



# ST CHRISTOPHER AND NEVIS

## CHAPTER 19.14

# SAINT CHRISTOPHER AND NEVIS DEFENCE FORCE ACT

and Subsidiary Legislation

**Revised Edition**

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03

This edition contains a consolidation of the following laws:

**Saint Christopher and Nevis Defence Force Act**

**Act 10 of 1997 in force 18<sup>th</sup> July, 1997**

**Amended by Act 4 of 2001**

**Act 20 of 2008**

**Regulations**

**Defence Force Regulations – Section 227 – SRO 20 of 1955**

**Amended by SRO 35 of 1983**

**Collision Regulations (Ships and Seaplanes on the Water) and Signals Distress (Ships) Order, 1965, of the United Kingdom – S.I. 1965 No. 1525 U.K. [Section 42]**

**Saint Christopher and Nevis Defence Force (Pension and Gratuity) Regulations – Sections 17 and 226 – SRO 25 of 2009 in force 1<sup>st</sup> September, 2009**

## **CHAPTER 19.14**

### **SAINT CHRISTOPHER AND NEVIS DEFENCE FORCE ACT**

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## CHAPTER 19.14

### SAINT CHRISTOPHER AND NEVIS DEFENCE FORCE ACT

**AN ACT to consolidate and amend the Defence Force Act, and to provide for related or incidental matters.**

#### PART I – PRELIMINARY

1. **Short title.**

This Act may be cited as the Saint Christopher and Nevis Defence Force Act.

2. **Interpretation.**

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

“Army Act, 1955” means the Army Act, 1955, of the United Kingdom Parliament as amended from time to time and any enactment substituted for that Act that was in force on 15th August, 1979;

“acting rank” means a rank of any description in respect of which an officer in command may, pursuant to regulations made under this Act, order the holder to revert from; and “acting warrant officer” and “acting non-commissioned officer” shall be construed accordingly;

“aircraft” means any machine used for flying whether propelled by mechanical means or not;

“aircraft material” includes:

- (a) parts of, components of, or accessories for, aircraft, whether in the aircraft or not;
- (b) engines, armaments, ammunition, bombs and missiles of any description in or for use in the aircraft;
- (c) any gear, apparatus or instrument in or for use in the aircraft;
- (d) any apparatus used in connection with the taking-off or landing of aircraft, or detecting the movement of the aircraft; and
- (e) any fuel used for the propulsion of the aircraft and any material used as a lubricant for the aircraft or for the aircraft material;

“appropriate superior authority” has the meaning assigned to it by section 114(2) and section 118;

“arrest” includes open arrest;

“before the enemy”, in relation to a person, means that he or she is in action against the enemy, or is 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 by the Board under section 165 of this Act;
- “Civil Court” includes a court of ordinary criminal jurisdiction and a court of summary jurisdiction;
- “Civil offence” has the meaning assigned to it under subsection (2) of section 102;
- “Colour service” means service in the regular force under this Act;
- “Commander” means the officer appointed under the provisions of section 195 of this Act;
- “Commonwealth Force” means any of the naval, military or airforces of a Commonwealth country;
- “competent military officer” means such officer of the Defence Force as may be prescribed;
- “constable” means a member of the Police Force;
- “corresponding civil offence” has the meaning assigned to it by subsection (2) of section 102 of this Act;
- “corresponding rank”, in relation to any rank or rating in a Commonwealth Force, means the rank or rating in any other of those forces declared by regulations made under section 196 to correspond with that rank or rating;
- “Court-martial”, except where it is expressed to be under service law, means a court-martial under this Act;
- “damage” includes destruction and references to damaging shall be construed accordingly;
- “date of attestation”, in relation to any person, means the date on which he or she is attested pursuant to regulations made under this Act;
- “decoration” includes medal, medal ribbon, clasp and good conduct badge;
- “Defence Board” means the Defence Board established under section 11 of this Act;
- “Defence Force” means the Defence Force established under section 5 of this Act;
- “desertion” shall be construed in accordance with the provisions of subsection (2) of section 76 of this Act;
- “enemy” includes
- (a) persons engaged in armed operations against the Defence Force or any force co-operating therewith; and
  - (b) armed mutineers, armed rebels, armed rioters and pirates;
- “Her Majesty” means Her Majesty in right of Saint Christopher and Nevis;

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“military” means connected to or belonging to land, sea or airforces;

“officer in command” has the meaning assigned to it by subsection (1) of section 114;

“on active service”,

- (a) in relation to a unit, means that it is engaged in operations against the enemy; and
- (b) in relation to a person, means that he or she is serving in or with such unit;

“prescribed” means prescribed by regulations under this Act or Rules of Procedure, as the case may be;

“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 the Government or held for the purposes thereof;

“recruiting officer” means a person authorised to enlist persons in the regular force pursuant to the provisions of section 19 of this Act;

“Registrar of the High Court” includes a Deputy Registrar or other officer for the time being discharging the duties of the Registrar or Deputy Registrar of the High Court;

“Rules of Procedure” means the Rules of Procedure made by the Board under section 163 of this Act;

“service” means belonging to or connected with the Defence Force or any part thereof or belonging to or connected with a Commonwealth Force or any part of a Commonwealth Force;

“service law” means

- (a) this Act; and
- (b) the following Acts of the United Kingdom Parliament, any amendments thereto, and any enactments substituted for those Acts which were in force on 15th August, 1979,
  - (i) the Army Act, 1955;
  - (ii) the Air Force Act, 1955; and
  - (iii) the Naval Discipline Act, 1957;

“ship” means any vessel;

“soldier”, subject to the modifications contained in this Act in relation to warrant officers and non-commissioned officers, includes a person who is a warrant officer, a non-commissioned officer or an officer of a lower military rank;

“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 body of the Defence Force which is not higher in the organisation 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 Board to be a unit.

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

(3) References to warrant officers and non-commissioned officers shall be construed as including references to persons of any corresponding ranks respectively.

### 3. **Provisions as to stealing.**

(1) In this Act, the provisions of this section shall apply in construing any provision relating to stealing.

(2) A person steals, who, without the consent of the owner, fraudulently and without claim of right made in good faith, takes away anything capable of being stolen with intent, at the time of the taking, permanently to deprive the owner of the thing:

Except that a person commits the offence of stealing the thing notwithstanding that he or she has lawful possession of the thing, if being a bailee or part owner of the thing, he or she fraudulently converts the thing to his or her own use or the use of any other person other than the owner.

- (3) The expression “takes” includes obtaining possession of anything
- (a) by trick;
  - (b) by intimidation;
  - (c) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained;
  - (d) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps.

(4) The expression “carries away” includes removal of anything from the place which it occupies, and in the case of a thing attached, if it is completely detached.

(5) The expression “owner” includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

(6) Anything that has value and is the property of any person, and if adhering to the realty then after severance therefrom is capable of being stolen.

(7) Notwithstanding the provisions of subsection 6 of this section and save as expressly provided in this subsection with respect to fixtures, growing things, and minerals,

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- (a) anything attached to or forming part of the realty is not capable of being stolen by the person who severs the same from the realty, unless after severance he or she abandons possession thereof; and
  - (b) the carcass of a creature wild by nature and not reduced into possession while living is not capable of being stolen by the person who has killed the creature, unless after killing the creature he or she abandons possession of the carcass.
- (8) Any person who, with intent to steal,
- (a) rips, cuts, severs or breaks
    - (i) any glass or woodwork fixed in any building;
    - (ii) any metal, utensil or fixture fixed in or to any building; or
    - (iii) anything made of metal fixed in any land being private property or in a fence to any dwelling house, garden or area or in a square or street, or in any place dedicated to public use or ornament, or in any burial ground;
  - (b) cuts, breaks, roots up or otherwise destroys or damages the whole or any part of a tree, sapling, shrub or underwood growing in any place, the value of the article stolen or the injury done being not less than one dollar; or
  - (c) destroys or damages any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hothouse or conservatory;

commits the offence of stealing.

(9) A person who, with intent to steal, severs the ore of any metal, raw gold, precious stones, or other valuable mineral commits the offence of stealing.

#### **4. Provisions as to acting service.**

Where, by reason of the eminence of active service or of the recent existence of active service, it is necessary for the public service that a unit should be deemed to be on active service, the Governor-General may declare that the unit is deemed to be on active service for a period not exceeding three months, starting on the day on which the declaration comes into force, as may be specified in the declaration.

## **PART II – THE DEFENCE FORCE**

#### **5. Establishment of Defence Force.**

There is established a Defence Force to be known as the Saint Christopher and Nevis Defence Force consisting of

- (a) a regular Force;
- (b) a Coast Guard Force;
- (c) a Reserve Force; and
- (d) a Cadet Force.

**6. Duties of Defence Force.**

The Defence Force shall be responsible for the defence of Saint Christopher and Nevis and such other duties as the Defence Board may determine.

**7. Service in aid of civil powers.**

(1) The Governor-General may, acting in accordance with the advice of Cabinet, call out the Defence Force for service in aid of the civil powers for a period not exceeding six months, with their arms and ammunition, where it is deemed that the resources of the civil powers need to be augmented.

(2) Where the Governor-General calls out the Defence Force for a period that is less than six months, he or she may at any time call out the Defence Force for a further period of service or extend the period of such call out for such periods as he or she may determine, except that if the total periods of call exceed six months then the provisions of subsection (4) shall apply.

(3) The Commander, or in his or her absence an officer in charge of the Defence Force, shall, when directed by the Governor-General, call out the Defence Force for the purpose specified in subsection (1) of this section, and the officer shall obey such instructions as are given to him or her by the Governor-General.

(4) Where the period of service required by the Defence Force to augment the civil powers pursuant to subsection (1) is to exceed six months the National Assembly shall, by Resolution, approve such period.

(5) A member of the Defence Force called out for service under the provisions of this section shall have and enjoy all the powers, authorities and immunities, which are vested in a police constable by law.

*[Inserted by Act 4/2001-Originally s.6A- Rest of sections have been renumbered accordingly]*

**8. Formation of Defence Force into units.**

The Defence Board may, by Order, form the Defence Force into units or other military bodies as it may determine.

**9. Employment of Defence Force outside Saint Christopher and Nevis.**

(1) The Governor-General may, at any time, order that the whole or any part of the Defence Force be employed outside Saint Christopher and Nevis.

(2) Notwithstanding the provisions of subsection (1) of this section, no officer or soldier of the Reserve Force shall be employed outside Saint Christopher and Nevis unless the officer or soldier is an officer or soldier who

- (a) was transferred from the regular Force to the Defence Force Reserve;  
or
- (b) has entered into an agreement in writing accepting such a liability.



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**10. Overseas training etc.**

(1) The Board may order any officer or soldier of the Reserve Force to proceed to a place outside Saint Christopher and Nevis for the purpose of undergoing instruction, training, duty or employment, except that no officer or soldier of the Reserve Force shall be ordered to go for training, instruction, duty or employment without his or her consent.

(2) The Governor-General may, with the consent of any officer or soldier, place the officer or soldier at the disposal of the military authorities of any country for the purpose of being attached to the armed forces of that country.

**PART III – THE DEFENCE BOARD**

**11. Establishment and composition of Defence Board.**

(1) There is established a Board to be known as Saint Christopher and Nevis Defence Board consisting of

- (a) the Prime Minister, who shall be the Chairperson;
- (b) such Minister as the Prime Minister may appoint;
- (c) the commanding officer; and
- (d) the Permanent Secretary, National Security or such other public officer as the Prime Minister may designate.

(2) The chairperson of the Board may nominate any member of the Board to perform the functions of chairperson at any meeting of the Board from which the chairperson is absent, and such nomination may be either general or in respect of a particular occasion.

**12. Secretary to the Defence Board.**

(1) The Secretary to the Defence Board shall be the Permanent Secretary, National Security.

(2) The chairperson of the Defence Board may, in the event of the absence or inability of the secretary to perform the duties of secretary, at any meeting of the Board, nominate such other person to perform those functions.

**13. Functions of the Defence Board.**

(1) The Defence Board shall, subject to subsection (2) of this section, be responsible for the command, discipline and administration of Saint Christopher and Nevis Defence Forces and all other matters relating thereto.

(2) The Commander of the Defence Force shall, subject to the directions of the Governor-General, be responsible for the operational use of the Defence Force.

(3) Where no directions have been given by the Governor-General under the provisions of subsection (2) of this section the Prime Minister may, as he or she deems fit, give to the Commander directions with respect to the operational use of the Defence Forces in Saint Christopher and Nevis for the purposes of maintaining and securing public order and public safety and the Commander shall comply with those directions.

**14. Performance of functions of the Defence Board.**

The Defence Board may

- (a) regulate its work, the manner in which it shall perform its functions, the duties and responsibilities of the members thereof;
- (b) delegate, by notice published in the *Official Gazette*, any powers or duties of the Board to any member of the Board;
- (c) consult with such persons, other than members thereof, as it thinks fit, including officers commanding units of the Defence Force, on matters relating to their units, and the officers shall attend such meetings of the Board as the Board requires;
- (d) determine the procedure to be followed in conducting its business;
- (e) make provision for any other matter which it considers necessary or desirable for attaining the better performance of its functions.

**PART IV – OFFICERS**

**15. Power to grant commissions.**

(1) The power to grant commissions in the Defence Force shall vest in Her Majesty, and may be exercised on Her Majesty's behalf by the Governor-General.

(2) A commission may be granted either for an indefinite period or for a specified time.

(3) An officer on being granted a commission shall be issued with a commission in the form set out in the First Schedule to this Act which commission shall be signed by the Governor-General.

(4) No officer shall be granted a commission unless the officer is recommended by the Commissions Board for grant of the commission.

**16. Commissions Board.**

(1) There is established a commission in Saint Christopher and Nevis Defence Force to be known as the Commissions Board consisting of

- (a) the Commander who shall be the chairperson;
- (b) the chairperson of the Public Service Commission; and
- (c) one other person appointed by the Defence Board for such period as the Defence Board may specify.

(2) The Commissions Board shall be responsible for advising the Governor-General on the exercise of the powers conferred upon him or her by section 15 of this Act.

(3) The chairperson of the Commissions Board may nominate a member of Saint Christopher and Nevis Defence Force, not below the rank of Major or corresponding rank, to perform the duties of the chairperson at any meeting of the Commissions Board at which the chairperson is absent.

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(4) The validity of any proceedings of the Commissions Board shall not be affected by any vacancy in the membership of the Commissions Board or defect in the appointment of a member.

(5) The chairperson shall, on any question where the members are equally divided, have a casting vote in addition to his or her deliberative vote.

**17. Appointment and transfer of officers.**

(1) An officer, upon being granted a commission, shall be appointed by the Governor-General either to the regular Force or to the first or second class of Saint Christopher and Nevis Reserve Force.

(2) The Governor-General may, subject to such terms and conditions as he or she may determine, transfer any officer between the regular Force and the Reserve, and between the first class and the second class of the Reserve Force.

(3) Notwithstanding the provisions of subsection (2) of this section, no officer shall be transferred to the regular Force or the first class of the Reserve Force without the officer's consent.

**18. Regulations in respect of officers.**

(1) The Governor-General may, subject to this Act, make regulations for the better carrying into effect the provisions of this Part and, without prejudice to the generality of the foregoing, the regulations may be made with respect to all or any of the following matters:

- (a) commissioning of officers;
- (b) their terms of service;
- (c) appointment;
- (d) transfer;
- (e) promotion;
- (f) retirement;
- (g) resignation;
- (h) removal from office; and
- (i) other related matters as may be necessary.

(2) The appointment, transfer, substantive promotion, retirement, resignation or removal from office of any officer shall be notified in the *Official Gazette* by the Defence Board.

**PART V – ENLISTMENT, TERMS AND CONDITIONS OF SERVICE  
IN REGULAR FORCE**

**19. Recruiting officer.**

A recruiting officer may enlist recruits in the regular Force in the prescribed manner.

20. **Enlistment.**

(1) A person who wishes 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 engagement to be entered into by him or her.

(2) A recruiting officer shall not enlist any person in the regular Force unless the recruiting officer is satisfied that the person intended to be enlisted has been given the notice, understands the notice, and wishes to be enlisted.

(3) A person who is under the age of eighteen years and is living with both or one of his or her parents shall not be enlisted in the regular Force without the consent in writing of his or her parents or parent.

(4) A person who is under the age of eighteen years and is not living with any of his or her parents shall not be enlisted in the regular Force without the consent in writing of the person, if the person's whereabouts are known or can after reasonable inquiry be ascertained, who has parental rights and powers in respect of him or her.

(5) Where the person referred to in the subsection (1) cannot be found or does not exist then the consent in writing to the enlistment of a person under the age of eighteen may be given by any person in whose care, whether in law or in fact, the person who wishes to enlist is.

(6) Notwithstanding any provisions of subsections (2), (3), (4) and (5), no person who is under the age of fourteen years shall be enlisted in the regular Force.

(7) Where the recruiting officer is satisfied by the production of a certified copy of an entry in the register of births or by any other evidence appearing to him or her to be sufficient that a person wishing to enlist has or has not attained the age permitted by this section for recruitment, the person shall be deemed for the purposes of this Act to have or not to have attained the age, as the case may be.

(8) A document purporting to be a certificate signed by the recruiting officer, in which certificate it is stated that the recruiting officer is satisfied as specified in subsection (7) of this section, shall, unless the contrary is provided, be sufficient evidence that he or she is so satisfied.

21. **Terms of enlistment.**

The term for which a person may enlist in the regular Force shall be,

- (a) in the case of a person who has, at the time of his or her enlistment, attained eighteen years,
  - (i) such term of colour service not exceeding twelve years as may be prescribed;
  - (ii) such term not exceeding twelve years as may be prescribed, being as to such part thereof as may be prescribed a term of colour service and as to the remainder a term of service in the Defence Force Reserve;
- (b) in the case of a person who has not, at the time of his or her enlistment, attained eighteen years,

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- (i) a term of colour service not exceeding twelve years, as may be prescribed, beginning with the date on which he or she attains such age; or
- (ii) a term not exceeding twelve years, as may be prescribed, beginning with the date on which he or she attains such age, being as to such part thereof as may be prescribed a term of colour service, and as to the remainder a term in the Reserve Force.

**22. Re-engagement and continuance of service.**

(1) Any soldier of the regular Force of good character who at any time has completed or is within the prescribed period before completing a prescribed term of service may, with the approval of a competent military authority, re-engage for such further period or periods of further colour service or service in the Reserve Force as may be prescribed:

EXCEPT that any such further period or periods of colour service together with the original period of colour service shall not, except as provided by subsection (2) of this section, exceed a total continuous period of twenty-two years' colour service from the date of the soldier's original attestation.

(2) Any soldier of the regular Force who completes a period of twenty-two years' colour service may, if he or she desires and with the approval of the competent military authority, continue to serve in all respects as if his or her term of colour has not expired except that he or she may claim his or her discharge at the expiration of the period of three months beginning on the day on which he or she gives notice of his or her wish to be discharged to his or her officer in command.

**23. Prolongation of service.**

Any soldier of the regular Force whose term of colour service expires during a state of war, insurrection, hostilities or public emergency may be retained in that Force and his or her service prolonged for such further period as the competent military authority, with the approval of the Defence Board, may direct.

***Discharge and Transfer to the Reserve Force***

**24. Discharge.**

(1) Save as is provided in this Act, any 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 is, when entitled to be discharged, serving out of Saint Christopher and Nevis, then if he or she requires to be discharged in Saint Christopher and Nevis he or she shall be sent there free of cost with all convenient speed and shall be discharged on his or her arrival there or if he or she consents to his or her discharge being delayed, within six months from the date of his or her arrival.

(3) The soldier referred to in subsection (1) of this section shall have no claim to be sent to Saint Christopher and Nevis or elsewhere if at his or her request he or she is discharged at the place where he or she is serving.

(4) Except in pursuance of a sentence of a court-martial, a soldier of the regular Force shall not be discharged unless his or her discharge has been authorised by order of a competent military authority.

(5) Any soldier of the regular Force shall, on his or her discharge be given a certificate of discharge containing such particulars as may be prescribed.

**25. Transfer to the Reserve Force.**

(1) Save as is provided in this Act, any soldier of the regular Force upon falling to be transferred to the Reserve Force shall be transferred to the Reserve Force 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 out of Saint Christopher and Nevis, he or she shall be sent to Saint Christopher and Nevis free of cost with all convenient speed and shall be transferred to the Reserve Force on the date of his or her arrival there, or if he or she consents to his or her transfer being delayed, within six months from the date of his or her arrival except that if he or she so requests he or she may be transferred to the Reserve Force without being required to return to Saint Christopher and Nevis.

(3) Notwithstanding anything in this section hereinbefore contained, but subject as may otherwise be prescribed, the competent military authority may, when a soldier of the regular Force falls to be transferred to the Reserve Force, discharge him or her forthwith without giving any reason and in any such case section 24 shall apply.

**26. Postponement of discharge etc. pending proceedings for offences.**

(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 or she has become liable to be proceeded against for an offence against any of the provisions of this Act except that 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 or her officer in command shall not be entitled to be discharged or transferred to the Reserve Force during the currency of the sentence.

