

CHAPTER 15

AIR FORCE ACT

ARRANGEMENT OF SECTIONS

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COURT MARTIAL.

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CHAPTER 15

AIR FORCE ACT

- 1964 No. 11. **An Act to make provision for the establishment, government and discipline of the Nigerian Air Force and of an Air Force Reserve and to provide for other matters connected therewith or ancillary thereto.**

Commence-
ment.
L.N. 49 of
1964.

[24th February, 1964]

PART I—ESTABLISHMENT OF AIR FORCE

Establish-
ment, etc., of
air force.

1. (1) There shall be established and maintained in and for the Federal Republic of Nigeria an air force to be known as the Nigerian Air Force (in this Act referred to as "the air force") which shall consist of—
- (a) such establishments as the President may from time to time think fit; and
 - (b) such numbers of officers, non-commissioned officers, men and aircraft as the air council as constituted under this Act may from time to time prescribe.

(2) The air force shall be charged with the defence of the Federal Republic by air; and to give effect thereto the air force shall be trained in such duties as well in the air as on the ground, as the Council of Ministers may from time to time prescribe or direct.

(3) It is hereby declared that the authority conferred by this Act to establish and maintain an air force shall include authority to raise and maintain units of or including women, and accordingly the provisions of this Act shall apply to women, subject to section 189 of this Act and to such modifications and adaptations as the President may by order specify from time to time.

(4) The air force shall not form part of the public service of the Federation.

2. There shall be established and maintained an air force reserve consisting of such numbers of officers, warrant officers, non-commissioned officers and men who are transferred to it on completion of their period of service in the air force and of such others as may be prescribed.

Establishment of air force reserve.

PART II—ESTABLISHMENT OF AIR COUNCIL

3. (1) Subject to the provisions of this section, there shall be established an air council to be known as the Nigerian Air Council (in this Act referred to as "the air council") which shall be responsible, under the general authority of the President, for the discipline and administration of, and of other matters relating to, the air force.

Establishment of air council.

(2) The responsibility of the air council shall not extend to the operational use of the air force.

1966 No. 6.

(3) Responsibility for the operational use of the air force (including its operational use in Nigeria for the purpose of maintaining and securing public safety and public order) shall be vested in the Commander subject to the overall direction of the President; and it shall be the duty of the Commander to comply with any directions (whether specific or of a general character) which may be given to him by the President with respect to the operational use of the air force.

Membership
of the Air
Council.
1980 No. 5.
1984 No. 11.

4. (1) The members of the air council shall be—
- (a) the President who shall be the Chairman of the Council;
 - (b) the Chief of General Staff;
 - (c) the Minister charged with responsibility for matters relating to Defence;
 - (d) the Chief of the Air Staff.

(2) The Director-General of the Ministry of Defence shall be the Secretary to the Council.

(3) The air council may whenever it deems it necessary co-opt any officer or any public officer or any person as a member of the air council for the purpose of any particular meeting of the air council but such officer or public officer or person shall have no vote and his membership shall cease at the end of the particular meeting.

Powers of air
council.

5. The air council may provide for all or any of the following matters—

- (a) the organisation of the work of the air council and the manner in which it shall perform its functions and the duties and responsibilities of the members thereof;
- (b) the delegation by notification in the *Federal Gazette* to any member of the air council of any of the powers or duties of the air council;
- (c) the consultation by the air council with persons other than members thereof; and
- (d) the procedure to be followed by the air council in conducting its business.

PART III—ADMINISTRATION AND GOVERNMENT

Command

*Command of
the air force*
1966 No. 6

6. The President may, after consultation with the air council, appoint an officer (in this Act referred to as "the commander") as he thinks fit, in whom the command of the air force and the air force reserve shall be vested; and, subject to the terms of his appointment and to any directions as to the operational use of the air force or of the air force reserve given under section 3 of this Act, the commander shall have the

command, direction and general superintendence of the air force and of the air force reserve.

