer or non-commissioned officer of the cooperating force who is of the equivalent rank.
- (3) In so far as powers of command depend on rank, any member of any cooperating force—
 - (a) who is acting in cooperation with any unit of the Defence Force; or
 - (b) whose unit is acting in cooperation with a unit of the Defence Force,shall have the same powers as a member of the Defence Force of corresponding rank, and for the purposes of sections [42](#) and [83](#) any such member of the cooperating force shall be treated as if he were a member of the Defence Force of corresponding rank.

8. Visiting forces

The President may, on the advice of the Defence Council, permit the presence in Malawi of visiting forces in accordance with the relevant treaty, agreement or arrangement to which the Government is a party.

9. External training and attachments

- (1) The Commander may order that any officer or soldier of the Regular Force or, with his consent, any officer or soldier of the Reserve Force, shall proceed to any place outside Malawi for the purpose of undergoing instruction or training or for duty or employment.
- (2) The Commander may, if the consent of the officer or soldier concerned is first obtained, place any officer or soldier of the Defence Force at the disposal of the military authorities of any other country or territory for the purpose of his being attached to the military forces of that country or territory.

Part II – Defence Council

10. Constitution of the Defence Council

- (1) The Defence Council shall, subject to the powers of command of the President as Commander-in-chief of the Defence Force and subject to this Act, be responsible for the overall control of the Defence Force, and shall perform other functions conferred on it by the Constitution and by this Act.
- (2) The members of the Defence Council shall be—
 - (a) the Minister who shall be Chairman of the Defence Council;
 - (b) the Secretary for Defence;

- (c) the Secretary to the President and Cabinet;
 - (d) the Commander;
 - (e) the Deputy Commander; and
 - (f) the Chief of Staff.
- (3) The Defence Council shall have power to co-opt any other person as a member of the Defence Council from time to time as the Council may decide.
- (4) In the event of any member being for any reason unable to perform his duties as a member, he may, with the approval of the Chairman, nominate a person to perform such duties during his inability.
- (5) The Chairman may nominate any person to perform the duties of the Chairman at any meeting of the Defence Council at which the Chairman is absent.
- (6) The majority of the members of the Defence Council shall form a quorum at any meeting of the Defence Council.

11. Performance of functions of the Defence Council

Without prejudice to any other power which may be conferred upon the Defence Council under this Act, the Defence Council may provide for all or any of the following matters—

- (a) the organization of the work of the Defence Council the manner in which it shall perform its functions, duties and responsibilities of the several members thereof;
- (b) the procedure to be followed by the Defence Council in conducting its business; and
- (c) any other matter which the Defence Council may, consider necessary or desirable to provide in order to secure the better performance of the functions of the Defence Council.

Part III – Officers

12. Commissions board

No person shall be granted a commission in the Defence Force unless he has been recommended by a commissions board, which shall be established for this purpose by the Defence Council.

13. Grant of commission

- (1) The power to grant commissions in the Defence Force is vested in and shall be exercised only by the President.
- (2) A commission may be granted either for an indefinite period or for a specified time.
- (3) Every officer on being granted a commission shall be issued with a commission signed by the President in the form set out in the First Schedule.

14. Compulsory resignation

- (1) An officer may be required by the Defence Council to resign from the Force in any of the following circumstances—
 - (a) if he is found guilty of conduct unbecoming of an officer;
 - (b) if he is sentenced by a civil court to a term of imprisonment, in which case his resignation shall be deemed to have effect from the date of his conviction by that court, or in the event of his appealing against conviction or the sentence, or both, from the date of the dismissal of the appeal, or

- (c) if, after due inquiry being made, he is, in the opinion of the Commander, so inefficient as an officer as to be unfit to remain in the Defence Force.
- (2) An officer who is required to resign from the Force under subsection (1) shall have a right of appeal to the President under [section 196](#).

15. Compulsory retirement and discharge

- (1) An officer shall be required to retire from his employment in the Defence Force—
 - (a) on being given three month's notice in writing by the Commander should there be no establishment for him in his present rank and no reasonable future prospects of promotion for him;
 - (b) if he is found by a Medical Board to be mentally or physically unfit for further service;
 - (c) on completion of his term of engagement except where further engagement from year to year is authorized by the Minister upon recommendation by the Commander; or
 - (d) whatever the length of his pensionable service, on attaining the age of 55 years.
- (2) Notwithstanding subsection (1) (d), an officer may, not less than three months before he attains the age of 55 years, apply in writing to his commanding officer for the grant of permission to continue in his employment in the Force for a further period to be specified in the application not exceeding five years.
- (3) Upon receipt of an application under subsection (2), the commanding officer shall—
 - (a) order the officer to present himself for, and to submit to a medical examination;
 - (b) obtain a report as to whether the applicant is presently mentally and physically fit to continue his employment for the period so specified; and
 - (c) forward the application and the report to the appropriate superior authority for a decision as to whether the application is granted or rejected.

16. Appointment and transfer of officers

- (1) Every officer upon being granted a commission shall be appointed to one of the components of the Defence Force referred to in [section 4](#) (1).
- (2) The Defence Council may, upon such terms and conditions as it may prescribe, transfer any officer from the Regular Force to the Reserve Force.

17. Power to make regulations for this Part

- (1) Subject to the provisions of this Act, the Minister may with the advice of the Defence Council, make regulations for the better carrying out of this Part.
- (2) The appointment, transfer, substantive promotion, retirement, resignation or removal from office of any officer shall be notified in the *Gazette*.

Part IV – Enlistment and terms of services of soldiers in the Regular Force

Division 1 – Enlistment

18. Recruiting officers

Any person authorized in that behalf by regulations, in this Act referred to as a “recruiting officer”, may enlist recruits in the Regular Force in the prescribed manner.

19. Enlistment

- (1) A person offering to enlist in the Regular Force shall be given a notice in the prescribed form setting out the 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 any person in the Regular Force unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.
- (2) A recruiting officer shall not enlist a person under the age of eighteen years or over the age of twenty-four years.

20. Terms of enlistment

The term for which a person enlisting in the Regular Force may be enlisted shall be seven years colour service and five years from the date of his attestation.

21. Re-engagement and continuation in service

- (1) Any soldier of the Regular Force who at any time has completed or is within one year before completing the term of his service with the Regular Force may, with the approval of the competent military authority, re-engage for such further period or periods of service with the Regular Force and service in the Reserve Force as may be prescribed.
- (2) Any soldier of the Regular Force who has completed seven years of service but is not re-engaged, shall be paid a gratuity as may be prescribed.

22. Prolongation of service

Any soldier of the Regular Force whose service expires during a state of national defence, insurrection, hostilities or public emergency may be retained in the Regular Force and his service prolonged for such period as the competent military authority may direct.

Division 2 – Discharge and transfer to Reserve Force

23. Discharge

- (1) Save as otherwise provided in this Act, every soldier of the Regular Force, upon becoming entitled to be discharged, shall be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act.
- (2) Where a soldier of the Regular Force who is entitled to be discharged is serving outside Malawi, then—
 - (a) if he requires to be discharged in Malawi he shall be sent to Malawi free of cost with all convenient speed and shall be discharged on his arrival or, if he consents to his discharge being delayed, within six months from his arrival; but

- (b) if at his request he is discharged at the place where he is serving, he shall have no claim to be sent to Malawi or elsewhere.
- (3) Except in pursuance of the sentence of a court-martial, a soldier of the Regular Force shall not be discharged unless his discharge has been authorized by order of the competent military authority.
- (4) Every soldier of the Regular Force shall on his discharge be given a certificate of discharge containing such particulars as may be prescribed.

24. Transfer to Reserve Force

- (1) Every soldier of the Regular Force upon falling to be transferred to the Reserve Force shall be so transferred but, until so transferred, shall remain subject to military law under this Act.
- (2) Where a soldier of the Regular Force when falling to be transferred to the Reserve Force, is serving outside Malawi, he shall be sent to Malawi free of cost with all convenient speed and shall be transferred to the Reserve Force on his arrival, or, if he consents to his transfer being delayed, within six months from his arrival.
- (3) Notwithstanding subsections (1) and (2), the competent military authority may, when a soldier of the Regular Force falls to be transferred to the Reserve Force, discharge him forthwith and in any such case [section 23](#) shall apply.

25. Postponement of discharge or transfer pending proceedings for offences, etc.

- (1) Notwithstanding anything in this part, a soldier of the Regular Force shall not be entitled to be discharged or transferred to the Reserve Force at a time when he has become liable to be proceeded against for an offence against any of the provisions of this Act; but if it is determined that the offence shall not be tried by court-martial this subsection shall cease to apply.
- (2) Notwithstanding anything in this part, a soldier of the Regular Force who is serving a sentence of imprisonment or detention awarded by a court-martial or by his commanding officer shall not be entitled to be discharged or transferred to the Reserve Force during the currency of the sentence.

26. Discharge upon prescribed grounds

An officer or a soldier of the Regular Force may be discharged by the appropriate superior authority, at any time during the currency of any term of engagement—

- (a) if with, two years after the date of his attestation's commanding officer considers that he is unlikely to be an efficient member of the Defence Force;
- (b) for activities or behavior likely to be prejudicial to the preservation of public security;
- (c) if he is convicted of a civil offence for which he is not given the option of a fine;
- (d) if he is pronounced by, the Medical Board to be mentally or physically unfit for further service;
- (e) on reduction of establishment;
- (f) at his own request on compassionate grounds;
- (g) if for any reason given to him in writing his services are no longer required;
- (h) if he is granted a commission;
- (i) if he is sentenced by court-martial to be dismissed from the Defence Force;
- (j) if he marries another member of the Defence Force in disobedience to standing orders for peace;
- (k) if, in the case of an unmarried female member, she becomes pregnant contrary to standing orders for peace; or

- (l) if, in the case of a male member, he is responsible for the pregnancy of a female member contrary to standing orders for peace.

27. Right of soldier to purchase discharge

- (1) Subject to this section, a soldier of the Regular Force shall be entitled to claim his discharge—
 - (a) at any time within three months after the date of his first attestation upon payment of a sum not exceeding the equivalent of ninety days pay; or
 - (b) at any time during his initial engagement with the consent of the Commander upon payment of one half of one month pay for each uncompleted year of service with the Regular Force;
 - (c) if on continuous service, at any time provided the requirements prescribed in the Defence Force (Regular Force)(Other Ranks) Regulations are complied with, and shall be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act.
- (2) Notwithstanding subsection (1), a soldier of the Regular Force shall not be entitled to claim his discharge pursuant to this section while he is required to continue with his colour service under [section 22](#).
- (3) For the purposes of subsection (1)(b)—
 - (a) “pay” means the basic rate of pay plus service pay and pay of rank, but does not include marriage allowance and trade pay; and
 - (b) “one half of one month’s pay” shall be the equivalent of fifteen days pay.

28. Restrictions on reduction in rank of warrant officers and non-commissioned officers

A warrant officer or non-commissioned officer of the Force, other than a lance-corporal, shall not be reduced in rank except by order of a court-martial or the Defence Council or of an officer not below the rank of lieutenant colonel authorized by Regulations made under this Act to act for the purpose of this subsection.

- (2) An authorization under subsection (1) may be given generally or subject to such limitations as may be prescribed.
- (3) For the purposes of this section, a “reduction in rank” does not include reversion from acting rank to substantive rank.

29. Right of warrant officer to discharge on reduction to ranks

A warrant officer of the Regular Force who is reduced to the ranks may thereupon claim to be discharged unless a state of national defence, insurrection, hostilities or public emergency exists.

Division 3 – Miscellaneous and supplementary provisions

30. Rules for reckoning service

In reckoning the service of any soldier of the Regular Force towards discharge or re-engagement or transfer to the Reserve Force, there shall be excluded therefrom—

- (a) all periods during which he has been absent from his 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.

31. Validity of attestation and enlistment

- (1) Where a person has made such declaration upon his attestation as may be prescribed and has thereafter received pay as a soldier of the Regular Force—
 - (a) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;
 - (b) after the expiration of a period of three months from the date from 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 regulation made as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper) and he shall be deemed to be a soldier of that Force until his discharge.
- (2) Where a person has received pay as a soldier of the Regular Force without having previously made such declaration as may be prescribed then—
 - (a) he shall be deemed to be a soldier of that Force until discharged;
 - (b) 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 appropriate superior authority who shall, if the claim is well founded, cause him to be discharged with all convenient speed.
- (3) Nothing in subsection (1) or (2) shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

32. False answers in attestation papers

- (1) If a person appearing before a recruiting officer for the purpose of being enlisted in the Regular Force knowingly makes a false answer to any question contained in the attestation paper and put to him by, or by the direction of, the recruiting officer, he shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.
- (2) For the avoidance of doubt it is hereby declared that a person may be proceeded against for an offence under subsection (1) notwithstanding that he has since become subject to military law under this Act.

Part V – Discipline, trial and punishment of military offences

Division 1 – Treachery, cowardice and other offences arising out of military service

33. Aiding the enemy

- (1) Any person subject to military law under this Act who, with intent to assist the enemy—
 - (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; or
 - (b) does any act calculated to imperil the success of operations of the Defence Force, or of any cooperating forces or any part of the Defence Force or of those forces; or
 - (c) having been made a pensioner 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 authorized by international usage; or

- (d) furnishes the enemy with arms or ammunition or with supplies of any description or with anything likely to assist the enemy (whether similar to any of the other things mentioned in this subsection or not), or
- (e) harbours or protects the enemy not being a prisoner of war; or
- (f) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal; or
- (g) when ordered by a superior officer, or otherwise under orders, to carry out any warlike operations in the air fails to use his utmost exertion to carry such orders into effect; or
- (h) causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or life imprisonment.

- (2) Any person subject to the military law under this Act who knowingly and without lawful excuse does any of the acts specified in subsection (1) (a) to (g) inclusive shall, where it is not proved that he acted with intent to assist the enemy, on conviction by court-martial or by the High Court, be guilty of an offence and liable to imprisonment of any less punishment provided by this Act.
- (3) Any person subject to military law under this Act who negligently causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force, or any forces cooperating therewith shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

34. Communication with the enemy

- (1) Any person subject to military law under this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or life imprisonment.
- (2) Any person subject to military law under this Act who, without authority, communicates with or gives intelligence to the enemy shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to life imprisonment.
- (3) In this section, the expression “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 the 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, being a matter such that information as to it would or might be directly or indirectly useful to the enemy, that is to say—
 - (a) the number, description, armament, equipment, disposition, movement or condition of the Defence Force or of any cooperating forces, or any aircraft of the Defence Force or aircraft of any cooperating forces;
 - (b) any operation or projected operation of the Defence Force or of any cooperating forces, or aircraft as aforesaid;
 - (c) any code, cipher, call-sign, password or countersign;
 - (d) any measure for the defence or fortification of any place;
 - (e) the number, description or location of any prisoner of war;
 - (f) munitions of war.

35. Cowardly behavior

- (1) Any person subject to military law under this Act who when before the enemy—
 - (a) leaves his post position or other place where it is his duty to be; or
 - (b) throws away his arms, ammunition or tools; or
 - (c) does any of the acts specified in [section 29](#) (1) (f) to (h) inclusive, 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.
- (2) Any person subject to military law under this Act who when before the enemy induces other persons subject to service law to commit an offence under subsection (1), shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

36. Offences against morale

Any person subject to military law under this Act who—

- (a) spreads (whether orally, in writing, by signal or otherwise) reports containing any matter or information relating to operations of the Defence Force or of any cooperating forces, or of any part of the Defence Force or any of those forces, being reports calculated to create despondency or unnecessary alarm, or
 - (b) when before the enemy uses words calculated to spread despondency or unnecessary alarm,
- shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

37. Becoming prisoner of war through disobedience or willful neglect and failing to rejoin force

- (1) Any person subject to military law under this Act who, through disobedience to orders or willful neglect of his duty, is captured by the enemy shall be guilty of an offence.
- (2) Any person subject to military law under this Act who—
 - (a) having been captured by the enemy, fails to take any reasonable steps to rejoin the Defence Force or any cooperating forces which is available to him; or
 - (b) prevents or discourages any other person subject to military law captured by the enemy from taking any reasonable steps to rejoin the Defence Force or any cooperating forces which is available to him or, as the case may be, to that other person,shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

38. Offences by or in relation to sentries, etc.

- (1) Any person subject to military law under this Act who, while on guard duty—
 - (a) sleeps at his post; or
 - (b) when not on duty at his post, is asleep at a time when he is not allowed to be asleep; or
 - (c) is drunk; or

- (d) leaves his post without having been regularly relieved, or otherwise absents himself from any place where it is his duty to be,
- shall be guilty of an offence.
- (2) For the purposes of subsection (1), a person is drunk if, owing to the influence of alcohol or any intoxicating drug or other substance, whether alone or in combination with any other substance or circumstance, 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 a manner likely to bring discredit to the Defence Force.
- (3) Any person subject to military law under this Act who strikes, or otherwise uses force against, any person on guard duty, being a member of the Defence Force or of any cooperating forces or who, by the threat of force, compels any such person to let him or any other person pass, shall be guilty of an offence.
- (4) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:
- Provided that if the offence is not committed on active service he shall not be liable to imprisonment for more than two years.
- (5) Reference in this section to a person on guard duty is reference to a person who—
- (a) is posted or ordered to 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 to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises or place, or regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

39. Looting

Any person subject to military law under this Act who—

- (a) steals from, or with intent to steal searches the person of, anyone killed or wounded in the course of warlike operations; or
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or
- (c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial or by the High Court, to imprisonment or any less punishment provided by this Act.