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

(1) A warrant officer or non-commissioned officer of the regular Force whose rank is not below that of sergeant or corresponding rank shall not be reduced in rank except by a sentence of a court-martial or by order of the Defence Board or of an officer not below the rank of major or corresponding rank, authorised under regulations to act for the purposes of this subsection.

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(2) An authorisation under subsection (1) may be given generally or subject to such limitations as may be prescribed.

(3) For the purposes of this section, reduction in rank does not include reversion from acting rank.

**28. Right of warrant officer to discharge on reduction in rank.**

A warrant officer of the regular Force who is reduced to the ranks may there-upon claim to be discharged unless a state of war, insurrection, hostilities or public emergency exists.

**29. Discharge upon prescribed grounds.**

A soldier of the regular Force may be discharged by the competent military authority at any time during the currency of any term of engagement upon such grounds as may be prescribed.

**30. Right of soldier to purchase discharge.**

(1) Subject to this section, a soldier of the regular Force shall be entitled to claim his or her discharge at any time within three months after the date of his or her first attestation and if he or she makes such a claim he or she shall, on payment of one hundred dollars, be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act except that the right conferred by this subsection shall not be exercisable within such period (not exceeding two months) beginning with such date as may be prescribed.

(2) This section shall not apply to a soldier of the regular Force who was at any time within three months prior to the date of his or her first attestation a member of any Commonwealth Force.

(3) Section 24 shall not apply to a soldier discharged under this section.

(4) Notwithstanding this section, a soldier of the regular Force shall not be entitled to claim his or her discharge pursuant to this section while soldiers of the regular Force are required to continue their colour service under section 23 of this Act.

**31. Further provisions relating to purchase of discharge or transfer.**

(1) A soldier of the regular Force may, at any time after the expiration of the period mentioned in subsection (1) of section 30 of this Act, apply for the purchase of his or her discharge or transfer to any class of the Reserve Force.

(2) An application made under subsection (1) of this section shall be considered by the Defence Board which may

(a) reject the application; or

(b) direct that the applicant, upon payment of a sum, not exceeding \$2,000.00, as the Defence Board may specify,

(i) be discharged or transferred to any class of the Reserve Force as the Defence Board may specify, where he or she seeks his or her discharge; or

- (ii) be transferred to any class of the Reserve Force, as the Defence Board may specify, where he or she seeks a transfer to the Reserve Force.

(3) Where, pursuant to the provisions of subsection (2) of this section, the Defence Board directs that a soldier of the regular Force be discharged upon payment of the sum specified by the Defence Board in respect of his or her discharge, the soldier shall be discharged with all convenient speed except that he or she shall remain subject to military law under this Act until discharged.

(4) Where, pursuant to the provisions of subsection (2) of this section, the Defence Board directs that a soldier of the regular Force be transferred to any class of the Reserve Force upon payment of the sum specified by the Defence Board in respect of his or her transfer, the soldier shall be transferred with all convenient speed to the class of the Reserve Force and shall, subject to subsection (1) of section 54 of this Act, serve in such class for a term equal to the unexpired portion of his or her colour service, as determined immediately before his or her transfer except that he or she shall remain subject to military law under this Act until transferred.

(5) Nothing in this section relating to the transfer of a soldier to the Reserve Force nor any direction by the Defence Board shall affect the liability of the soldier who enlisted for a term consisting as to a part of colour service and, as to remainder, of service in the second class of the Reserve Force, and accordingly, but subject to subsection (1) of section 54,

- (a) if the soldier is transferred under this section to the first class of the Reserve Force, he or she shall, at the expiration of the term specified in subsection (4), be transferred to the second class to serve the remaining period of his or her engagement; and
- (b) if the soldier is transferred under this section to the second class of the Reserve Force, he or she shall, at the expiration of the term specified in subsection (4), continue to serve in that class for the remaining period of his or her engagement.

(6) A soldier serving outside Saint Christopher and Nevis at the time of his or her discharge or transfer to the Reserve Force under this section shall not be entitled to be returned to Saint Christopher and Nevis or to be sent elsewhere at the expense of the Defence Force.

(7) Subsections (1), (2) and (3) of section 24 of this Act shall not apply to a soldier discharged under this section, and section 25 shall not apply to a soldier transferred to the Reserve Force under this section.

### **32. Service after training course.**

Notwithstanding section 40 and paragraph (a) of subsection (1) of section 31, and any other provision relating to discharge from the Defence Force, where a member of the Defence Force undergoes a training course under the auspices of the Defence Force, he or she shall, on completion of the training course, serve in the Defence Force for such period as may be prescribed.



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*Miscellaneous and Supplementary Provisions*

**33. 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

- (a) any period during which he or she has been absent from duty for any of the following causes:
  - (i) imprisonment;
  - (ii) desertion;
  - (iii) absence without leave exceeding twenty-eight days; and
- (b) any period ordered by a court-martial to be forfeited.

**34. Validity of attestation and enlistment.**

(1) Where a person has made such declaration upon his or her attestation as may be prescribed and has thereafter received pay as a soldier of the regular Force

- (a) the validity of his or her enlistment shall not be called in question on the grounds of any error or omission in his or her attestation paper;
- (b) after the expiration of a period of three months from the date on which he or she made the declaration he or she shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any regulations made as to enlistment or attestation or any other ground (not being an error or omission in his or her attestation paper) and shall be deemed to be a soldier of the regular Force until his or her discharge.

(2) Where a person has received pay as a soldier of the regular Force without having previously made the declaration referred to in subsection (1) of this section, then

- (a) he or she shall be deemed to be a soldier of the regular Force until discharged;
- (b) he or she may claim his or her discharge at any time and if he or she makes such claim the claim shall be submitted as soon as may be to the Defence Board which shall, if the claim is well founded, cause him or her to be discharged with all convenient speed.

(3) Nothing in this section 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 or her discharge.

**35. 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 or her by or by the direction of the recruiting officer he or she commits an offence and is liable, on summary conviction, to a fine of one hundred dollars or to imprisonment for three months.

(2) For the avoidance of doubt, it is hereby declared that a person may be proceeded against under this section notwithstanding that he or she has since become subject to military law under this Act.

**36. Interpretation.**

In this Part, “Reserve Force” means the second class of the Reserve Force.

**PART VI – THE COASTGUARD**

**37. Special duties of Coast Guard.**

The Saint Christopher and Nevis Coast Guard shall

- (a) enforce the provisions of any law relating to
  - (i) the regulation of any harbour or port of Saint Christopher and Nevis;
  - (ii) quarantine;
  - (iii) immigration;
  - (iv) fisheries;
  - (v) territorial waters and economic zones;
  - (vi) safety at sea;
  - (vii) the regulation and control of dangerous drugs within the territorial waters and contiguous zone of the Federation;
- (b) detect and prevent contravention of laws relating to revenue and customs;
- (c) prevent persons from boarding, holding or clinging on to any vessel without the permission of the master of the vessel, and if necessary, remove any such person from the vessel.

(2) The Saint Christopher and Nevis Coast Guard shall, for purposes of carrying out their duties under this Part, have the same powers, authorities and privileges as are conferred by law on members of the Police Force.

**38. Powers of Coast Guard.**

(1) An officer or soldier in command of any ship of Saint Christopher and Nevis Defence Force may

- (a) cause any vessel within the territorial waters or in any port, harbour, bay or roadstead in Saint Christopher and Nevis that the officer or soldier suspects is being used or employed in any unlawful operation or enterprise, to be stopped, boarded and searched;
- (b) while searching any vessel, break open any receptacle or door where he or she, after demand and refusal of a key, reasonably suspects that there is on board the vessel property that has been stolen or

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- unlawfully obtained, or any article prohibited to be exported or imported;
- (c) while searching any vessel, break into any false compartment if he or she reasonably suspects that there is concealed in such compartment any property that has been stolen or unlawfully obtained, or any article prohibited to be exported or imported;
  - (d) direct, for the purposes of any lawful examination, investigation or inquiry, that the vessel be taken to a place he or she may specify;
  - (e) remain on board of any vessel for such reasonable time as is necessary;
  - (f) deliver any property that he or she reasonably suspects to have been stolen or unlawfully obtained, or any article prohibited to be imported or exported, and the person in whose possession is found, with all practicable speed, into the custody of a constable to be dealt with in accordance with section 5 of the Police Act and otherwise according to law.
- (2) Any officer or soldier acting in pursuance of any provisions of this section may
- (a) without warrant, pursue and arrest any person, whether that person has landed or not, upon reasonable suspicion of having committed or being about to commit a criminal offence; and
  - (b) take such steps as are reasonably justified in the circumstances of the case in order to compel compliance with any directions given in pursuance of the provisions of subsection (1) of this section.
- (3) Any officer or soldier shall not be liable for loss or damage to a vessel referred to in subsection (1) of this section, or loss or injury to any person on board the vessel, occasioned in the execution of his or her duty.
- (4) Any person who
- (a) assaults, obstructs, resists, or wilfully delays any officer or soldier acting in pursuance of the powers conferred by subsections (1) and (2) of this section; or
  - (b) fails to comply, without reasonable excuse, the proof of which lies on him or her, with any directions given in pursuance of the provisions of sub-sections (1) and (2) of this section;

commits an offence and is liable, on summary conviction, to a fine of one thousand dollars or to imprisonment for a period of twelve months, or both.

### **39. Powers of arrest.**

(1) Any officer or soldier of the Defence Force may, in the pursuance of his or her duties as a member of the Saint Christopher and Nevis Coast Guard, without a warrant, arrest any person who commits an offence under any legislation specified in the Second Schedule to this Act.

(2) Any officer or soldier who arrests any person pursuant to the provisions of subsection (1) of this section shall deliver the person to a constable to be dealt with according to law.

**40. Hazing or loss of ship.**

Any person who, being subject to military law under this Act, wilfully or with wilful neglect causes or allows to be lost, stranded or hazarded any ship belonging to the Defence Force or being used by the Defence Force is liable to imprisonment.

**41. Sleeping on watch or abandoning.**

(1) Any person who

- (a) being subject to military law under this Act;
- (b) being attached to any ship of the Defence Force; and
- (c) being in the presence of the enemy or under orders to be prepared for action against the enemy;

abandons his or her post improperly or sleeps while on watch, commits an offence and is liable on conviction by a court-martial, to imprisonment.

(2) Any person who

- (a) being subject to military law under this Act;
- (b) being attached to any ship of the Defence Force; and
- (c) not being in the presence of the enemy nor under orders to be prepared for action against the enemy;

abandons his or her post improperly, or sleeps while on watch, commits an offence and is liable, on conviction by a court-martial, to imprisonment for a period not exceeding two years.

**42. Application of S.I. 1965 No. 1525 U.K.**

For the purposes of this Act, the Collision Regulations (Ships and Seaplanes On the Water) and Signals Distress (Ships) Order, 1965, of the United Kingdom shall apply *mutatis mutandis* in Saint Christopher and Nevis.

## **PART VII – THE RESERVE FORCE**

**43. Composition of Reserve Force.**

(1) The Saint Christopher and Nevis Reserve Force shall consist of two classes composed of officers and soldiers as provided in subsections (2) and (3) of this section.

(2) The first class of the Reserve Force shall consist of:

- (a) officers appointed or transferred to that class;
- (b) soldiers enlisted or deemed to be enlisted or re-engaged in pursuance of this Part for service in the class;

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- (c) soldiers of the second class of the Reserve who are, after written application made by them in that behalf to the competent military authority, are accepted by the authority for service in the first class; and
  - (d) soldiers transferred to the first class pursuant to the provisions of section 31 of this Act.
- (3) The second class of the Reserve Force shall consist of:
- (a) the officers appointed or transferred to that class;
  - (b) the soldiers who are members of that class by virtue of Part V; and
  - (c) the soldiers enlisted, or deemed to be enlisted, or to be re-engaged in pursuance of this Part for service in that class.

**44. Enlistment and re-engagement in the Reserve Force.**

(1) The terms for which a person may be enlisted in the Reserve Force shall be a term beginning on the date of his or her attestation, as may be prescribed.

(2) A person who enlists in the Reserve Force shall be attested in the same manner as a recruit in the regular Force and, except for references in section 34 as to receipt of pay, sections 20, 34 and 35 of this Act shall, *mutatis mutandis*, apply to this Part.

(3) A person who enlists in the Reserve Force may be attested by any officer and except for references in section 34 as to receipt of pay, sections 20, 34, 35 and 94 of this Act shall, *mutatis mutandis*, apply to this Part.

(4) Any soldier of the Reserve Force who completes or is within six months before completing the term for which he or she enlisted or re-engaged in pursuance of this Part, or the term for which he or she is liable to serve in the Reserve Force under Part V of this Act may, with the approval of the competent military authority, re-engage for such further period of service in the Reserve Force as may be prescribed.

**45. Training of Reserve Force.**

(1) Every officer and soldier of the Reserve Force shall, subject to the provisions of this section, attend for training at such place or places and for such periods as may be determined by the Defence Board, and shall fulfil such conditions relating to training as may be prescribed.

(2) The requirements of subsection (1) of this section may be dispensed with in whole or in part

- (a) by the Defence Board in respect of any unit of the Reserve Force; and
- (b) subject to any general directions of the Defence Board by an officer in command in respect of any individual officer or soldier of the Reserve Force.

(3) Nothing in this section shall prevent an officer or soldier of the Reserve Force from undergoing voluntary training in addition to the training referred to in subsection (1) of this section.

**46. Call-out of first class of Reserve Force on temporary service.**

(1) The Defence Board may, at any time when occasion appears to require, call out the first class of the Reserve Force, or as many officers and soldiers of the class as is necessary, on temporary service.

(2) Officers and soldiers called out for service under subsection (1) of this section shall not be liable to serve at any one time for a period exceeding two months.

**47. Call-out of Reserve Force on permanent service.**

(1) In the event of a state of war being declared or of insurrection, hostilities or public emergency, the Governor-General may, by proclamation, direct that the Reserve Force, or any class thereof be called out on permanent service.

(2) Upon the making of a proclamation under subsection (1), the Defence Board shall call out the Reserve Force, or the class thereof so directed to be called out, as the case may be, or as many officers and soldiers of the Reserve Force or of that class as is necessary, on permanent service.

(3) Every officer and soldier of the Reserve Force when called out on permanent service shall be liable to continue in service until his or her services are no longer required.

**48. Attendance upon call out.**

(1) Where the whole or any part of the first class of the Reserve Force is called out on temporary service or on permanent service, it shall be the duty of every officer and soldier belonging to that class, or part of that class so called out, as the case may be, to attend in person at such place or places as may be prescribed:

Except that no officer or soldier of that class shall be liable to be proceeded against for an offence under this Act by reason of his or her failure to attend unless he or she has been served with a notice under subsection (2) requiring him or her to attend.

(2) In the event of a call out under section 46 or 47, the Defence Board shall cause any officer or soldier liable to such call out to be served with a notice requiring him or her to attend at the time and place specified in the notice.

(3) A notice under subsection (2) may be served on any officer or soldier by

- (a) being delivered to him or her personally;
- (b) being left at his or her last known address;
- (c) being sent by registered post addressed to him or her at his or her last known address.

**49. Effective time of call out.**

Where an officer or soldier of the Reserve Force is called out on temporary service or on permanent service he or she shall, for the purposes of section 54 and paragraph (d) of subsection (1) of section 222, be deemed to be so called out with effect from either

- (a) the time of his or her attendance under subsection (1) of section 48;
- or

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- (b) the time specified in any notice served under subsection (2) of that section, whichever time, (in the case of an officer or soldier to whom subsection (1) of that section applies) is the earlier.

**50. Termination of service.**

Where any officer or soldier of the Reserve Force is called out on temporary service or on permanent service, the Defence Board may at any time thereafter give such directions as it may think fit for terminating the service of the officer or soldier called out without prejudice to the power of the Defence Board by notice served under section 48 to call out for further service of the officer or soldier whose service has been terminated in directions given under this section.

**51. Posting or attachment of members of Reserve Force.**

Every officer and soldier of the Reserve Force may, when called out on temporary service or on permanent service or when undergoing training, be posted or attached to any unit of the regular Force or the Reserve Force.

**52. Punishment for non-attendance.**

(1) Any officer or soldier of the Reserve Force who, without leave lawfully granted or other reasonable excuse, (the proof of which lies on him or her), fails to appear at such time and place as may be appointed for annual camp, or at the time and place specified in any notice under subsection 2 of section 48,

- (a) if called out on permanent service, commits an offence under the circumstances, of desertion within the meaning of section 76 or of absenting himself or herself without leave within the meaning of section 77; or
- (b) if called out on temporary service or due to attend annual camp, commits an offence of absenting himself without leave within the meaning of section 77.

(2) Any officer or soldier of the Reserve Force who commits any offence under this section shall be

- (a) tried by court-martial, and on conviction is punishable as for an offence under section 76, or, as the case may be, section 77; or
- (b) tried by a court of summary jurisdiction and on summary conviction is liable to a fine of two hundred dollars and in default of payment to imprisonment for six months.

(3) Section 107 shall apply to officers and soldiers of the Reserve Force who commit an offence under this section as it applies to officers and soldiers of the regular Force.

(4) Where an officer or soldier of the Defence Force Reserve fails to appear at the time and place appointed for training or at the time and place specified in any notice under subsection (2) of section 48, and his or her absence continues for not less than twenty-one days, an entry of such absence shall be made by an officer in the service books and such entry shall be *prima facie* evidence of the fact of such absence.

**53. Wrongful sale etc of public property.**

If any person designedly makes away with, sells or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him or her as an officer or soldier of the Reserve Force, or wrongfully refuses or neglects to deliver up on demand anything issued to him or her as such officer or soldier the value of the thing shall be recoverable from him or her on complaint by any officer of the Force to a court of summary jurisdiction and he or she shall also, for that offence, be liable, on summary conviction, to a fine of fifty dollars.

**54. Discharge from Reserve Force.**

(1) A soldier of the Reserve Force may be discharged by the competent military authority at any time during the currency of any term of service in the Reserve Force upon such grounds as may be prescribed.

(2) A soldier of the first class of the Reserve Force, other than a soldier who is a member of the Reserve Force by virtue of the provisions of Part V, shall, unless that class is called out on permanent service, be entitled to be discharged before the end of his or her current term of service on complying with the following conditions:

- (a) giving to his or her officer in command three months' notice in writing of his or her desire to be discharged; and
- (b) delivering up in good order, fair wear and tear only excepted, all arms, clothing and equipment, being public property issued to him or her or, in cases where for any good or sufficient cause the delivery of the property is impossible, paying the value of that property.

**55. Application of Parts IX and XI of this Act.**

The provisions of Part IX relating to the award of fines and stoppages, and the provisions of Part XI shall not apply to officers and soldiers of the Reserve Force except when called out on permanent service or on temporary service or when serving on such permanent staff of the Reserve Force as may be employed.

**PART VIII – CADET CORPS**

**56. Composition of Cadet Corps.**

The Saint Christopher and Nevis Cadet Corps shall consist of pupils of authorised secondary schools of the Federation.

**57. Enrolment in Cadet Corps.**

(1) A pupil who is under the age of thirteen years may not be enrolled in the Cadet Corps.

(2) A pupil who wishes to enrol in the Cadet Corps shall be given a notice in the prescribed form setting out the general conditions of enrolment.

(3) The officer in command shall not enrol any pupil unless he or she is satisfied that the pupil who wishes to be enrolled understands the notice and wishes to be enrolled.

(4) No pupil may be enrolled unless consent to his or her enrolment is given by the parent or guardian in the prescribed manner.



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**58. Command and training of Cadet Corps.**

The command and training of the Cadet Corps shall be the responsibility of the officers and non-commissioned officers of the Defence Force who are posted or attached to the Cadet Corps.

**59. Regulations for Cadet Corps.**

The Defence Board may, subject to this Act, make regulations with respect to

- (a) the length of service and maximum age of Cadets;
- (b) the size, establishment and organisation of school companies;
- (c) the disciplinary code to be followed in respect of Cadets, which shall be prepared in collaboration with the Ministry responsible for education and the headteachers of the schools;
- (d) the safety of Government property and penalties for loss or damage thereto;
- (e) the order of dress to be worn by Cadets;
- (f) the programme of training, projects and qualification tests to be undertaken by Cadets;
- (g) discharge of Cadets;
- (h) inspection of Cadet Companies;
- (i) attendance at training and other parades;
- (j) any other matters necessary for the good management of the Cadet Corps.

**60. Call-out of Cadet Corps in emergency.**

The Governor-General may, in the event of a public emergency and on the advice of the Prime Minister, direct, by proclamation, that the Cadet Corps or any part thereof be called out for service in aid of the civil community except that no Cadet may be required to bear arms.

**61. Parent liable for uniform and equipment.**

A parent or guardian who consents to the enrolment of his or her child or ward as a Cadet, and accepts liability for any uniform and equipment issued at any time to the child or ward, is liable for the uniform and equipment, and the provisions of section 53 of this Act shall apply to the parent or guardian as if he or she were an officer or soldier of the Reserve Force.