7. Insofar as powers of command depend on rank, if a member of any army or navy unit (either with or without his unit or any part of it) is acting together with any of the air force units, he shall have the like powers of a member of the air force of corresponding rank; and for the purposes of sections 41 and 78 of this Act (which relate to insubordinate behaviour and certain powers of arrest) any such member of any army or navy unit shall be treated as if he were a member of the air force of corresponding rank.

Powers of command of members of co-operating army or navy units.

8. (1) Any member of the air force may be attached temporarily to the army or the navy.

Attachment of members of the air force to the army or navy.

(2) Regulations made by the appropriate service authorities may prescribe circumstances in which officers, warrant officers, non-commissioned officers and men of the air force shall be deemed to be attached to the army or the navy, as the case may be, under the last foregoing subsection.

(3) In this section, the expression "appropriate service authorities" means—

- (a) in relation to attachment to the army, the Nigerian Army Council and the air council; and
- (b) in relation to attachment to the navy, the Nigerian Navy Council and the air council.

(4) A person shall not cease to be subject to air force law under this Act by reason only of attachment in pursuance of this section.

9. (1) The Minister may by order direct that this section shall apply to any military, naval, or air force of a country (other than Nigeria) and where the Minister so directs the application of this section, the air council—

Attachment of personnel and powers of command.

- (a) may attach temporarily to the air force any member of the foreign country to which the other force belongs; or
- (b) subject to anything to the contrary in the conditions applicable to his service, may place any member of the air force of Nigeria at the disposal of the service

authorities of a foreign country for the purpose of being attached temporarily by those authorities to the foreign force or force of that country.

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

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

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

(b) if the forces are acting in combination, any officer of the foreign force appointed by the air council, or in accordance with regulations made by the air council, to command the combined force, or any part thereof, shall have over members of the air force the like powers of command and punishment and may be invested with the like authority to convene, and confirm the findings and sentences of, courts-martial as if he were an officer of the air force of relative rank and holding the same command.

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

*Regulations
as to
command*

10. The air council, with the approval of the Minister, may make Regulations as to the persons in whom command over the establishments and units or any member thereof is vested and as to circumstances in which such command as aforesaid is to be exercised and, without prejudice to the generality of

the foregoing, may in such Regulations provide for the duties, functions, and powers of the commander, its air force staff and officers, warrant officers, non-commissioned officers and airmen.

Officers

11. (1) No person shall be appointed to a commission in the air force unless he has been recommended by a board of officers set up by the air council. Appointment of officers.

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

(3) Every officer on appointment shall be issued with a commission in the form prescribed by regulations made under section 13 of this Act and signed by the President. 1966 No. 6.

(4) The appointment of a person to a commission in the air force shall be notified in the *Federal Gazette*.

12. All promotions of officers and any retirement or resignation of an officer shall be notified in the *Federal Gazette*. Promotion of officers, etc.

13. The President may make regulations governing the commissioning of officers, their terms of service, promotion, retirement, resignation and such other matters concerning officers of the air force as seem to him necessary. Regulations as to officers.

Enlistment and Terms and Conditions of Service

14. Any person authorised in that behalf by regulations made under this Part of this Act may be appointed to act as a recruiting officer and accordingly may enlist persons in the air force. Recruiting officers.

15. (1) A person offering to enlist in the air force shall be given a notice in the prescribed form setting out questions to be answered on attestation and stating the general conditions and engagement to be entered into by him, and a recruiting officer shall not enlist any person in the air force unless satisfied by that person that he has given such a notice, understands it and wishes to be enlisted. Enlistment.

(2) A recruiting officer shall not enlist a person under the apparent age of eighteen years unless consent to the enlistment has been given in writing by his parents or guardian or, where parents or guardian are dead or unknown, by some person approved by the Local Government Area of the State or of the Federal Capital Territory, as the case may be, in which such person applying for enlistment resides.

Terms of
enlistment.

16. (1) The term for which a person enlisting in the air force may be enlisted shall be such a term, beginning with the date of his attestation, as is mentioned in the following provisions of this section.

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

(a) as a term of regular service; or

(b) as to a prescribed part, a term of regular service and as to the remainder, a term of service in the air force reserve.

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

(a) as a term of regular service; or

(b) as to a prescribed part, a term of regular service and as to the remainder, a term of service in the air force reserve.