Division 2 — Mutiny and insubordination

40. Mutiny

- (1) Any person subject to military law under this Act who—
- (a) takes part in 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 connexion with operations against, the enemy, or the impeding of the performance of any such duty or service; or

- (b) incites any person subject to service law to take part in such mutiny, whether actual or intended,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or any other punishment provided by this Act.

- (2) Any person subject to military law under this Act who, in a case not falling within subsection (1), takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.
- (3) In this Act, “mutiny” means a combination between two or more persons subject to service law, or between persons at least two of whom are subject to service law—
 - (a) to overthrow or resist lawful authority in the Defence Force or any cooperating forces or in any part of the Defence Force or of those forces; or
 - (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connexion with operations against, the enemy; or
 - (c) to impede the performance of any duty or service in the Defence Force or in any cooperating forces or in any part of the Defence Force or of those forces.

41. Failure to suppress mutiny

Any person subject to military law under this Act who, knowing that a mutiny is taking place or is intended fails to use his utmost endeavours to suppress or prevent it or fails to report without delay that the mutiny is taking place or is intended shall, on conviction by court-martial or by the High Court—

- (a) if his offence was committed with intent to assist the enemy, be liable to suffer death or life imprisonment; and
- (b) in any other case, be liable to life imprisonment.

42. Insubordinate behavior

- (1) Any person subject to military law under this Act who—
 - (a) strikes or otherwise uses violence to a superior officer; or
 - (b) uses threatening or insubordinate language to a superior officer,shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.
- (2) If the offence under subsection (1) was not committed on active service and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such, the offender shall not be liable to be imprisoned for more than two years.
- (3) In this section the expression “superior officer”, in relation to a person, means an officer, warrant officer or non-commissioned officer subject to service law of superior rank, and includes an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as that person’s superior.

43. Disobedience to particular orders

- (1) Any person subject to military law under this Act who, in such manner as to show a willful defiance of authority, disobeys any lawful command given or sent to him personally shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

- (2) Any person subject to military law under this Act who, whether willfully or through neglect, disobeys any lawful command, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.
- (3) If the offence under this section was not committed on active service the offender shall not be liable to be imprisoned for more than two years.

44. Obstruction of provost officers

Any person subject to military law under this Act who—

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

any person known to him to be a provost officer, or to be a person (whether subject to military law under this Act or not) legally exercising authority under or on behalf of a provost officer shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

45. Disobedience to standing orders

- (1) Any person subject to military law under this Act who contravenes or fails to comply with any provision of standing orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for 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 that may be made by the appropriate superior authority for any formation or unit or body of troops, or for any command or other areas, garrison or place, or for any vessel, train or aircraft.

Division 3 — Desertion, absence without leave, etc.

46. Desertion

- (1) Any person subject to military law under this Act who—
 - (a) deserts; or
 - (b) persuades or procures any person subject to service law to desert shall be guilty of an offence and shall,
on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.
- (2) A person shall not be liable to be imprisoned for more than two years unless—
 - (a) if the offence was against paragraph (a) of subsection (1), he was on active service or under orders for active service at the time it was committed, or
 - (b) if the offence was an offence against paragraph (b) of subsection (1), the person in relation to whom it was committed was on active service or under orders for active service at that time.
- (3) For the purposes of this Act, a person deserts who—
 - (a) leaves the Defence Force or, when it is his duty to do so, fails to join or rejoin the Defence Force, with (in either case) the intention, subsisting at the time of leaving or failure or formed thereafter, of remaining permanently absent from his duty; or

- (b) being an officer, enlists in or enters any part of the Defence Force or other forces without having resigned his commission; or
 - (c) being a soldier, enlists in or enters any part of the Defence Force or other forces without having been discharged from his previous enlistment; or
 - (d) absents himself without leave with intention to avoid serving at any place outside Malawi or to avoid service or any particular service when before the enemy, and references in this Act to “desertion” and to desert” shall be construed accordingly.
- (4) In addition to or in lieu of any punishment authorized by subsection (1), the court-martial or the High Court by which a soldier of the Regular Force is convicted of desertion may direct that the whole or any part of his service previous to the period in respect of which he is convicted of having been a deserter shall be forfeited.

47. Absence without leave

Any person subject to military law under this Act who—

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

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

48. Assisting and concealing desertion and absence without leave

Any person subject to military law under this Act who—

- (a) knowingly assists any person subject to service law to desert or absent himself without leave, or
- (b) knowing that any person subject to service law 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 steps in his power to cause that person to be apprehended,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

49. Falsely obtaining or prolonging leave

Any person subject to military law under this Act who, for the purpose of obtaining leave or prolonging his leave, knowingly makes any false statement shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

50. Failure to perform military duties

Any person subject to military law under this Act who, without reasonable excuse, fails to attend for any, parade or any military duty of any description or leaves any such parade or duty before he is permitted to do so shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 4 – Malingering and drunkenness

51. Malingering

- (1) Any person subject to military 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 service, or causes himself to be injured by any person with that intent; or
 - (c) injures another person subject to service law, at the instance of that person, with intent thereby to render that person unfit for service; 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, or prolongs or aggravates, any sickness or disability,shall be guilty of malingering and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.
- (2) In this section the expression “unfit” includes temporarily unfit.

52. Drunkenness

- (1) Any person subject to military law under this Act who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.
- (2) If the offence under subsection (1) is committed by a soldier neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months.
- (3) For the purposes of subsection (1) a person is drunk if owing to the influence of alcohol or any intoxicating drug or other substance, whether alone or in combination with any other substance or circumstances, 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 a manner likely to bring discredit to the Defence Force.

Division 5 – Offences relating to property

53. Offences relating to public and service property

- (1) Any person subject to military law under this Act who—
 - (a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at stealing or fraudulent misapplication of any public or service property; or
 - (b) receives any public or service property knowing it to have been stolen or to have been fraudulently misapplied; or
 - (c) willfully damages, or is concerned in the willful damage of, any public or service property; or
 - (d) by willful neglect causes damage by fire to and public or service property,shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for fourteen years.

- (2) Without prejudice to the generality of subsection (1), any person subject to military law under this Act who—
- (a) willfully damages, or is concerned in the willful damage of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces; or
 - (b) by willful neglect causes damage to, or the loss of, any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces; or
 - (c) without lawful authority disposes of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces,
- shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for fourteen years.
- (3) Any person subject to military law under this Act who, during the active service, willfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any aircraft of the Defence Force or of any cooperating forces shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for life.
- (4) If the offender, in committing the offence under subsection (3), did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

54. Offences in relation to property of members subject to service law

Any person subject to military law under this Act who—

- (a) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
- (b) receives any property belonging to a person subject to service law, knowing it to have been stolen or to have been fraudulently misapplied; or
- (c) willfully damages, or is concerned in the willful damage of, any property belonging to a person subject to service law,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

55. Miscellaneous offences relating to property

- (1) Any person subject to military law under this Act who—
- (a) loses, or by negligence damages, any public or service property of which he had the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care; or
 - (b) by negligence loses or damages any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces;
 - (c) does any act of neglect likely to cause damage or loss of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or any forces cooperating therewith; or
 - (d) by negligence causes damage by fire to any public or service property; or
 - (e) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or

- (f) fails to take proper care of any animal or bird used in the public service which is in his charge; or
- (g) makes away (whether by pawning, selling, destruction or in any other way) with any service decoration granted to him, or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

- (2) It shall be a defence for any person charged under subsection (1) with the offence of losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

56. Loss and hazarding of aircraft, vessel or vehicle of the Defence Force

- (1) Any person subject to military law under this Act who, either willfully or by negligence, causes or allows any aircraft, vessel or vehicle of the Defence Force to be captured, lost, destroyed, damaged, stranded or hazarded shall be guilty of an offence and liable to imprisonment for life or any less punishment provided by this Act.
- (2) If the offender, in committing the offence under subsection (1) did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

57. Improper carriage of goods

Any person subject to military law under this Act who, being in command of any aircraft, vessel or vehicle of the Defence Force or being a member of its crew, without lawful authority—

- (a) receives or permits to be received on board the aircraft vessel or vehicle any goods or merchandise (not being goods or merchandise received in the course of salvage) intended for disposal or delivery by way of, trade or business, whether on his own account or on account of any other person; and
- (b) agrees to carry any goods or merchandise on board the aircraft, vessel or vehicle in consideration of the payment of freight, or demands or receives any payment in respect of such carriage,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 6 – Offences relating to billeting and requisitioning of vehicles, aircraft or vessels

58. Billeting offences

Any person subject to military law under this Act who—

- (a) knowing that no billeting requisition is in force under Part VIII authorizing him to demand any billets, or that he is otherwise not authorized to demand them, obtains those billets or orders or procures another person to obtain them; or
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle, aircraft or vessel is or is to be billeted in pursuance of a billeting requisition under Part VIII any money or thing as consideration for not requiring, or ceasing to require, the accommodation for himself or the said other person or standing room for the vehicle, aircraft or vessel; or
- (c) commits any offence or any wrongful act against the personal property of the occupier of premises in which he is billeted in pursuance of a billeting requisition under Part VIII or of any other person being in those premises, or against any other property in those premises, or willfully or by willful neglect damages those premises or any such property, shall be guilty of an offence and shall, on

conviction by court-martial or the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

59. Offences in relation to requisitioning of vehicles, aircraft or vessel

- (1) Any person subject to military law under this Act who—
- (a) knowing that no requisitioning order is in force under Part VIII authorizing him to give directions for the provision of any vehicle, aircraft or vessel, or that he is otherwise not authorized to give such directions, gives directions for the provision of the vehicle, aircraft or vessel or orders or procures another person to give such directions; or
 - (b) in purported exercise of powers conferred by a requisitioning order under Part VIII takes, or orders or procures any other person to take possession of a vehicle, aircraft or vessel, knowing that no requisitioning order is in force under Part VIII under which the taking possession of the vehicle, aircraft or vessel could be authorized, or that the taking possession thereof is otherwise not authorized under such order; or
 - (c) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle, an aircraft or vessel not being given, or not being retained, under a requisitioning order under Part VIII,
- shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.
- (2) Subsection (1) shall apply in relation to animals, food, forage and stores (within the meaning of Part VIII) as it applies in relation to vehicles, aircraft and vessels.

60. Dangerous flying

- (1) Any person subject to military law under this Act who, either willfully or by negligence, does any act or makes any omission in flying an aircraft of the Defence Force or in the use of such aircraft or in relation to such aircraft or any material of such aircraft, which act or omission causes or is likely to cause loss of the life of or to cause bodily injury to, any person shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for life or any less punishment provided by this Act.
- (2) If, in committing the offence under subsection (1), the offender did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

61. Low flying

Any person subject to military law under this Act who, being the pilot of an aircraft of the Defence Force, flies the aircraft at a height less than the prescribed height, except—

- (a) while taking off or landing; or
- (b) in such other circumstances as may be prescribed,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

62. Annoyance by flying

Any person subject to military law under this Act who, being the pilot of an aircraft of the Defence Force, flies the aircraft so as to cause or likely to cause unnecessary annoyance to any person shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 7 – Offences relating to, and by, persons in custody

63. Irregular arrest and confinement

- (1) Any person subject to military law under this Act who, when another person also subject to military law under this Act is under arrest—
 - (a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegation against that other person investigated by his commanding officer or the appropriate superior authority or, as the case may be, tried by court-martial or by the High Court; or
 - (b) fails to release, or effect the release of, that other person when it is his duty to do so,
shall be guilty of an offence.
- (2) Any person subject to military law under this Act who, having committed a person (hereinafter referred to as “the prisoner”) to the custody of any provost officer or other officer, or any warrant officer or non-commissioned officer, fails without reasonable cause to deliver—
 - (a) at the time of the committal; or
 - (b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,
to the 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, shall be guilty of an offence.
- (3) Where any person (hereinafter referred to as “the prisoner”) is committed to the charge of a person subject to military 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 known to him the prisoner’s name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; and
 - (b) if he has received it, the report required by subsection (2) he shall be guilty of an offence.
- (4) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

64. Performing and unlawful release of prisoners

- (1) Any person subject to military law under this Act who willfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.
- (2) Any person subject to military law under this Act who—
 - (a) without proper authority releases any person who is committed to his charge; or
 - (b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,
shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

65. Resistance to arrest

- (1) Any person subject to military law under this Act who, being concerned in any quarrel or disorder, refuses to obey any officer subject to service law who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence whether or not the officer is his superior officer.
- (2) Any person subject to military law under this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to military law under this Act or not, whose duty is to apprehend him or in whose custody he is, shall be guilty of an offence.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High court, be liable to imprisonment for two years or any less punishment provided by this Act.

66. Escape from confinement

Any person subject to military law under this Act who escapes from arrest, prison or other lawful custody (whether military or not), shall, on conviction by court-martial or the High court, be liable to imprisonment for two years or any less punishment provided for by this Act.

Division 8 – Offences in relation to courts-martial**67. Offences in relation to courts-martial**

- (1) Any person subject to military 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 when duly required by a court-martial to do so; or
 - (c) refuses to produce any 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 any questions which court-martial has lawfully required him to answer; or
 - (e) willfully insults any 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, while that person is acting as a member thereof or is so attending, or willfully insults any such person while such person is going to or returning from the proceedings, of the court; or
 - (f) willfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall be guilty of an offence and shall, on conviction by court-martial, other than the court in relation to which the offence was committed or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

- (2) Notwithstanding anything in subsection (1) where an offence against paragraph (e) or (f) of that subsection is committed in relation to any court-martial held in pursuance of this Act, that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial or by the High Court, may by order under the hand of the presiding officer order the offender to be imprisoned for a period not exceeding twenty-one days, or, in the case of a soldier, either to be imprisoned for such a period or to undergo detention for such a period.
- (3) Reference in subsection (1) (a) to (f), inclusive, to a court-martial shall include references to a court-martial held in pursuance of service law.

68. False evidence

- (1) Any person subject to military law under this Act who having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.
- (2) A person shall not be liable to be convicted of an offence against this section solely on the evidence of one witness as to the falsity of any statement alleged to be false.

Division 9 – Miscellaneous offences

69. Injuries disclosures

- (1) Any person subject to military law under this Act who without authority, discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to the enemy shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for ten years or any less punishment Provided by this Act.
- (2) In this section, the expression “information useful to the enemy” means information as to any matter such that information as to it would or might be directly or indirectly useful to the 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, being a matter such that information as to it would or might be directly or indirectly useful to the enemy, that is to say—
 - (a) the number, description, armament, equipment disposition, movement or conditions of any part of the Defence Force or of any cooperating forces, or any aircraft of the Defence Force or aircraft of those forces;
 - (b) any operations or projected operations of the Defence Force or of any cooperating forces or any aircraft of the Defence Force or of those forces;
 - (c) any code, cipher call-sign, password or countersign;
 - (d) any measures for the defence or fortification of any place;
 - (e) the number, description or location of any prisoners of war; and
 - (f) any munitions of war.

70. Making of false statement on enlistment

Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part IV, has knowingly made a false answer to any question contained in the attestation paper and put to him by the direction of the recruiting officer shall, if he has since become and remains subject to military law under this Act, be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for three months or to any less punishment provided by this Act.

71. Making of false documents

Any person subject to military law under this Act who—

- (a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular; or

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

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

72. Scandalous conduct of an officer

Every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer, shall be guilty of the offence and shall, on conviction by court-martial or by the High Court, be cashiered:

Provided that the scandalous behavior is such as to demonstrate that the accused is unfit to remain an officer and it is necessary in the interest of discipline and the good name of the service that the accused should be dismissed from the service.

73. Ill-treatment of officers or men of inferior rank

If—

- (a) any officer subject to military law under this Act strikes or otherwise ill-treats any officer subject to service law of inferior rank or less seniority, or any soldier subject to service law; or
- (b) any warrant officer or non-commissioned officer subject to military law under this Act strikes or otherwise ill-treats any person subject to service law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or a private soldier,

he shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

74. Disgraceful conduct

Any person subject to military law under this Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

75. False accusation, etc.

Any person subject to military law under this Act who—

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

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

76. Attempts to commit military offences

Any person subject to military law under this Act who attempts to commit an offence against any of the foregoing provisions of this Part shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to the like punishment as for that offence:

Provided that if the offence is one punishable by death he shall not be liable to any greater punishment than imprisonment.

77. Conduct to the prejudice of military discipline

Any person subject to military law under this Act who is guilty of any act, conduct or neglect to the prejudice of good order and military discipline shall be guilty of an offence and shall, on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

78. Political activities

(1) Any person subject to military law under this Act who—

- (a) promotes, or is a member of, or takes part in the activities of, any political association;
- (b) expresses political views in a public place or in the media; or
- (c) addresses any meeting or joins in any demonstration, the purpose of which is to express support for a political association or object, or for a candidate, in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act:

Provided that this section shall not prevent any person from voting in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum.

(2) Voting in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum shall not take place within the premises of the Defence Force and no person shall be permitted to campaign for such vote within such premises.

79. Prize offences

(1) Any person subject to military law under this Act who is in command of an aircraft or a vessel and who—

- (a) having taken such aircraft or vessel as prize, fails to send to the High Court or to some other prize court having jurisdiction in the case all the documents found on board, and relating to, such aircraft or vessel;
- (b) unlawfully makes any agreement for the ransoming of such aircraft or vessel or any goods taken as prize; or
- (c) in pursuance of an agreement referred to in paragraph (b), or otherwise by collusion, restores or abandons such aircraft or vessel or any goods taken as prize,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for five years or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who—

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

- (b) removes out of any aircraft or vessel taken as prize (otherwise than for safekeeping or for some necessary use by the Defence Force) any goods not previously adjudged by a prize court to be lawful prize; or
- (c) breaks bulk on board any aircraft or vessel taken as prize, or detained in exercise of any belligerent right or under any law, with intent to embezzle or fraudulently misapply anything therein,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for five years or any less punishment provided by this Act.