**PART IX – DISCIPLINE AND TRIAL OF MEMBERS OF THE DEFENCE FORCE AND PUNISHMENT IN RESPECT OF MILITARY OFFENCES.**

**62. 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 or her 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;
- (b) does any act calculated to imperil the success of operations of the regular Force, of any forces co-operating therewith or of any part of any of those forces;
- (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or measures calculated to influence morale, or in any other manner not authorised by international usage;
- (d) furnishes the enemy with arms or ammunition or with supplies of any description or with any other thing likely to assist him or her (whether similar to any of the things specified in this subsection or not); or
- (e) harbours or protects an enemy not being a prisoner of war;

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

(2) Any person subject to military law under this Act who, knowingly and without lawful excuse does any of the acts specified in subsection (1)(a) to (e) commits an offence even if it is not proved that he or she acted with intent to assist the enemy, and liable on conviction by a court-martial to imprisonment or any less punishment proved by this Act.

**63. 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 commits an offence and is, on conviction by court-martial, liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law under this Act who, without authority, communicates with or gives intelligence to the enemy commits an offence and is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act.

(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 an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful, that is to say,

- (a) the number, description, armament, equipment, disposition, movement or condition of any of the regular Force or of any forces

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co-operating therewith, or of any ships or aircraft of the regular Force or any such co-operating force;

- (b) any operations or projected operations of any of the regular Force or any such forces, ships or aircraft;
- (c) any code, cipher, call sign, password or countersign;
- (d) any measures for the defence or fortification of any place against an enemy;
- (e) the number, description or location of any prisoners of war;
- (f) munitions of war.

**64. Cowardly behaviour.**

(1) Any person subject to military law under this Act who, when before the enemy,

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

commits an offence under this section.

(2) Any person subject to military law under this Act who, when before the enemy, induces any other person subject to service law and before the enemy to commit an offence under subsection (1) of this section commits an offence under this section.

(3) Any person who is convicted of an offence by a court-martial under this section, is liable to imprisonment or any less punishment provided by this Act.

**65. Offences against morale.**

Any person subject to military law under this Act who,

- (a) spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of the regular Force, of any forces co-operating therewith, or of any part of any of those forces, being reports calculated to create despondency or unnecessary alarm; or
- (b) when before the enemy, uses words calculated to create despondency or unnecessary alarm;

commits an offence and is liable to imprisonment or any less punishment provided by this Act.

**66. Becoming a prisoner of war through disobedience or wilful neglect, and failure to rejoin forces.**

(1) Any person subject to military law under this Act who, through disobedience to orders or wilful neglect of his or her duty, is captured by the enemy commits an offence under this section.

(2) Any person subject to military law under this Act who, having been captured by the enemy, fails to take reasonable steps available, or prevents or discourages any other person subject to service law who has been captured by the enemy from taking any reasonable steps available, to rejoin the regular Force commits an offence under this section.

(3) Any person who commits an offence under this section is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act.

**67. Offences by or in relation to sentries etc.**

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

- (a) while on guard duty, sleeps at his or her post;
- (b) when not on duty at a post, is asleep at a time when he or she is not allowed to be asleep;
- (c) while on guard duty, is drunk; or
- (d) leaves his or her post without having been regularly relieved or otherwise absents himself or herself from any place where it is his or her duty to be,

commits an offence under this section.

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

(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 any unit of the regular Force or of any forces co-operating therewith, or by the threat of force compels that person to let him or her or any other person pass, commits an offence under this section.

(4) Any person who commits an offence under this section is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act except that if the offence was not committed on active service he or she is not liable to be imprisoned for more than two years.

(5) References in this section to a person on guard duty are references to a person who

- (a) is posted or ordered to patrol or has adopted the position of sentry at a post or has undertaken the patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol, for the purpose of protecting any person, premises or place.

(6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol or who have adopted the position of sentries at a post or have undertaken the patrol, and to the members of a party mounted or ordered to patrol, for the purpose of preventing or controlling access to or egress from any premises or place, or of regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

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**68. Sleeping on watch or abandoning post.**

(1) Any person subject to military law under this Act who is attached to any ship of the regular Force, and who, being in the presence or vicinity of the enemy or under orders to be prepared for action against the enemy, abandons his or her post improperly or sleeps upon his or her watch commits an offence and is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who is attached to any ship of the regular Force, and who, not being in the presence or vicinity of the enemy or under orders to be prepared for action against the enemy, abandons his or her post improperly or sleeps upon his or her watch commits an offence and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

**69. 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;
- (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;

commits the offence of looting and is liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

***Mutiny and Insubordination***

**70. Mutiny.**

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

- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against the enemy, or the impeding of the performance of any such duty or service;
- (b) incites any person subject to service law to take part in the mutiny, whether actual or intended,

commits an offence and is, on conviction by court-martial, 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, commits an offence and is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act.

(3) In this Act the expression “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 regular Force or any forces co-operating therewith or in any part of any of the forces;
- (b) to disobey the 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 connection with operations against, the enemy; or
- (c) to impede the performance of any duty or service in the regular Force or in any forces co-operating therewith or in any part of any of the forces.

**71. Failure to suppress mutiny.**

Any person subject to military law under this Act who, knowing that a mutiny is taking place or is intended,

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

commits an offence and is, on conviction by court-martial,

- (i) if the offence was committed with intent to assist the enemy, liable to suffer death or any other punishment provided by this Act; and
- (ii) in any other case, liable to imprisonment or any less punishment provided by this Act.

**72. Insubordinate behaviour.**

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

- (a) strikes, or otherwise uses violence against his or her superior officer; or
- (b) uses threatening or insubordinate language to his or her superior officer,

commits an offence and is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act, except that he or she is not liable to imprisonment for more than two years if the offence was not committed on active service, and did not involve the striking or other use of violence, against a superior officer exercising authority as such.

(2) In this section, the expression “superior officer”, in relation to any person, means an officer, warrant officer or non-commissioned officer subject to service law of superior rank, and includes such an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as the person’s superior.

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**73. Disobedience to particular orders.**

Any person subject to military law under this Act who, whether wilfully or through neglect, disobeys any lawful command commits an offence and is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act, except that if the offence was not committed on active service he or she is not liable to imprisonment for more than two years.

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

**75. Disobedience to Standing Orders.**

(1) Any person subject to military law under this Act who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him or her, or which he or she might reasonably be expected to know, commits an offence and is, on conviction by court-martial, 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 made for any formation or unit or body of troops, or for any command or other area, garrison or place, or for any ship or aircraft.

*Desertion, Absence Without Leave, etc.*

**76. 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;

commits an offence and is, on conviction by court-martial, liable to imprisonment or any less punishment provided by this Act, except that a person is not liable to imprisonment for a term of more than two years unless

- (i) he or she was on active service and the offence was committed under paragraph (a) or under orders for active service at the time when it was committed; or
- (ii) the person in relation to whom the offence was committed was on active service and the offence was committed under paragraph (b) or under orders for active service at that time.

- (2) For the purpose of this Act, a person deserts who
- (a) leaves the regular Force or, when it is his or her duty to do so, fails to join or rejoin the regular Force, with (in either case) the intention, subsisting at the time of leaving or formed thereafter, of remaining permanently absent from his or her duty;
  - (b) being an officer enlists in or enters any Commonwealth force without having resigned his or her commission, or being a soldier enlists in or enters any Commonwealth force without having resigned his or her commission, or being a soldier enlists in or enters any Commonwealth force without having been discharged from his or her previous enlistment; or
  - (c) absents himself or herself without leave with intent to avoid serving at any place overseas or to avoid service or any particular service when before the enemy;

and reference in this Act to desertion shall be construed accordingly.

(3) In addition to or in lieu of any punishment authorised by subsection (1) of this section, the court-martial by whom a soldier is convicted of deserting during a term of service for which he or she is engaged or re-engaged may direct that the whole or any part of his or her service during that term previous to the period as respects which he or she is convicted of having been a deserter shall be forfeited, except that this subsection shall not apply to soldiers of the Reserve Force called out on permanent service or continuing to serve under subsection (2) of section 22.

**77. Absence without leave.**

Any person subject to military law under this Act who absents himself or herself without leave, or persuades or procures any person subject to service law to absent himself or herself without leave commits an offence and is, on conviction by a court-martial, liable to imprisonment for a period of two years or any less punishment provided by this Act.

**78. 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 or herself without leave; or
- (b) knowing that a person subject to service law has deserted or absented himself or herself without leave, or that a person is attempting to desert or absent himself or herself without leave, fails to report that fact without delay, or fails to take any steps in his or her power to cause that person to be apprehended;

commits an offence and is, on conviction by court-martial, liable to imprisonment for a period of two years or any less punishment provided by this Act.



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**79. Failure to perform military duties.**

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

*Malingering and Drunkenness*

**80. Malingering.**

- (1) Any person subject to military law under this Act who
  - (a) falsely pretends to be suffering from sickness or disability;
  - (b) injures himself or herself with intent to render himself or herself unfit for service, or causes himself or herself to be injured by any person with that intent;
  - (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 or herself unfit for service, does or fails to do anything (whether at the time of the act or omission he or she is in hospital or not) whereby he or she produces, or prolongs, or aggravates, any sickness or disability;

commits an offence of malingering and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

- (2) In this section, the expression “unfit” includes temporarily unfit.

**81. Drunkenness.**

(1) Any person subject to military law under this Act who commits the offence of drunkenness, whether on duty or not, is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act:

Except that where the offence is committed by a soldier who is neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months.

(2) For the purpose of this section, a person is guilty of drunkenness if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he or she is unfit to be entrusted with any duty which he or she may be called upon to perform or behaves in a disorderly manner or in any manner likely to bring discredit to the regular Force.

***Offences Relating to Property*****82. Offences in relation to public and service property.**

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 the stealing or fraudulent misapplication of any public or service property;
- (b) receives any public or service property knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied;
- (c) wilfully damages, or is concerned in the wilful damage of, any public or service property; or
- (d) by wilful neglect causes damage by fire to any public or service property;

commits an offence and shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

**83. Offences in relation to property of members of forces.**

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 the property;
- (b) receives property knowing or having reason to believe the same to have been stolen or to have been fraudulently misapplied; or
- (c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to service law;

commits an offence and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

**84. Miscellaneous offences relating to property.**

Any person subject to military law under this Act who

- (a) loses any public or service property of which he or she has the charge or which has been entrusted to his or her care or which forms part of property of which he or she has the charge or which has been entrusted to his or her care;
- (b) by negligence damages any public or service property of which he or she has the charge or which has been entrusted to his or her care or which forms part of property of which he or she has the charge or which has been entrusted to his or her care;
- (c) by negligence causes damage by fire to any public or service property;

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

commits an offence and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act, except that it shall be a defence for any person charged under paragraph (a) with losing any property that he or she took reasonable steps for the care and preservation thereof.

### *Offences Relating to Ships*

#### **85. Loss hazarding of ships.**

Any person subject to military law under this Act who, either wilfully or by negligence causes or allows to be lost, stranded or hazarded any ship belonging to the regular Force, commits an offence and is, on conviction by court-martial, liable, if he or she acts wilfully or with wilful neglect, to imprisonment or any less punishment, and in any other case to imprisonment for a term not exceeding two years or any less punishment as provided by this Act.

### *Offences Relating to, and by, Persons in Custody*

#### **86. Irregular arrest and confinement.**

(1) Any person subject to military law under this Act who, while another person subject to the same law is under arrest,

- (a) unnecessarily delays the taking of such steps as it is his or her duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his or her officer in command or an appropriate superior authority or, as the case may be, tried by court-martial; or
- (b) fails to release, or effect the release of, that other person when it is his or her duty to do so,

commits an offence under this section.

(2) Any person subject to military law under this Act who commits a prisoner to the custody of a provost officer, a warrant officer, non-commissioned officer or other officer and fails without reasonable cause to deliver at the time of committal, or if it is not practicable to do so within twenty-four hours after the committal to the person to whose custody the prisoner is committed, a report in writing signed by himself or herself of the offence which the prisoner is alleged to have committed, commits an offence under this section.

(3) Where a prisoner is committed to the custody of a person who is in command of a guard and is subject to military law under this Act and that person without

reasonable cause does not as soon as he or she is relieved from his or her guard and any further duty, or, if he or she is not sooner relieved, within twenty-four hours after the prisoner was committed to his or her custody, give to the officer to whom he or she reports

- (a) a written statement containing so far as known to him or her the prisoner's name, alleged offence, and the name and rank or other description of the officer or person who alleges that the prisoner has committed any offence; and
- (b) the report required by subsection (2) of this section, if he or she has received it;

commits an offence under this section.

(4) Any person who commits an offence under this section is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

**87. Permitting escape and unlawful release of prisoners.**

(1) Any person subject to military law under this Act who wilfully allows any person committed to his or her charge, or whom it is his or her duty to guard, to escape, commits an offence and is on conviction by court-martial, 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 or her charge; or
  - (b) without reasonable excuse, allows any person who is committed to his or her charge or whom it is his or her duty to guard to escape;

commits an offence and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

**88. Resistance to arrest.**

(1) Any person subject to military law under this Act, who, is concerned in any quarrel or disorder, refuses to obey any officer who is subject to service law who orders him or her into arrest, or strikes or otherwise uses violence against the officer, commits an offence under this section whether or not the officer is his or her superior officer.

(2) Any person subject to military law under this Act who strikes or otherwise uses violence against any person, whether subject to this Act or not, whose duty it is to apprehend him or her or in whose custody he or she is, commits an offence under this section.

(3) Any person who commits an offence under this section is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

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**89. 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) commits an offence and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

*Offences in relation to Courts-Martial and Civil Authorities*

**90. Offences in relation to Courts-martial.**

- (1) Any person subject to military law under this Act who
  - (a) is duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order;
  - (b) refuses to take an oath when duly required by a court-martial to do so;
  - (c) refuses to produce any document in his or her custody or under his or her control which a court-martial has lawfully required him or her to produce;
  - (d) refuses, when a witness, to answer any question that a court-martial has lawfully required him or her to answer;
  - (e) wilfully insults 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 wilfully insults that person in the manner provided for in this paragraph while the person is going to or returning from the proceedings of the court; or
  - (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court;

commits an offence and is, on conviction by a court-martial, other than the court in relation to which the offence was committed, liable to imprisonment for two years or any less punishment provided by this Act.

(2) Notwithstanding anything in subsection (1) of this section, where an offence under paragraph (e) or paragraph (f) of subsection (1) of this section is committed in relation to any court-martial held in pursuance of this Act the 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, may by order under the hand of the Governor-General order the offender to be imprisoned for 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 as the court may determine.

(3) References in subsections (1)(a) to (f) to a court-martial shall include references to a court held in pursuance of service law.

**91. False evidence.**

(1) Any person subject to military law under this Act who is lawfully sworn as a witness or as an interpreter in proceedings before a court under service law or before any board or person having power under service law to administer oaths, makes a statement material in those proceedings which he or she knows to be false or does not believe to be true commits an offence and shall, on conviction by court-martial, 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 upon the evidence of one witness as to the falsity of any statement alleged to be false.

**92. Obstruction of policemen arresting officer or soldier.**

Any person subject to military law under this Act who at any place in the Commonwealth prevents or obstructs

- (a) the execution by a policeman of a warrant for the arrest of a person subject to service law who has committed or is suspected of having committed an offence punishable on conviction by a civil court; or
- (b) a policeman acting in the exercise of his or her powers of arrest without warrant to arrest a person who is subject to service law;

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

*Miscellaneous Offences*

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

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

- (a) the number, description, armament, equipment, disposition, movement or condition of any of the regular Force or of any forces co-operating therewith, or of any ships or aircraft of the regular Force or the co-operating force;
- (b) any operations or projected operations of any of the regular Force or of the forces, ships or aircraft;
- (c) any code, cipher, call sign, password or counter-sign;

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- (d) any measures for the defence or fortification of any place against an enemy;
- (e) the number, description or location of any prisoners of war; or
- (f) munitions of war.

**94. Making of false statements on enlistment.**

Any person who, while before a recruiting officer for the purpose of attesting, knowingly makes a false answer to any question contained in the attestation paper and put to him or her by or by direction of the recruiting officer commits an offence and is, if he or she has since become and remains subject to military law under this Act, liable, on conviction by court-martial, to imprisonment for three months or to any less punishment provided by this Act.

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

commits an offence and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

**96. Scandalous conduct of officer.**

Any officer subject to military law under this Act who behaves in a scandalous manner unbecoming of the character of an officer and gentleman commits an offence and shall, on conviction by court-martial, be cashiered.

**97. Ill-treatment of officers or men of inferior rank.**

Where

- (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 or she commits an offence and is, on conviction by court-martial liable to imprisonment for two years or less punishment provided by this Act.

98. **Disgraceful conduct.**

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

99. **False accusation.**

Any person subject to military law under this Act who,

- (a) knowingly makes any false accusation against any officer or soldier subject to service law; or
- (b) in making a complaint where he or she thinks himself or herself wronged, makes a false statement affecting the character of an officer or soldier subject to service law or wilfully suppresses any material facts;

commits an offence and is, on conviction by court-martial, liable to imprisonment for two years or any less punishment provided by this Act.

100. **Attempt to commit military offences.**

Any person subject to military law under this Act who attempts to commit an offence under any of the foregoing provisions of this Part commits an offence and is, on conviction by court-martial liable to the like punishment as for that offence except that if the offence is one punishable by death, he or she shall not be liable to any greater punishment than imprisonment.

101. **Conduct prejudicial to military discipline.**

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

*Civil Offences*

102. **Civil Offences.**

(1) Any person subject to military law under this Act who commits a civil offence whether in Saint Christopher and Nevis or elsewhere commits an offence under this section.



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(2) In this Act, the expression “civil offence” means any act or omission punishable by the law of Saint Christopher and Nevis or which, if committed in Saint Christopher and Nevis would be punishable by such law; and in this Act the expression “the corresponding civil offence” means the civil offence the commission of which constitutes the offence under this section.

- (3) A person convicted by court-martial of an offence under this section shall,
- (a) if the corresponding civil offence is treason or murder, be liable to suffer death; and
  - (b) in any other case, be liable to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in Saint Christopher and Nevis, 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 except 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 discharge with ignominy in the case of a soldier, as is so provided.

(4) A person shall not be charged with an offence under this section committed in Saint Christopher and Nevis 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 under 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 causes the death, irrespective of the place of the death.

### *Punishments*

#### **103. Punishment of officers.**

(1) The punishments to which an officer is liable by sentence of a court-martial under this Act are, subject to the limitations provided in this section on the powers of certain courts-martial, those set out in the scale specified in subsection (2) of this section and references in this Act to punishments provided by this Act in relation to an officer are references to those punishments.

(2) The scale of punishments referred to in subsection (1) of this section is as follows:

- (a) death;
- (b) imprisonment;
- (c) cashiering;
- (d) dismissal from the Defence Force;
- (e) fine of a sum not exceeding the equivalent of ninety days’ pay;

- (f) forfeiture, in such manner as may be prescribed, of seniority of rank in the Defence Force, or in any unit to which the offender belongs, or in both;
- (g) severe reprimand or reprimand;
- (h) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part any punishment specified in any paragraph of the scale shall be treated as less than the punishments 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 a court-martial for one offence.

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

(6) A severe reprimand or reprimand may be awarded under a court-martial in addition to a fine imposed under paragraph (e) of subsection (2), or any forfeiture of seniority awarded under paragraph (f), of subsection (2).

(7) Where an officer is sentenced by a court-martial to imprisonment, he or she shall also be sentenced to be cashiered except that if the court-martial fails to sentence him or her to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

#### **104. Punishment of soldiers.**

(1) The punishments to which a soldier is liable by sentence of a court-martial under this Act are, subject to the limitations provided in this section on the powers of certain courts-martial, those set out in the scale specified in subsection (2) of this section and references in this Act to punishments provided by this Act in relation to a soldier are references to those punishments.

(2) The scale of punishments referred in subsection (1) of this section is as follows:

- (a) death;
- (b) imprisonment;
- (c) discharge with ignominy from the Defence Force;
- (d) in the case of a warrant officer, dismissal from the Defence Force;
- (e) detention for a term not exceeding two years or such shorter period as may be prescribed;
- (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 of any less reduction in rank;
- (h) in the case of a warrant officer or non-commissioned officer, forfeiture, in such manner as may be prescribed, of seniority of rank;

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- (i) fine of a sum not exceeding the equivalent of ninety days' pay;
- (j) where the offence is desertion, forfeiture of service;
- (k) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (l) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part, any punishment specified in any paragraph of the scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs of the scale except 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 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 a 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 or she shall also be sentenced to be reduced to the ranks except that if the court-martial fails to sentence him or her 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 severe reprimand may be awarded by a court-martial in addition to a fine or any forfeiture of seniority of rank.

(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 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 or she is subsequently sentenced by a court-martial to imprisonment any part of the sentence of the 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.

#### **105. 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 or she were not undergoing punishment, and such loss of privileges, as may be provided under regulations made under this Part and may include confinement in such place and manner as may be provided and such personal restraint as may be necessary to prevent the escape of the offender.

**106. Imprisonment.**

Where in this Act it is provided that any person subject to military law under this Act is liable on conviction by court-martial to imprisonment and no term or maximum term of imprisonment is specified then such person shall be liable to imprisonment for any term.

*Arrest*

**107. Power to arrest offenders.**

(1) Any person subject to military law under this Act, found committing an offence under any provision of this Act, or alleged to have committed or reasonably suspected of having committed an offence, may be arrested in accordance with the provisions of this section.