Re-engage-
ment and
continuance
in service.

17. (1) Any airman before or after completing the term of his regular service may with the approval of the competent air force authority re-engage for such further period or periods of regular service and service in the reserve as may be prescribed:

Provided that—

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

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

(2) Any airman who has completed a period of twenty-four years of regular service may, if he so desires and with the approval of the competent air force authority, continue to serve to complete thirty years of regular service in all respects as if his term of regular service was still unexpired:

Provided that—

(a) it shall be lawful for him to claim his discharge at the expiration of three months after he has given notice to his commanding officer of his wish to be discharged; and

(b) it shall be lawful for his commanding officer to give him three months notice of intention to discharge him.

(3) Any airman who has completed a period of thirty years of regular service may, if he so desires and with the approval of the competent air force authority, continue to serve in all respects as if his regular service was still unexpired.

18. Any airman whose term of regular service expires during a state of war, insurrection, hostilities or public emergency may be retained in the air force and his service prolonged for such further period as the competent air force authority, with the approval of the President, may direct.

Prolongation
of service.

1966 No. 6.

Discharge and Transfer to the Reserve

19. (1) Unless otherwise prescribed by this Act, if an airman becomes entitled to be discharged, he shall be discharged with all convenient speed; but until discharged he shall remain subject to air force law under this Act.

Discharge.

(2) If an airman entitled to be discharged is serving out of Nigeria and his term of service is prolonged under this Act, he shall be returned to Nigeria free of cost with all convenient

speed, and be discharged on his arrival in Nigeria, or if he consents to his discharge being delayed, he shall be discharged not later than six months from the date of his arrival in Nigeria.

(3) Except in pursuance of the sentence of a court martial, an airman shall not be discharged unless the discharge has been authorised by order made pursuant to regulations under this Part of this Act.

(4) Every airman shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed:

Provided that an airman who is discharged within six months of the date of attestation shall not be entitled to receive a certificate of discharge.

(5) An airman who is discharged in Nigeria shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost.

Transfer to
the reserve.

20. (1) Subject to the provisions of this Act, every airman whose term of service requires his transfer to the air force reserve shall, when so due, be transferred to that reserve; but until he is so transferred, he shall remain subject to air force law under this Act.

(2) When an airman due for transfer to the air force reserve is serving outside Nigeria he shall be returned to Nigeria free of cost with all convenient speed and be transferred to such reserve on his arrival in Nigeria; or, if he consents to his transfer being delayed, he shall be so transferred not later than six months from the date of his arrival in Nigeria.

(3) An airman who is transferred to the reserve in Nigeria shall be entitled to be conveyed free of cost from the place where he is transferred to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost.

(4) Any airman due for transfer to the air force reserve

may, instead of being so transferred, be discharged forthwith by a competent air force authority without assigning any reason; and if an airman is so discharged the provisions of section 19 of this Act (which relates to discharge) shall have effect instead of the foregoing provisions of this section.

21. Notwithstanding anything in this Part of this Act—
- (a) an airman shall not be entitled to be discharged or transferred to the air force reserve at a time when he has become liable, as a person subject to service law, to be proceeded against for an offence against any of the provisions of service law:

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

Provided that if the offence is not one for trial by court martial, this paragraph shall cease to apply;

- (b) an airman who is serving a sentence of imprisonment or detention awarded by a court martial under service law, or by his commanding officer, shall not be entitled to be discharged or transferred to the air force reserve during the currency of the sentence.

22. Unless there exists a state of war or public emergency or there is an insurrection or hostilities have commenced, if a warrant officer is reduced to the ranks he may thereupon claim to be discharged.

Right of warrant officer to discharge on reduction to ranks.

23. An airman may be discharged by a competent air force authority at any time during his term of engagement.

Power to discharge.

24. (1) Subject to the provisions of section 18 of this Act (which relates to prolongation of service in times of war, etc.) an airman may claim his discharge within six months after the date of his first attestation, and if a competent air force authority approves, he shall, on payment of a sum of not more than twenty naira as may be determined by such authority, be discharged accordingly.

Right of airman to purchase discharge.