Division 10 – Civil offences

80. Civil offences

- (1) Any person subject to military law under this Act who commits a civil offence, whether in Malawi or elsewhere, shall be guilty of an offence.
- (2) In this Act, the expression—
 - (a) “civil offence” means any act or omission punishable by the law of Malawi or which, if committed in Malawi, would be punishable by that law; and
 - (b) “the corresponding civil offence” means the civil offence the commission of which constitutes the offence against this section.
- (3) A person convicted by court-martial or by the High Court of an offence against this section shall—
 - (a) if the corresponding civil offence is treason or murder, be liable to suffer death; or
 - (b) in any other case, be liable to suffer any punishment or punishments which the civil court could award for the corresponding civil offence, if committed in Malawi, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could 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 detention in the case of a soldier, as is so provided.

- (4) A person shall not be charged with an offence against this section committed in Malawi if the corresponding civil offence is treason, murder, manslaughter, treason-felony or rape.
- (5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed for the purposes of subsection (4) 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 death.
- (6) Proceedings for an offence against this section shall be instituted only with the consent of the Director of public Prosecutions.

Division 11 – Punishments

81. Punishment of officers

- (1) The punishments which may be awarded under this Act to an officer by sentence of court-martial or by the High Court are those set out in the scale in subsection (2); and in relation to an officer references in this Act to punishments provided by this Act are references to those punishments.

- (2) The scale referred to in subsection (1) is—
- (a) death;
 - (b) imprisonment;
 - (c) cashiering;
 - (d) dismissal from the Defence Force;
 - (e) forfeiture in the prescribed manner of seniority of rank in the Defence Force or in the corps to which the offender belongs, or in both;
 - (f) fine of a sum not exceeding the equivalent of ninety days pay;
 - (g) severe reprimand;
 - (h) reprimand;
 - (i) admonition; or
 - (j) stoppages of pay, where the offence has occasioned any expense, loss or damage.
- (3) For the purposes of this Part, a punishment specified in any paragraph of the scale in subsection (2) shall be treated as less than the punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale.
- (4) Save as expressly provided in this Act, not more than one punishment shall be awarded by court-martial or by the High Court for one offence.
- (5) Stoppages (of pay) may be awarded by court-martial or by the High Court either in addition to or without any other punishment.
- (6) A severe reprimand or reprimand may be awarded by court-martial or by the High Court in addition to forfeiture of seniority of rank or a fine.
- (7) Where an officer is sentenced by court-martial or by the High Court to imprisonment he shall also be sentenced to be cashiered:

Provided that if the court-martial or the High Court fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

82. Punishment of soldiers

- (1) The punishment which may be awarded to a soldier by a sentence of a court-martial under this Act are those set out in the scale in subsection (2); and in relation to a soldier reference in this Act to punishments provided by this Act are references to those punishments.
- (2) The scale referred to in subsection (1) is—
- (a) death;
 - (b) imprisonment;
 - (c) discharge with ignominy from the Defence Force;
 - (d) in the case of the warrant officer, dismissal from the Defence Force;
 - (e) detention for a term not exceeding two years;
 - (f) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding ninety days;
 - (g) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;

- (h) in the case of a warrant officer or non-commissioned officer forfeiture in the prescribed manner seniority of rank;
 - (i) where the offence is desertion, forfeiture of service;
 - (j) fine of a sum not exceeding the equivalent of ninety days' pay;
 - (k) in the case of warrant officer or non-commissioned officer, reprimand or admonition; and
 - (l) stoppages (of pay), where an offence has occasioned any expense, loss or damage;
- (3) For the purposes of this Part, a punishment specified in any paragraph in the scale in subsection (2) shall be treated as less than the punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale:
- Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.
- (4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for any one offence.
- (5) A soldier sentenced by a court-martial to imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from the Defence Force, and a warrant officer sentenced by court-martial to imprisonment may, in addition thereto, be sentenced to dismissal from the Defence Force.
- (6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment, detention or field punishment, he shall also be sentenced to be reduced to the rank:
- Provided that if the court-martial failed to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.
- (7) In the case of a warrant officer or non-commissioned officer a reprimand or admonition may be awarded by court-martial in addition to forfeiture of seniority of rank or a fine.
- (8) Where an offender is on active service when sentence of a court-martial is announced, a fine may be awarded in addition to field punishment.
- (9) Stoppages (of pay) may be awarded by a court-martial either in addition to or without any other punishment.
- (10) Where an offender has been sentenced by a court-martial to detention, then if he is subsequently sentenced by a court-martial to imprisonment any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.
- (11) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

83. Field punishment

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 regulations to be made by the Defence Council, and may include confinement in such place or 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.

Division 12 – Arrest

84. Power to arrest offenders

- (1) Any person subject to military law under this Act found committing an offence against any provision of this Act or alleged to have committed or reasonably suspected of having committed any such offence may be arrested in accordance with the following provisions of this section.
- (2) An officer may be arrested by an officer subject to service law of superior rank, or, if engaged in a quarrel or disorder, by an officer subject to service law of any rank.
- (3) A soldier may be arrested by any officer, warrant officer or non-commissioned officer subject to service law:

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.
- (4) A provost officer, or any officer, warrant officer or non-commissioned officer subject to service law lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or soldier:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.
- (5) The power of arrest given to any 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.

85. Avoiding delay after arrest

- (1) The allegations against any person subject to military law under this Act who is under arrest shall be duly investigated without unnecessary delay and, as soon as may be practicable, either proceedings shall be taken to deal with the alleged offence or the person shall be released from arrest.
- (2) Where any person subject to military law under this Act, having been taken into military custody, remains under arrest for a longer period than eight days without either a court-martial for his trial being assembled or the date for his trial by the High Court having been fixed, a special report on the necessity for further delay shall be made by his commanding officer to the Defence Council and the Director of Public Prosecutions in the prescribed manner, and a similar report will be made to those like authorities and in the like manner every eight days until either a court-martial is assembled or the trial by the High Court is commenced or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.
- (3) For the purposes of [section 63](#) (1), the question as to whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to subsection (2).

Division 13 – Investigation of, and summary dealings with, charges

86. Investigation of charges by commanding officer

Before an allegation against a person subject to military law under this Act (hereinafter referred to as “the accused”) that he has committed an offence against any provision of this Part is further proceeded with,

the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

87. Charges to be dealt with summarily or by court-martial

- (1) After investigation, a charge against an officer below the rank of colonel or against a warrant officer may be dealt with summarily by the appropriate superior authority in accordance with this Part.
- (2) After investigation, a charge against a non-commissioned officer or private soldier may be dealt with summarily by his commanding officer, subject to, and in accordance with, the following provisions of this Part.
- (3) Any charge not dealt with summarily by the appropriate superior authority shall, after investigation—
 - (a) in the case of an officer of the rank of colonel or above, be remanded for trial by the High Court; or
 - (b) in any other case, be remanded for trial by court-martial.
- (4) Notwithstanding the other provisions of this section, where a commanding officer has investigated a charge against—
 - (a) an officer or warrant officer; or
 - (b) a non-commissioned officer or private soldier,which is not one which can be dealt with summarily, the commanding officer 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 commanding officer or appropriate superior authority of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty and, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.
- (6) A remand for trial by the High Court referred to in subsection (3) (a) shall be deemed to constitute committal by a magistrate for trial to the High Court for the purpose of section 262 of the Criminal Procedure and Evidence Code.

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88. Further proceedings on charges against non-commissioned officers and soldiers

- (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned or private soldier.
- (2) If the charge is not one which can be dealt with summarily and the commanding officer is of opinion that it should not be so dealt with, he shall take the prescribed steps with a view to the charge being tried by court-martial.
- (3) If, the commanding officer shall proceed to deal with the charge summarily, and he records a finding of guilty he may award on, or more of the following punishments, that is to say—
 - (a) if the accused is a non-commissioned officer—
 - (i) a fine of a sum not exceeding the equivalent of twenty-eight days pay;
 - (ii) severe reprimand;
 - (iii) reprimand;
 - (iv) stoppages (of pay), where the offence has occasioned any expense, loss or damage; and

- (v) admonition;
- (b) if the accused is a private soldier—
 - (i) detention for a period not exceeding forty-two days, or if the accused is on active service, field punishment for a period not exceeding forty-two days;
 - (ii) a fine of a sum not exceeding the equivalent of twenty-eight days pay;
 - (iii) stoppages (of pay), where the offence has occasioned any expense, loss or damage;
 - (iv) confinement to barracks for a period not exceeding fourteen days;
 - (v) extra guards or pickets, and
 - (vi) admonition.
- (4) Where the accused is an acting warrant officer or an acting non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment except stoppages (of pay), order the accused to revert to his permanent rank or to assume an acting rank lower than that held by him but higher than his permanent rank.
- (5) Notwithstanding subsection (4), where the accused is a corporal or lance-corporal and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment except stoppages (of pay), order the accused to be reduced to a lower rank.
- (6) No fine or severe reprimand or reprimand, confinement to barracks, extra guards or pickets, or admonition shall be awarded for an offence for which detention is awarded.
- (7) A fine shall not be awarded for an offence for which stoppages (of pay) have been awarded.
- (8) Notwithstanding subsection (3), where a commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or admonition, confinement to barracks, extra guards or pickets, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accordance with regulations withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.
- (9) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, the Commander may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference subsections (3), (4), (5), (6), (7) and (8) shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

89. Further proceedings on charges against officers and warrant officers

- (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to the appropriate superior authority, who shall determine how the charge is to be proceeded under subsections (2) and (3) of this section.
- (2) If the charge is one which can be dealt with summarily, it may be so dealt with by the appropriate superior authority.

- (3) If the charge is not one which can be dealt with summarily or the charge is one which can be dealt with summarily but the appropriate superior authority is of opinion that it should not be so dealt with, the prescribed steps shall be taken with a view to its being tried—
- (a) by the High Court in the case of members who are officers of the rank of colonel and above; or
 - (b) by court-martial in the case of members who are below the rank of colonel.
- (4) Where the charge is dealt with summarily by the appropriate superior authority, he shall investigate the charge in the prescribed manner and if, upon such investigation, he determines that—
- (a) the accused is guilty of the charge, he shall record a finding of guilty; and
 - (b) the accused is not guilty of the charge, he shall record a finding of not guilty and accordingly dismiss the charge.
- (5) If the appropriate superior authority records a finding of guilty, he may award one or more of the following punishments, that is to say—
- (a) forfeiture in the prescribed manner of seniority of rank;
 - (b) a fine of a sum not exceeding the equivalent of twenty-eight days pay;
 - (c) severe reprimand;
 - (d) reprimand;
 - (e) stoppages (of pay), where the offence has occasioned any expense, loss or damage; and
 - (f) admonition:
- Provided that the appropriate superior authority may not award both forfeiture of seniority of rank and a fine.
- (6) Notwithstanding the provisions of subsection (4)—
- (a) where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily he may award forfeiture of seniority, a fine or stoppages (of pay); or
 - (b) where a finding of guilty will involve a forfeiture of pay, the appropriate superior authority shall not record a finding until affording the accused an opportunity of electing to be tried by court-martial, and if the accused so elects, the appropriate superior authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.
- (7) If the charge is one which can be dealt with summarily, it may be referred to the Commander for guidance.

90. Dismissal of charges referred to the Commander

- (1) Notwithstanding the provisions of sections 88 and 89, where a charge—
- (a) has been referred to the Commander with a view to its being tried by court-martial, or
 - (b) has been referred to the Commander for determination of how it is to be proceeded with,
- he may, subject to this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed and in any such case the commanding officer shall dismiss the charge.
- (2) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the Commander has so directed or the commanding officer thinks fit.

91. Power of commanding officers to delegate powers

Regulations made under this Act may confer on commanding officers power to delegate the powers of commanding officers, in such cases and to such extent and to such officer or class of officers as may be specified in the regulations.

92. Limitations of powers to summary dealing with charges

- (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by the Commander, shall be such as may be specified by regulations made under this Act.
- (2) In such cases as may be specified in that behalf by regulations made under this Act, the powers of a commanding officer to award punishment shall be subject to such limitations as may be so specified.

Division 14 – Court-martial: General provisions**93. Trial by and powers of, court-martial**

Subject to this Act, a court-martial convened under this Act shall have power to try any person subject to military law under this Act for any offence which under this Act is triable by court-martial and to award for any such offence any punishment authorized by this Act for that offence.

94. Officers having power to convene court-martial

- (1) A court-martial may be convened by the Commander or by any officer not below field rank authorized by Commander to convene courts-martial.
- (2) Any authorization under subsection (1) to convene courts-martial—
 - (a) may be made subject to restrictions, reservations, exceptions or conditions;
 - (b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer and to the person for the time being performing the duties of his office, or to a named or designated officer and his successor in that office or to a named or designated officer and such person and successors; and
 - (c) may be varied or may be revoked either wholly or in part by the officer by whom it was given or his successor in office.

95. Constitution of court-martial

- (1) Every court-martial shall consist of—
 - (a) an officer designated as the presiding officer appointed by the appropriate superior authority; and
 - (b) not less than four other members who shall—
 - (i) all be officers if the accused is an officer;
 - (ii) include at least one non-commissioned officer if the accused is a non-commissioned officer or a private soldier.
- (2) A person officer shall not be appointed to be the presiding officer or a member of a court-martial unless he has served in the Defence Force for—
 - (a) a period of not less than five years, in the case of an officer; or

- (b) a period of not less than seven years, in the case of a non-commissioned officer or a private soldier.
- (3) The presiding officer of a court-martial shall be appointed by order of the convening officer and shall not be below the field rank unless in the opinion of the convening officer an officer of field rank having suitable qualifications is not, with due regard to the public service, available; and in any event the presiding officer of a court-martial shall not be below the rank of major.
- (4) The members of a court-martial shall be appointed by order of the convening officer or in such other manner as may be prescribed.

96. Supplementary provisions of court-martial

- (1) The officer who convenes a court-martial shall not be 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 be the presiding officer or sit as a member of the court-martial or act as judge advocate at such a court-martial.
- (3) Where the officer convening a court-martial appoints a captain to be presiding officer, being of opinion that a field officer having suitable qualifications is not, with due regard to the public service, available, the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

97. Place for sitting of court-martial and adjournment to other places

- (1) Subject to this section, a court-martial shall sit at such place, whether within or outside Malawi, as may be specified in the order convening the court.
- (2) A court-martial sitting at any 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 requisite in the interest of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Division 15 – Court-martial: provisions relating to trial

98. Challenges by accused

- (1) An accused about to be tried by court-martial shall be entitled to object on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another member.
- (2) For the purposes of enabling the accused to avail himself of the right conferred by subsection (1), the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those members.
- (3) Every objection made by the accused to any member shall be considered by the other members of the court.
- (4) If objection is made to the presiding officer, and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another presiding officer.
- (5) If objection is made to a member of the court other than the presiding officer, and not less than one-half of the members of the court allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced to below the legal minimum shall, be filled in the prescribed manner by another member.

99. Administration of oaths or affirmations

- (1) Subject to this section, an oath shall be administered to every member of a court-martial and to any person in attendance on the court-martial as a judge advocate, officer under instruction, shorthand writer or interpreter.
- (2) Every witness before a court-martial shall be examined on oath except that where a child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court—
 - (a) he is possessed of sufficient intelligence to justify the reception of the evidence; and
 - (b) he understands the duty of speaking the truth.
- (3) Where the evidence is given on behalf of the prosecution under subsection (2) the accused is not liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.
- (4) The unsworn evidence of a child of tender years may not be corroborated by the unsworn evidence of another child of tender years.
- (5) For the purposes of this section, a child of tender years is a child under fourteen years of age but not under eight years of age.
- (6) If—
 - (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to be sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
 - (b) it is not reasonably practicable to administer an oath to such a person in the manner appropriate to his religious belief,he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.
- (7) An oath or affirmation required to be administered under this section shall be in the prescribed form, and shall be administered at the time and by the person and in the manner prescribed.
- (8) For the purposes of this section—

“reasonably practicable” means reasonably practicable without inconvenience or delay; and

“officer under instruction” includes a non-commissioned officer.

100. Court-martial to sit in open court

- (1) Subject to this section, a court-martial shall sit in open court and in the presence of the accused.
- (2) Nothing in subsection (1) shall affect the power of a court-martial to sit *in camera* on the ground that it is necessary or expedient in the interest of the administration of justice so to do; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court 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 an enemy.
- (3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.
- (4) A court-martial may sit in closed court on any other deliberation amongst the members.
- (5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.

101. Dissolution of court-martial

- (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), if after the commencement of a trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.
- (3) If after the commencement of the trial the presiding officer dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then, if the senior member of the court is of the rank of captain or is of higher rank the convening officer may appoint him presiding officer and the trial shall proceed accordingly, but if he is not, the court shall be dissolved.
- (4) Without prejudice to the generality of subsection (1), 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.
- (5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court-martial.

102. Decisions of court-martial

- (1) Subject to this section, every question to be determined on a trial by court-martial shall be determined by a majority of votes of the members of the court.
- (2) In the case of an equality of votes on the finding, the court shall acquit the accused.
- (3) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and, where on such a finding being come to by the majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.
- (4) Where the accused is found guilty and the court 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.
- (5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the presiding officer shall have a second or casting vote.

103. Finding and sentence

- (1) Without prejudice to [section 100](#), the finding of a court-martial on each charge shall be announced in open court.
- (2) Any finding of guilty shall be, and be announced as being, subject to confirmation.
- (3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

104. Power to convict of an offence other than that charged

- (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 less degree of punishment.