(2) An officer may be arrested by an officer of superior rank who is subject to service law or, if engaged in a quarrel or disorder, by any officer.

(3) A soldier may be arrested by an officer, warrant officer or non-commissioned officer who is 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 warrant officer, non-commissioned officer or any officer who is subject to service law lawfully exercising authority under a provost officer or on his or her 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.

**108. Provisions for 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, either proceedings shall be taken for punishing the person or he or she shall be released.

(2) Wherever any person subject to military law under this Act is taken into military custody and remains under arrest for a longer period than eight days without a court-martial sitting to hear his or her case, a special report on the necessity for further delay shall be made by his or her officer in command to the prescribed authority in the prescribed manner, and a similar report shall be made to the like authority and in the like manner every eight days until a court-martial sits or the offence is dealt with summarily or he or she is released except 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.

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(3) For the purposes of section 81.(1), the question 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 the provisions of subsection (2) of this section.

### *Investigation of, and Summary Dealing with, Charges*

#### **109. Investigation of charges by officers in command.**

Before an allegation against a person who is subject to military law under this Act that he or she has committed an offence under any provision of this Part is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's officer in command and the officer in command shall investigate the charge in the prescribed manner.

#### **110. Charges to be dealt with summarily or by court-martial.**

(1) After investigation, a charge against an officer below the rank of major or against a warrant officer may, if an authority has power under the provisions of this Part to deal with it summarily, be so dealt with by that authority in accordance with those provisions.

(2) After investigation, a charge against a non-commissioned officer or private soldier may be dealt with summarily by the officer in command, subject to, and in accordance with, the following provisions of this Part.

(3) Any charge not dealt with summarily as provided in this section shall, after investigation, be preserved for trial by court-martial.

- (4) Notwithstanding anything in the foregoing provisions of this section, where
- (a) the officer in command has investigated a charge against an officer or warrant officer; or
  - (b) the officer in command has investigated a charge against a non-commissioned officer or private soldier, which is not one which can be dealt with summarily;

the officer in command may dismiss the charge if he or she is of opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the officer in command of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

#### **111. Further proceedings on charges against non-commissioned officers and soldiers.**

(1) The provisions of this section shall have effect where the officer in command has investigated a charge against a non-commissioned officer or private soldier.

- (2) The officer in command shall,
- (a) if the charge is not one which can be dealt with summarily and the officer in command has not dismissed it; or
  - (b) if the charge is one which can be dealt with summarily but he or she is of opinion that it should not be so dealt with;

take the prescribed steps with a view to the charge being tried by court-martial.

(3) Where the officer in command proceeds to deal with the charge summarily, and he or she records a finding of guilty he or she may award one or more of the following punishments:

- (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 or reprimand;
  - (iii) where the offence has occasioned any expense, loss or damages, stoppages;
  - (iv) stoppage of leave;
  - (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) where the offence has occasioned any expense, loss or damage, stoppages;
  - (iv) confinement to barracks for a period beginning with the day of the sentence and not exceeding twenty-eight days;
  - (v) stoppage of leave;
  - (vi) extra guards, piquets, duty or drill;
  - (vii) admonition.

(4) Where the accused is a lance-corporal or of corresponding rank and the officer in command finds him or her guilty, the officer may, if he or she awards no other punishment except stoppages, order the accused to be reduced to the ranks.

(5) Where the accused is an acting warrant officer or acting non-commissioned officer, the officer in command may, if he or she awards no other punishment except stoppages, order the accused to revert to his or her permanent rank or to assume an acting rank lower than that held by him or her but higher than his or her permanent rank.

(6) Notwithstanding anything in subsection (3), where the officer in command has determined that the accused is guilty and if the charge is dealt with summarily will award detention or field punishment, the officer shall not record a finding until he or she

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has afforded 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 or her election the officer in command shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(7) Where a charge is one which can be dealt with summarily, but the officer in command has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the officer in command to be dealt with summarily, and on that reference subsections (3), (4), (5) and (6) shall apply as if the officer in command had originally been of opinion that the charge should be dealt with summarily except that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his or her election.

**112. Further proceedings on charges against officers and warrant officers.**

(1) After investigating a charge against an officer or warrant officer, the commander shall, unless he or she dismisses the charge, or the case is one where he or she has power, and proposes to direct trial by field court-martial, submit it in the prescribed manner to higher authority and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with subsections (2) and (3) of this section.

(2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.

(3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.

(4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty except that if in the course of investigating the charge the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.

(5) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments:

- (a) a fine of a sum not exceeding the equivalent of twenty-eight days' pay;
- (b) forfeiture, in such manner as may be prescribed, of seniority of rank, where the accused is an officer the forfeiture being of seniority of rank either in the Defence Force or in the unit to which the accused belongs or in both;
- (c) severe reprimand or reprimand;
- (d) where the offence has occasioned any expense, loss or damage, stoppages.

(6) Notwithstanding anything in subsection (4), where the appropriate superior authority determines that the accused is guilty and if the charge is dealt with summarily the authority may award a fine under paragraph (a) or any forfeiture of seniority under paragraph (b), of subsection (5) or stoppages, or where a finding of guilty may involve a

forfeiture of pay, the authority 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 the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

**113. Dismissal of charges referred to higher authority.**

(1) Notwithstanding anything in sections 111 and 112, where a charge is referred to higher authority with a view to its being tried by court-martial; or is submitted to higher authority for determination on how it is to be proceeded with, the authority may refer the charge back to the officer in command of the accused with a direction that it be dismissed, and in any such case the 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 higher authority has so directed or the officer in command thinks fit.

**114. Officers who are to act as officers in command and appropriate superior authorities.**

(1) In this Act, the expression “officer in command”, in relation to a person charged with an offence, means either the officer for the time being commanding the unit to which the person belongs or is attached, or, if the person belongs or is attached to a part of a unit which is so separated from the unit to which he or she belongs that the officer commanding that unit cannot effectively exercise his or her powers as officer in command over it, the officer commanding that part of the unit, or such other officer having powers of command over that person as may be determined by regulations.

(2) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say, any officer having power to convene ordinary courts-martial.

(3) Regulations may confer on officers, or any class of officers, who by or under this Act or the regulations are authorised to exercise the functions of officer in command power to delegate those functions, in such cases and to such extent as may be specified in the regulations, to officers of a class so specified.

**115. Limitation on powers of summary dealing with charges.**

(1) The charges which may not be dealt with by an officer in command or an appropriate superior authority, and the charges which may not be dealt with summarily by an officer in command or an appropriate superior authority except with the permission of higher authority, shall be such as may be specified under regulations.

(2) Any charge not specified as provided in subsection (1), and, upon obtaining the permission referred to in subsection (1), any charge which may be dealt with summarily with such permission, may be dealt with summarily by the officer in command or an appropriate superior authority, as the case may be.

(3) In such case as may be specified in that behalf by regulations, the powers of an officer in command or appropriate superior authority to award punishments shall be subject to such limitations as may be so specified.



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*Court-Martial: General Provisions*

**116. Trial by, and powers of, court-martial.**

Subject to this Act, an ordinary court-martial 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 in respect of that offence any punishment authorised by this Act for that offence.

**117. Trial by, and powers of, field court-martial.**

(1) Where an officer commanding any body of the Defence Force on active service

- (a) being an officer to whom under section 112(1) a charge has been submitted for determining how it is to be dealt with;
- (b) being the accused's commanding officer who has investigated a charge which cannot be dealt with summarily or which in his or her opinion ought not to be so dealt with; or
- (c) being the accused's officer in command or the appropriate superior authority who has investigated a charge on which the accused has elected to be tried by court-martial;

is of the opinion that it is not possible without serious detriment to the public service that the charge should be tried by an ordinary court-martial, the officer may (whether or not he or she is authorised to convene ordinary courts-martial) direct that the charge be tried by a field court-martial.

(2) A field court-martial shall have the powers of an ordinary court-martial, except that where the court consists of less than three officers the sentence shall not exceed imprisonment for a term of two years.

**118. Officers having powers to convene courts-martial.**

(1) An ordinary court-martial may be convened by the Commanding Officer or any officer authorised to convene ordinary courts-martial by the Defence Board.

(2) A field court-martial may be convened by the officer who directed that the charge should be tried by field court-martial.

- (3) Any authorisation under this section to convene ordinary 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 or her office, to a named or designated officer and his or her successors in that office or to a named or designated officer and such person and his or her successors;
  - (c) may be varied or may be revoked either wholly or in part by the Defence Board.

**119. Constitution of ordinary courts-martial.**

(1) An ordinary court-martial shall consist of the president and not less than two other officers except that the ordinary court-martial shall consist of five members if an officer is to be tried or if the only punishment or the maximum punishment which can be awarded in respect of a charge before the court is death.

(2) Save as hereinafter provided, an officer shall not be appointed a member of an ordinary court-martial unless he or she belongs to the Defence Force, is subject to service law, and has been an officer therein or in any Commonwealth force for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3) Not less than two of the members of an ordinary court-martial shall be of a rank not below that of captain or corresponding rank.

(4) The president of an ordinary court-martial shall be appointed by order of the convening officer and shall not be under the rank of field officer or corresponding rank unless in the opinion of the convening officer an officer of field or corresponding rank having suitable qualifications is not, with due regard to the public service, available, and in any event the president of an ordinary court-martial shall not be under the rank of a captain or corresponding rank.

(5) The members of an ordinary court-martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed.

(6) An officer under the rank of captain or corresponding rank shall not be a member of an ordinary court-martial for the trial of an officer above that rank.

**120. Constitution of field courts-martial.**

(1) A field court-martial shall consist of the president and not less than two other officers, or, if the convening officer is of opinion that three officers having suitable qualification are not available without serious detriment to the public service, shall consist of the president and one other officer.

(2) Save as provided in this section, the members of a field court-martial shall be officers belonging to the Defence Force and subject to service law.

(3) The president of a field court-martial shall be an officer appointed by the convening officer and shall not be under the rank of captain or corresponding rank.

(4) The members of a field court-martial, other than the president, shall be appointed by order of the convening officer or in such manner as may be prescribed.

**121. Supplementary provisions as to constitution of courts-martial.**

(1) The officer who convenes a court-martial shall not be a member of that court-martial except that if in the case of a field court-martial it is not practicable in the opinion of the convening officer to appoint another officer as president, he or she may himself or herself be president of the court-martial.

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(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 officer in command 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 enquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of an ordinary court-martial or act as a judge advocate at such a court-martial.

(3) If any court-martial is required to be convened at any place where in the opinion of the convening officer the necessary number of officers belonging to the Defence Force and having requisite qualifications is not available to form the court, and cannot be made available with due regard to the public service, the convening officer may, with the consent of the proper military authority, appoint any officer of a Commonwealth force as president in lieu of an officer belonging to the Defence Force or as any other member of the court in lieu of or in addition to an officer or officers belonging to the Defence Force except that no officer of a Commonwealth force shall be qualified to act in relation to a court-martial unless he or she is of a rank not lower than that which would have been required in the case of an officer belonging to the Defence Force and has been an officer in a Commonwealth force for the like period or periods as would have been so required.

(4) Where

- (a) the officer convening an ordinary court-martial appoints a captain or an officer of corresponding rank to be president, being of opinion that an officer of field or corresponding rank having suitable qualifications is not, with due regard to the public service, available;
- (b) an officer directs that an offender shall be tried by a field court-martial, being of opinion that it is not possible without serious detriment to the public service that the offender should be tried by an ordinary court-martial, or the officer convening a field court-martial appoints two officers only to be members of the court, being of opinion that three officers having suitable qualifications are not without serious detriment to the public service available, or appoints himself or herself to be president being of opinion that it is not practicable to appoint another officer as president; or
- (c) the officer convening any court-martial appoints an officer, not being an officer belonging to the Defence Force, as president or any other member of the court being of opinion that the necessary number of officers belonging to the Defence Force and having requisite qualifications is not available to form the court and cannot be made available with due regard to the public service;

the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

## **122. Place for sitting of courts-martial and adjournment to other places.**

(1) Subject to this section, a court-martial shall sit at such a place (whether within or without Saint Christopher and Nevis) as may be specified in the order convening the court; and the convening officer may convene it to sit at a place outside the limits of his or her command.

(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 interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

### ***Courts-Martial: Provisions Relating to Trial***

#### **123. Challenges by accused.**

(1) An accused who is about to be tried by any 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 officer.

(2) For the purpose of enabling the accused to avail himself or herself 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 or she shall be asked whether he or she objects to any of those officers.

(3) Every objection made by an accused in relation to any officer shall be considered by the other officers appointed members of the court.

(4) If objection is made in relation to the president 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 president.

(5) If objection is made in relation to a member of the court other than the president and not less than one-half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

#### **124. Administration of oaths.**

(1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter.

(2) Any witness before a court-martial shall be examined on oath except that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his or her evidence may be received, though not given upon oath, if in the opinion of the court he or she is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that, where the evidence is given on behalf of the prosecution, the accused shall not be liable to be convicted upon such evidence alone unless it is corroborated by some other material evidence in support thereof implicating the accused.

(3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

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**125. Courts-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 interests of the administration of justice to do so, 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 outfit 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.

**126. Dissolution of Courts-martial.**

(1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests 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 the 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 president dies or is otherwise unable to attend and the court is not reduced below the legal minimum,

(a) if the senior member of the court is of the rank of captain or corresponding rank or is of a higher rank, the convening officer may appoint him president and the trial shall proceed accordingly;

(b) if he or she 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.

**127. Decision of Courts-martial.**

(1) Subject to this section, any question to be determined on a trial by court-martial shall be determined by a majority of the 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 members of the court, and where on such a finding being come to by a 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 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 president shall have a second or casting vote.

#### 128. **Finding and sentence.**

(1) Without prejudice to section 125, 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.

#### 129. **Power to convict 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 or she actually committed the offence.

(4) Where an accused is charged before a court-martial under section 102 in respect of attempting to commit a civil offence, he or she may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court-martial with an offence against section 102, and the corresponding civil offence is one in proceedings for which, if he or she had been tried by a civil court for committing the offence in Saint Christopher and Nevis he or she might have been found guilty of another civil offence, then if the court finds that he or she has committed that other civil offence he or she may be convicted of an offence under section 102 in respect of the commission of that other civil offence.

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**130. Rules of evidence.**

(1) Subject to this Act, the rules of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in Saint Christopher and Nevis, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he or she could not be required to answer or produce in similar proceedings before a civil court in Saint Christopher and Nevis.

(2) Notwithstanding anything in subsection (1), a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent which, oral evidence to the like effect would be admissible in that trial except 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 officer in command of the accused or the officer in command of the accused has given his or her 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 officer in command of the accused requiring that oral evidence shall be given in lieu of the declaration; or
- (d) in any case, if the court-martial is of opinion that it is desirable in the interests 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 Saint Christopher and Nevis.

**131. Privileges of witnesses and others at Courts-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.

**132. Offences by civilians in relation to Courts-martial.**

- (1) Where any person, other than a person subject to military law under this Act,
  - (a) is duly summoned to attend as a witness before a court-martial, fails to comply with the summons;
  - (b) refuses to swear an oath when duly required by a court-martial to do so;

- (c) refuses to produce any document in his or her custody or under his or her control which a court-martial has lawfully required him or her to produce;
- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him or her to answer;
- (e) wilfully insults any person who is 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 wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court;
- (f) wilfully 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 president of the court-martial may certify the offence of that person under his or her hand to the High Court, and that court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of that 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 or she had been guilty of contempt of the High Court.

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

### 133. **Affirmations.**

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 being sworn, and states as the ground of his or her objection either that he or she has no religious belief or that the taking of an oath is contrary to his or her religious belief; or
- (b) it is not reasonably practicable to administer an oath to the person referred to in paragraph (a) of this section in the manner appropriate to his or her religious belief,

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

### *Confirmation, Revision and Review of Proceedings of Courts-Martial*

### 134. **Confirmation of proceedings of Courts-martial.**

(1) Where a court-martial finds the accused guilty of any charge, the record of the proceedings of the court martial shall be transmitted to a confirming authority for confirmation of the finding and sentence of the court on that charge.



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(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or a sentence of the court until confirmed except that this subsection shall not affect the keeping of the accused in custody pending confirmation, or the operation of sections 135 and 136 or the provisions of this Act as to confirmation or approval.

**135. Petition against finding or sentencing.**

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.

**136. Revision of findings of Court-martial.**

(1) A confirming authority may direct a court-martial to revise any finding of guilty come to by the court in any case where it appears to him or her

- (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) The direction referred to in subsection (1) shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reasons for the direction.

(3) On any revision of a finding, the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor 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 a revision referred to in subsection (3) the court shall not have power to receive further evidence.

(5) Where, on revision, the court either adheres to the original finding or substitutes therefor 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 except that the court shall not have power to substitute a sentence of a punishment greater than the punishment or the greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

(6) The confirming authority shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming authority, or the revision of the original finding if adhered to by the court on such a previous direction, but save as provided this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations 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 except that the decision of the court on the revision shall not be required to be announced in open court.

**137. Powers of confirming authorities.**

(1) Subject to section 136 and to the following provisions of this section, a confirming authority 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 a higher confirming authority.

(2) In lieu of withholding confirmation of the finding of a court-martial, a confirming authority may,

- (a) if some other finding of guilty could have been validly made by the court-martial on the charge before it; and
- (b) if he or she 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 he or she does so he or she shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised.

(3) Where it appears to a confirming authority that a sentence of a court-martial is invalid, he or she may, in lieu of withholding confirmation of the sentence, substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or the greatest of the punishments awarded by the court and not in his or her opinion more severe than that punishment or those punishments.

- (4) In confirming the sentence of a court-martial, the confirming authority may
- (a) remit in whole or in part any punishment awarded 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) A finding or sentence substituted by the confirming authority or any sentence having effect after the confirming authority has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(6) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated, and in the event of any such substitution, remission or commutation the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(7) Where the confirming authority determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

**138. Confirming authorities.**

(1) Subject to this section, the following shall have power to confirm the finding and sentence of any court-martial:

- (a) the officer who convened the court-martial or any officer superior in command to that officer;

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- (b) the successor of the officer or superior officer, or any person for the time being exercising the functions of that officer or superior officer; or
- (c) failing the officer referred to in this subsection,
  - (i) any officer appointed by the Defence Board to act as confirming authority, whether for the particular case or for a specified class of cases; or
  - (ii) the Defence Board.

(2) The following shall not have power to confirm the finding or sentence of a court-martial:

- (a) any officer who was a member of the court-martial;
- (b) any person who, as officer in command of the accused, investigated the allegations against him or her or who is for the time being the officer in command of the accused; or
- (c) any person who, as appropriate superior authority, investigated the allegations against the accused;

except that a person excluded by the foregoing provisions of this subsection may act as confirming authority for a field court-martial, if otherwise having power to do so, where he or she is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to another confirming authority.

(3) An authorisation empowering the convening of an ordinary court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the authorisation, and the powers conferred by subsection (1) shall be exercised subject to that reservation.

### **139. Approval of death sentence by Governor-General.**

A sentence of death shall not be carried into effect unless it has been approved by the Governor-General acting on the recommendation of the advisory authority.

### **140. Review of findings and sentences of Courts-martial.**

(1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under section 135 against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after presentation of the petition and after consideration of the matters alleged therein.

- (2) The reviewing authorities for the purposes of this Act are:
  - (a) the Governor-General acting on the recommendation of the advisory authority;
  - (b) the Defence Board or (so far as the delegation extends) any officer to whom the powers of the Defence Board as reviewing authority, or any of those powers, may be delegated by regulations; or
  - (c) any officer superior in command to the confirming officer.

(3) If an appeal or an application for leave to appeal is received by the Registrar of the High Court under Part X 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 the sentence passed in consequence of that finding.

- (4) On a review under this section the reviewing authority 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 punishment as are conferred on a confirming authority by section 137(2) to (4) inclusive;

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 sentence of the court duly confirmed.

(5) Where a reviewing authority exercises any of the powers conferred by subsection (4) of this section, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

#### 141. **Reconsideration of sentences of imprisonment and detention.**

(1) Sentences of imprisonment and detention passed by courts-martial may be reconsidered by the Commander or by such officers (not below the rank of Major or corresponding rank) as may be from time to time appointed by the Defence Board; and if on any such reconsideration it appears that the conduct of the offender since his or her conviction has been such as to justify remission of the sentence, whether in part or in whole, it may 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 except that delay in complying with this subsection shall not invalidate the sentence.

#### *Review of Summary Findings and Awards*

#### 142. **Review of summary findings and awards.**

(1) Where a charge is dealt with summarily, otherwise than by the dismissal of the charge, the authority specified in subsection (2) of this section may at any time review the finding or award.

- (2) For purposes of this section the authority shall be
- (a) the Defence Board; or
  - (b) any officer superior in command to the officer who dealt summarily with the charge.

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(3) Where on a review under this section it appears to the authority expedient to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding.

(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 finding 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 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 the 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 punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment 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.

#### *Findings of Insanity, etc.*

#### **143. Provisions relating to 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 or her trial, the court shall so find, and if the finding is confirmed in accordance with the provisions of this section the accused shall be kept in custody in such manner as may be provided under regulations under this Part until the directions of the Governor-General are known or until any earlier time at which the accused is fit to stand his or her 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 that 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 under regulations under this Part until the directions of the Governor-General are known.