- (2) Nothing in section 19 of this Act shall apply to any such discharge, and until his discharge the airman shall remain subject to air force law under this Act.

Miscellaneous and Supplementary

Rules for
reckoning
service.

25. (1) In reckoning the service of any airman for discharge or re-engagement or transfer to the air force reserve there shall be excluded therefrom—

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

(i) imprisonment,

(ii) desertion,

(iii) absence without leave exceeding twenty-eight days; and

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

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

Validity of
attestation
and
enlistment.

26. (1) Where a person has upon attestation made the prescribed declaration and thereafter receives pay as an airman—

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

(b) after the expiration of a period of three months from the date on which he made the said declaration he 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 whatsoever (not being an error or omission in his attestation paper);

and accordingly he shall be an airman until discharged under this Act.

(2) Where a person has received pay as an airman without having previously made the prescribed declaration for enlisting he may claim his discharge at any time; and if he makes such claim, the claim shall be submitted as soon as may be to the competent air force authority, who shall cause him

to be discharged with all convenient speed. Until he is discharged, he shall be deemed to be an airman.

(3) Nothing in the foregoing provisions of 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 discharge.

27. For the purpose of the Armed Forces Pensions Act, service with the air force shall be deemed to be service in the Nigerian Army; and accordingly the provisions of that Act shall apply in respect of members of the air force as they apply to members of the Army, but subject to such modifications as may be prescribed by the National Council of Ministers.

Pensions provisions. Cap. 23.

28. (1) Every officer or airman of the air force to whom the Armed Forces Pensions Act applies who in the actual discharge of his duty and without his own default has received wounds or injuries or suffered illness shall, subject to provisions of section 27 of this Act, be entitled to the like benefits under the Armed Forces Pensions Act as are accorded to members of corresponding rank in the Army.

Provisions as to death or injury. Cap. 23.

(2) The family of any officer or airman of the air force who has been killed or has died of wounds received on active service, or who has died through illness directly attributable to fatigue or exposure incidental to such service, shall be entitled to such benefits under the Armed Forces Pensions Act as may be prescribed.

(3) For the purpose of this section "family" and "active service" shall have the respective meanings as may from time to time be assigned to those expressions by regulations made under section 30 of this Act.

29. The President may by order direct that any officer or airman of the air force shall proceed to any place outside Nigeria for the purpose of undergoing instruction or training or for duty or employment.

Liability for service outside Nigeria.

30. (1) In this Part of this Act—
"competent air force authority" means any officer designated as such by the air council for the purposes of this Part of this Act.

Interpretation of, and power to make certain regulations for, this Part.

(2) The air council may, with the approval of the Minister, make such regulations as appear to the air council to be necessary or expedient for the purpose of, or in connection with, the enlistment of recruits for the air force and generally for carrying this Part of this Act into effect; and without prejudice to the generality of the foregoing such regulations may make provision—

- (a) for prescribing the form of attestation paper to be used; and
- (b) for an oath or affirmation to be administered on enlistment.

PART IV—DISCIPLINE AND TRIAL AND PUNISHMENT OF AIR FORCE OFFENCES

Application.

31. The provisions of this Part of this Act as to discipline and offences shall apply only to persons who, for the time being, are subject to air force law, unless the context otherwise requires.

Treachery, Cowardice and Offences arising out of Air Force Service

Aiding the enemy.

32. (1) Any person, who with intent to assist the enemy—
- (a) abandons or delivers up any place or post which it is his duty to defend, or induces any other person to abandon or deliver up any place or post which it is the duty of that other person to defend; or
 - (b) does any act calculated to imperil the success of operations of the armed forces of Nigeria, of any allied forces co-operating therewith or of any part of any of those forces; or
 - (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or
 - (d) furnishes the enemy with arms or ammunition or with supplies of any description; or
 - (e) harbours or protects an enemy not being a prisoner of war; or

- (f) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal; or
- (g) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air, fails to use his utmost exertions to carry such orders into effect; or
- (h) causes the capture or destruction by the enemy of aircraft belonging to the air force or any allied forces co-operating therewith,

shall, on conviction by court martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person who knowingly and without lawful excuse does any of the acts specified in paragraphs (a) to (g) of subsection (1) of this section shall, where it is not proved that he acted with intent to assist the enemy, be liable on conviction by court martial to imprisonment or any less punishment provided by this Act.