- (2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that 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 that offence.
- (4) Where an accused is charged before a court-martial under [section 80](#) 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 that civil offence.
- (5) Where an accused is charged before a court-martial with an offence against [section 80](#), 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 Malawi, he might have been found guilty of another civil offence, then, if the court finds that he has committed that other civil offence, he may be convicted of an offence against [section 80](#) 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 Second Schedule may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

105. Rules or evidence

- (1) Subject to this Act, the rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in Malawi, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before civil courts in Malawi.
- (2) Despite the provisions of subsection (1), a statutory declaration shall, in a trial by a court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent to which, oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in any such trial on behalf 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 the trial, been served on the accused;
 - (b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused, or the commanding officer of the accused has given his agreement in writing to its admission;
 - (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 oral evidence to be given in lieu of the declaration; and
 - (d) in any case, if the court-martial is of 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, and of all other matters of which judicial notice would be taken in a civil court in Malawi.

106. Privileges of witnesses others at court-martial

A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court.

107. Offences by civilians in relation to court-martial

Where in Malawi any person not subject to military 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 an oath or make solemn affirmation when duly required by a court-martial to do so; or
- (c) refuses to produce any 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 any question which a court-martial has lawfully required him to answer; or
- (e) willfully insults any 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, while that person is acting as a member thereof or is so attending, or willfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or
- (f) willfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court; 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 presiding officer of the court-martial may certify, the offence of that person under his hand to the High Court, and the High Court may thereupon inquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.

Division 16 — Confirmation, revision and review of proceedings of court-martial

108. Confirmation of proceedings of court-martial

- (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to the Defence Council for confirmation of the finding and sentence of the court on that charge.
- (2) A finding of guilty, or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of sections [109](#) and [110](#) or the provisions of this Act as to confirmation or approval.

109. Petition against finding or sentence

At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed the accused may in the prescribed manner present a petition against the finding or sentence or both.

110. Revision of findings of court-martial

- (1) The Defence Council may direct that a court-martial shall revise any findings of guilty come to by the court in any case where it appears to the Defence Council—
 - (a) that the finding was against the weight of evidence; or

- (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.
- (2) Any direction of the Defence Council under subsection (1) shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reason for the direction.
- (3) On any revision of a finding the court shall reconsider the finding, and unless the court adheres to the finding, may substitute the finding with either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.
- (4) On any revision of finding the court shall not have power to receive further evidence.
- (5) Where on any revision of a finding the court either adheres to the original finding or substitutes the finding with a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

- (6) The Defence Council shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the Defence Council, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid, this Act shall apply to the proceedings of the court on any such revision as it applies to the deliberations of the court 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:

Provided that the decision of the court on the revision shall not be required to be announced in open court.

111. Powers of the Defence Council on confirmation

- (1) Subject to [section 110](#) and to the provisions of this section, the Defence Council shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court 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, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to the President.
- (2) In lieu of withholding confirmation of the finding of a court-martial, the Defence Council may, if—
 - (a) some other finding of guilty could have been validly made by the court-martial on the charge before it; and
 - (b) the Defence Council is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,
 substitute that other finding, and if the Defence Council does so it shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised.
- (3) Where it appears to the Defence Council that a sentence of a court-martial is invalid, it may, in lieu of withholding confirmation of the sentence, substitute the sentence with a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in its opinion more severe than that punishment or those punishments.
- (4) In confirming the sentence of a court-martial, the Defence Council may—
 - (a) remit in whole or in part any punishment passed by the court; or

- (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.
- (5) In confirming any sentence, the Defence Council may postpone the carrying out of the sentence for such time as seems expedient, and the Defence Council may extend or terminate any postponement ordered under this subsection.
- (6) A finding or sentence substituted by the Defence Council, or any sentence having effect after the Defence Council has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.
- (7) 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 any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.
- (8) Where the Defence Council determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

112. Approval of death sentence by President

Subject to the proviso to [section 150](#), a sentence of death shall not be carried into effect unless it has been approved by the President.

113. Review of finding and sentence of court-martial'

- (1) A finding or sentence which has been confirmed may at any time be reviewed by the President and if, after confirmation of a finding or sentence, a petition is duly presented under [section 109](#) against the finding or sentence, then, subject to 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.
- (2) If an application for leave to appeal is received by the Registrar of the court of appeal under Part VI of this Act, so much of subsection (1) 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 the application for leave to appeal relates and to the sentence passed in consequence of that finding.
- (3) On a review under this section the President may—
 - (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence; or
 - (b) in so far as the review is of a sentence, quash the sentence; or
 - (c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting a punishment as are conferred on the Defence Council by [section 111](#) (2), (3), and (4),

and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

- (4) Where the President exercises any of the powers conferred by subsection (3), the determination shall be promulgated and shall have effect as from the promulgation thereof.

114. Reconsideration of sentences of imprisonment and detention

- (1) Sentence of imprisonment and detention passed by courts-martial may be reconsidered by the Defence Council, and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, it shall be remitted accordingly.

- (2) 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 subsection shall not invalidate the sentence.

Division 17 – Review of summary findings and awards

115. Review of summary findings and awards

- (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority mentioned in subsection (2) may at any time review the findings or awards.
- (2) The authority for purposes of subsection (1) is—
 - (a) the Defence Council; or
 - (b) any officer superior in command to the officer who dealt summarily with the charge.
- (3) Where on review under this section it appears to the authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealings 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.
- (4) If a finding in any proceedings is quashed under subsection (3) and the award made in those proceedings relates only to the finding quashed, the authority shall also quash the award; and if the award relates also to any other findings and it appears to the authority that the award was not warranted by this Act in respect of that other finding, the authority may vary the award by substituting such punishment or punishments with another punishment or other punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.
- (5) Where on a review under this section it appears to the authority that a punishment awarded was invalid, or too severe, or, where the award included two or more punishment, 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 with another punishment or other punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

Division 18 – Findings of insanity

116. Provisions where accused found insane

- (1) Where, on the trial of a person by 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 a manner as may be provided by or under regulations made under this Part until the directions of the President are 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 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 any offence, but at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations made under this Part until the directions of the President are known.

- (3) In the case of any such findings as in subsection (1) or (2) the President may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the President thinks it fit.
- (4) A finding under subsection (1) shall not have effect unless and until the finding has been confirmed by the Defence Council and has been promulgated.
- (5) Where the court or the Defence Council come to or substitute a finding of guilty but insane the Defence Council or, as the case may be, the President shall not have power to substitute a finding of guilty; but save as aforesaid 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 any finding, any other finding which could have been come to by the court-martial in question, apply in relation to such findings as are provided for by subsection (2) as those provisions apply in relation to other findings of guilty.

Division 19 – Commencement and duration of sentences

117. Commencement of sentences

- (1) A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to [section 142](#) (4) (which empowers the court of appeal in certain cases to direct that a sentence shall begin to run from the day on which the court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.
- (2) A sentence of imprisonment or detention passed by a court-martial on a soldier which is suspended in pursuance of [section 119](#) before he has been committed to prison or a military establishment shall not begin to run until the beginning of the day on which the suspension is determined:

Provided that where the sentence is suspended by the Defence Council and the President determines the suspension, the President may direct that the sentence shall run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the President may specify.

118. Duration of imprisonment and detention

- (1) Where a soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of [section 119](#) after he has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with that section until the beginning of the day on which the suspension is determined.
- (2) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which, as a person having become unlawfully at large, he is taken into military custody or the custody of a civil authority or, not having been taken into such custody, returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Regulations made by the Defence Council, that during any time during the last-mentioned period he was in the custody of a civil authority, otherwise than on account of an offence committed by him while unlawfully at large, the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

- (3) In subsection (2), the expression “civil authority” means a civil authority authorized by law to detain persons, and includes a police officer.
- (4) Without prejudice to subsection (2), where any person serving a military sentence of imprisonment or detention has in accordance with Imprisonment and Detention Regulations been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of 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) or who is otherwise allowed, in pursuance of imprisonment and Detention Regulations, out of any military establishment or otherwise 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 condition, be treated for the purposes of subsection (2) as being unlawfully at large.
- (6) A person serving a military sentence of imprisonment or detention 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 his 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) References in subsection (6) to release or recall under civil law are references to release or recall under the Prisons Act.

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119. Suspension of sentences

- (1) The following provisions of this section shall have effect with regard to the suspension of a sentence of imprisonment or detention passed by a court-martial on a soldier.
- (2) Without prejudice to [section 111](#) (5), in confirming such a sentence the Defence Council may order that the sentence shall be suspended.
- (3) Any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the Defence Council or the President, as the case may be.
- (4) The suspension of any such sentence may, without prejudice to its again being suspended, be determined on the review or reconsideration of the sentence by an order of the Defence Council or the President, as the case may be, committing the person sentenced to imprisonment or detention, as the case may be.
- (5) Where, while any such sentence is suspended, the person sentenced is sentenced by court-martial to imprisonment or detention for a fresh offence, then, unless the balance of the earlier sentence is remitted by virtue of [section 82](#) (1)—
 - (a) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively;
 - (b) if the court does not exercise the powers under paragraph (a), the Defence Council may exercise those powers on the confirmation of the later sentence;
 - (c) if neither the court nor the Defence Council exercises the powers under paragraph (a) or (b), the President may exercise those powers on the review of the later sentence;
 - (d) where the powers under paragraphs (a), (b) or (c) are exercised, whether by the court, the Defence Council or the President, any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

Provided that this subsection has effect to [section 82](#) (11).

- (6) Without prejudice to the further suspension of the earlier sentence, an order under subsection (5) directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.
- (7) Where the sentence of a person in custody is suspended, he shall thereupon be released.
- (8) The maximum intervals for the reconsideration, under [section 114 \(2\)](#), of a sentence of imprisonment and detention which is suspended shall be three months, and not as specified under that subsection.

120. Restriction on serving of sentences of detention in prisons

A person shall not be required to serve any part of a military sentence of detention in a military or civil prison:

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Regulations he shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under like sentence of a civil court.

121. Special provision as to civil prisons in Malawi

A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under [section 140](#) or Imprisonment and Detention Regulations shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

122. Special provisions as to carrying out or serving sentences outside Malawi

The President may from time to time make arrangements with the authorities of any country or territory outside Malawi whereby sentences of death passed by courts-martial may in accordance with regulations made under this Act be carried out in establishments under the control of those authorities, and military sentences of imprisonment or detention may, in accordance with regulations under this Act, be served wholly or partly in such establishments.

123. Country in which sentence of imprisonment or detention to be served

- (1) A person who is serving a military sentence of imprisonment or detention in Malawi, (in so far as may be specified by or under Imprisonment and Detention Regulations) be removed out of Malawi 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 out of Malawi to imprisonment or detention for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to Malawi.
- (3) Where a person has been sentenced under this Act by a court-martial held out of Malawi to imprisonment or detention for more than twelve months, the Defence Council or the President may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to Malawi until he has served such part of his sentence, not exceeding, in the case of a sentence of more than two years imprisonment, two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection the Defence Council or the President shall have regard to any recommendation in that behalf made by the court-martial.
- (4) Any direction of the Defence Council under this section may at any time be revoked by the Defence Council or by the President, or superseded by any direction of the Defence Council or the President which the Defence Council or the President could have given under subsection (3); and any direction of the President under this section may at any time be revoked by him or superseded as aforesaid.

- (5) Any direction given under this section, and the revocation of any such direction, shall be promulgated.
- (6) 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.

124. Duties of officers in charge of prisons and others to receive prisoners

- (1) It shall be the duty, in so far as regulations made under this Part or Imprisonment and Detention Regulations so provide, of the superintendent or other person in charge of a prison, not being a military prison, to receive any person duly sent to that prison in pursuance of such regulations 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 military sentence of imprisonment or detention, 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 any superintendent or other person mentioned in subsection (1) or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully 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.

Division 20 – Trial of persons ceasing to be subject to military law under this Act and time limits for trials

125. Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto

- (1) Where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed by any person while subject to military 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 charges, trial and punishment by court-martial (including confirmation, review and reconsideration and suspension) and execution of sentences, as continuing subject to military law under this Act notwithstanding his ceasing at any time to be subject thereto.
- (2) Where, while a person is in military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law under this Act would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of the Act mentioned in subsection (1) and the provisions of this Act thereof as to the summary dealing with charges, as having been subject to military law under this Act when the offence was committed or is suspected as having been committed and as continuing subject thereto thereafter.
- (3) Where, by virtue of either subsection (1) or subsection (2), a person is treated as being at any time subject to military law under this Act for the purpose of any provision of this Act, that provision shall apply to him—
 - (a) if he holds any military rank, as to a person having that rank; or
 - (b) if otherwise, as to a person having the rank which he had when last actually subject to military law under this Act:

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the provision shall apply to him, in any case, as to a private soldier.

- (4) Where, apart from this subsection, any provision of this Act would under subsection (3) apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

Division 21 – Relation between military and civil courts and finality of trials

126. Powers of civil courts

- (1) Save as provided in [section 151](#), nothing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to military law under this Act for any offence.
- (2) Where a person is tried by a civil court for any offence, and he has previously been sentenced by court-martial held under service law to punishment for any act constituting (whether wholly or in part) that offence, or in pursuance of this Act has been punished for any such act by his commanding officer or an appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of service law.

127. Persons not to be tried under this Act for offences already disposed of

- (1) Where a person subject to military law under this Act—
 - (a) has been tried for an offence by a competent civil court or a court-martial under service law;
 - (b) has been charged with an offence under service law, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority; and
 - (c) has had the offence condoned by his commanding officer,

he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.

- (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;
 - (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed;
 - (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or of the appropriate superior authority has been quashed or that the award of that officer or of the appropriate superior authority has been quashed or varied, on the review of such finding or awards;
 - (d) 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 authorized by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged with the offence; and
 - (e) a person ordered under [section 67](#) (2), or the corresponding provision of any service law, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.
- (3) Subject to [section 143](#) (2) where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the

later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

- (4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act, whether before a commanding officer or the appropriate superior authority or before a court-martial, shall not be barred on the grounds of condemnation.

128. Resolution of conflicts of jurisdiction

- (1) The decision as to whether an offence shall be dealt with by the military authorities under this Act or by the civil authorities shall be determined by the Attorney General in accordance with the following subsections.
- (2) The civil authorities shall exercise jurisdiction in respect of offences committed in Malawi where the offence is one of those referred to in [section 80](#) (4).
- (3) The civil authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Malawi not referred to in subsections (4) and (5).
- (4) The military authorities shall have the right to exercise jurisdiction in relation to offences under this Act at all times when the person alleged to have committed an offence against this Act is serving outside Malawi.
- (5) The military authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Malawi—
 - (a) if the offence is against the property or security of the Defence; or
 - (b) if the offence is against the property or person of a person subject to service law; or
 - (c) if the offence is against the property or person of a dependant of a person subject to service law when such dependant is residing with such person; or
 - (d) if the offence arises out of an act or omission in the course of official duty.
- (6) In cases where the civil authorities and military authorities have primary right to jurisdiction in relation to specific or general offences such authority shall give sympathetic consideration to any request from such other authority for a waiver by that authority of jurisdiction in any particular case or general class of cases; and in particular the civil authorities shall consider waiving their rights of jurisdiction in the case of minor offences where the military authorities can impose a suitable punishment by disciplinary action under this Act without recourse to a civil court.

Division 22 – Inquiries

129. Body of inquiry

- (1) Subject to and in accordance with rules made under [section 138](#) (in this Act referred to as “Board of Inquiry Rules”), the Defence Council, or any officer empowered by or under such rules so to do, may convene a board of inquiry to investigate and report on the facts relating to—
 - (a) the absence of any person subject to military law under this Act;
 - (b) the capture of any such person by the enemy;
 - (c) the death of any person where any inquiry into the death is not required to be held by any civil authority;
 - (d) any other matter of a class specified in such rules or referred to such a board by the Defence Council or any such officer,

and a board of inquiry shall, if directed so to do by the Defence Council or by such officer, express its opinion on any question arising out of any matters referred to the board.

- (2) A board of inquiry shall consist of such number of persons as may be provided for by the Board of Inquiry Rules who shall be persons subject to service law and the presiding officer of a board of inquiry shall be an officer not below the rank of lieutenant.
- (3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or the appropriate superior authority, other than proceedings for an offence against [section 68](#) or for an offence against [section 80](#) where the corresponding civil offence is perjury.

130. Inquiries into absence

- (1) Where a board of inquiry inquiring into the absence of an officer or soldier of the Defence Force 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 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) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Defence Council or by a subsequent board of inquiry, have the like effect as a conviction by a court-martial for desertion.

Division 23 – Miscellaneous provisions

131. Restitution or compensation for theft, etc.

- (1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, receiving it knowing it to have been stolen, fraudulently misapplying it or otherwise.
- (2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered to the person appearing to be the owner of the property or the offender may be ordered to pay to such person such sum as may represent a reasonable value of the property.
- (3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing 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 obtained by him by the conversion or exchange of any property and 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 that person by the offence in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.
- (5) Where any of the 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 thereof of the property so sold or given, 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 any of the 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 thereof of the property so given, there shall be restored to that other 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, by the Defence Council or by the President and in this section the expression “appearing” means appearing to the court, Defence Council or President, as the case may be.