(3) In the case of a finding referred to in subsections (1) and (2) the Governor-General may give orders for the safe custody of the accused during his or her pleasure in such place and in such manner as the Governor-General thinks fit.

(4) A finding under subsection (1) shall not have effect unless and until the finding has been confirmed by an authority who would have had power to confirm a finding of guilty come to by the court-martial in question and has been promulgated.

(5) Where the court or the confirming authority comes to or substitutes a finding of guilty but insane the confirming authority or, as the case may be, the reviewing authority shall not have power to substitute for that finding a finding of guilty, but save as provided the provisions of this Act as to revision, confirmation and review shall (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.

### *Commencement, Suspension and Duration of Sentences*

#### **144. Commencement of sentences.**

A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to section 169(5) of this Act, 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 or her officer in command.

#### **145. Duration of sentences of imprisonment or detention.**

(1) 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 or she is liable to be imprisoned in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he or she became at large and ending with the day on which, as a person having become unlawfully at large, he or she 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 or she was imprisoned or detained before he or she became unlawfully at large except that if he or she satisfies the authority as may be specified in that behalf by or under Imprisonment and Detention Regulations that during any time during the last-mentioned period he or she was

- (a) in the custody of a civil authority; or
- (b) if and in so far as Imprisonment and Detention Regulations so provide, in the custody of any military authority of any country or territory outside Saint Christopher and Nevis as respects which arrangements have been made under section 148;

otherwise than on account of an offence committed by him or her while unlawfully at large, the last-mentioned time shall not be disregarded in calculating the period for which he or she is liable to be imprisoned or detained in pursuance of the military sentence.

(2) In subsection (1), the expression “civil authority” means a civil authority (whether of Saint Christopher and Nevis or of any country outside Saint Christopher and Nevis), authorised by law to detain persons, and includes a policeman.

(3) Without prejudice to subsection (1), 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 or she 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 or she is released and ending with the day on which he or she is required to return to custody.

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(4) A person who, for any period, is released as mentioned in subsection (3) or who is otherwise allowed, in pursuance of Imprisonment and Detention Regulations, 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 (1) as being unlawfully at large.

(5) 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 or she is liable to be detained in civil custody in pursuance of his or her sentence shall be deemed to be unlawfully at large if the period for which he or she was temporarily released has expired or if an order recalling him or her has been made in pursuance of civil law.

(6) References in subsection (5) to release or recall under civil law are references to release or recall in pursuance of the law of the county in which he or she is serving his or her sentence.

**146. Restrictions on serving of sentences of detention in prison.**

A person shall not be required to serve any part of a military sentence of detention in a military or civil prison except that in cases and subject to such conditions as may be specified by or under Imprisonment and Detention Regulations a person serving the sentence may be temporarily detained in a military or civil prison for any period not exceeding seven days.

**147. Special provisions as to civil prisons.**

A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under this Part or of 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.

**148. Special provisions as to carrying out or serving of sentences outside Saint Christopher.**

The Governor-General may, from time to time, make arrangements with the authorities of any country outside Saint Christopher and Nevis whereby sentences of death passed by courts-martial may in accordance with regulations made under this part be carried out in establishments under the control of those authorities and military sentences of imprisonment or detention may in accordance with Imprisonment and Detention Regulations be served wholly or partly in such establishments.

**149. 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 Saint Christopher and Nevis may (in so far as may be specified by or under Imprisonment and Detention Regulations) be removed out of Saint Christopher and Nevis to any place where the unit or any part thereof to which for the time being he or she 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 Saint Christopher and Nevis 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 Saint Christopher and Nevis.

(3) Where a person has been sentenced under this Act by a court-martial held outside Saint Christopher and Nevis to imprisonment or detention for more than twelve months, the confirming or reviewing authority may, notwithstanding anything in subsection (2), direct that he or she shall not be required to be removed to Saint Christopher and Nevis until he or she has served part of his or her 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, a confirming or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

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

(5) Any direction given under this section, and the revocation of the 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.

#### **150. 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 the Regulations, and to confine him or her 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 officer in command, it shall be the duty of any superintendent or other person in charge of prison, or the policeman in charge of a police station, or any person in charge of any other place in which prisoners may be lawfully confined, to keep the person in custody for a period not exceeding seven days unless he or she is earlier discharged or delivered over in due course of law.

#### ***Trial of persons ceasing to be subject to military law under this Act and time limited for trials***

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

(1) Subject to section 152, where an offence under this Act triable by court martial is 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 or she shall



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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 execution of sentences as continuing subject to military law under this Act notwithstanding his or her 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 or she commits, or is reasonably suspected of having committed, an offence which if he or she 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 or she shall be treated for the purposes of the provisions of this Act mentioned in subsection (1) and the provisions 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 of having been committed and as continuing subject to those provisions 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 or her

- (a) if he or she holds any military rank, as to a person having that rank;
- (b) otherwise, as to a person having the rank which he or she had when last actually subject to military law under this Act except that as respects any time after he or she has been sentenced for the offence in question and the sentence has been confirmed the provision shall apply to him or her 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 or her as to a person having the lower or lowest of those ranks.

## **152. Limitation of time for trial of offences under this Act.**

(1) No person shall be tried by court-martial for any offence, other than one under sections 62(1), 63(1), 70 or 71 or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he or she was a prisoner of war and any time during which he or she was illegally absent except that,

- (a) in the case of an offence under section 102 where proceedings for the corresponding civil offence must, by virtue of any enactment, be brought within a limited time, that limit of time shall apply to the trial of the offence under section 102 in substitution for the foregoing provisions of this subsection;
- (b) subject to any such limit of time as is mentioned in paragraph (a), a person may be tried by court-martial for a civil offence committed outside Saint Christopher and Nevis notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney General consents to the trial.

(2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the regular Force continuously in an exemplary manner for not less than three years, he or she shall not be tried for the offence.

(3) A person shall not be triable by virtue of section 151(1) unless his trial is begun within three months after he or she ceases to be subject to military law under this Act or the trial is for a civil offence committed outside Saint Christopher and Nevis and the Attorney-General consents to the trial except that this subsection shall not apply to an offence committed under sections 62(1), 63(1), 70 or 71 or to desertion.

(4) A person shall not be arrested or kept in custody by virtue of section 151(1) for an offence at any time after he or she has ceased to be triable for the offence.

### *Relations between Military and Civil Courts and Finality of Trials*

#### **153. Powers of Civil Courts.**

(1) Save as provided in section 157, 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 or she has previously been sentenced by court-martial held under service law to punishment for any act or omission constituting (whether wholly or in part) that offence, or in pursuance of this Act he or she has been punished for any such act or omission by his or her officer in command or an appropriate superior authority, the civil court shall, in awarding punishment, have regard to his or her punishment in pursuance of this Act.

#### **154. 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, or has had an offence committed by him or her taken into consideration by the court in sentencing him or her;
  - (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 the officer in command or an appropriate superior authority; or
  - (c) has had an offence condoned by the officer in command;

he or she shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by the officer in command or an 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 or she is guilty of the offence;

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- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him or her if confirmation of the sentence of the court-martial is withheld or the sentence is quashed;
- (c) a case shall be deemed to have been dealt with summarily by the officer in command or an appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;
- (d) an offence shall be deemed to have been condoned by the officer in command of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him or her to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him or her that he or she will not be charged with that offence;
- (e) a person ordered under section 90.(2) or the corresponding provisions 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 170.(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 an officer in command or appropriate superior authority or before a court-martial) shall not be barred on the ground of condonation.

### *Inquiries*

#### **155. Boards of Inquiry.**

(1) Subject to and in accordance with rules made under this Part, the Defence Board 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 who is subject to military law under this Act;
- (b) the capture of any such person by the enemy;
- (c) the death of any person where an inquiry into the death is not required to be held by any civil authority; or
- (d) any other matter of a class specified in such rules or referred to such a board by the Defence Board or any such officer as aforesaid;

and a board of inquiry shall, if directed so to do, 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 president of a board of inquiry shall be an officer not below the rank of lieutenant or corresponding rank.

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, officer in command or appropriate superior authority, other than proceedings for an offence under section 91 or for an offence under section 102 when the corresponding civil offence is perjury.

**156. 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 or she has been absent without leave or 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 Board or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

*Miscellaneous Provisions*

**157. Restitution of compensation for theft, etc.**

(1) The following provisions shall have effect where a person is convicted by court-martial of unlawfully obtaining any property, whether by stealing it or receiving it knowing or having reason to believe 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 or paid to the person appearing to be the owner 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 or her 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 in the manner mentioned in subsection (3) 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 sums as may be specified in the order as or towards compensation for the loss caused to the 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 of the property sold or given

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as aforesaid, there shall be paid to the 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 towards compensation for the loss caused to him or her 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 of the property given there shall be restored to the 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 whom the offender is convicted, by the confirming or by any reviewing authority, and in this section the expression “appearing” means appearing to the court, officer or authority making the order.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming authority, 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 the period prescribed under Part X 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 referred to in subsection (9) is suspended under this section

- (a) it shall not take effect if the conviction is quashed on appeal;
- (b) the Court of Appeal may by order annul or vary the order although the conviction is not quashed;
- (c) such steps shall be taken for the safe custody, during the period in which 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 made under Part X.

(11) Notwithstanding anything in subsections (9) and (10), an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner of the property, be suspended if the court or authority making the order directs to the contrary in any case in which, in the opinion of the court or authority, 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 or her, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

**158. Appointment of judge advocates.**

The appointment of a judge advocate to act at any court-martial may be made by the Defence Board or by the convening officer.

**159. 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 confirming authority or reviewing authority, as the case may be, may direct.

**160. Custody of proceedings of Court-martial and right of accused to a copy thereof.**

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

(2) Subject to this section, any person tried by a court-martial shall be entitled to obtain from the Defence Board on demand at any time within the relevant period and on payment of a fee, if any 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 or her personal representatives or any person who in the opinion of the Defence Board ought to be treated for the purposes of this subsection as his or her personal representative shall, subject to this section, be entitled to obtain from the Defence Board on demand at any time within the period of twelve months from the death and on payment of a fee 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 Board 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 or her acquittal, or where he or she 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 or confirmation except that where the proceedings relate 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 the record of the proceedings with respect to the confirmation or revision of the finding and sentence of the court-martial.

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**161. 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 defect in any warrant or other instrument made for the purposes of that sentence.

*Interpretation of this Part*

**162. Interpretation of Part IX.**

(1) In this Part, unless the context otherwise requires,

“the advisory authority” means the authority in accordance with whose advice the prerogative of mercy is, in relation to persons convicted by courts-martial, required by the Constitution to be exercised by the Governor-General;

“civil prison” means a prison in Saint Christopher and Nevis 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 or her successor or any person for the time being exercising his or her or his or her successor’s functions;

“military establishment” means a military prison or any other establishment under the control of the Defence Board where persons may be required to serve military sentences of imprisonment or detention, or a corresponding establishment in a Commonwealth country;

“military prison” means separate premises designated by the Defence Board for persons serving military sentences of imprisonment;

“prison” means a civil prison or a military prison;

“private soldier” includes any 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 officer in command.

(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.

***Rules of Procedure, etc*****163. Rules of Procedure.**

(1) Subject to the provisions of this section, the Defence Board may make rules of procedure with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, officers in command and appropriate superior authorities 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 officers in command and appropriate superior authorities;
- (b) the manner in which charges brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not an oath and whether in full or in summary or abstract form) for the purpose 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 124 in any case where the accused requires that evidence shall be taken on oath;
- (c) the addition to, or 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 courts-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 made under paragraph (b);
- (i) applying in relation to proceedings before officers in command and appropriate superior authorities and otherwise in relation to proceedings prior to trial by court-martial all or any of the provisions of sections 130, 131, 132 and 133;
- (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 variations 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 or her defence;



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- (1) the forms of orders and other documents to be made for the purposes of any provision of this Part or the rules relating to the investigation or trial of, or award of punishment for offences cognizable by courts-martial, officers in command or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts-martial.
- (3) Rules made by virtue of subsection (2)(j) of this section shall secure that the power to amend charges shall not be exercisable in circumstances substantially different from those in which indictments are amendable by the High Court, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments 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 or her functions at a trial by courts-martial, and, without prejudice to the generality of the foregoing provision, may make provision
  - (a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law;
  - (b) for requiring or authorising the president 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 president and other members of the court and any officers under instruction, and for applying to the judge advocate and his or her 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) references to questions of law include references to questions of joinder of charges and as to the trial of persons jointly or separately.
- (6) Rules of Procedure may make provision for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence which he or she is convicted, at the request of the accused take into consideration other offences against this Act committed by him or her.
- (7) Where Rules of Procedure make provision for the matter mentioned in subsection (6), they may also make provision for conferring on the court taking one or more offences into consideration, the power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he or she had been found guilty of the offence or offences taken into consideration as well as of the offence of which he or she was in fact found guilty.

#### **164. Imprisonment and Detention Regulations.**

The Defence Board may make 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 establishments 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 establishments or otherwise in military custody;
- (e) the temporary release on compassionate grounds of persons serving such sentences in establishments or custody, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any sentence for good conduct and industry;
- (f) the appointment, powers and duties of inspectors, visitors and governors, and of officers and other members of the staff, of military establishments.

**165. Board of Inquiry Rules.**

(1) The Defence Board may make Board of Inquiry 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:

- (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 where if the evidence was being taken at a court-martial on oath could be dispensed with;
- (b) without prejudice to the provisions of section 156, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the rules.

(3) Boards of Inquiry Rules shall contain provision for securing that any witness or other person subject to service law 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.

**166. Miscellaneous Regulations.**

The Defence Board may make regulations with respect to all or any of the following matters:

- (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;

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- (b) field punishment;
- (c) any matter which by this Part is required or authorised to be prescribed or for which regulations may be made;
- (d) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 163, 164 and 165 and in this section.

**167. Section 166(c) and (d) not to prejudice powers under sections 163 164 and 165.**

Nothing in section 166(c) and (d) shall be construed to prejudice the powers conferred by section 163, 164 or 165 upon the Defence Board, which may, in the exercise of such powers, prescribe or provide for matters notwithstanding that regulations with respect thereto may be made under section 166(c) and (d).

## **PART X – APPEALS FROM COURTS**

**168. Right of appeal.**

(1) Subject to the provisions of this Part, a person convicted by a court-martial may, with the leave of the Court of Appeal, appeal to that Court against his or her conviction, except in the case of a conviction involving sentence of death.

(2) An appeal to the Court of Appeal shall lie as of right, without leave, from any conviction of a court-martial involving a sentence of death.

**169. Procedure for applying for leave to appeal or lodging 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 appellant, and lodged, subject to subsection (4), within twenty-eight 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 High Court, 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, within fourteen days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, lodged with the Registrar of the High Court, in the prescribed manner, by or on behalf of the person convicted.

(3) Rules of court may provide that, in such circumstances as may be specified in the said rules, any such application or appeal which is lodged with such person (other than the Registrar) as is specified in the said rules shall be treated, for the purposes of subsections (1) and (2), as having been lodged with the Registrar.

(4) The Court of Appeal may extend the period within which an application for leave to appeal is required to be lodged, whether that period has expired or not.

(5) 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.

**170. Determination of appeals in ordinary cases.**

(1) Subject to section 175, 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 the ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal except that the Court 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) Where 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 section 154(3), a new trial by court-martial may be held within such time as the Court may order.

**171. Powers of Court of Appeal in special cases.**

(1) Where it appears to the Court of Appeal that an appellant, though not properly convicted on some charge preferred against him or her before the court-martial by which he or she was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant is not one that could lawfully be passed by the courts-martial for the offence of which he or she was convicted on the other charge the Court shall pass on the appellant, in substitution for the sentence passed on him or her 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 is convicted of an offence and the court-martial by which he or she was tried could lawfully have found him or her guilty of some other offence, and it appears to the Court of Appeal that the court-martial must have been satisfied of facts which proved him or her 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 or her 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 is 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 or she was tried ought to have found him or her guilty of the offence as being committed under circumstances involving the lower degree of punishment; or
- (b) an appellant is convicted of an offence and it appears to the Court of Appeal that the court-martial by which he or she was tried ought to have found him or her guilty of the offence subject to exceptions or variations;

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the Court 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, guilty of the offence subject to exceptions or variations, and pass on the appellant, in substitution for the sentence passed on him or her 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 charged against him or her, he or she was insane at the time the act was done, so as not to be responsible according to law for his or her actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody under section 147 in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

**172. Commencement of sentence.**

The term of any sentence passed by the Court of Appeal under any of the provisions of section 171 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.

**173. Appeals to be final.**

Save as otherwise provided by any law governing appeals to the Judicial Committee of the Privy Council from judgments of the Court of Appeal, no appeal shall lie from the Court to any other court and any determination by the Court of any appeal or other matter which it has power to determine under the provisions of this Part shall be final.

**174. Proceedings may take place in absence of appellant.**

An appellant shall not be entitled to be present at the hearing of an appeal to the Court of Appeal under this Part or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he or she shall have the right to be present or the Court gives him or her leave to be present, and accordingly any power of the Court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

**175. Defence of appeals.**

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

**176. Right of appellant to present his case in writing.**

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

**177. 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 mentioned in subsection (2) of section 169 within which an appeal to the Court of Appeal against the conviction shall be lodged;
- (b) if such an appeal is duly lodged, the sentence shall not be executed until the appeal is determined or abandoned; and
- (c) if an application for leave to appeal to the Judicial Committee of the Privy Council is duly made, the sentence shall not be executed until the application is finally refused or is withdrawn or the appeal to the Judicial Committee of the Privy Council is determined or abandoned.

**178. Person not to be tried again where conviction is quashed.**

Where the conviction of a person by a court-martial for an offence has been quashed under this Part, he or she shall not be liable to be tried again for the offence by a court-martial or by any other court.

**179. 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 at, and brought back from any place at which he or she 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 or her to be taken for the purpose of any proceedings of the Court.

**180. Furnishing, on appeal, of documents relating to trial.**

In the case of any appeal, or application for leave to appeal, under this Part to the Court of Appeal against a conviction by courts-martial, it shall be the duty of the Secretary to the Defence Board to furnish to the Registrar of the High Court 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 136(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.

**181. Saving of powers of reviewing authorities.**

Nothing in this Part shall affect the exercise by reviewing authorities of the powers conferred by section 140 in respect of a conviction of a court-martial so far as regards the exercise thereof at a time before the lodging with the Registrar of the High Court of an appeal or an application for leave to appeal to the Court against the conviction and nothing in this Part shall affect the exercise by the Governor-General of the prerogative of mercy.

**182. Supplementary powers of the Court of Appeal.**

In relation to appeals under this Part, the Court of Appeal shall have and exercise the like powers with respect to

- (a) legal assistance to an appellant;
- (b) obtaining and production of documents;

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- (c) receiving and examination of further evidence; and
- (d) issue of warrants necessary for enforcing its orders and sentence as are exercisable by the Court in relation to criminal appeals.

**183. Interpretation of Part X.**

In this Part, “prescribed” means prescribed by rules of court.

**PART XI – FORFEITURES AND DEDUCTIONS**

**184. Forfeitures and deductions; general provisions.**

(1) No forfeiture of the pay of an officer or soldier of the Force shall be imposed unless authorised by this Act, service law or some other enactment and no deduction from such pay shall be made unless so authorised or authorised by regulations.

(2) Regulations shall not authorise the making of any penal deduction, 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) The foregoing provisions of this section shall not prevent the making of regulations providing for the imposition of any forfeiture authorised by this Act or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised 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 sum or 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 soldier of the Defence Force he or she 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 soldier of the Defence Force for any period has been ordered in pursuance of this Act, he or she may remain in receipt of pay at the minimum rate, but the amount received for that period may be recovered from him or her by deduction from pay.

(6) Any amount authorised to be deducted from the pay of any officer or soldier of the Defence Force may be deducted from any balance (whether or not representing pay) which may be due to him or her as an officer or 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 an offender’s pay may be recovered by deduction from the balance.

**185. Forfeiture of pay for absence from duty.**

- (1) The pay of an officer or soldier of the Defence Force may be forfeited
  - (a) for any day of absence in such circumstances as to constitute an offence under section 76 or section 77 or, if his or her officer in command so directs, of other absence without leave;
  - (b) for any day of imprisonment, detention or field punishment awarded under service law by a court-martial or officer in command, or of

imprisonment or detention of any description to which he or she is liable in consequence of an order or sentence of a civil court;

- (c) where he or she is found guilty (whether by court-martial under service law, an appropriate superior authority or his or her officer in command) of an offence under service law, for any day (whether before or after he or she is found guilty) on which he or she 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 any officer or soldier of the Defence Force may be forfeited for any day of absence by reason of his or her having been made a prisoner of war if the Commanding Officer or an officer authorised by regulations is satisfied

- (a) that he or she was made a prisoner of war through disobedience of orders or wilful neglect of his or her duty;
- (b) that having been made a prisoner of war he or she failed to take any reasonable steps available to him or her to rejoin the Defence Force; or
- (c) that having been made a prisoner of war he or she served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage;

but subject to the foregoing provisions of this subsection, nothing in subsection (1)(a) shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

#### **186. Deductions for payments of civil penalties.**

Where a person sentenced or ordered by a civil court (whether within or without the Commonwealth) 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 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 or her pay.