(3) Any person who negligently causes the capture or destruction by the enemy of any of Nigerian aircraft shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

33. (1) Any person who, with intent to assist the enemy, communicates with or gives intelligence to the enemy shall, on conviction by court martial, be liable to suffer death or any other punishment provided by this Act.

Communi-
cation with
the enemy.

(2) Any person who, without authority, communicates with or gives intelligence to the enemy shall, on conviction by court martial, be 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 as aforesaid, that is to say—

- (a) the number, description, armament, equipment, disposition, movement or condition of any of the armed forces of Nigeria or of any forces co-operating therewith, or of the ships or aircraft of any such co-operating force;
- (b) any operations or projected operations of any such forces, ships or aircraft as aforesaid;
- (c) any code, cipher, call sign, password or countersign;
- (d) any measures for the defence or fortification of any place on behalf of the government of the Federal Republic of Nigeria;
- (e) the number, description or location of any prisoners of war;
- (f) munitions of war.

Cowardly
behaviour.

34. (1) Any person who, when before the enemy—

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

shall be guilty of an offence against this section.

(2) Any person 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 shall be guilty of an offence against this section.

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

Offences
against
morale.

35. Any person who—

- (a) spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of any of the armed forces of Nigeria, 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.

shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

36. (1) Any person who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section.

Wilful neglect
and failure to
rejoin forces,
etc.

(2) Any person who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law who has been captured by the enemy from taking, any reasonable steps to rejoin the armed forces of Nigeria which are available to him or, as the case may be, to that other person shall be guilty of an offence against this section.

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

37. (1) Any person who, while on guard duty—

(a) sleeps at his post; or

(b) when not on duty at a post, is asleep at a time when he is not allowed to be asleep; or

(c) is drunk; or

(d) leaves his post without having been regularly relieved or otherwise absents himself from any place where it is his duty to be,

Offences by
or in relation
to sentries,
etc.

shall be guilty of an offence against this section.

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

(3) Any person who strikes or otherwise uses force against any person on guard duty, being a member of any of the armed forces of Nigeria, or of any forces co-operating therewith, or by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall on conviction by court martial, if the offence was not

committed on active service, be liable to imprisonment for a term of not more than two years, but otherwise shall be liable to such term of imprisonment or any less punishment provided by this Act.

(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 purposes of protecting any persons, 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 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 air, road, or rail, or on any inland navigation, as they apply to persons on guard duty.

Looting.

38. Any person who—
- (a) steals from, or with intent to steal searches, the person of anyone killed or wounded in the course of warlike operations; or
 - (b) steal any property which has been left exposed or unprotected in consequence of warlike operations; or
 - (c) takes otherwise than for the service of the public any vehicle, equipment or stores abandoned by the enemy,
- shall be guilty of looting and liable, on conviction by court martial, to imprisonment or any less punishment provided by this Act.

Mutiny and Insubordination

Mutiny.

39. (1) Any person who—
- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty

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

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

shall, on conviction by court martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person who, in a case not falling within subsection (1) of this section, takes part in a mutiny, or incites any person subject to service law to take part in a mutiny, whether actual or intended, shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

40. (1) Any person who, knowing that a mutiny is taking place or is intended—

Failure to suppress mutiny.

- (a) fails to use his utmost endeavours to suppress or prevent it; or

- (b) fails to report without delay that the mutiny is taking place or is intended,

shall on conviction by court martial—

- (i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any other punishment provided by this Act; or

- (ii) in any other case, be liable to imprisonment or any less punishment provided by this Act.

41. (1) Any person who—

Insubordinate behaviour.

- (a) strikes or otherwise uses violence to, or offers violence to his superior officer; or

- (b) uses threatening or insubordinate language to his superior officer,

shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service or did not involve the striking or other use of violence, or offering of violence, to 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 an officer, warrant officer or non-commissioned officer so subject of equal rank but greater seniority while exercising authority as the said person's superior.