- (8) An order under this section made by a court-martial shall not have effect until confirmed by the Defence Council and the provisions of this Part as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.
- (9) The operation of any order under this section shall be suspended—
 - (a) in any case, until the expiration of any period prescribed under Part VI 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 such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned.
- (10) Where the operation of an order under this section as aforesaid is suspended under subsection (9)—
 - (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; and
 - (c) such steps shall be taken for the safe custody, during the period which the 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 court.
- (11) Notwithstanding anything in subsection (9), 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, the Defence Council or President, in making the order directs to the contrary in any case in which, in the opinion of the court, Defence Council or President, the title to the property is not in dispute.
- (12) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

132. Appointment of judge advocate

- (1) A judge of the High Court may be appointed as judge advocate to serve at any court-martial.
- (2) The appointment of a judge advocate under subsection (1) shall be made by the Chief Justice upon request by the convening officer.

133. Promulgation

Any 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 other manner as may be prescribed or as the Defence Council or the President, as the case may be, may direct.

134. Custody of proceedings of court-martial and right of accused to copy thereof

- (1) The record of the proceedings of a court-martial shall be kept in the custody of the Defence Council for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) shall be capable of being exercised.
- (2) Subject to this section, any person tried by court-martial shall be entitled to obtain from the Defence Council on demand at any time within the relevant period, and on payment therefor of such sum as may be prescribed, a copy of the record of the proceedings of the court.
- (3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Defence Council ought to be treated for the purposes of this subsection as his personal representative shall, subject to this section, be entitled to obtain from the Defence Council on demand at any time within the period of twelve months from the death, and

on payment therefor of such fees as may be prescribed, a copy of the record of the proceedings of the court.

- (4) If, on an application in pursuance of either subsection (2) or subsection (3) for a copy of the record of any proceedings, the Defence Council 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 part to which the certificate relates.
- (5) In this section, the expression “the relevant period”, in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, when he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings related to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

- (6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to a record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

135. Indemnity for prison officers, etc.

No action shall lie in respect of anything done by any person in pursuance of a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defeat in a warrant or other instrument made for the purposes of that sentence.

Division 24 — Rules of procedure, etc.

136. Rules of procedure

- (1) Subject to this section, the Minister may, with the advice of the Defence Council, make Rules (in this Act referred to as “Rules of Procedure”) with respect to the investigation and trial of, and awarding of punishment for offences cognizable by courts-martial, commanding officers and the Commander and with respect to the confirmation and revision of findings and sentences of courts-martial.
- (2) Without prejudice to the generality of subsection (1), Rules of Procedure may make provision with respect to all or any of the following matters, that is to say—
 - (a) the procedure to be observed in the bringing of charges before the Commander and commanding officers;
 - (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purposes of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules shall make provision for the application of [section 99](#) in any case where the accused requires that evidence shall be taken on oath;
 - (c) in addition to, or in substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;
 - (d) the convening and constitution of court-martial;
 - (e) the sittings, adjournment and dissolution of courts-martial;

- (f) the procedure to be observed in trials by courts-martial;
 - (g) the representation of the accused at such trials;
 - (h) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of Rules of Procedure;
 - (i) applying in relation to proceedings before the Commander and commanding officers and otherwise in relation to proceedings prior to trial by courts-martial all or any of the provisions of sections 99, 105, 106 and 107;
 - (j) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
 - (k) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or vacations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence; and
 - (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or Rules of Procedure.
- (3) Rules of Procedure shall secure that the power to amend charges referred to in subsection (2) (j) shall not be exercisable in circumstances substantially different from those in which charges or information's are amendable by a civil court in Malawi, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which charges or information's are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.
- (4) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial, and without prejudice to the generality of this provision may make provision —
- (a) as to the effect of advice or ruling given to the court by a judge advocate on questions of law;
 - (b) for requiring or authorizing the presiding officer of a court-martial, in such cases as may be specified in the rules, to direct that questions of law shall be determined by a judge advocate in the absence of the presiding officer and other members of the court and any officer under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.
- (5) In subsection (4) reference to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately charged.
- (6) Rules of Procedure may make provision for determining the cases in which and the extent to which court-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him.
- (7) Where Rules of Procedure make such provision as provided by subsection (6), those Rules may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

137. Imprisonment and detention regulation

The Minister may, with the advice of the Defence Council, make regulations (in this Act referred to as “Imprisonment and Detention Regulations”) with respect to all or any of the following matters, that is to say—

- (a) the places in which and the establishment or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them under this Act;
- (b) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;
- (c) the provision, classification, regulation and management of military establishments;
- (d) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishment or otherwise in military custody;
- (e) the temporary release on compassionate grounds of persons serving such sentence in such establishment or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such sentence for good conduct and industry; and
- (f) the appointment, powers and duties of inspectors, visitors and superintendents, and of officers and other members of the staff of military establishments.

138. Board of Inquiry Rules

- (1) The Minister may, with the advice of the Defence Council, make rules with respect to the convening, constitution and procedure of boards of inquiry.
- (2) Without prejudice to the generality of subsection (1), Board of Inquiry Rules may make provision with respect to all or any of the following matters, that is to say—
 - (a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the Rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath or affirmation could be dispensed with; and
 - (b) without prejudice to the provisions of [section 130](#), the making in service books of records of findings of boards of inquiry in such cases as may be provided by the Rules.
- (3) Board of Inquiry Rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the Rules.

139. Miscellaneous regulations

The Minister may, on the advice of the Defence Council, make regulations with respect to all or any of the following matters, that is to say—

- (a) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;
- (b) field punishment;
- (c) any matter which by this Part is required or authorized to be prescribed or for which regulations may be made; and

- (d) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections [136](#), [137](#) and [138](#), and in this section.

Division 25 – Interpretation of Part V

140. Interpretation of Part V

- (1) In this Part—
- “**civil prison**” means a prison in Malawi in which a person sentenced by a civil court to imprisonment can for the time being be confined;
- “**convening officer**”, in relation to a court-martial, means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor’s functions;
- “**Judge advocate**” means the person appointed under [section 132](#) to serve as judge advocate at a court-martial;
- “**military establishment**” means a military prison or any other establishment under the control of the Defence Council where persons may be required to serve military sentences of imprisonment or detention;
- “**military prison**” means separate premises designated by the Defence Council for persons serving military sentences of imprisonment;
- “**prison**” means a civil prison or a military prison;
- “**private soldier**” means a soldier who is not a warrant officer or a non-commissioned officer.
- (2) References in this Part to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial.
- (3) References in this Part to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender’s commanding officer or the appropriate superior authority.
- (4) References in this Part to warrant officers do not include references to acting warrant officers.
- (5) References in this Part to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

Part VI – Appeals from courts-martial

141. Right of appeal

- (1) Subject to this Part, where a person has been convicted by a court-martial—
- (a) the person convicted may, with the leave of the court-martial given pursuant to [section 142](#), appeal to the court of appeal against the conviction, or against the sentence, or against both;
- (b) the convicted person shall have the right, without leave, to appeal to the court of appeal against any conviction involving a sentence of death; and
- (c) the Director of Public Prosecutions may, in any case, within forty days of the promulgation of the conviction, appeal to the court of appeal against the sentence.
- (2) Subject to this Part, where a person has been acquitted of a charge by a court-martial, the Director of Public Prosecutions may, within forty days of the acquittal, appeal to the court of appeal against the acquittal on a point of law.

142. Application for leave to appeal

- (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 person convicted, and lodged 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 conviction involving a sentence of death shall not be entertained by the court of appeal unless the appeal is lodged with the registrar of the court of appeal in the presented manner by or on behalf of the appellant within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought.
- (3) The court of appeal may extend the period within which an application for leave to appeal is required by subsection (1) to be lodged whether that period has expired or not, and may similarly extend the period for lodging the appeal provided by subsection (2), if, owing to the fact that the appellant is outside Malawi or otherwise, he has not had a reasonable opportunity of lodging his appeal within forty days.
- (4) 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.

143. Determination of appeals in ordinary cases

- (1) Subject to [section 144](#), 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 under this Part, it shall either quash the conviction or direct that the finding of the court-martial shall be treated as if confirmation thereof had been withheld and, in the latter event, notwithstanding the provisions of [section 127](#) (3), a new trial by court-martial may be held within such time as the court may order.

144. Powers of court of appeal in special cases

- (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, then, if the sentence passed by the court-martial on the appellant was not one that could lawfully be passed by the court-martial for the offence for which he was convicted on the other charge, the court 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 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 must have been satisfied with the facts which proved him guilty, of that other offence, the court may, instead of allowing or dismissing the appeal, substitute 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 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 offence 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 vacations,

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, 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 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 was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission was 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 [section 116](#) of this Act in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

145. Commencement of sentence

The term of any sentence passed by the court of appeal under any of the provisions of [section 144](#) shall, unless the court 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 a sentence passed by the court of appeal 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.

146. Appeals to be final

Any determination by the court of appeal of any appeal or other matter which it has power to determine under this Part shall be final, and no appeal shall lie from the court of appeal to any other court.

147. Proceedings may be heard in absence of appellants

An appellant shall not be entitled to be present at the hearing of an appeal to the court of appeal under this Part or to any proceedings 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 despite the absence of the appellant.

148. Defence of appeals

It shall be the duty of the Director of Public Prosecutions on an appeal against conviction by court-martial to undertake the defence of the appeal.

149. Right of appellant to present his case in writing

An appellant may if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

150. Suspension of death sentence

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 the appeal to the court of appeal against the conviction shall be lodged; and
- (b) if such an appeal is duly lodged or if application is made for the extension of the period for lodging the appeal the sentence shall not be executed until the appeal or application is determined or abandoned:

Provided that, where a sentence of death passed on a person on active service by a court-martial is confirmed and the Defence Council, in confirming that sentence certifies that it is essential in the interests of discipline and for the purposes of securing the safety of the Force with which that person is present that the sentence should be carried out forthwith, the foregoing provisions of this section shall not apply to the sentence.

151. Person not to be tried again where conviction quashed

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 again for that offence by a court-martial or by any other court.

152. Removal of prisoners for purposes of this Part

Imprisonment and Detention Regulations may provide in what manner an appellant, when in custody, is to be taken to, kept in custody 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.

153. Furnishing on appeal, of documents relating to trial

In the case of every appeal, or application for leave to appeal, under this Part to the court of appeal against a conviction by court-martial, it shall be the duty of the secretary of the Defence Council 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 [section 110](#) (1)) the proceedings with respect to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted.

154. Duties of registrar of court of appeal with respect to appeals, etc.

- (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 proceedings 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—
 - (a) to any person who demands such forms or instructions;
 - (b) to persons in charge of places where persons sentenced by a court-martial may lawfully be confined for the purpose of serving their sentences; or
 - (c) to such other persons as he thinks fit.
- (3) Every person in charge of such a place of confinement mentioned in subsection (2) 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 an application for leave to appeal under this Part.

155. Saving of powers of reviewing authorities

Nothing in this Part shall affect the exercise by the President of the powers conferred by [section 113](#) in respect of a conviction by 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 that court against the conviction, and nothing in this Part shall affect the exercise by the President of the prerogative of mercy.

156. Composition of court of appeal

At the hearing of any appeal from any court-martial, the court of appeal shall consist of an uneven number of judges, not being less than three.

157. Exercise of certain powers of court of appeal by a judge

Any judge of the court of appeal may—

- (a) give leave to appeal; or
- (b) extend the period within which an application for leave to appeal or an appeal is required by [section 142](#) (1) or (2) to be lodged; or
- (c) allow, the applicant or appellant to be present at any proceedings under this Part,

but if the judge refuses an application on the part of an applicant or appellant to exercise in his favour any of the powers mentioned in paragraphs (a), (b), and (c), the applicant or appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed manner, shall be entitled to have the application determined by the court of appeal, which shall consist of an uneven number of judges, not being less than three.

158. General provisions as to procedure

- (1) Subject to the provisions of this Part, any rules of court in force relating to the hearing of criminal appeals by the court of appeal shall apply to the hearing and determination of an appeal by the court under this Part.
- (2) Where under this Part anything is required or authorized to be prescribed it shall be prescribed by rules of court.

Part VII – Forfeitures and deductions and enforcement of maintenance liabilities

159. Forfeitures and deductions; general provisions

- (1) No forfeiture of the pay of an officer or a soldier of the Defence Force shall be imposed unless authorized by this Act, other service law or any other law and no deduction from such pay shall be made unless so authorized by regulations.
- (2) Regulations shall not authorize the making of any penal deductions, that is to say, a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.
- (3) Subsections (1) and (2) shall not prevent the making of regulations providing for the imposition of any forfeiture authorized by this Act or the making of any deduction so authorized, or for the time at which and manner in which sums may be deducted from pay to give effect to authorized deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

- (4) Notwithstanding any deduction from the pay of an officer or a soldier of the Defence Force, he shall, subject to any forfeiture, remain in receipt of pay at not less than such minimum rate as may be prescribed.
- (5) Notwithstanding that forfeiture of pay of an officer or a soldier of the Defence Force for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such minimum rate as may be prescribed, but the amount received for that period may be recovered from him by deduction from pay.
- (6) Any amount authorized to be deducted from the pay of an officer or a soldier of the Defence Force may be deducted from any balance, whether or not presenting pay, which may be due to him as an officer or a soldier, and references in this Act to the making of deductions from pay shall be construed accordingly and the whole or any part of any sum forfeited from the pay of an officer or a soldier may be recovered by deductions from any such balance.

160. Forfeiture of pay for absence from duty

- (1) The pay of an officer or a soldier of the Defence Force may be forfeited—
 - (a) for any day of absence in such circumstances as to constitute an offence under section [46](#) or [47](#), if the Defence Council so directs, or for any day of other absence without leave;
 - (b) for any day of imprisonment, detention or field punishment awarded under service law by a court-martial, appropriate superior authority or commanding officer, or for any day of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court;
 - (c) where he is found guilty, whether by court-martial under service law, the appropriate superior authority or his commanding officer, of an offence under service law for any day, whether before or after he is found guilty, on 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 an officer or a soldier of the Defence Force may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Defence Council or an officer authorized by the Defence Council is satisfied—
 - (a) that he was made a prisoner of war through disobedience to orders or willful neglect of his duty; or
 - (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Defence Force or any cooperating forces; or
 - (c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorized by international usage,but, save as so provided, nothing in subsection (1) (a) shall apply to absence by reason of having been made a prisoner of war.
- (3) Regulations under this Act, or orders of the Defence Council, may make provision as to the computation of time for the purpose of this section and in particular as to the counting or disregarding of parts of days.
- (4) For purposes of this section “a day” shall be deemed to be any period over six hours but not more than twenty-four hours.

161. Deductions for payment of civil penalties

Where a person sentenced or ordered by a civil court, whether within or outside Malawi, to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes, an officer or a soldier of

the Defence Force, then, if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay.

162. Compensation for loss occasioned by wrongful act or negligence

- (1) Without prejudice to the provisions of this Act as to the position of stoppages (of pay) as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations made under this Act, it appears to the Defence Council or an officer authorized by the Defence Council that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or a soldier of the Defence Force (hereinafter referred to as “the person responsible”).
- (2) The Defence Council or authorized officer, as the case may be, may order the person responsible to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.
- (3) No order shall be made under the provisions of subsection (2) if, in proceedings before a court-martial under service law, the appropriate superior authority or commanding officer of the person responsible, that person—
 - (a) has been acquitted in circumstances involving a finding that he was guilty of the wrongful act or negligence in question, or
 - (b) has been awarded stoppages (of pay) in respect of the same loss or damage, but save as so provided, the fact that any such 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).

163. Deductions for barracks damage

- (1) When damage occurs to any premises in which one or more units or parts of such units of the Defence Force are quartered or billeted or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then, if it appears, on investigation in accordance with regulations made under this Act, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of the units in occupation of the premises and was so occasioned at a time when they were in occupation thereof but that the persons cannot be identified, any person belonging to any such units or parts of the units may be required to contribute towards compensation for the damage or loss such amount as may, in accordance with such regulations, be determined to be just, and the amount may be deducted from his pay.
- (2) Subsection (1) shall extend to vessels, trains, motor vehicles and aircraft in which units or parts of units are being transported, and reference to premises, quartering and occupation shall be construed accordingly.

164. Remission of forfeitures and deductions

Any forfeiture or deduction imposed under this Part or under regulations made under this Act may be remitted by the Defence Council or in such manner or by such authority as may be provided by such regulations.

165. Enforcement of maintenance and affiliation orders by deduction from pay

- (1) Where any court in Malawi has made an order against any person (in this section referred to as “the defendant”) for the payment of any periodical or other sum specified in the order for or in respect of —
 - (a) the maintenance of spouse or child of that person; or
 - (b) any costs incurred in obtaining the order; or

- (c) any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order,

and the defendant is an officer or a soldier of the Defence Force, then, whether or not he was a member of the Defence Force when the order was made, the Defence Council or an officer authorized by the Defence Council may order such 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 as the Defence Council or authorized officer may think fit.

- (2) Where to the knowledge of the court making any order as mentioned in subsection (1), or an order varying, revoking or reviving any such order, the defendant is an officer or a soldier of the Defence Force the court shall send a copy of the order to the Defence Council or to an officer authorized by the Defence Force.
- (3) Where a like order as is mentioned in subsection (1) has been made by a court of a country outside Malawi, and the Defence Council or an officer authorized by the Defence Council is satisfied that the defendant has a reasonable opportunity of appearing in person, or has appeared by a duly authorized legal representative, to defend the case before the court by which the order was made, the Defence Council or the authorized officer shall have the like power under subsection (1) as if the order had been made by such a court in Malawi.
- (4) The Defence Council or an officer authorized by the Defence Council may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent in circumstances mentioned in [section 160](#) (1) (a).
- (5) In this section—
- (a) references to a spouse or child include, in relation to an order made in proceedings in connexion with the dissolution or annulment of a marriage, references to a person who would have been the spouse or child of the defendant if the marriage had subsisted; and
- (b) references to a child of a person include references to a child of the spouse of that person, and to a child of that person born out of wedlock or to an adopted child of that person or of the spouse, and in this paragraph “adopted child” means a child adopted, whether alone or jointly, in pursuance of an adoption order made under the Adoption of Children Act.