#### **187. Compensation for loss occasioned by wrongful act or negligence.**

(1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations, it appears to an authorised officer that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of any officer or soldier of the Defence Force.

- (2) For the purpose of this section, sections 189, 190 and 191
  - (a) “authorised officer” means an officer authorised under regulations; and



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(b) “person responsible” means an officer or soldier who, by any wrongful act or by negligence causes any loss of, or damage to, public or service property.

(3) The authorised officer 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 or her pay.

(4) No order shall be made under subsection (3) if, in proceedings before a court-martial under service law, an appropriate superior authority or officer in command, the person responsible

(a) has been acquitted in circumstances involving a finding that he or she was not guilty of the wrongful act or negligence in question; or

(b) has been awarded stoppages in respect of the same loss or damage.

(5) Except as provided in this section, the fact that 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 (3).

#### **188. Deductions from pay for maintenance of wife or child.**

(1) When damage occurs to any premises in which one or more units or parts of 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, and it appears on investigation in accordance with regulations 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 thereof, but that the persons cannot be identified, any person belonging to any of the units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may, in accordance with regulations, be determined to be just, and the amount may be deducted from his or her pay.

(2) Subsection (1) shall extend to vessels, motor vehicles and aircraft in which units or parts of units are being transported or are otherwise serving and reference to premises, quartering and occupation shall be construed accordingly.

#### **189. Review of orders and remission of forfeitures and deductions.**

(1) Any officer or soldier of the Defence Force against whom an order has been made by the authorised officer under sections 187, 190 or 191 may, in accordance with the prescribed regulations, apply to a board of officers for a further examination of the case, and that board shall consider the case, and thereafter may, in relation thereto, if it thinks fit, give directions to the authorised officer; and the authorised officer shall give effect to such directions.

(2) Any forfeiture or deduction imposed under sections 185, 186, 187 or 188 or under regulations may be remitted by the Defence Board or in such manner and by such authority as may be provided by such regulations.

**190. Enforcement of maintenance and affiliation orders by deduction from pay.**

(1) Where any court makes an order against any person for the payment of any periodical or other sums specified in the order for or in respect of

- (a) the maintenance of his wife or child;
- (b) any costs incurred in obtaining the order;
- (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 soldier of the Defence Force then (whether or not he was an officer or soldier when the order was made) the authorised officer 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 authorised officer may think fit.

(2) Where, to the knowledge of the court making the order or any order varying, revoking or reviving the order, the defendant is an officer or soldier of the Defence Force the court shall send a copy of the order to the Defence Board.

(3) Where an order referred to in subsection (1) is made by a court of a Commonwealth country outside Saint Christopher and Nevis, and the authorised officer is satisfied that the defendant had a reasonable opportunity to appear in person, or appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the authorised officer shall have the like power under subsection (1) as if the order had been made by such a court as referred to in that subsection, except that this subsection shall not apply to an order adjudging a man to be the father of an illegitimate child, and ordering him to pay a sum of money for or in respect of the maintenance of that child or any order varying or reviving the order, or any order for the payment of costs incurred in obtaining the order or in proceedings on appeal against, or for the variation, revocation or revival of, the order.

(4) The authorised officer 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 provided in section 185(1)(a).

(5) In this section,

- (a) references to an order made by a court in Saint Christopher and Nevis include references to an order registered in or confirmed by such a court under any law which makes provision for the enforcement in Saint Christopher and Nevis of maintenance orders made outside Saint Christopher and Nevis; references to a wife or child include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who could have been the wife or child of the defendant if the marriage had subsisted; references to a child of a person include references to a child of his wife, and to an illegitimate or adopted child of that person or of his wife, 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, Cap. 12.01;

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- (b) for the purposes of this subsection, the expression “maintenance order” means an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and the expression “dependants” means such persons as that person is, according to the law in force in that part of the Commonwealth in which the maintenance order was made, liable to maintain.

**191. Deductions from pay for maintenance of wife or child.**

(1) Where the authorised officer is satisfied that an officer or soldier of the Defence Force is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of eighteen, the authorised officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the authorised officer thinks fit.

(2) On an application made to the authorised officer for an order under subsection (1) the authorised 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 further examination of the case.

(3) Where an order is in force under section 190(1) or (3) for the making of deductions in favour of any person from the pay of an officer or 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 soldier is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under section 190 was made.

(4) The authorised officer 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 185(1)(a).

**192. Limit of deductions under sections 190 and 191 and effect on forfeiture.**

- (1) The total sums deducted under sections 190 and 191 shall not exceed,
- (a) in the case of an officer, three-sevenths of his pay;
  - (b) in the case of a warrant officer or a non-commissioned officer not below the rank of sergeant or corresponding rank, two thirds of his pay;
  - (c) in the case of a soldier below the rank of sergeant or corresponding rank, three-fourths of his pay.

(2) Where any deductions have been ordered under either section 190 or section 191 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 an appropriate superior authority or a commanding officer it shall apply only to so much of his pay as remains after the deductions have been made.

(3) For the purposes of subsection (1)(b) and (c) a person having acting rank shall be treated as of that rank.

**193. Service of process in maintenance proceedings.**

(1) Any process to be served on any officer or soldier of the Defence Force in connection with proceedings for an order of a court as is provided in section 190(1), or for the variation, revocation or revival of the order, shall be deemed to be duly served on him or her if served either on him or her or his or her officer in command and may, without prejudice to any other method of service, be so served by registered post.

(2) Where the process is served in Saint Christopher and Nevis and the defendant is required to appear in person at the hearing, then if his officer in command certifies to the court by which process was issued that the defendant is under orders for service out of Saint Christopher and Nevis and that in the 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 XII – GOVERNMENT AND GENERAL PROVISIONS COMMAND**

*Order of Precedence and structure of command*

**194. Command and precedence.**

(1) Any officer and soldier of the Defence Force shall stand with each other in such order of precedence as may be prescribed by the Defence Board.

(2) Any officer or soldier of any Commonwealth force may, with the approval of the Defence Board,

- (a) be attached to the Defence Force if the proper military authority in such territory has placed him or her at the Board's disposal for that purpose; or
- (b) be seconded to the Defence Force.

**195. Command of Defence Force.**

The Governor-General shall appoint an officer, who is a member of the Defence Force, in whom the command of the Defence Force shall be vested, and subject to the terms of such appointment the officer shall have the command of the Defence Force.

**196. Regulations as to command.**

The Defence Board may make regulations in relation to any person who is a member of the Defence Force or a Commonwealth force, in whom command over any part of the Defence Force is vested and as to the circumstances in which such command is to be exercised.

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**197. Powers of command of members of co-operating forces.**

(1) In so far as powers of command depend on rank, a member of a Commonwealth force who is acting with or is a member of a body of those forces which is acting with any body 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 72 and 107 any such member of the forces referred to in this subsection shall be treated as if he or she 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 force, the Governor-General may place the Defence Force or part of the Defence Force under the command of the officer commanding such other force.

(3) Where any part of the Defence Force is acting in co-operation with any other force the Commander or the officer commanding that part of the Defence Force may, in agreement with the officer commanding the 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 the other force.

***Redress of Complaints***

**198. Complaints by officers.**

(1) If an officer of the Defence Force thinks himself or herself wronged in any matter by a superior officer or authority and on application to his or her officer in command does not obtain the redress to which he or she thinks he or she is entitled, he or she may make a complaint with respect to that matter to the Defence Board.

(2) On receiving the complaint the Defence Board shall investigate the complaint and grant any redress which appears to it to be necessary or, if the complainant so requires, the Defence Board shall make its report on the complaint to the Governor-General in order to receive the directions of the Governor-General.

**199. Complaints by soldiers.**

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

(2) If a soldier of the Defence Force thinks himself or herself wronged in any matter by his or her officer in command, either by reason of redress not being given to his or her satisfaction on a complaint under subsection (1) or for any other reason, he or she may make a complaint with respect thereto to the Defence Board.

(3) It shall be the duty of an officer in command or the Defence Board, upon receipt of a complaint under this section, to have the complaint investigated and to take any steps for redressing the matter complained of which appear to the officer or Board, as the case may be, to be necessary.

**200. Restriction on composition of Defence Board dealing with a complaint.**

Where the officer in command of a complainant referred to under section 198 or section 199(2) is a member of the Defence Board, such officer shall not sit on the Board when it is dealing with the complaint lodged by the complainant under section 198 or section 199(3), as the case may be.

*Exemptions for officers and soldiers*

**201. Exemption from jury service.**

Any officer or soldier of the Defence Force shall be exempt from serving on any jury.

**202. Exemptions from tolls etc.**

(1) Duties, tolls or dues for embarking from or disembarking on any pier, wharf, quay or landing place, or for passing over any road, ferry or bridge, belonging to the State or under its control shall not be payable in respect of

- (a) members of the Defence Force or a Commonwealth force on duty;
- (b) vehicles in military service;
- (c) goods carried in military vehicles;
- (d) animals in military service.

(2) In subsection (1), the expression “in military service” means employed under proper military authority for the purposes of the Defence Force or any body of a Commonwealth Force or accompanying the Defence Force or any body of a Commonwealth Force.

**203. Exemption from execution of certain orders etc.**

(1) No judgment, decree or order given or made against an officer or soldier of the Defence Force by any court shall be enforced by the levying of execution on any service property, nor shall any distress be made on such property.

(2) No member of a Commonwealth Force shall be taken out of service, nor shall execution issue against his or her person, by virtue of any order or judgment of a court in civil proceedings if such taking out of service or execution is contrary to any agreement between the Government and the government of that territory pursuant to which such member is in Saint Christopher and Nevis.

*Provisions relating to deserters and absentees without leave*

**204. Arrest of deserters and absentees without leave.**

(1) Any policeman may arrest without a warrant any person whom he or she has reasonable cause to suspect of being an officer or soldier of the Defence Force who has deserted or is absent without leave.

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(2) Where no policeman is available, any officer or soldier of the Defence Force or any other person may arrest without a warrant any person whom he or she has reasonable cause to suspect to be a person referred to in subsection (1) of this section.

(3) Any person who has authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is within his or her jurisdiction an officer or soldier of the Defence Force who has deserted or is absent without leave or is reasonably suspected of having deserted or being absent without leave, may issue a warrant authorising his or her arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a magistrate's court.

**205. Proceedings before a civil court where persons are suspected of illegal absence.**

(1) Where a person who is brought before a magistrate's court is alleged to be an officer or soldier of the Defence Force who has deserted or is absent without leave, then the provisions of this section shall apply.

(2) If the officer or soldier referred to in subsection (1) of this section admits, before the magistrate, that he or she is illegally absent from the Defence Force, the Magistrate shall, unless the officer or soldier is in custody for some other cause, forthwith cause the officer or soldier to be delivered into military custody in such manner as the magistrate may specify or commit the officer or soldier to a prison, police station or other place provided for the confinement of people in custody, to be kept there for such reasonable time as the magistrate may specify pending delivery of the officer or soldier into military custody.

(3) If the officer or soldier does not admit that he or she is illegally absent from the Defence Force the magistrate shall consider the evidence and if satisfied that the officer or soldier is subject to military law under this Act and is of opinion that there is sufficient evidence to justify the officer or soldier being tried under this Act for an offence of desertion or absence without leave, then, unless the officer or soldier is in custody for some other cause, the Magistrate shall cause him or her to be delivered into military custody or commit him or her as provided in subsection (2) of this section.

(4) The provisions of law for the time being in force relating to the procedure for the holding of preliminary inquiries by magistrates, and conferring powers of adjournment and remand on magistrates so acting, and with respect to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall, *mutatis mutandis*, apply to proceedings under this section.

**206. Deserters and absentees without leave surrendering to police.**

(1) Where a person surrenders himself or herself to a policeman as being illegally absent from the Defence Force, the policeman shall, unless the person surrenders himself or herself at a police station, bring him or her to a police station.

(2) The policeman in charge of a police station at which a person surrenders himself or herself or to which a person who surrenders himself or herself is brought, shall forthwith inquire into the case.

(3) If it appears to the policeman, after inquiring into the case pursuant to the provisions of subsection (2) of this section, that the person is illegally absent from the Defence Force he or she may bring the person before a Magistrate court or, if circumstances dictate, cause the person to be delivered into military custody without taking him or her to court.

**207. Certificates of arrest or surrenders of deserters and absentees.**

(1) Where a Magistrate's court in pursuance of section 205 deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over a certificate, in the prescribed form, signed by the magistrate, containing the prescribed particulars as to the arrest or surrender of the person and the proceedings before the court.

(2) Where a policeman lawfully causes a person to be delivered into military custody without bringing the person before a magistrate's court, there shall be handed over a certificate, in the prescribed form, signed by the policeman and containing the prescribed particulars relating to the person's surrender.

- (3) In any proceedings for an offence under section 76 or section 77,
- (a) a document purporting to be a certificate under either subsection (1) or subsection (2) of this section, or under the corresponding provisions of any service law (other than this Act) and to be signed as required, shall be evidence of the matters stated in the document;
  - (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 any corresponding officer of a force raised under the law of a Commonwealth territory, or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

**208. Duties of Superintendent 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 magistrate as illegally absent and to detain him or her until, in accordance with the directions of the magistrate, he or she 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.

*Offences relating to military matters punishable by civil courts*

**209. Punishment for pretending to be a deserter.**

Any person who falsely represents himself or herself to any military or civil authority to be a deserter from the Defence Force shall be liable, on summary conviction, to a fine of two hundred and fifty dollars and to imprisonment for three months.



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

shall be liable, on summary conviction, to a fine of two hundred and fifty dollars and to imprisonment for three months, or on conviction on indictment to a fine of two thousand five hundred dollars and to imprisonment for three months.

**211. Punishment for obstructing officers or soldiers in execution of duty.**

Any person who wilfully obstructs or otherwise interferes with any officer or soldier of the Defence Force acting in the execution of his or her duty commits an offence and is liable, on summary conviction, to a fine of two hundred and fifty dollars and to imprisonment for three months.

**212. 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 him or her any drug or preparation calculated or likely to render him or her, or lead to the belief that he or she is permanently or temporarily unfit for service;

with a view to enabling him or her to avoid military service, whether permanently or temporarily, shall be liable, on summary conviction, to a fine of five hundred dollars and to imprisonment for three months, or on conviction on indictment, to a fine of two thousand five hundred dollars and to imprisonment for two years.

**213. 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, commits an offence and is, on summary conviction, liable to a fine of five hundred dollars and to imprisonment for three months, and in the case of conviction on indictment, is liable to a fine of two thousand five hundred dollars and to imprisonment for two years.

(2) A person accused of an offence under subsection (1) of this section shall be deemed not to have committed the offence if he or she proves

- (a) that he or she did not know, and could not reasonably be expected to know, that the chattels in question were military stores;

- (b) that those chattels had (by the transaction with which he or she 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 or she had reasonable cause to believe to have, 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 such 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.

(3) A policeman may arrest without warrant any person whom he or she has reasonable grounds for suspecting of having committed an offence under this section, and may seize any property which he or she has reasonable grounds for suspecting of having been the subject of the offence.

(4) Any person who has authority to issue a warrant for the arrest of a person charged with a crime may, if satisfied by evidence on oath that a person within his or her jurisdiction has, or is reasonably suspected of having, in his or her possession any property which is the subject of an offence under this section, grant a warrant to search for the property as in the case of stolen goods.

(5) Any property suspected of being the subject of an offence under this section which is found on search shall be seized by the person authorised to carry out the search and he or she shall bring the person in whose possession or keeping the property is found before a magistrate's court.

(6) In this section,

“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” includes any chattel of any description belonging to the Government, which has been issued for use for military purposes or is held in for the purpose of being so issued when required.

(7) For the purposes of subsections (4) and (5) property shall be deemed to be in the possession of a person if he or she has it under his or her control, and whether he or she has it for his or her own use or benefit or for the use or benefit of another.

#### **214. Illegal dealings in documents relating to pay, pensions, 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 herself or to any other person;

receives, detains or has in his or her possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or her or any other person's service in the Defence Force or a Commonwealth force commits an offence under this section.

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(2) Any person who has in his or her possession without lawful authority or excuse (the proof of which shall lie on him or her) the document referred to in subsection (1) of this section or any official document issued in connection with the mobilization or demobilization of the Defence Force or any Commonwealth force or any member thereof, commits an offence under this section.

(3) Any person found guilty of an offence under this section shall be liable, on summary conviction, to a fine of five hundred dollars and to imprisonment for three months.

(4) For the purposes of this section, a document shall be deemed to be in the possession of a person if he or she has it under his or her control and whether he or she has it for his or her own use or benefit or for the use or benefit of another.

#### **215. Unauthorised use of and dealing in decorations etc.**

(1) Any person

- (a) who, being a person who is not serving in the Defence Force or a Commonwealth force, without authority, wears in a public place the uniform of any of those forces or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform;
- (b) who, without authority, uses or wears any military decoration, or any badge, wound stripe or emblem supplied or authorised by the Defence Board or by the Government of a Commonwealth territory;
- (c) who uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any decoration, badge, stripe or emblem mentioned in paragraph (b) of this subsection, as to be calculated to deceive; or
- (d) who falsely represents himself or herself to be a person who is or has been entitled to use or wear the decoration, badge, stripe emblem as is mentioned in paragraph (b) of this subsection;

commits an offence under this section.

(2) Nothing in subsection (1) of this section shall

- (a) prevent any person from wearing any uniform or dress in the course of a stage play performed in a place duly licensed or authorised for the public performance of stage plays or in the case of a music hall or circus performance, or in the course of any *bona fide* military representation;
- (b) prohibit the use and wearing of ordinary regimental badges or of brooches or ornaments representing them in pursuance of the provisions of paragraph (a) of this subsection.

(3) Any person who purchases or takes in pawn any military decoration awarded to any member of the Defence Force or any Commonwealth force, or solicits or procures any person to sell or pledge such decoration, or acts for any person in the sale or pledging thereof, commits an offence under this section unless he or she 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 those forces.

(4) Any person found guilty of an offence under this section shall be liable, on summary conviction, to a fine of two hundred and fifty dollars and to imprisonment for three months.

***Provisions relating to evidence***

**216. General provisions as to evidence.**

(1) The provisions of this section shall have effect with respect to evidence in proceedings under this Act whether before a court-martial, a civil court or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by 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 or her enlistment shall be evidence of his or her having given the answers to questions which he or she is therein recorded as having given.

- (4) A letter, return or other document in which it is stated that any person
- (a) was or was not serving at any specified time or during any specified period in the Defence Force or in any Commonwealth force or was discharged from any part 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 the Defence Force or any Commonwealth force, or had at or before any specified time been attached, posted, or transferred to any part 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 authorised to use or wear any decoration, badge, wound stripe or emblem;

shall, if it is issued by or on behalf of the Defence Board or the Commanding Officer be evidence of the matters stated in the document.

(5) A record made in any prescribed service book or other prescribed document being a record made in pursuance of service law or regulations, or otherwise in pursuance of military duty, and signed by the officer or by a 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 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 issued by order of the Defence Board or the Commander and containing, signifying and notifying instructions, orders, appointments or matters given, made or determined by the Defence Force Board or the Commanding Officer shall be evidence of the instructions, orders, appointments or matters and that they were given, made or determined as specified in this subsection.

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(7) A certificate issued by or on behalf of the Defence Board, in which it is stated

- (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 description specified in or annexed to the certificate is one supplied or authorised by the Defence Board or by the Government of a Commonwealth territory;

shall be evidence of the matters stated in the certificate.

(8) A certificate signed by a person's officer in command or any officer authorised by him or her to sign the certificate, and in which certificate is stated 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 ship, train or aircraft;

shall, in proceedings under this Act be evidence of the matters stated in the certificate.

#### **217. Proof of outcome of civil trial.**

(1) Where a person subject to military law under this Act is tried before a civil court (whether at the time of the trial he or she is subject to military law or not) a certificate signed by the Registrar of the court, or a judge, or a magistrate, in which all or any of the following matters are stated:

- (a) that the person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) judgment or order given or made by the court;
- (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 Registrar of the court, or a judge, or a magistrate, shall, unless the contrary is shown, be deemed to be such a certificate.

#### **218. Evidence of proceedings of Court-martial.**

(1) The original record of the proceedings of a court-martial under service law signed by the president of the court and which record is in the custody of any person having the lawful custody of such record 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 of the original record and to be certified by

the person having lawful custody of the record to be a true copy shall be evidence of the contents of the record 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.

### *Miscellaneous Provisions*

#### **219. 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 or her being charged with, an offence under Part IX or under the corresponding provisions of any other service law then the person in charge of a civil prison, police station, or other place in which prisoners are lawfully detained shall, upon delivery to him or her of a written order signed by the officer in command of the person who is in custody, receive the person into his or her custody for a period not exceeding seven days.

(2) In this section,

“civil prison” has the meaning ascribed to it in section 162.

#### **220. Avoidance of 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 her or any other person’s service in the Defence Force shall be void at law.

(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 or she 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 bankrupt’s trustee in bankruptcy for distribution among creditors.