Disobedience of particular orders.

42. Any person who—

(1) in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act; and

(2) whether wilfully or through neglect, disobey any lawful command shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

Obstruction of provost officers.

43. Any person who—

(a) obstructs; or

(b) when called on, refuses to assist,

any other person known to him to be a provost officer, or to be a person (whether subject to air force law under this Act or not) lawfully exercising authority under or on behalf of a provost officer, shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Disobedience of standing orders.

44. (1) Any person who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court martial, be liable to imprisonment for a term no exceeding two years or any less punishment provided by this Act.

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

Desertion and Absence without Leave

45. (1) any person who—

Desertion.

(a) deserts; or

(b) persuades or procures any other person subject to service law to desert,

shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act; but a person shall not be liable to be imprisoned for more than two years unless—

(i) if the offence was against paragraph (a) of this subsection, he was on active service or under orders for active service at the time when it was committed; or

(ii) if the offence was against paragraph (b) of this subsection, the person in relation to whom it was committed was on active service or under orders for active service at that time

(2) In addition to or in lieu of any punishment authorised by subsection (1) of this section, the court martial by whom an airman is convicted of desertion may direct that the whole or part of his service previous to the period as respects which he is convicted of having been a deserter shall, if he is not a reservist called out on permanent service, be forfeited.

46. Any person who—

Absence
without
leave.

(a) absents himself without leave; or

(b) persuades or procures any other person subject to service law to absent himself without leave,

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

Assisting and concealing desertion and absence without leave.

47. Any person who—

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

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

Failure to perform air force duties.

48. Any person who without reasonable excuse fails to attend for any parade or other air force duty of any description or leaves any such parade or duty as aforesaid before he is permitted to do so shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Malingering and Drunkenness

Malingering.

49. Any person who—

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

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

50. (1) Any person who is guilty of drunkenness, whether on duty or not, shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act: Drunkenness.

Provided that where the offence is committed by an airman not on active service or on duty, the sentence imposed shall not exceed imprisonment 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 is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit to the armed forces of Nigeria.

Offences relating to Property

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

shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

Offences in relation to public and service property.

52. Any person who—

- (a) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
- (b) receives or retains any such property knowing or having reason to believe the same to have been stolen or to have been fraudulently misapplied; or

Offences in relation to property of members of forces.

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

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

Miscellaneous offences relating to property.

53. Any person who—

- (a) loses any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care; or
- (b) by negligence damages any public or service property of which he has the charge or which has been entrusted to his care or which forms part of the property of which he has the charge or which has been entrusted to his care; or
- (c) by negligence causes damage to any public or service property; or
- (d) fails to take proper care of any animal or bird used in the public service which is in his charge; or
- (e) makes away (by pawning or in any other way) with any air force decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for air force purposes,

shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that it shall be a defence for any person charged under paragraph (a) of this section with losing any property that he took reasonable steps for the care and preservation thereof.

Flying, etc., Offences

54. Any person who is guilty of any act or neglect in flying or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life

Dangerous flying, etc.

or bodily injury to any person shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

55. Any person who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Inaccurate certification of aircraft, etc.

56. Any officer, airman or other person in the air force who being the pilot of a Nigerian service aircraft, flies it at a height less than the height from time to time prescribed by regulations made by the air council under this Act except while taking-off or alighting, or in such other situation as may be so prescribed shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Low flying.

57. Any officer, airman or other person in the air force who, being the pilot of a Nigerian service aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Annoyance by flying.

Offences relating to and by Persons in Custody

58. (1) Any person who, when an officer or airman or other person subject to air force law is under arrest—

Irregular arrest and confinement.

- (a) unnecessarily delays the investigation of allegations against that officer, airman or other person or, as the case may be, his trial by court martial; or
 - (b) fails to release, or effect the release of, the officer, airman or other person when it is his duty to do so,
- shall be guilty of an offence against this section.