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166. Deductions from pay for maintenance of spouse or child

- (1) Where the Defence Council or an officer authorized by the Defence Council is satisfied that an officer or a soldier of the Defence Force is neglecting, without any reasonable cause, to maintain the spouse or child under the age of sixteen, the Defence Council or the authorized officer may order such sum to be deducted from his pay and appropriated towards the maintenance of the spouse or child as the Defence Council or the authorized officer thinks fit.
- (2) On an application made to the Defence Council or an officer authorized by the Defence Council for an order under subsection (1), the Defence Council or the authorized officer, if satisfied that a *prima facie* case has been made out for the making of such an order may make an interim order for such deduction and appropriation as is mentioned in subsection (1) to take effect pending the further examination of the case.
- (3) Where an order is in force under [section 165](#) (1) or (3) for the making of deductions in favour of any person from the pay of an officer or a soldier of the Defence Force, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer or the soldier is in a place where process cannot be served on him in connexion with proceedings for the variation of the order of the court in consequence of which the order under [section 165](#) was made.

- (4) The Defence Council or an officer authorized by the Defence Council may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in [section 160](#) (1) (a).

167. Limit of deductions from pay for maintenance of spouse or child

- (1) The sums deducted under sections [165](#) and [166](#) shall not together exceed one half of the defendant's pay.
- (2) Where any deductions have been ordered under either section [165](#) or [166](#) from a person's pay and, whether before or after the deductions have been ordered, he incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of the Commander or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

168. Service of process in maintenance proceedings

- (1) Any process to be served on an officer or soldier of the Defence Force (in this section referred to as "the defendant") in connexion with proceedings for any such order of a court in Malawi as is mentioned in [section 165](#) (1), or for the variation, revocation or revival of such an order, shall be deemed to be duly served on him if served either on him or on his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.
- (2) Where any such process as is mentioned in subsection (1) is serviced in Malawi and the defendant will be 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 service out of Malawi 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.

Part VIII – Billeting and requisitioning of vehicles, aircraft or vessels

Division 1 – Billeting

169. Billeting requisitions

At any time when this section is in operation the Defence Council or any officer authorized by the Defence Council in that behalf not below field rank in Malawi may issue a billeting requisition requiring the officer-in-charge of police for any area in Malawi specified in the requisition to provide billets at such places in that area, for such numbers or members of the Defence Force and, if the requisition so provides, for such number of vehicles, aircraft or vessels in use for the purpose of the Defence Force being vehicles, aircraft or vessels of any kind specified in the requisition, as may be so specified.

170. Premises in which billets may be provided

- (1) Billets, other than for vehicles, aircraft or vessels, may be provided in pursuance of a billeting requisition—
 - (a) in any inn or hotel, 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), 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; or

- (c) in any dwelling, outhouse, warehouse, bam or stables, but not in any, other premises.
- (2) Billets for vehicles, aircraft or vessels may be provided under this section in any building or on any land.

171. Provisions of billets

- (1) Where a billeting requisition has been produced to the officer-in-charge of police for the area specified in the requisition he shall, on the demand of the officer commanding any part of the Defence Force or on the demand of an officer or a soldier of the Defence Force authorized in writing by such an officer commanding, billet on the occupiers of premises falling within [section 170](#), being premises at such place in that area as may be specified by the officer or soldier by whom the demand is made, such number of persons or vehicles, aircraft or vessels as may be required by the officer or soldier by whom the demand is made, not exceeding the number specified in the requisition.
- (2) Without prejudice to [section 172](#), the officer-in-charge of police for the area specified shall exercise his functions under this section in such manner as in his opinion will cause least hardship to persons on whom the billeting may take place.
- (3) The officer-in-charge of police for the area specified in the requisition may, to such extent and subject to such restrictions as he thinks proper, authorize any police officer to exercise his said functions on his behalf, and the provisions of subsections (1) and (2) shall apply accordingly.

172. Billeting schemes

- (1) A local authority may make a scheme for the provision of billets in its area in pursuance of billeting requisitions, and where such a scheme is in force the officer-in-charge of police for such area shall so far as the scheme extends exercise his functions under [section 171](#) in accordance with the scheme.
- (2) Any scheme under this section may be revoked by the local authority by which it was made, or may be varied by that local authority by a subsequent scheme under this section, where a local authority makes a scheme under this section it shall furnish the officer-in-charge of police for the area to which the scheme relates with a copy of the scheme.
- (3) A scheme under this section shall not come into force until approved by the Minister responsible for local government; and that Minister may require the local authority to revoke any scheme in force under this section and in substitution therefor to submit for his approval a further scheme under this section.

173. Accommodation to be provided and payment therefor

- (1) Where persons are billeted in pursuance of a billeting requisition, the occupier of the premises on which they are billeted shall furnish such accommodation (including meals) as the officer or soldier demanding the billets may require, not exceeding such accommodation as may be prescribed by regulations made under this Act.
- (2) Where vehicles, aircraft or vessels are billeted in pursuance of a billeting requisition, the occupier of the premises shall furnish standing room for the vehicles, aircraft or vessels.
- (3) Where persons or vehicles, aircraft or vessels have been billeted in pursuance of a billeting requisition they may continue to be billeted, so long as [section 169](#) continues in operation, for such period as may be required, and the allotments of billets among the persons or vehicles, aircraft or vessels in question may be varied from time to time.

- (4) The occupier on whose premises any person or vehicle, aircraft or vessel is billeted in pursuance of a billeting requisition shall be entitled to receive for the billeting such payment as may be prescribed by regulations made under this Act:
- Provided that no payment shall be required in respect of vehicles, aircraft or vessels billeted otherwise than in a building unless the land on which they are billeted—
- (a) has its surface made up for the passage or parking of vehicles, aircraft or vessels; and
 - (b) is not land where vehicles, aircraft or vessels are normally allowed to stand free of charge irrespective of the person by whom they are owned or driven.
- (5) Subject to subsection (6), payment for billeting—
- (a) shall be made before the persons billeted finally leave, or the vehicles, aircraft or vessels are finally removed from, the premises where they are billeted; and
 - (b) where the billeting continues for more than seven days shall be made at least once in every seven days.
- (6) If for any reason payment for billeting cannot be made, or fully made, as required by subsection (5) (a), there shall be made up with the occupier an account, in such form as may be prescribed by the Defence Council, of the amount due to him; and—
- (a) on presentation of the account the local authority for the area in which the premises are situated shall pay to the occupier the amount stated in the account to be due; and
 - (b) any sums paid by a local authority under paragraph (a) shall be recoverable by them from the Defence Council.
- (7) 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 of the premises were the occupier thereof.

174. Appeals against billeting

- (1) Any person who—
- (a) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting requisition, or
 - (b) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion,
- may apply to a person or persons appointed on behalf of the local authority in accordance with arrangements made by the Minister responsible for Local Government.
- (2) On any application on grounds mentioned in subsection (1) (a) the person or persons to whom the application is made may direct the billeting elsewhere of such number of the persons billeted as may seem just or may dismiss the application.
- (3) On application on the grounds mentioned in subsection (1) (b) the person or persons 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 billeting pending the determination of the application.

175. Compensation for damage

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

- (2) Where any person other than the recipient of compensation under subsection (1) has any 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 just.
- (3) A subordinate court shall have jurisdiction to deal with any claim arising under either subsection (1) or (2) irrespective of the amount of the claim.

176. Refusal to receive persons billeted etc.

Any person who—

- (a) refuses to receive any person billeted upon him in pursuance of a billeting requisition or without reasonable excuse fails to furnish him with the accommodation properly required for him;
- (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 vehicle or of furnishing accommodation properly required for him; or
- (c) obstructs the billeting in his building or on his land of any vehicle,

shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

177. Application to civilians employed with the Defence Force

In relation to persons employed with any body of the Defence Force not entitled under the provisions of this Part to be billeted, being persons of such descriptions as may be prescribed by regulations made under this Act, those provisions shall apply as they apply in relation to members of the Defence Force.

178. Suspension of laws against billeting

While [section 169](#) is in operation, any part of a law that prohibits, restricts or regulates quartering or billeting on any inhabitants of Malawi shall not apply to such billeting in pursuance of a billeting requisition.

Division 2 — Requisitioning of vehicles, aircraft or vessels

179. Requisitioning orders

- (1) At any time when this section is in operation the Defence Council or any officer authorized by the Defence Council in that behalf not below field rank in Malawi may issue a requisitioning order authorizing the requisitioning, from among vehicles, aircraft or vessels in any area in Malawi specified in the order, of such vehicles, aircraft or vessels or such number of vehicles, aircraft or vessels of such description, as may be specified in the order.

180. Provisions of ssvehicles, aircraft or vessels

- (1) A requisitioning order may be issued to the officer commanding any part of the Defence Force, or any officer or soldier authorized by him in writing, may give directions for the provision—
 - (a) in so far as the requisitioning order authorizes the requisitioning of particular vehicles, aircraft or vessels, of all or any of those vehicles, aircraft or vessels; and
 - (b) in so far as the order authorizes the requisitioning of vehicles, aircraft or vessels of a specified description, of the number of vehicles, aircraft or vessels of that description specified in the order or any lesser number of such vehicles, aircraft or vessels.

- (2) A direction under subsection (1) given as respects any vehicle, aircraft or vessel shall be either—
- (a) a direction given to the person having possession thereof to furnish it immediately at the place where it is; or
 - (b) a direction given to the person having possession thereof to furnish it at such place within one hundred and sixty kilometers from the premises of that person and at such time as may be specified by the officer or soldier by whom the direction is given:

Provided that no direction shall be given under paragraph (b) as respects a vehicle, aircraft or vessel which is neither mechanically propelled nor a trailer normally drawn by a mechanically propelled vehicle, aircraft or vessel.

- (3) If the officer to whom the requisitioning order was issued, or any officer or soldier authorized by him in writing, is satisfied that the person having possession thereof has refused or neglected to furnish a vehicle, aircraft or vessel in accordance with a direction under any of the provisions of subsection (2), or has reasonable grounds for believing that it is not practicable without undue delay to give a direction to that person, he may take, or authorize any officer or soldier to take, possession of the vehicle, aircraft or vessel; and where possession is taken of a vehicle, aircraft or vessel had been furnished by the person having possession of the vehicle, aircraft or vessel in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

181. Assistance of police authorities

The officer-in-charge of police for any area specified in a requisitioning order shall, on a request to that effect made by or on behalf of the officer to whom the order is issued, give instructions for securing that so far as is practicable police officers will be available, if required, for accompanying officers or soldiers requisitioning vehicles, aircraft or vessels in pursuance of the order.

182. Period for which vehicles, aircraft or vessels to be furnished

Where a vehicle, aircraft or vessel has been furnished in pursuance of a requisitioning order it may be retained, so long as [section 178](#) is in operation, for any period for which it is required for the purpose specified in the order or for any other purposes connected with the needs of any part of the Defence Force.

183. Payment for vehicles, aircraft or vessels furnished

- (1) The person by whom a vehicle, aircraft or vessel is furnished in pursuance of a requisitioning order, and is so furnished otherwise than for the purpose of being purchased, shall be entitled to be paid—
- (a) a sum for the use of the vehicle, aircraft or vessel calculated, by reference to the period for which possession of the vehicle, aircraft or vessel is retained, at the rate of payment commonly recognized or generally prevailing in the district at the time at which the vehicle, aircraft or vessel is furnished, or, in default of such a rate, such rate as may be just;
 - (b) a sum equal to the cost of making good any damage to the vehicle, aircraft or vessel 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, aircraft or vessel is retained and which has not been made good during that period by a person acting on behalf of the Government, and in this paragraph, 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, aircraft or vessel was requisitioned, and
 - (c) if, during the period for which possession of the vehicle, aircraft or vessel is retained a total loss of the vehicle, aircraft or vessel occurs, a sum equal to the value of the vehicle, aircraft or vessel immediately before the occurrence of the damage which caused the loss.

- (2) The person by whom a vehicle, aircraft or vessel is furnished in pursuance of a requisitioning order for the purpose of being purchased shall be entitled to be paid the value of the vehicle, aircraft or vessel at the time at which it is furnished.
- (3) Where a vehicle, aircraft or vessel is furnished in pursuance of a direction under [section 180](#) (1) (b), then—
 - (a) for the purposes of subsection (1) (c) and (b) (if that subsection applies) the vehicle, aircraft or vessel shall be deemed to have been furnished at the time; and
 - (b) in addition to the payments provided for by subsections (1) or (2), the person by whom the vehicle, aircraft or vessel is furnished 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, aircraft or vessel is given under [section 180](#) (2) (b), and after the giving of the direction any damage occurs to the vehicle, aircraft or vessel, whether or not resulting in a total loss thereof, then, if the damage prevents the furnishing of the vehicle, aircraft or vessel in pursuance of the requisitioning order the foregoing provisions of this section shall apply as if the vehicle, aircraft or vessel had been furnished, and, notwithstanding that it may have been required to be furnished for the purpose of being purchased, had been furnished otherwise than for that purpose, subject however to the following modifications, that is to say—
 - (a) subsection (1) (a), (b) and (c) 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; and
 - (b) subsection (3) (b) 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 any person (hereinafter referred to as “a person interested”) other than the person by whom a vehicle, aircraft or vessel is required to be furnished has an interest in the vehicle, aircraft or vessel—
 - (a) the person by whom the vehicle, aircraft or vessel is required to be furnished shall notify any person known to him to be a person interested that the vehicle, aircraft or vessel has been requisitioned; and
 - (b) any person interested shall be entitled to recover from the person by whom the vehicle, aircraft or vessel was required to be furnished such part, if any of the payment received by him for the vehicle, aircraft or vessel as may be just.
- (6) Where, during the period for which possession of a vehicle aircraft or vessel is retained, a total loss of the vehicle, aircraft or vessel occurs, then—
 - (a) for the purposes of subsection (1) (a) and (b) that 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, aircraft or vessel, if it still exists, or for payment in respect thereof other than such as is provided for by subsection (1).

184. Avoidance of hardship in requisitioning of vehicles, aircraft or vessels

In deciding which of alternative vehicles, aircraft or vessels is to be specified in an order under [section 179](#), or is to be the subject of a direction under [section 180](#) (1) (b), the officer or soldier by whom the order is issued or direction given shall act in such manner as in his opinion will cause least hardship.

185. Record and inspection of mechanically propelled vehicles, aircraft or vessels

The Defence Council may, by general notice published in the *Gazette* require persons having in their possession in Malawi mechanically propelled vehicles, aircraft or vessels or trailers normally drawn by

mechanically propelled vehicles, aircraft or vessels, if required so to do by such authority or person as may be specified in the notice—

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

186. Enforcement of provisions as to requisitioning

- (1) If any person—
 - (a) fails to furnish any vehicle, aircraft or vessel which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle, aircraft or vessel at the time and place at which he is directed to furnish it;
 - (b) fails to comply with any notice of the Defence Council under [section 185](#); or
 - (c) obstructs any officer or other person in the exercise of his function under this Part of this Act in relation to the inspection or requisitioning of vehicles,he shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.
- (2) without prejudice to any penalty under subsection (1), if any person is obstructed in the exercise of powers of inspection conferred on him by the notice under [section 185](#), a magistrate may, if satisfied by information on oath that the person has been so obstructed, issue a search warrant authorizing a police officer named therein, accompanied by that person, to 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 to inspect any vehicles, aircraft or vessels which may be found therein.

187. Application to horses, food, forage and stores

- (1) Subject to this section, the foregoing provisions of this Part, except such of those provisions as relate only to mechanically propelled vehicles, aircraft or vessels and trailers normally drawn thereby, shall apply to horses, food, forage and stores as they apply to vehicles, aircraft or vessels.
- (2) Where stores are required for and can be conveyed with, a vehicle with respect to which a direction is given under [section 180](#) (2) (b), such a direction may be given as well in relation to the stores as in relation to the vehicle, aircraft or vessel, and the foregoing provisions of this Part shall apply accordingly:

Provided that [section 183](#) (4) shall not apply, but if after the giving of the direction the furnishing of the stores is prevented by damage to them or to the vehicle, aircraft or vessel such payment, if any, shall be made in respect of the stores as may be just in all the circumstances.
- (3) Notwithstanding the provisions of [section 182](#), food, forage or stores to be furnished in pursuance of a requisitioning order at any time may be required to be furnished for purchase by the Government.
- (4) [Section 185](#) shall apply in relation to horses as it applies in relation to mechanically propelled vehicles, aircraft or vessels.
- (5) In this section the expression “stores” means any chattel, other than a horse, a vehicle, aircraft or vessel, food or forage, being a chattel required for, or for use in connexion with—
 - (a) persons or vehicles, aircraft or vessels billeted or to be billeted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated; or

- (b) vehicles, aircraft or vessels or horses furnished or to be furnished in pursuance of a requisitioning order.

188. Damage by vehicles, aircraft or vessels being delivered for requisitioning

The person using a vehicle, aircraft or vessel for the purpose of its being furnished in pursuance of a direction under [section 180](#) (2) (b) shall be deemed as respects any claim in respect of injury or damage to any other person or property, to be so using the vehicle, aircraft or vessel as a servant of the Government.