#### **221. Statutory declarations taken outside Saint Christopher and Nevis.**

A document in the form of a statutory declaration, purporting to have subscribed on it the signature of an officer of the Defence Force or any Commonwealth force, being an officer of a rank not below that of major or corresponding rank, in testimony of its having been taken before him or her outside Saint Christopher and Nevis from a person subject to military law under this Act and containing in the 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, unless the contrary is proved, be admitted in evidence without proof of the signature being the signature of that officer, or of the facts so stated.

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## GENERAL PROVISIONS

### *Application of the Act*

#### 222. **Persons subject to military Law.**

(1) Subject to section 224 of this Act, the following persons shall be subject to military law under this Act, that is to say,

- (a) officers and soldiers of the regular Force;
- (b) officers and soldiers of the Coast Guard;
- (c) officers and soldiers attached to the Defence Force or any part of the Defence Force in accordance with the provisions of subsection (2) of section 194 of this Act;
- (d) officers and soldiers of the Reserve Force when called out on permanent service or temporary service or when undergoing or performing any training or other duty (whether in pursuance of an obligation or not) or when serving on the permanent staff of the Reserve Force.

(2) This Act shall apply to the persons subject thereto under this section and in relation to the Defence Force as well outside as within Saint Christopher and Nevis.

#### 223. **Application of Act to civilians.**

(1) Subject to the modifications specified in this section, where any unit is on active service, Part IX shall apply to any person who is not subject to service law but is employed in the service of that unit or any part or member of the unit, or accompanies the unit or any part of the unit.

(2) The modifications referred to in subsection (1) of this section shall be the following:

- (a) the punishments which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment;
- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding fifty dollars but no other punishment;
- (c) the following provisions shall have effect in substitution for section 107(2) to (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 or her 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 officer in command shall be such officer as may be appointed by the officer authorised to convene a court-martial;
- (g) for references in sections 151 and 152 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 IX applies and subsection (3) of section 151 shall not apply.

(3) Any fine awarded by virtue of this section, whether by a court-martial or the officer in command shall be a debt due to the Government, which shall be recoverable by way of an action before a court of summary jurisdiction at the suit of any officer of the Defence Force.

#### **224. Non-application of the Act to some officers etc.**

(1) The Governor-General may, by Order, declare that officers, warrant officers, and non-commissioned officers, who being members of the armed forces of any Commonwealth country, are subject to the military law of such country and are seconded to serve with the Defence Force or any part of the Defence Force, shall remain subject to the military law of such country and shall not be subject to military law under this Act.

(2) Where a person referred to in subsection (1) of this section commits an offence under the military law applicable to him or her, he or she may be held, tried and punished in accordance with the provisions of that military law.

#### **225. Application of U.K. legislation.**

(1) The Army Act, 1955, the Air Force Act, 1955, and the Naval Discipline Act, 1957, any amendment to those Acts made before the 15th day of August, 1979 shall apply in Saint Christopher and Nevis in respect of any matter for which this Act does not provide.

(2) For the purposes of this Act, the Queen's Regulations made under the Army Act, 1955, and any amendment made to those Regulations before the 15th day of August, 1979 shall apply, *mutatis mutandis*, in Saint Christopher and Nevis for the purpose of giving the necessary effect to this Act until regulations are made under this Act in substitution for those regulations.

(3) In this section, "Queen's Regulations" has the meaning assigned to it by subsection (1) of section 225 of the Army Act, 1955.

#### **226. Civilian staff.**

(1) The Defence Board may appoint such civilian staff as are deemed necessary to carry out certain duties within the Defence Force.



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(2) Subject to the provisions of subsection (3) of this section, the staff appointed under subsection (1) of this section shall be appointed on such terms and conditions of service as the Defence Board may prescribe by regulations.

(3) The Pensions Act and any regulations made under that Act shall, with the necessary modifications, apply to the staff appointed under this section.

#### **227. Regulations for Defence Force.**

(1) Subject to the foregoing provisions of this Act, the Governor-General may, acting on the recommendation of the Defence Board, make regulations for the better carrying out of the provisions of this Act and generally for the good government and organisation of the Defence Force and for providing for matters required by this Act to be prescribed and without prejudice to the generality of the foregoing such regulations may make provisions with respect to all or any of the following matters:

- (a) the enlistment of persons into, and the discharge of persons from, the regular Force and generally for the carrying into effect of Part V, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (b) determining to what extent and under what conditions colour service in any Commonwealth force may be counted as colour service in the regular Force;
- (c) the pay, allowances, pensions and gratuities of officers and soldiers for their service while in the Defence Force and of their dependants surviving them, and the deductions therefrom and the forfeiture thereof (including the reckoning for pay, pensions and gratuities of service of the State, other than in the Defence Force, prior to the commencement of service in the Defence Force);
- (d) the description, supply, use and disposal of arms, accoutrement, clothing and other stores;
- (e) the enlistment of persons into and the discharge of persons from the Reserve Force including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (f) the calling out of officers and soldiers of the Reserve Force on temporary service, on permanent service and for training including prescribing the manner in which notification of the places and times appointed for training is to be given;
- (g) requiring officers and soldiers of the Reserve Force to report themselves from time to time and generally for the carrying into effect of Part VII;
- (h) 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;
- (i) in respect of matter for which regulations may be made under the foregoing provisions of this Act, other than under Part IV and Part X.

(2) The pensions and gratuities of officers and soldiers and of their dependants surviving them payable by virtue of regulations made under subsection (1) shall be a charge upon the Consolidated Fund.

(3) Regulations made pursuant to this section may impose fines not exceeding ten thousand dollars and terms of imprisonment not exceeding five years or a fine and term of imprisonment.

*[Inserted by Act 20/2008]*

**228. Powers exercisable in subsidiary legislation.**

(1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases, and to make different provisions for different classes or cases, and for the purpose of any such instrument classes of cases may be defined by reference to any circumstances specified in the instrument.

(2) Any regulations, rules, orders, or other instruments mentioned in subsection (1) of this section 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 of any Commonwealth force, empower such persons to issue orders either orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, 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.

**229. Execution of orders, instruments, etc.**

Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorised to be made under this Act by any military officer or authority may be signified under the hand of any officer authorised in 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 authorised shall, unless the contrary is proved be deemed to be signed by an officer so authorised.

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**FIRST SCHEDULE**

(Section 15.(3))

**QUEEN'S COMMISSION**

I, ..... Governor-General of Saint Christopher and Nevis do give to ..... Greetings and reposing especial trust in your loyalty, courage and good conduct, do by these presents constitute and appoint you to be an officer in the Saint Christopher and Nevis Defence Force [for ..... years]\* from the ..... day of ..... 20 .....

You are therefore carefully and diligently to discharge your duty as such an officer in the rank of ..... or in such other rank as you may from time to time hereafter be promoted or appointed and you are in such manner and on such occasions to exercise and well discipline in their duties, such officers and soldiers as may be placed under your orders from time to time and use your best endeavours to keep them in good order and discipline. I do hereby command, all such officers and soldiers 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 any of your superior officers in pursuance of the trust hereby reposed in you.

Given ..... at  
..... this  
..... day of ..... 20 .....

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..... Governor-General

\* to be omitted in the case of a commission granted for an indefinite period.

**SECOND SCHEDULE**

(Section 39.(1))

Enactments referred to in subsection (1) of section 39.

1. Customs Duties (Dumping and Subsidies) Act, Cap. 20.05
2. Customs Tariff Act, Cap. 20.06
3. Drugs (Prevention and Abatement of Misuse and Abuse of Drugs) Act, Cap. 9.08
4. Emergency Powers Act, Cap. 19.02
5. Export Duty Act, Cap. 20.12
6. Exportation of Fruit Act, Cap. 14.06
7. External Trade Act, Cap. 18.11
8. Fisheries Act, Cap. 14.07
9. Firearms Act, Cap. 19.05
10. Merchant Shipping Act, Cap. 7.05
11. Public Order Act, Cap. 19.11
12. Quarantine Act, Cap. 9.23

**DEFENCE FORCE REGULATIONS**

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**1. Short Title.**

These Regulations may be cited as the Defence Force Regulations.

**2. Interpretation.**

In these regulations,

“Act” means the Saint Christopher and Nevis Defence Force Act;

“Force” means the St. Christopher and Nevis Defence Force;

“section” means a section of the Saint Christopher and Nevis Defence Force Act;

“training year” means the year commencing on the 1st of January and ending on the 31st of December.

**3. Age Limits for Appointment of Officers.**

(1) No person who has not attained the age of 18 years shall be appointed as an officer of the Force.

(2) No person who has attained the age of 31 years shall be appointed as a Second-Lieutenant of the Force:

Provided that the Governor-General may, in any special case where the circumstances so warrant, waive the operation of this paragraph.

**4. Officers Appointed by the Governor-General.**

(1) The Governor-General may appoint the following Officers of the Force:

(a) Lieutenant Colonels;

(b) Majors;

(c) Captains;

(d) Lieutenants and Second-Lieutenants.

(2) In addition to the Officers specified in paragraph (1), the Governor-General may under the Act appoint fit and proper persons to be Officers for the purpose of performing the duties of Judge Advocate, Surgeon, or Chaplain and such persons shall hold such rank and seniority as may be proper and as the Governor-General may from time to time direct.

**5. Promotions of Officers.**

(1) Every Second-Lieutenant, if recommended by the Commanding Officer, will be promoted, after 12 months service, to the rank of Lieutenant.

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(2) Promotion will, as a general rule, be governed by establishment and will be given in volunteer force seniority to Officers qualified by service in the field and by examination; but in the interest of the Force it may be necessary to promote or appoint Officers who are not next in seniority or who have not served in the lower rank.

**6. Retiring age of Officers.**

The Officers hereunder specified shall retire from the active list on their attaining the ages hereunder set forth:

- (a) a Lieutenant-Colonel ..... 55 years;
- (b) Majors ..... 50 years;
- (c) Captains ..... 50 years;
- (d) Lieutenants ..... 45 years;

Provided that the Governor-General may if he or she thinks fit from time to time extend, for periods of not more than 3 years at any one time, the retiring age as aforesaid with respect to any particular Officer, and provided further that the retiring age as aforesaid shall not be extended by more than six years.

**7. Resignation of Officers.**

(1) The Governor-General may, in his or her discretion, grant permission to an Officer to resign his or her commission and where an Officer applies to resign on the ground of ill health, he or she may, for the purposes of the Act, request that he or she be medically examined.

- (2) An Officer may be required to resign his or her commission
  - (a) where he or she is found guilty of misconduct and such finding is confirmed by the Governor-General; or
  - (b) where in the opinion of the Governor-General the circumstances so require;

and where such an Officer refuses to resign his or her commission within the time specified by the Governor-General, the Governor-General may direct that the name of the Officer be removed from the list of Officers.

**8. Preliminaries to enlistment under the Act.**

(1) Where any person applies to enlist in the Force he or she shall be given a document in the form from time to time approved by the Commandant, containing a summary of the terms of service and liabilities, of a member of the Force.

(2) No person shall be attested until the attesting Officer is satisfied that such person fully understands the nature and purport of such document.

(3) No person shall be attested before he or she has undergone the medical examination referred to in regulation 9.

(4) An application for enlistment shall be in the form from time to time approved by the Commanding Officer.

**9. Physical Fitness.**

(1) The standards of physical fitness required under the Act shall be those for the time being required for enlistment in Her Majesty’s Regular Army:

Provided that the Commanding Officer may, if the circumstances so warrant, approve of the enlistment of men who are below such standards of fitness.

(2) In order to ascertain their physical fitness, applicants for enlistment shall, and other ranks who desire to be re-engaged may be required to undergo a medical examination.

(3) Such medical examination shall be conducted by one or more Surgeons of the Force appointed under regulation 4 (2).

**10. Persons Ineligible for Enlistment in the Force.**

The following persons shall not be eligible for enlistment in the Force:

- (a) persons who are members of Her Majesty’s military naval or air forces;
- (b) persons who are members of the Police Force;
- (c) persons who have been discharged from any of those forces for misconduct of any sort, or with a bad or indifferent character.

**11. Retiring age for other Ranks.**

Except with the permission of the Commandant first had and obtained, every non-commissioned officer and volunteer shall retire from the Force on his or her attaining the age of 50 years.

**12. Annual Training.**

(1) Annual training shall take the form of Camp Training or Training Exercises, or of both Camp Training and Training Exercises.

(2) For the purposes of pay and allowances, every day’s attendance on annual training shall count as 1 day, provided that the period of time covered by the training on any one day shall not be less than 4 hours.

**13. Pay and Ration Allowance when in Training under the Act.**

Subject to the provisions of this regulation, every member of the Force, while in annual training under the Act, shall receive rations or ration allowance at such rate as may be approved by the Governor-General, and shall receive pay at the following rates per day:

(a) a Lieutenant-Colonel .....	\$35.00
(b) Major .....	\$30.00
(c) Captain.....	\$27.00
(d) Lieutenant .....	\$24.00
(e) Second-Lieutenant .....	\$21.00

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(f) Warrant Officer 1 .....	\$20.00
(g) Warrant Officer 2 .....	\$17.25
(h) Staff Sergeant .....	\$14.00
(i) Sergeant.....	\$12.00
(j) Master Corporal .....	\$10.75
(k) Corporal.....	\$9.75
(l) Lance-Corporal .....	\$8.75
(m) Volunteer .....	\$7.25

*[Substituted by SRO 35/1983]*

**14. Pay for Drills.**

(1) Subject to the provisions of this regulation, every non-commissioned officer or volunteer shall be paid the sum of \$5.00 in respect of every drill attended by him or her.

Provided that no sum shall be payable under this paragraph in respect of drills attended by the non-commissioned officer before he or she was approved as aforesaid as an instructor.

*[Amended by SRO 35/1983]*

(2) Payment under this regulation shall be made at the last parade before Christmas in each training year:

Provided that

- (a) where a member of the Force is discharged therefrom, payment may be made at any time after such discharge; and
- (b) the Commanding Officer may, in his or her discretion, make payment at the end of any quarter in respect of drills attended during that quarter.

**15. Weapon Training Course.**

(1) All other ranks who complete the Annual Training Course and reach the qualification standards required shall receive a grant as set out hereunder:

Marksman .....	\$ 25.00
First Class Shot .....	\$ 20.00
Second Class Shot.....	\$ 15.00
Qualification .....	\$ 10.00

(2) Payment of such grant shall be made at the end of the quarter during which a member of the Force so qualifies.

*[Amended by SRO 35/1983]*

**16. Laundry Allowance.**

Every member of the Force shall receive a laundry allowance of \$7.50 per month.

*[Amended by SRO 35/1983]*

**17. Pay on Embodiment.**

Every member of the Force who, on embodiment, is found to be physically fit and is retained for military duty shall be paid a gratuity of \$25.00.

*[Substituted by SRO 35/1983]*

**18. Distribution of Uniform, Arms and Appointments.**

The Commandant shall distribute the uniforms, arms, ammunition and appointments within the Force as he or she may consider best for the efficiency of the Force.

**19. Safe Custody and Maintenance of Uniform, Arms and Appointments.**

Every member of the Force shall be responsible for the safe custody and maintenance, in a state of military efficiency, of the uniform, arms and appointments entrusted to him or her.

**20. Uniforms and Equipment Schedule.**

Every member of the Force shall be provided with such uniform and equipment as is set out in the Schedule to these Regulations.

**21. Arms, Uniform and Equipment to be delivered up in good order by other Ranks on leaving the Force.**

Where any non-commissioned officer, or volunteer retires or is discharged from the Force he or she shall deliver up to the Commanding Officer or any person authorised by him or her, in good order (fair wear and tear excepted) his or her arms, uniform and equipment.

**22. Form of Certificate of Discharge.**

A certificate of discharge shall be in such form as may be approved from time to time by the Commanding Officer.

**23. Limitation of Powers of commanding officer and of officer in temporary command of the force.**

(1) The Commanding Officer while absent from and not in the exercise of his or her command cannot issue Company Orders or any other orders relating to such command.

(2) An Officer in temporary command of the Force shall not, without reference to the Commandant, issue standing Company Orders or alter those which are at the time in force, or authorise the application of the funds of the Force for any purpose other than ordinary current expenditure.

**24. Publication of Notices.**

(1) Directions of the Commandant under the Act shall be published in the *Gazette* and in two newspapers circulating in the State, and copies of such directions shall be distributed among members of the Force in such numbers and in such manner as the Commanding Officer shall from time to time approve.



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(2) Local Force Orders, and Company Orders, made under the Act shall be posted up at the headquarters of the Force, and copies of such Orders shall be distributed among members of the Force in such numbers and in such manner as the Commanding Officer shall from time to time approve.

**25. Sickness and other Reasonable excuse under the Act.**

(1) For the purposes of the Act, sickness means sickness certified by one or more Surgeons of the Force appointed under regulation 4 (2).

(2) The Commanding Officer may, under the Act, allow as reasonable any excuse which, having regard to all the circumstances of the case, he or she considers to be reasonable.

**26. Meaning of “Prescribed Officer” in the Act.**

The expression “prescribed officer” in the Act means the sergeant-major of the Force in the case of a non-commissioned officer or volunteer.

**27. Exercise of Jurisdiction under the Act by a Magistrate’s Court.**

An offence which under the Act is cognizable both by a court-martial and a Magistrate’s court shall not be tried by a Magistrate’s court unless such court is satisfied, by a certificate of the Commanding Officer, that the person charged has not, in respect of such offence, been tried by a court-martial or been dealt with by the Commanding Officer.

**28. Disability Pension.**

The Governor-General may, with the approval of the National Assembly, award a disability pension to any member of the Force who, without his or her own default, is permanently injured in the actual discharge of his or her duty as a member of the Force by some injury specifically attributable to the nature of his or her duty.

**29. Leave and Superannuation Rights of Clerks, Storekeepers and other employees.**

The clerks, storekeepers and other employees referred to in the Act shall be eligible for the same leave and superannuation rights as if they were appointed to corresponding grades of the Civil Establishment.

**30. Leave from Duty as a Member of the Force.**

The Commanding Officer may, if he or she thinks fit, from time to time grant leave to any member of the Force to be absent from duty as such member.

**SCHEDULE TO THE REGULATIONS.**

(Regulation 20)

**UNIFORMS AND EQUIPMENT.****DRILL ORDER.***For Non-Commissioned Officers and men*

Khaki shirt, shorts, peak cap or beret, hose tops, short puttees or gaiters, and black boots. Web belt with bayonet frog. Side arms, and web equipment.

*For Officers*

As for Non-Commissioned Officers and men with the addition of Sam Browne belt and sword.

**CEREMONIAL.***For Non-Commissioned Officers and men*

Khaki tunic with silver gilt buttons, shorts, peak cap, hose tops, short puttees and black boots. Side arms.

*For Officers*

Khaki tunic with silver gilt buttons, slacks, peak cap, brown brogue shoes, Sam Browne belt and sword.

**MESS DRESS.***For Officers and Sergeants*

White mess jackets, white waist coat or black waist band, dress shirt, black bow tie. Black serge trousers with black silk seam. Black patent leather boots or shoes.

**FOURTH SCHEDULE**

(Sections 17 and 226)

Saint Christopher and Nevis Defence Force (Pension and Gratuity) Regulations

**ARRANGEMENT OF REGULATIONS****REGULATIONS**

1. Citation.
2. Commencement.
3. Interpretation.
4. Revision of terms.
5. Compulsory deductions.

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6. Payment of pension and gratuity.
7. Power to reduce pension etc. in certain cases.
8. Pension etc. in cases of bankruptcy.
9. Power to dispense with probate.
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15. Early retirement at officer's or soldier's request.
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19. Definition of "reckonable service" under this Part.
20. Officer or soldier may receive benefits other than under these Regulations.
21. Officer or soldier dying after ten or more years of service.
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23. Pension to widow and children of an officer or soldier dying after retirement.
24. Division of pension between widow and children in the discretion of the Board.
25. Diversion of payments to satisfy financial support order.
26. Where recipient unable to manage own affairs.
27. Payment deemed to be to recipient.
28. Presumption of death.
29. Special allowance for injuries.
30. Pension to widow and children of members of the Defence Force who die in execution of their duty.
31. Payment of Pension to persons of unsound mind.
32. Settlement of questions arising under these Regulations.

**Saint Christopher and Nevis Defence Force (Pension and Gratuity)  
Regulations****1. Citation.**

These Regulations may be cited as the Saint Christopher and Nevis Defence Force (Pension and Gratuity) Regulations.

**2. Commencement.**

These Regulations shall be deemed to have come into force on the 1<sup>st</sup> day of September 2009.