(2) Where any person (elsewhere in this section referred to as "the prisoner") is committed to the custody of any provost officer or other officer, or any warrant officer or non-commissioned officer, and the person so committing the prisoner fails without reasonable cause to deliver—

(a) at the time of the committal, or

(b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter, to the person to whose custody the prisoner was committed, a report in writing signed by himself of the offence which the prisoner is alleged to have committed,

he shall be guilty of an offence against this section.

(3) Where a prisoner is committed to the charge of any person who is in command of a guard, and the guard commander fails without reasonable excuse to give to the officer to whom it is his duty to report, as soon as may be after he is relieved from his guard and any further duty or, if he is not sooner relieved, within twenty-four hours after the committal,—

(a) a written statement containing as far as known to him, the name of the prisoner with particulars of the alleged offence, and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence, and

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

he shall be guilty of an offence against this section.

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

Permitting
escape, and
unlawful
release, of
prisoners.

59. (1) Any person who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person who—

- (a) without proper authority releases any person who is committed to his charge; or
- (b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,

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

60. (1) Any person who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer. Resistance to arrest.

(2) Any person who strikes or otherwise uses violence to, or offers violence to any person whose duty it is to apprehend him or in whose custody he is shall be guilty of an offence against this section.

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

61. Any person who escapes from arrest, prison or other lawful custody (whether air force custody or not) shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. Escape from confinement.

Offences in relation to Courts Martial and Civil Authorities

62. (1) Any person who—

- (a) having been duly summoned or ordered to attend as a witness before a court martial, fails to comply with the summons or order; or
- (b) refuses to swear an oath or make an affirmation when duly required by a court martial to do so; or

Offence in relation to courts martial.

- (c) refuses to produce any document in his custody or under his control which a court martial has lawfully required him to produce; or
- (d) when a witness, refuses to answer any question which a court martial has lawfully required him to answer; or
- (e) wilfully insults any person, being a member of a court martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or
- (f) wilfully interrupts the proceeding of a court martial, or otherwise misbehaves before the court,

shall, on conviction by court martial, other than the court in relation to which the offence was committed, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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

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

False
evidence.

63. (1) Any person who, having been duly sworn as a witness or as an interpreter in proceedings before a court martial or before any board or person having power to administer an oath under service law, makes a statement material in those proceedings knowing it to be false or recklessly without belief in its truth shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) A person shall not be liable to be convicted of an offence against this section upon the evidence, sworn or unsworn, of one witness alone as to the truth or untruth of any statement alleged to be false.

64. Any person who at any place either within or outside Nigeria prevents or obstructs—

Obstruction of police officer arresting officer or airman.

- (a) the execution by a police officer 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) the arrest of a person subject to service law by a police officer acting in the exercise of his powers of arrest without warrant,

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

Miscellaneous Offences

65. (1) Any person who without authority discloses, by any means whatsoever, information which is or purports to be information useful to an enemy shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Injurious disclosures.

(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 as aforesaid, that is to say—

- (a) the number, description, armament, equipment, disposition, movement or condition of any of the armed forces of Nigeria or of any forces co-operating therewith, or any of Nigerian ships or aircraft or of the ships or aircraft of any such co-operating force; or
- (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid; or

- (c) any code, cipher, call sign, password or countersign; or
- (d) any measures for the defence or fortification of any place on behalf of Nigeria; or
- (e) the number, description or location of any prisoners of war; or
- (f) munitions of war.

Making of false statements on enlistment.

66. Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part II of this Act has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall, on conviction by court martial, if he is subject to air force law, be liable to imprisonment for a term not exceeding three months or any less punishment provided by this Act.

Making false documents.

67. Any person who—

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

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

68. Every officer who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court martial, be cashiered.

Scandalous
conduct of
officer.

69. If—

(a) any officer subject to air force law strikes or otherwise ill-treats any other officer subject to service law of inferior rank or less seniority or any airman subject to service law, or

Ill-treatment
of officers or
airmen of
inferior rank.

(b) any warrant officer or non-commissioned officer subject to air force law 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 an airman,

any such officer shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

70. Any person who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind, shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Disgraceful
conduct.