189. Bringing into operation of sections 169 and 179

- (1) Wherever it appears to the Minister that the public interest so requires, he may by order which shall be published in the *Gazette* direct that section [169](#) or [179](#), or both those sections, shall come into operation either generally or as respects such area in Malawi as may be specified in the order; and that section or those sections, as the case may be, shall come into operation either generally or as respects such area in Malawi as may be specified in the order; and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation so long as the order has effect.
- (2) As soon as may be after either of the said sections has been brought into operation on any occasion, the Minister shall report that fact to the Cabinet and National Assembly.
- (3) An order under this section shall, subject to any revocation or variation thereof, continue to have effect for the period of one month from the making thereof:

Provided that where, before the expiration of the period for which the order has effect (whether by virtue of the other provisions of this subsection or of this proviso), it is determined by the Minister 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 IX – Government and general provisions

Division 1 – Command

190. Command and precedence

- (1) Officers and soldiers of the Defence Force shall stand with each other in such order of precedence as may be prescribed by the Defence Council.
- (2) Officers and soldiers of the armed forces of a friendly country raised outside Malawi may be attached or seconded to the Defence Force with the approval of the Defence Council.

191. Command of Defence Force

- (1) The command of the Defence Force shall vest in the Commander appointed under section 161 of the Constitution.
- (2) The President shall, in accordance with section 161 of the Constitution, appoint an officer to be the Deputy Commander of the Defence Force.
- (3) The Commander and Deputy Commander shall have such rank and title and fulfil such duties and functions as may be determined by the President.
- (4) The Commander may delegate to any officer under his command such duties, functions and powers other than such power of delegation, as he may from time to time deem expedient.

- (5) The office of the Commander shall, unless the holder is sooner removed, become vacant after the holder has served for a period of four years, but the person holding that office may be appointed for a further period not exceeding two years as the President may consider appropriate.

192. Powers of command of members of cooperating forces

- (1) In so far as powers of command depend on rank, a member of the armed forces of a friendly country who—
 - (a) is acting with; or
 - (b) is a member of a body of those forces which is acting with,any body of the Defence Force shall have the like such powers as a member of the Defence Force of corresponding rank; and for the purposes of sections 42 and 84 any such member of those forces shall be treated as if he were a member of the Defence Force of corresponding rank.
- (2) If the whole or any part of the Defence Force is required to act with any other military naval or air force, the President may place the Defence Force or such part thereof under the command of the officer commanding such other force.
- (3) Where any part of the Defence Force is acting in cooperation with any other force, the Commander or the officer commanding that part of the Defence Force may, in agreement with the officer commanding that other force, define the powers of command and the order of precedence of the officers, warrant officers and non-commissioned officers of the Defence Force in relation to the officers, warrant officers and non-commissioned officers of such other force.

193. Military police

- (1) There is hereby established a unit, to be known as military police, which shall be part of the Regular Force, and which shall consist of a provost marshal and such other members as the Commander may determine.
- (2) Every member of the military police shall on joining the unit make an oath of allegiance in the form set out in the Third Schedule.
- (3) The functions of the military police shall be—
 - (a) to maintain military discipline;
 - (b) to maintain the security and orderly regulation as well as ensure protection (including protection against fire and other damages of—
 - (i) all public establishments; and
 - (ii) all public property under the charge of the Defence Force.
- (4) In the exercise of their functions under this Act, all members of the military police shall have the same powers and privileges as are by law accorded to civil police, including the power to carry arms; but such powers and privileges shall not apply in relation to a member of the military police when he is beyond the limits of a public establishment except when that member—
 - (a) is performing his functions in respect of public property under the charge of the Defence Force; or
 - (b) is in charge of fresh pursuit of a person who is reasonably suspected of having committed an offence—
 - (i) in or on such establishment;
 - (ii) in relation to public property under the control of the Defence Force; or

- (iii) in relation to a member of the military police, or to a member of the Defence Force, or to a person employed in the service of a unit of the Defence Force.
- (5) For the purposes of this section “public establishment” means—
- (a) any establishment of the Defence Force; and
 - (b) any building or other premises belonging to, or in the occupation of, the Government which the Minister, after consultation with the Minister responsible for matters relating to internal security, may, by order published in the *Gazette*, declare to be a public establishment for the purposes of this section.

194. Provost marshal

- (1) There shall be a provost marshal who shall be appointed by the Commander from among the officers of the Defence Force.
- (2) The provost marshal shall—
 - (a) be responsible for the enforcement of discipline within the Defence Force; and
 - (b) carry out such other duties as the Commander may assign to him in accordance with this Act.

195. Directorate of Legal Services

- (1) There shall be a Directorate of Legal Services within the Defence Force.
- (2) The Commander shall appoint an officer to be the Director of Legal Services within the Defence Force.
- (3) The Director of Legal Services shall, in relation to service law—
 - (a) advise the Commander on all legal matters affecting the Defence Force;
 - (b) prosecute and defend charges before a court-martial;
 - (c) defend a member of the Defence Force in a civil court or other tribunal in matters pertaining to performance of military duties; and
 - (d) perform such other duties as the Commander may assign to him in accordance with this Act.

Division 2 – Redress of complaints

196. Complaints by officers

- (1) If an officer of the Defence Force thinks himself wronged in any matter by a superior officer 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 Defence Council.
- (2) On receiving any such complaint, it shall be the duty of the Defence Council to investigate the complaint and to grant any redress which appears to it to be necessary or, if the complainant so requires, the Defence Council shall make its report on the complaint to the President in order to receive the directions of the President.

197. Complaints by soldiers

- (1) If a soldier of the Defence Force thinks himself wronged in any matter by any officer, other than his commanding officer, or by any soldier, he may make a complaint with respect to that matter to his commanding officer.

- (2) If a soldier of the Defence Force 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 for any other reason, he may make a complaint with respect thereto to the Defence Council.
- (3) It shall be the duty of a commanding officer or the Defence Council to have any complaint received under this section investigated and to take any steps for redress in the matter complained of which appear to be necessary.

Division 3 – Exemption for officers and soldiers

198. Exemption from service as assessor

An officer or a soldier of the Regular Force shall be exempted from serving as an assessor in any civil court:

Provided that an officer of the rank of captain or above may serve as an assessor in a civil court during any trial for an offence against this Act.

199. Exemption from tolls, etc.

- (1) Duties or tolls for passing over any road, ferry or bridge in Malawi shall not be payable in respect of –
 - (a) members of the Defence Force on duty;
 - (b) vehicles in military service, being vehicles belonging to the Government or other vehicles driven by persons, whether members of the Defence Force or not, in the service of the Government;
 - (c) goods carried in such vehicles; and
 - (d) animals in military service.
- (2) In subsection (1) the expression “in military service” means employed under proper military authority for the purposes of any body of the Defence Force or accompanying any body of the Defence Force.

200. Exemption from taking in execution of property used for military purposes

No judgment, decree or order given or made against an officer or a soldier of the Defence Force by any court in Malawi shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon.

Division 4 – Provisions relating to deserters and absentees without leave

201. Arrest of deserters and absentees without leave

- (1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or a soldier of the Defence Force who has deserted or is absent without leave.
- (2) Where no police officer is available any person may arrest any person whom he has reasonable cause to suspect of being an officer or a soldier of the Defence Force who has deserted or is absent without leave.
- (3) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or a soldier of the Defence Force 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 authorizing his arrest.

- (4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a subordinate court.
- (5) Notwithstanding any other law to the contrary, a person arrested and brought before a subordinate court under this section or section [202](#) or [203](#) shall not be admitted to bail.

202. Proceedings before a civil court, where persons suspected of illegal absence

- (1) Where a person who is brought before a subordinate court is alleged to be an officer or a soldier of the Defence Force who has deserted or is absent without leave, the provisions under this section shall have effect.
- (2) If the person mentioned in subsection (1) admits that he is illegally absent from the Defence Force 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 military custody in such manner as the court may think fit or commit him to some prison, police station or 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 military custody, or until sooner delivered into such custody.
- (3) Any time specified by the court under subsection (1) may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose specified in that subsection.
- (4) If a person mentioned in subsection (1) does not admit that he is illegally absent from the Defence Force, 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 satisfied that he is subject to service law and if of opinion that there is sufficient evidence to justify his being tried under service law for an offence of desertion or absence without leave, then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as provided in subsection (2), 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.

203. Deserters and absentees without leave surrendering to police

- (1) Where a person surrenders himself to a police officer as being illegally absent from the Defence Force, the police officer shall, unless that person 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 Defence Force, he may cause him to be delivered into military custody without bringing him before a subordinate court or may bring him before such a court.

204. Certificates of arrest or surrender of deserters and absentees

- (1) Where a subordinate court in pursuance of [section 202](#) deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by a magistrate, containing the prescribed particulars as to his arrest or surrender and the Proceedings before the court.

- (2) Where a person is delivered into military custody without being brought before a court, whether under [section 203](#) 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 military custody, containing the prescribed participation relating to his surrender.
- (3) In any proceedings for an offence against [section 46](#) or [47](#)—
 - (a) a document purporting to be a certificate under either of subsections (1) or (2) of this section, or under the corresponding provisions of any service law, other than this Act, and to be signed as thereby required, shall be evidence of the matters stated in the document; and
 - (b) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or by any officer in charge of the guardroom or other place where that person, as confined on being taken into custody stating the fact, date, time and place of arrest or surrender shall be evidence of the matter in the certificate.

205. Duties of superintendents of prisons and others to receive deserters and absentees

- (1) It shall be the duty of the superintendent or other person in charge of a civil prison to receive any person duly committed to that prison by a subordinate court as illegally absent under service law and to detain him in accordance with the directions of the court under which he is delivered into military custody.
- (2) Subsection (1) shall apply to the person having charge of any 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.

Division 5 – Offences relating to military matters punishable by civil courts

206. Punishment for pretending to be a deserter

Any person who falsely represents himself to any military or civil authority to be a deserter from the Defence Force shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

207. Punishment for procuring and assisting desertion

Any person who—

- (a) procures or persuades any officer or soldier of the Defence Force to desert or to absent himself without leave;
- (b) knowing that any officer or soldier of the Defence Force is about to desert or absent himself without leave, assists him in so doing; or
- (c) knowing any person to be a deserter or absentee without leave from the Defence Force, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

208. Punishment for obstructing officers or soldiers in execution of duty

Any person who willfully obstructs or otherwise interferes with any officer or soldier of the Defence Force, acting in the execution of his duty, shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

209. Punishment for aiding malingering

Any person who—

- (a) produces in an officer or soldier of the Defence Force any sickness or disability; or
- (b) supplies to or for him any 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 military service, whether permanently or temporarily, shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

210. Unlawful purchase, etc., of military stores

- (1) Any person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall, unless he proves either—
 - (a) that he did not know, and could not reasonably be expected to know, that the chattels in question were military stores; or
 - (b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe had, power to give the order or consent; or
 - (c) that those chattels had become the property of an officer of the Defence Force who had retired or ceased to be an officer, or of a soldier of the Defence Force who had been discharged or of the personal representatives of a person who had died,

shall be guilty of an offence and shall be liable to a fine of K100,000 and to imprisonment for two years.

- (2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed any offence against this section and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.
- (3) Any person having authority to issue a warrant for the arrest of a person charged with 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 against this section, grant a warrant to search for such property as in the case of stolen goods, and any property suspected of having been the subject of such an offence which is found on such a search 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 subordinate court.
- (4) In this section the expression—

“acquire” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

“dispose” means sell, give in exchange, pledge or otherwise hand over whether, apart from this section, the handing over is lawful or not;

“military stores” means any chattel of any description belonging to the Government which has been issued for use for military purposes or is held in store for the purpose of being so issued when required, and includes any chattel which had so belonged, and had been so issued or held, at some past time.
- (5) For the purposes of subsection (3), 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 another person.

211. Illegal dealing in documents relating to pay, pension, mobilization, etc.

- (1) Any person who—
 - (a) as a pledge or a security for a debt; or
 - (b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

receives, detains or has in his possession any official document issued in connexion with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's military service shall be guilty of an offence.
- (2) Any person who has in his possession without lawful authority or excuse, the proof of which shall lie on him, any such document as mentioned in subsection (1) or any official document issued in connexion with the mobilization or demobilization of the Defence Force or any member of the Defence Force, shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.
- (3) 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 he has it for his own use or benefit or for the use or benefit of another person.

212. Unauthorized use of and dealing in decorations, etc.

- (1) Any person who—
 - (a) being a person who is not serving in the Defence Force or any cooperating forces without authority wears in a public place the uniform of any part of the Defence Force or of those forces or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform;
 - (b) without authority uses or wears any naval, military or air force decoration, or any badge, wound stripe or any emblem supplied or authorized by the Defence Council or by the Government of the country of any cooperating forces;
 - (c) uses or wears any decoration, badge, wound stripe or emblem so nearly resembling any decoration, badge, wound stripe or emblem, as to be calculated to deceive; or
 - (d) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, wound stripe or emblem as is mentioned in paragraph (6),

shall be guilty of an offence:

Provided that nothing in this subsection shall—
 - (i) prevent any person from wearing any uniforms or dress in the course of a stage play performed in a place duly licensed or authorized for the public performance of stage plays or in the case of a musical or circus performance, or in the course of any *bona fide* military representation; or
 - (ii) prohibit the use and wearing of ordinary regimental badges or of brooches or of ornaments representing them.
- (2) Any person who purchases or takes in pawn any naval, military or air force decoration awarded to any member of the Defence Force or cooperating forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence 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 Defence Forces or of those forces.

- (3) Any person who is guilty of an offence under this section shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Division 6 – Provisions as to evidence

213. General provisions as to evidence

- (1) The following provisions 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 any 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 any person—
- (a) was or was not serving at any specified time or during any specified period in any part of the Defence Force or in any part of cooperating forces or was discharged from any part of the Defence Force or of those forces at or before any specified time;
 - (b) held or did not hold at any specified time any specified rank or appointment in any part of the Defence Force or of those forces or had at or before any specified time been attached to any part of the Defence Force or of those forces, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
 - (c) was or was not at any specified time authorized to use or wear any decoration, badge, wound stripe or emblem,
- shall, if purporting to be issued by or on behalf of the Defence Council, or a person authorized by the Defence Council, be evidence of the matters stated in the document.
- (5) A record made in any prescribed service book or any other prescribed document, being a record made in pursuance of service law or regulations, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.
- (6) A document purporting to be issued by order of the Defence Council and to contain instructions or orders given or made by the Defence Council shall be evidence of the giving of the instructions or making of the orders and of their contents.
- (7) A certificate purporting to be issued by or on behalf of the Defence Council, or by a person authorized by the Defence Council, and stating—
- (a) that a decoration of a description specified in or annexed to the certificate is a military decoration; or
 - (b) that a badge, wound stripe or emblem of a decoration specified in or annexed to the certificate is one supplied or authorized by the Defence Council or by the cooperating forces,
- shall be evidence of the matters stated in the certificate.

- (8) A certificate purporting to be signed by a person's commanding officer or any officer authorized 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) any formation or unit or body of troops;
 - (b) any command or other area, garrison or place; or
 - (c) any vessel, train or aircraft,
- shall, in proceedings against a person, be evidence of the matters stated in the certificate.

214. Proof of outcome of civil trial

- (1) Where a person subject to military 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 the clerk of the court or by a judge or a magistrate and stating all or any of the following matters—
- (a) that the said person has been tried before the court for an offence specified in the certificate;
 - (b) the result of the trial;
 - (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) A document purporting to be a certificate under this section and to be signed by the clerk of the court, a judge or a magistrate shall, unless the contrary is shown, be deemed to be such a certificate.
- (3) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer authorized by him, furnish a certificate under this section.
- (4) References in this section to the clerk of the court include references to his deputy, to the registrar of the High Court and to any other person having the custody of the records of a court.

215. Evidence of proceedings of court-marshal

- (1) The original record of the proceedings of a court-martial under service law purporting to be signed by the presiding officer of the court and being in the custody of any 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 record of the proceedings of a court-martial under service law or any part thereof and to be certified by the person having the lawful custody of the proceedings to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.
- (3) This section applies to evidence given in any court, whether civil or criminal.

Division 7 — Miscellaneous provisions

216. Temporary reception in civil custody of persons under escort

- (1) Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part V or the corresponding provisions of any other service law, it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding seven days.

- (2) In subsection (1), “civil prison” has the meaning ascribed to it in [section 140](#).

217. Avoidance or assignment of, or charge on, military pay, pension, etc.

- (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person’s service in the Defence Force or the armed forces of a friendly country shall be void.
- (2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any 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 any law providing for the payment of any sum to a bankruptcy trustee in bankruptcy for distribution among creditors.

218. Power of certain officers to make statutory declarations

- (1) An officer of the Defence Force or of the armed forces of a friendly country not below field rank (hereinafter referred to as an “authorized officer”) may, outside Malawi, take statutory declarations from persons subject to military law under this Act.
- (2) A document purporting to have subscribed thereto the signature of an authorized officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer, shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

Part X – Militia

219. Composition, discipline and functions of the Militia

- (1) The Militia shall consist of citizens of Malawi between eighteen years and sixty years of age who have elected to render part-time service in the Defence Force and are accepted by the Defence Council.
- (2) Every member of the Militia shall be subjected to the provisions of this Act for the discipline and administration during training and active service.
- (3) Units of the Militia or parts thereof shall train for and undertake military service either independently of, or jointly with, other components of the Defence Force.
- (4) A member of the Militia shall at all times be liable to serve anywhere within or outside Malawi, save that a member shall be liable to serve outside Malawi only with the approval of the President.

220. Procedure for enlistment

- (1) The term for which a person enlisting in the Militia may be enlisted shall be such term beginning with the date of his attestation as may be prescribed.
- (2) A person enlisting in the Militia shall be attested in the same manner as a recruit in the Regular Force and the following provisions of Part IV that is to say—
 - (a) [section 18](#) (which relates to the mode of enlistment and attestation);
 - (b) [section 31](#) (which relates to the validity of attestation and enlistment), but omitting the references in that section to the receipt of pay; and

- (c) [section 32](#) (which makes recruits punishable for false answers),

shall apply in like manner as if they were re-enacted in this Part of this Act with substitution for the expression “Regular Force” of expression “Militia”.