**3. Interpretation.**

In these Regulations,

“Act” means the Saint Christopher and Nevis Defence Force Act,  
Cap. 19.14;

“child” means

- (a) a person under the age of eighteen years;
- (b) a person eighteen years and older whose special circumstances are such that he or she is unable to reasonably provide for his or her daily requirements; or
- (c) a person eighteen years of age or older but under the age of twenty-five years who is receiving instruction at an educational institution or undergoing training for a trade, profession or vocation, whether or not he or she is also, or will also be, in gainful employment;

who at the time of death of the member of the Defence Force was wholly or partially dependent on the member for support and includes a stepchild or an individual adopted either legally or in fact by the member of the Defence Force;

“Defence Board” means the Defence Board established under section 10 of the Saint Christopher and Nevis Defence Force Act, Cap. 19.14;

“Defence Force” means the Defence Force established under section 5 of the Saint Christopher and Nevis Defence Force Act, Cap. 19.14;

“disabled” means any condition rendering a member of the regular Force mentally or physically unfit to perform his duties;

“duty allowance” means a payment made to an officer or soldier to offset any cost incurred by him while detailed from and posted away from his normal place of abode, but does not include trade or skill pay allowance;

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“member” means any commissioned officer, non-commissioned officer or soldier of the Saint Christopher and Nevis Defence Force;

“Minister” means the Minister responsible for national security;

“non-commissioned officer” means a member holding the rank of warrant officer, staff sergeant, sergeant lance corporal or corporal;

“officer” means

(a) a person who holds Her Majesty’s commission in the Saint Christopher and Nevis Defence Force,

(b) a person who holds the rank of officer, cadet or ensign in the Saint Christopher and Nevis Defence Forces;

“pensionable emoluments” includes salary and duty allowance but does not include entertainment or any other emoluments or allowances;

“pensionable service” means paid colour service in the Defence Force after attaining the age of eighteen years and includes paid colour service in Her Majesty’s Military Forces and Service before 1997 on the permanent staff of the Saint Christopher and Nevis Defence Force (Volunteers);

“public claim” means a public debt or disallowance including any over-issue or advance of pay, gratuity, pension or other emoluments made through an error as to the facts or the sum required to make good any loss, deficiency or irregular expenditure of public money, and deficiency, loss, damage or destruction of public stores, buildings or other public property of which, after due investigation no explanation satisfactory to the Defence Board is given by the person who is responsible for the same;

“qualifying service” means paid colour service in the Defence Force and in respect of any member of the Defence Force who before the coming into operation of these Regulations was in the Defence Force, includes colour service of such member in the Saint Christopher and Nevis Defence Force, or service on the permanent staff of the former Saint Christopher and Nevis Defence Force (Volunteers) or in Her Majesty’s Military Forces;

“recipient” means a person to whom any amount is or is about to become payable under these Regulations;

“salary” as applied to a member of the Saint Christopher and Nevis Defence Force means the pay received by the member from employment as a member of the Defence Force;

“service claim” means any service debt or the sum required to make good any loss, deficiency or irregular expenditure of service money of which after due investigation no explanation satisfactory to the Defence Board is given by the person who is responsible for the same;

“substantive rank” shall exclude brevet, honorary, acting or local rank.

(2) A reference in these Regulations to “officers” and “soldiers” shall be construed as being references to officers and soldiers of the regular Force.

(3) In this Part “reckonable service” for pension shall be so much of the officer’s or soldier’s qualifying service as was given after he attained the age of eighteen years.

(4) A reference in these Regulations to

- (a) “cohabitation” means a relationship between one man and one woman, where, although not married, they have lived together as husband and wife in the same dwelling house for a continuous period of at least five years;
- (b) “marriage” includes the cohabitation of one woman with one man, and the words wife, husband, widow, widower and spouse shall be construed accordingly.

#### **4. Revision of terms.**

Except where otherwise provided, no person shall be entitled to claim any pension, gratuity or other advantage conferred by a provision of these Regulations in the event of the provision being at any time added to, varied or cancelled.

#### **5. Compulsory deductions.**

A pension, gratuity or other grant awarded under these Regulations to a person shall be liable to deductions on the order of the Defence Board to meet a public or service claim.

#### **6. Payment of pension and gratuity.**

The payment of pension, gratuity or other grant awarded under these Regulations may be made provisionally or upon any other basis and for such period as the Defence Board may think fit and, either generally or in any particular case or class of case, any pension, gratuity or other grant awarded in terms of a monthly amount may be paid quarterly or monthly in arrears.

#### **7. Power to reduce pension etc. in certain cases.**

(1) The Defence Board may withhold or reduce any pension or grant awarded under these Regulations

- (a) if it is satisfied that it was obtained by the willful suppression of material facts or granted in ignorance of facts which, had they been known at the time of the grant, would have justified the reduction or withholding thereof; or
- (b) if the person to, or in respect of whom such gratuity, pension or grant is awarded is sentenced to death or to any term of imprisonment by any court of competent jurisdiction whether in Saint Christopher and Nevis or elsewhere, for any crime or offence, or is in the opinion of the Defence Board unworthy of a grant from the public funds.

(2) Where any pension or gratuity has been withheld or reduced under these Regulations, the Defence Board may

- (a) at anytime it considers it equitable to do so, grant or restore the whole pension or gratuity or a portion thereof;
- (b) at anytime it considers it equitable to do so, cause all or any part of the pension or gratuity to which the officer or soldier would have been

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entitled, to be paid to or applied for the benefit of any spouse or children or any other person whom the Defence Board is satisfied was wholly or partially maintained by that officer or soldier, or

- (c) after the expiration of a sentence, cause all or any part of the pension or gratuity to which the officer or soldier would have been entitled to be paid to or applied for the benefit of the officer or soldier himself in the same manner and subject to the same qualifications and restrictions as in the case of bankruptcy or insolvency as hereinafter provided.

**8. Pension etc. in cases of bankruptcy.**

(1) No pension, gratuity or other grant shall be awarded to a person who, having been adjudicated a bankrupt or declared insolvent by a judgment of a court of competent jurisdiction, whether in Saint Christopher and Nevis or elsewhere, has not obtained his discharge from such adjudication or declaration.

(2) If any person to whom a pension, gratuity or other grant has been awarded under these Regulations is adjudicated a bankrupt or is declared insolvent by a judgment of a court of competent jurisdiction, whether in Saint Christopher and Nevis or elsewhere, then his pension, gratuity or other grant shall cease.

(3) Notwithstanding the provisions of sub-regulation (2), the Defence Board may, during the lifetime of a person or a shorter period, cause all or part of the moneys that he would have been entitled to by way of pension, gratuity or other grant, had he not become bankrupt or insolvent, to be paid or applied for the maintenance and personal support of himself, his wife or any child of his in such proportions and manner as the Defence Board thinks proper, and any moneys applied for the discharge of his debts shall for the purposes of this sub-regulation be deemed as applied for his benefit.

(4) When a person to whom any pension, gratuity or other grant has not been awarded or whose pension, gratuity or other grant has ceased under the provisions of this regulation, obtains a discharge from bankruptcy or insolvency his pension, gratuity or other grant may be awarded or restored to him with effect from the date of the discharge.

**9. Power to dispense with probate.**

(1) Where a person to whom any payment could have been made under these Regulations before his death, dies before the payment is made and the amount unpaid does not exceed two thousand five hundred dollars, the amounts so unpaid may be paid to the personal representative of the deceased person without probate or other proof of title or may be paid or distributed to or among the persons appearing to the Defence Board to be the person beneficially entitled to the personal estate of the deceased person.

(2) In determining the persons to whom and the proportions in which the amount so unpaid shall be paid or distributed, pursuant to sub-regulation (1), the Defence Board may have regard to any payment made or expenses incurred by the person responsible for the funeral of the deceased person.

**10. Service of a foreign power.**

If a person to whom an award of pension or gratuity has been made under these Regulations enters the service of a foreign power without the consent of the Defence Board or, if he continues in such service after the consent is withdrawn, the Defence Board may decide to have his pension or gratuity, as the case may be, suspended or withheld.

**11. Officers and soldiers transferred from Public Service and Police Service.**

An officer or soldier who has been transferred from the Public Service, the Fire Service or Police Service to the service of the Defence Force shall, on retirement from the Defence Force, be entitled to the payment of the greatest of the following benefits:

- (a) a pension and a gratuity, as the case requires, calculated as if all his pensionable service in the Public Service, the Fire Service or the Police Service as well as pensionable service in the Defence Force was qualifying service under these Regulations; or
- (b) a pension and gratuity calculated as if all his pensionable service in the Defence Force, the Public Service, the Fire Service, or the Police Service were pensionable service under the Pension Act, Cap. 22.06 or the Police Act, Cap. 19.07, as the case may be.

**12. Offence.**

Any person who knowingly makes any statement or gives any information that is false in any material particular for the purpose of obtaining, either for himself or for any other person, any payment under these Regulations commits an offence and is liable on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both.

**13. Compulsory retirement.**

It shall be compulsory for an officer or soldier to retire upon attaining the following ages:

- (a) Officers
  - (i) Lieutenant Colonel and above 58 years;
  - (ii) Major 55 years;
  - (iii) Captain 50 years;
  - (iv) Lieutenant & Second Lieutenant 45 years;
- (b) Soldiers
  - (i) Warrant Officers 47 years;
  - (ii) Staff Sergeants and Sergeants 45 years;
  - (iii) Corporals and below 42 years;

(2) Notwithstanding sub-regulation (1), if an officer or soldier who has attained the age at which he is required by this regulation to retire he may be permitted by the Force Commander to continue as a member of the Defence Force



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for such further period as may be agreed with the officer or soldier with the approval of the Defence Board.

**14. Retirement at full rate of pension.**

(1) An officer or soldier who retires on or after attaining the compulsory age for retirement in his rank, and whose qualifying service is not less than the minimum period of service specified in sub-regulation (3), may be granted pension calculated in accordance with the provisions of sub-regulation (2).

(2) The pension for an officer or a soldier shall be computed as follows:

- (a) the annual rate of one-six hundredth of the pensionable emoluments of the officer or soldier in respect of each completed month of service calculated on the basis of the last rate in issue to the officer or soldier immediately preceding the date of retirement; and
- (b) a terminal grant equal to three and a half times the annual pension computed in accordance with paragraph (a).

(3) The standard period of service for the purpose of qualifying for pension is twenty-four continuous years.

(4) Notwithstanding sub-regulation (3) a pension granted to an officer or soldier under these Regulations shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of service in the regular Force.

**15. Early retirement at officer's or soldier's request.**

An officer or soldier permitted to retire at his own request before the compulsory retirement age for his rank and who has served for a period of at least twenty-two years qualifying service may be granted a pension as calculated in regulation 13 (2).

**16. Pension on being invalidated out.**

(1) An officer or soldier who is invalidated from the Defence Force before the retirement age for his rank with at least ten years qualifying service, who produces medical evidence from a Medical Board that he is incapable by reason of some infirmity of mind or body of discharging his duties and that the infirmity of mind or body is likely to be permanent may be awarded a pension as follows:

- (a) if he has twenty-two or more years qualifying service, the award shall be computed as if he had retired in the circumstances mentioned in regulation 10;
- (b) if his qualifying service is less than twenty-two years it shall be calculated at the rate of one-six hundredth of the final pensionable emoluments of the officer or soldier in respect of each completed month of service.

(2) The Medical Board referred to in sub-regulation (1) shall consist of at least two qualified medical practitioners appointed for the purposes of these Regulations by the Defence Board.

**17. Retirement for misconduct.**

(1) An officer or soldier who is removed or called upon to retire or resign for misconduct, or who is cashiered or dismissed from the Defence Force, and who has at least twenty-two years qualifying service, may be granted, if the Defence Board so decides, a compassionate award of pension at such rate as it may determine, but not in any event exceeding seventy percent of the pension rate which would have been admissible had he retired at his own request.

(2) Where an officer or soldier has been granted a compassionate award of pension under this regulation the Defence Board may in its discretion award a compassionate gratuity not exceeding two times the annual rate of the compassionate award of pension.

**18. Gratuity for service prematurely terminated.**

An officer or soldier ineligible for pension may be granted, at the cessation of his service, a gratuity in accordance with the following provisions:

- (a) an officer or a soldier
  - (i) who has retired at his own request or upon reaching the compulsory retirement age for his rank or who is removed or called upon to retire or resign on the grounds of the interest for the Defence Force, and not due to causes within his own control; and
  - (ii) who has had at least ten years qualifying service, may be granted a gratuity of an amount equal to one month's pay at the last rate in issue to the officer or soldier immediately preceding the date of retirement for each year of reckonable service;
- (b) an officer or a soldier who is invalided from the Defence Force may be granted a gratuity of an amount equal to twenty-two days pay at the last rate in issue to the officer or soldier immediately preceding the date of retirement for each year of reckonable service;
- (c) an officer or soldier who is removed or is called upon to retire or resign or who is cashiered or dismissed from the Defence Force and who has at least twenty-two years qualifying service, may be granted, if the Defence Board so decides, a compassionate gratuity at such rate as the Defence Board may determine, but not in any event exceeding seventy per cent of the gratuity which would have been admissible had he retired at his own request.

**19. Definition of "reckonable service" under this Part .**

"Reckonable service" for pension shall be so much of the officer's or soldier's qualifying service as was given after he attained the age of eighteen years.

**20. Officer or soldier may receive benefits other than under these Regulations.**

Nothing in these Regulations shall prevent an officer, soldier or his dependents, as a result of injury or death from receiving in addition to the benefits he is eligible

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for under these Regulations, any other benefits he may be entitled to under any other legislation or insurance scheme.

**21. Officer or soldier dying after ten or more years of service.**

(1) When an officer or soldier dies while in the service of the Defence Force and at the date of his death he has completed ten years qualifying service, there shall be paid

- (a) if he is survived only by a widow, to that widow, a gratuity or terminal grant to which the officer or soldier would have been entitled had he retired at the date of his death and a pension while she remains unmarried, equal to one-half the pension to which the officer or soldier would be entitled on that date;
- (b) if he is survived by a widow and children, that widow, subject always to the provisions of regulation 22, the pension and gratuity calculated in accordance with paragraph (a) to be administered in accordance with the provisions of sub-regulation (1) of regulation 22;
- (c) if he is not survived by a widow, but is survived by children, to the person appointed by the Defence Board under sub-regulation 24 (2), the pension and gratuity calculated in accordance with paragraph (a) to be administered in accordance with the provisions of sub-regulation 24 (2).

(2) A pension granted to a child shall cease upon marriage of the child under the age of eighteen years.

**22. Officer or soldier dying prior to completion of ten years service.**

(1) When an officer or soldier dies while in the service of the Defence Force but before he has completed ten years of qualifying service in the Defence Force, there shall be paid to his widow or children or to both the widow and the children or, in the appropriate case, to a legal personal representative, a special gratuity equal to fourteen days pensionable emoluments for each completed year of pensionable service of the officer or soldier.

(2) The provisions of regulation 24, which relate to the manner in which a pension and gratuity shall be administered, shall apply *mutatis mutandis* to a special gratuity payable in accordance with sub-regulation (1).

**23. Pension to widow and children of an officer or soldier dying after retirement.**

When an officer or soldier who has married prior to the date of his retirement from the Defence Force dies after his retirement, and, before his death, was actually in receipt of or entitled to receive a pension granted under these Regulations, there shall be payable to his widow or children or to both the widow and children, a pension at the rate of one-half of the pension received by the officer or soldier or that which he was entitled to receive at the date of his death and the provisions of regulation 24 shall apply *mutatis mutandis* to the administration of that person.

**24. Division of pension between widow and children in the discretion of the Board.**

(1) When an officer or soldier dies leaving a widow and children, there shall be paid to the widow, whether in the first instance or at any time while a pension is payable, the whole of the pension, or a part only of the pension, and the balance of the pension may be applied for or towards the maintenance or education of the children in such manner as the Defence Board thinks fit.

(2) Notwithstanding sub-regulation (1) where the pension ceases to be payable owing to the remarriage of the widow, the whole of the pension may be applied towards the maintenance and education of the children, as the case may be, in such manner as the Defence Board may from time to time direct.

(3) When any sum becomes payable to any person not in *sui juris* law, there shall be paid or applied such sum or any part thereof for the benefit or towards the maintenance or education of the person, in the manner and at the times the Defence Board thinks fit; and the amount may be paid either directly to the person or to any other person as the Defence Board may direct.

(4) If the widow of an officer or soldier while in receipt of a pension deserts or abandons or does not assist a child whom she is liable to maintain under these Regulations, the Defence Board may cause to be paid to a fit and proper person on behalf of the child, such portion of the pension as the Defence Board thinks fit.

**25. Diversion of payment to satisfy financial support order.**

When any court of competent jurisdiction in Saint Christopher and Nevis has made an order requiring a recipient to pay financial support, any amount payable to the recipient under these Regulations are subject to being diverted to the person named in the order.

**26. Where recipient unable to manage own affairs.**

Where, for any reason, a member is unable to manage the member's own affairs, or where the member is incapable of managing the member's own affairs and there is no person entitled by law to act as the recipient's on his behalf, payment may be made to any person designated by the Defence Board to receive payment on behalf of the member any amount that is payable to the member under this Part or Part III.

**27. Payment deemed to be to recipient.**

Any payment made pursuant to regulation 25 or 26 is deemed to be a payment to the member in respect of whom the payment was made.

**28. Presumption of death.**

(1) Where a member to whom any benefit has become payable under these Regulations, either before or after the coming into force of this sub-regulation, disappeared under circumstances that, in the opinion of the Minister, raise beyond a reasonable doubt a presumption that the person is dead, the Minister may determine the date for the purposes of these Regulations, on which that person's death is presumed to have occurred, and thereupon that person is deemed for all purposes of these Regulations to have died on that date.

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(2) If, after the date of a person's death is determined by the Minister under sub-regulation (1), new information or evidence is received by the Minister that the date of death is different, the Minister may determine a different date of death, in which case the person is deemed for all purposes of these Regulations to have died on that different date.

**29. Special allowance for injuries.**

(1) Subject to sub-regulation (2), where an officer or soldier has been permanently disabled

- (a) in the actual discharge of his duty;
- (b) without his own default; and
- (c) by some injury specifically attributable to the nature of his duty;

the officer or soldier may, on his retirement from the Defence Force, be granted in respect of the injury, in addition to any pension, terminal grant or gratuity to which he is entitled under these Regulations, an allowance in proportion to his injury in such annual amount not exceeding the following:

- (i) when his capacity to contribute to his own support is slightly impaired, eight-sixtieths of pensionable emoluments;
- (ii) when his capacity to contribute to his own support is impaired, twelve-sixtieths of his pensionable emoluments;
- (iii) when his capacity to contribute to his own support is materially impaired eighteen-sixtieths of his pensionable emoluments;
- (iv) When his capacity to contribute to his own support is totally destroyed twenty-five-sixtieths of his pensionable emoluments.

(2) The annual allowances granted under sub-regulation (1) together with any pension granted under these Regulations shall not exceed two-thirds of the highest pensionable emoluments of the officer or soldier.

**30. Pension to widow and children of members of the Defence Force who die in execution of their duty.**

(1) Where a member of the Defence Force dies while in the service of the Defence Force as a result of injuries received

- (a) in the actual discharge of his duty;
- (b) without his own default; and
- (c) on account of circumstances specifically attributed to the nature of his duty;

there may be granted to his widow or children in addition to any pension, terminal grant or gratuity, to which she or they are entitled under these Regulations, an annual allowance equal to ten-fiftieths of the member's pensionable emoluments on the date of his death.

(2) The annual allowance granted under sub-regulation (1) shall not exceed two-thirds of the highest pensionable emoluments of the officer or soldier concerned at the date of his death.

(3) If the deceased officer or soldier leaves a widow and children to whom a pension is granted under the preceding paragraph, a pension shall be payable in respect of each child, of an amount not exceeding one-eighth of the pension prescribed by sub-regulation (2), until the child attains the age of eighteen years.

(4) If the deceased officer or soldier leaves a child or children but does not leave a widow or no pension is granted to the widow, a pension in respect of each child until such child attains the age of eighteen years, shall be double the amount prescribed by sub-regulation (3).

(5) If the deceased officer or soldier leaves a child or children and a widow to whom a pension is granted under paragraph (1) and the widow subsequently dies, a pension in respect of each child as from the date of the death of the widow until such child attains the age of eighteen years of double the amount prescribed by sub-regulation (3).

(6) If the deceased officer or soldier does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or partially dependent on him for her support a pension to the mother whilst without adequate means of support in the opinion of the Defence Board, of an amount not exceeding the pension which might have been granted to his widow.

(7) If the deceased officer or soldier does not leave a widow or mother, or if no pension is granted to his widow or mother, and his father were wholly or partially dependent on him for his support, a pension to the father who is without adequate means of support in the opinion of the Defence Board, of an amount not exceeding the pension which might have been granted to his widow.

(8) Provided that:

- (a) in the case of a pension granted under sub-regulation (6), if the mother is a widow at the time of the grant of the pension and subsequently remarries, such pension shall cease as from the date of remarriage;
- (b) and if it appears to the Defence Board at any time that the mother is adequately provided with other means of support, such pension shall cease as from such date as the Defence Board may determine; and
- (c) a pension granted to a child under this regulation shall cease upon marriage under the age of eighteen years.

### **31. Payment of pension to persons of unsound mind.**

If any officer or soldier to whom a pension is granted under these Regulations is, or becomes of unsound mind the Defence Board may direct that his pension, or such part of it as appears necessary for his care and maintenance be paid to the person in the opinion of the Defence Board in whose care may be or who may be responsible for the cost of his care and maintenance.

### **32. Settlement of questions arising under these Regulations.**

The Defence Board shall have full power and authority to decide all questions that may arise in respect of or in connection with the administration of these Regulations.