- (3) A person enlisting in the Militia may be attested by any officer and the provisions of Part IV mentioned in subsection (2), together also with [section 70](#) (which relates to false answers on enlistment), shall in their application to the Militia be construed as if the expression “recruiting officer” included an officer of the Defence Force.

221. Training

- (1) Subject to this section, a member of the Militia shall receive initial and subsequent military training at such place or places and for such periods as may be determined by the Defence Council and shall fulfil such conditions relating to training as may be prescribed.
- (2) The requirement of subsection (1) may be dispensed with in whole or in part with respect to the Militia or any part thereof by the Defence Council and with respect to any individual member of the Militia by his commanding officer subject to any general directions of the Defence Council.

222. Embodiment

- (1) Wherever it appears to the President necessary or desirable in the public interest he may by notice published in the *Gazette* or otherwise—
- (a) order the employment of the whole or any part of the Militia; and
 - (b) order the employment of any member of the Militia for service within or, with his consent, outside Malawi.
- (2) Any member of the Militia employed under subsection (1) by reason of an order issued by the President shall remain so employed until released by order of the President.
- (3) Every member of the Militia may, when undergoing training under [section 221](#), or when employed under subsection (1), be posted or attached to any unit of the Regular Force or the Reserve Force.

223. Discharge

- (1) A member of the Militia shall, save as otherwise provided in this section, be entitled to be discharged before the end of his current term of service on complying with the following conditions—
- (a) giving to his commanding officer one month’s notice in writing, or such less notices as may be prescribed, of his desire to be discharged; and
 - (b) delivering up in good order, fair wear and tear only excepted, all arms, clothing and appointments, being public property issued to him, or, in cases where for any good or sufficient cause the delivery of such property is impossible, paying the value thereof:
- Provided that it shall be lawful for the commanding officer, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with any of the conditions in paragraph (a) or (b).
- (2) A member of the Militia may be discharged by his commanding officer—
- (a) for disobedience to orders by him while doing any military duty, or for neglect of such duty, or for misconduct by him as a member of the Militia, or for other sufficient cause, the existence and sufficiency of such cause to be judged by the commanding officer; or

- (b) within one year of the date of his enlistment if, in the opinion of his commanding officer, he is considered to be either—
 - (i) unlikely to make an efficient soldier; or
 - (ii) likely to bring discredit upon the Defence Force.

224. Postponement of discharge

Where the time at which a member of the Militia would otherwise be entitled to be discharged occurs at a time when the Militia or any part thereof is employed under [section 222](#), he may be required to prolong his service for such further term as the President may order.

225. Failure to attend on embodiment or training

- (1) Any member of the Militia who, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembly on embodiment in accordance with directions given under [section 222](#) shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction by court-martial shall be punishable as for an offence under [section 46](#) or, as the case may be, [section 47](#).
- (2) sections [201](#) and [202](#) shall apply to a deserter or absentee without leave contrary to subsection (1).
- (3) Any person who, knowing any member of the Militia to be a deserter within the meaning of this Act, employs or continues to employ him shall be deemed to aid him in concealing himself within the meaning of [section 207](#) (c) (which provides, among other things, for the punishment of persons concealing deserters from the Defence Force).
- (4) Where a member of the Militia deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of discharge.

226. Failure to fulfil training obligations

Where a member of the Militia, without leave lawfully granted, or such sickness or other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for preliminary training or for annual training, or fails to attend the number of drills or instructional parades or to fulfil the other conditions relating to preliminary or annual training which may be prescribed, he shall be guilty of an offence and shall be liable to a fine of K10,000.

227. Power to make regulations under this Part

Subject to the foregoing provisions of this Part, the Minister may with the advice of the Defence Council, make regulations for the better carrying out of this Part and generally for the good government and organization of the Militia and for providing for matters required by this Part to be prescribed and without prejudice to the generality, of the foregoing such regulations may make provision with respect to all or any of the following matters, that is to say—

- (a) the constitution, powers and functions of the Militia or any part thereof;
- (b) the enlistment of persons into, and the discharge of persons from, the Militia;
- (c) the pay, allowances, pensions and gratuities of members of the Militia and of their dependants surviving them and the deduction therefrom and the forfeiture thereof;
- (d) the calling out of members of the Militia on service in accordance with [section 222](#) and for training, including prescribing the manner in which notification of the places and times appointed for training is to be given;
- (e) requiring members of the Militia to report themselves from time to time; and

- (f) the attachment of members of the Regular Force to the Militia.

Part XI – Reserve Force

228. Composition

- (1) The Reserve Force shall consist of such officers and soldiers who shall be appointed therein under sections 16 (2) and 24.
- (2) Retired officers and soldiers of the Defence Force, not exceeding 55 years of age, shall be members of the Reserve Force.

229. Discharge from Reserve Force

- (1) An officer or soldier of the Reserve Force may be discharged by the appropriate superior authority at any time during the currency of any term of engagement—
 - (a) for disobedience to orders issued to him while doing any military duty, or for neglect of such duty, or for misconduct by him as a member of the Reserve Force, or for other sufficient or reasonable cause as may be determined by the commanding officer or appropriate superior authority;
 - (b) if, in the opinion of his commanding officer or appropriate superior authority, he is considered to be either—
 - (i) unlikely to make an efficient officer or soldier; or
 - (ii) likely to bring discredit upon the Defence Force.
- (2) A member of the Reserve Force who is discharged from service shall deliver up in good order, fair wear and tear only excepted, all arms, clothing and accoutrements, being public property issued to him, or in cases where for any good or sufficient cause the delivery of the property mentioned is impossible, paying the value of the property.
- (3) The commanding officer or approbate superior authority may, if it appears to him that the reasons for which the discharge is claimed are of sufficient urgency or weight, dispense either wholly or in part with all or any of the requirements specified in subsection (2).

230. Reporting Reserve Force

Officers and soldiers of the Reserve Force shall be required to report to such authority and to attend such examinations before a medical board as may be directed by the Defence Council.

231. Embodiment

- (1) The President may, in accordance with chapter XVI of the Constitution, by notice published in the *Gazette* or otherwise, order the employment of the whole or any part of the Reserve Force.
- (2) Where the President has made an order under subsection (1) the Defence Council may order employment of any officer or soldier from the Reserve Force for service within or outside Malawi.
- (3) Any officer or soldier of the Reserve Force employed by reason of an order issued pursuant to subsections (1) and (2) shall remain so employed until released by the Defence Council.
- (4) Every officer and soldier of the Reserve Force may, when called out for service under this section, be posted or attached to any unit of the Regular Force or the Militia or the Reserve Force.

232. Training of Reserve Force

- (1) Subject to subsection (2), officers and soldiers of the Reserve Force shall receive continuing military training at such places and for such periods as may be determined by the Defence Council and shall fulfill such conditions relating to training as may be prescribed.
- (2) The requirements of subsection (1) may be dispensed, with in whole or in part with respect to the Reserve Force or any part thereof by the Defence Council and with respect to any individual member of the Reserve Force by his commanding officer or appropriate superior authority subject to any general directions of the Defence Council.

233. Failure to fulfil training obligations

Where a member of the Reserve Force, without leave lawfully granted, or such sickness or other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for training or fails to attend the number of drills or instructional parades or to fulfil the other conditions relating to training which may be prescribed, he shall be guilty of an offence and he shall be liable to a fine of K10,000.

234. Postponement of discharge

Where the time at which a member of the Reserve Force would otherwise be entitled to be discharged occurs at a time when the Reserve Force, or any part thereof, is employed under [section 231](#), he may be required to prolong his service for such further term as the Defence Council may order.

235. Failure to attend on embodiment

- (1) Any officer or soldier of the Reserve Force who without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembly on embodiment in accordance with directions given under [section 231](#), shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction, shall be punishable as for an offence under [section 46](#) or, as the case may be, [section 47](#).
- (2) Any person who, by any means whatsoever—
 - (a) procures or persuades any officer or soldier of the Reserve Force to commit an offence of desertion contrary to subsection (1), or attempts to procure or persuade any such officer or soldier to commit such an offence;
 - (b) knowing that any such officer or soldier is about to commit such an offence aids or assists him in so doing; or
 - (c) knowing any such officer or soldier to be a deserter contrary to subsection (1), conceals the soldier, or aids or assists him in concealing himself or employs or continues to employ him, or aids or assists in his rescue,shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for six months.
- (3) [sections 201](#) and [202](#) shall apply to a deserter or an absentee without leave contrary to subsection (1).
- (4) Any person who, knowing any officer or soldier of the Reserve Force to be a deserter within the meaning of this Act, employs or continues to employ the officer, or soldier, shall be deemed to aid him in concealing himself within the meaning of [section 207](#) (c) (which provides, among other things, for the punishment of persons concealing deserters from the Regular Force).

- (5) Where an officer or soldier of the Reserve Force deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of retirement or discharge.

236. Power to make regulations under this Part

Subject to the foregoing provisions of this Part, the Minister may with the advice of the Defence Council, make regulation for the better carrying out of this Part and generally for the good government and “organization of the Reserve Force and for providing for matters required by this Part to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say—

- (a) the transfer of persons to, and the discharge of persons from, the Reserve Force;
- (b) the pay, allowances, pensions and gratuities of officers and soldiers of the Reserve Force and of their dependants surviving them and the deductions therefrom and the forfeiture thereof;
- (c) the calling out of officers and soldiers of the Reserve Force on service in accordance with [section 231](#), including prescribing the manner in which notification of the places and time appointed is to be given; and
- (d) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

Part XII – Application of Act and supplementary provisions

Division 1 – Persons subject to military law

237. Persons subject to military law

- (1) Subject to sections [239](#) and [240](#), the following persons are subject to military law under this Act—
 - (a) officers and soldiers of the Regular Force;
 - (b) officers and soldiers when attached to the Defence Force or any part thereof;
 - (c) officers and soldiers of the Reserve Force when employed under [section 231](#); and
 - (d) members of the Militia.
- (2) This Act shall apply to the persons subject thereto—
 - (a) as well outside as within Malawi; and
 - (b) notwithstanding their attachment under section [7](#) or [9](#).

238. Application of Act to civilians

- (1) Subject to the modification hereinafter specified, where any part of the Defence Force is on active service, Part V shall apply to any person who is employed in the service of that part of the Defence Force or a member thereof, or accompanies that part of the Defence Force, and is not subject to service law, as it applies to soldiers subject to military law under this Act.
- (2) The modifications referred to in subsection (1) are the following—
 - (a) the punishment 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 imposed where a charge is dealt with summarily shall, in the use of any offence, be a fine not exceeding K5,000 but no other punishment;

- (c) the following provision shall have effect in substitution for [section 84](#) (2), (3) and (4), that is to say, that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer, subject to service law;
 - (d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure;
 - (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided, apply as they apply to soldiers;
 - (f) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer of a civilian to whom this section applies shall be the officer for the time being commanding the unit or detachment in which the person is employed or which he accompanies; and
 - (g) for references in [section 125](#) 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 V applies and [section 125](#) (3) shall not apply.
- (3) Any fine awarded by military law under this Act, whether by a court-martial or the commanding officer, shall be recoverable summarily on complaint by any officer of the Defence Force before a subordinate court as a debt due to the Government.

239. Application of Act to members of friendly forces

- (1) Officers, warrant officers and non-commissioned officers who, being members of the armed forces of a friendly country, are subject to military law of that country and are seconded to serve with the Defence Force or any part of the Defence Force shall not be subject to military law under this Act.
- (2) In the event of a person referred to in subsection (1) committing an offence against the military law of the country from where he is seconded he may be held, tried and punished in Malawi under the military law of that country for the offence.

240. Application of Act to Militia and Reserve Force

The provisions of Part V relating to the award of fines and stoppages, and Part VII, shall not apply to members of the Militia except when undergoing training either voluntary or as may be prescribed by [section 221](#), or when employed under [section 222](#), or to officers and soldiers of the Reserve Force except when reporting under [section 231](#) or employed under [section 231](#) or [section 232](#).

241. Power to make regulations

Subject to the provisions of this Act, the Minister may, with the advice of the Defence Council, make regulations for the better carrying out of this Act and generally for the good government and organization of the Defence Force and for providing matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say-

- (a) the enlistment of persons into, and the discharge of persons from, the Regular Force and generally for the carrying into effect of Part IV, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (b) the compensation of persons subject to military law under this Act for total or partial incapacity caused by personal injury sustained by accident arising out of or in the course of discharging military duties under this Act;

- (c) the pay, allowances, pensions and gratuities of soldiers and their dependants surviving them, and the deductions therefrom and the forfeiture thereof;
- (d) the description, supply, use and disposal of arms, accoutrements, clothing and other stores;
- (e) prohibiting, restricting and regulating the holding of meetings, within the limits of any camp or other military establishment and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;
- (f) the award of medals to service members, and where appropriate, to civilians for an act or acts done in support of military duties; and
- (g) in respect of matters for which regulations may be made under the foregoing provisions of this Act, other than under Part III and Part IV.

242. Powers exercisable in subsidiary legislation

- (1) Any power conferred by this Act to make regulations, rules, orders or other instrument shall include power to make provision for specified cases or any class of cases, and to make different provisions for different cases or any class of cases, and for the purposes of any such instrument, cases or any class of cases may be defined by reference to any circumstances specified in the instrument.
- (2) Any such regulations, rules or orders or other instruments as mentioned in subsection (1), may impose conditions, require acts or things to be performed or done to the satisfaction of any persons named therein, whether or not such persons are members of the Defence Force or armed forces of a friendly country, empower such persons to issue orders orally or in writing requiring such acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled and provide for appeal against any such order, requirement or direction.

243. Defence Council with Solicitor General's advice in certain cases

Notwithstanding the powers conferred upon the Defence Council by sections [108](#), [110](#), [111](#), [115](#) and [196](#), those powers shall not be exercised except upon advice of the Solicitor General.

244. Execution of orders, instruments, etc.

- (1) Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorized to be made under this Act, by any military officer or authority may be signified under the hand of any officer authorized on that behalf, and any instrument signifying such an order, determination, direction or appointment and purporting to be signed by an officer stated therein to be so authorized shall, unless the contrary is proved, be deemed to be signed by an officer so authorized.

245. Repeal

The Army Act is repealed.

[Cap. 12.01]

First Schedule (under Section 13(3))

Commission

By His Excellency

The President of the Republic of Malawi and Commander-in-chief of the Malawi Defence Force

To:

Greetings!

_____ Know you that by these Presents, I _____
reposing special Trust and Confidence in your Loyalty, Courage and Good Conduct, do, by these Presents,
constitute and appoint you to be an officer in the Malawi Defence Force from the _____ day of _____, 20 ____
You are therefore to carefully and diligently discharge your duty as such in the Rank of _____ or in
such higher Ranks as I may from time to time hereafter be pleased to promote or to appoint you, and you are at
all times to exercise fairness in dealing and disciplining Officers, Men and Women, serving under you and use
your best endeavours to ensure that their discipline is maintained at high standard at all times. And I do hereby
command them to obey you as their Superior Officer, and you to observe and follow such Orders and Directions
as from time to time you shall receive from me or the Defence Force Council in accordance with the provisions of
the Defence Force Act, and the Regulations and Rules made hereunder.

Presented on the _____ day of _____, 20 ____

President

Second Schedule (under Section 104)

Offences of which accused may be convicted by court-martial

Offence Charged		Alternative Offence	
1.	Any offence against section <u>33</u> (1)	1.	Any offence against section <u>33</u> (2)
2.	Any offence against section <u>34</u> (1)	2.	Any offence against section <u>34</u> (2)
3.	Any offence against section <u>40</u> (1)	3.	Any offence against section <u>40</u> (2)
4.	Communicating with or giving intelligence to the enemy either with intent to assist the enemy or without authority	4.	Disclosing information without authority
5.	Striking a superior officer	5.	(a) using violence to a superior officer otherwise than by striking him (b) offering violence to a superior officer
6.	Using violence to a superior officer otherwise than striking him	6.	Offering violence to a superior officer
7.	Using threatening language to a superior officer	7.	Using insubordinate language to a superior officer
8.	Disobeying, in such manner as to show willful defiance of authority, a lawful command given or sent to him personally	8.	Disobeying a lawful command
9.	Desertion	9.	Absence without leave

10.	Attempting to desert	10.	Absence without leave
11.	Stealing any property	11.	Fraudulently misapplying the property
12.	Any offence against section <u>64</u> (1)	12.	Any offence against section <u>64</u> (2)
13.	Any offence against section <u>65</u> (1) involving striking	13.	(a) The corresponding offence involving the use of violence other than striking (b) The corresponding offence involving the offering of violence
14.	Any offence against section <u>65</u> involving the use of violence other than striking	14.	The corresponding offence involving the offering of violence

Third Schedule (under Section 104)

Oath of allegiance

I, _____ do hereby swear by the Almighty God [or do hereby solemnly and sincerely affirm that—

- (a) I will be faithful and bear true allegiance to the Republic of Malawi;
- (b) I will faithfully serve the people and the Republic of Malawi as a member of the military police;
- (c) I will obey all laws, and all orders, regulations, directions and instructions, concerning the military police; and
- (d) I will discharge all the duties of a member of the military police according to the law, without fear, favour, affection or ill-will.

Sworn [or affirmed] by the said

after the oath had been read over and explained to him in the _____ language, which he acknowledged to understand, at ____ this ____ day of ____, 20 ____

Signature or thumb-print of person making the oath