71. Any person who—

(a) makes an accusation against any officer or airman subject to service law, knowing it to be false or recklessly without belief in its truth; or

(b) in making a complaint where he thinks himself wronged, makes a statement affecting the character of an officer or airman subject to service law, knowing it to be false or recklessly without belief in its truth or wilfully suppresses any material fact,

False accusa-
tion.

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

72. Any person who attempts to commit an offence against any of the foregoing provisions of this Part of this Act shall, on conviction by court martial, be liable to the like punishment as for that offence:

Attempts to
commit an
offence.

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

Conduct to
prejudice of
an force
discipline.

73. Any person who is guilty of any conduct or neglect to the prejudice of good order and air force discipline shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Civil Offences

Civil
offences.

74. (1) Any officer or airman who commits a civil offence within the meaning of this Act in Nigeria or elsewhere, shall be guilty of an offence against this section.

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

(3) Subject to subsection (4) of this section, a person convicted by court martial of an offence against 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 the punishment which a civil court might award for the corresponding civil offence, if committed anywhere in Nigeria being a punishment provided by this Act or such lesser punishment which a civil court could so award, as is so provided.

(4) Where a court other than a court martial may not award a term of imprisonment for a civil offence, a person convicted of a civil offence shall be liable to suffer such punishment, less than cashiering in the case of an officer, or discharge with ignominy in the case of an airman, as is prescribed for the civil offence.

(5) Nothing in this section shall be construed to authorise the charging of a person with an offence against this section

committed in Nigeria if the corresponding civil offence is treason, murder, manslaughter, treasonable felony or rape; and for the purposes of this subsection where the corresponding civil offence is murder or manslaughter an offence against this section shall be deemed to have been committed at the place of the commission of the act or occurrence of the negligence which caused the death, irrespective of the place of the death.

Punishments

75. (1) The punishments which may be awarded to an officer by sentence of a court martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts martial, those set out in the following scale; and in relation to an officer references in this Act to punishments provided by this Act are references to those punishments.

Punishment
of officers.

(2) The said scale is—

- (a) death;
- (b) imprisonment;
- (c) cashiering;
- (d) dismissal from the armed forces of Nigeria;
- (e) a fine of a sum not exceeding the equivalent of three months' pay; 1965 No. 12.
- (f) severe reprimand or reprimand;
- (g) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part of this Act, a punishment specified in any paragraph of the said 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 by a court martial in addition to a fine.

(7) Where an officer is sentenced by a court martial to imprisonment, he shall also be sentenced to be cashiered;

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

Punishment
of warrant
officers, non-
commis-
sioned
officers and
airmen.

76. (1) The punishments which may be awarded to a warrant officer, non-commissioned officer or airman by sentence of a court martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts martial, those set out in the following scale; and in relation to a warrant officer, non-commissioned officer or airman references in this Act to punishments provided by this Act are references to those punishments.

(2) The said scale is—

- (a) death;
- (b) imprisonment;
- (c) discharge with ignominy from the armed forces of Nigeria;
- (d) in the case of a warrant officer, dismissal from the armed forces of Nigeria;
- (e) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;
- (f) a fine of a sum not exceeding the equivalent of three months' pay;
- (g) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (h) where the offence is desertion, forfeiture of service;
- (i) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part of this Act, a punishment specified in any paragraph of the said 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.

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(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 warrant officer, non-commissioned officer or airman sentenced by a court martial to imprisonment may in addition thereto be sentenced to be discharged with ignominy from the service of the armed forces of Nigeria.

(6) Where a warrant officer or non-commissioned officer is sentenced by a court martial to imprisonment he shall also be sentenced to be reduced to the ranks:

Provided that if the court martial fails to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.

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

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

77. (1) In relation to an offence committed by an airman on active service, the scale set out in subsection (2) of section 76 of this Act shall have effect as if after paragraph (d) thereof there were inserted the following paragraph—

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

and subsection (6) of the said section 76 shall apply to field punishment as it applies to imprisonment.

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

Field
punishment.

Arrest

Power to
arrest
offenders.

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

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

(3) An airman may be arrested by an officer, warrant officer or non-commissioned officer subject to service law, but no airman shall be arrested under this subsection except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer, non-commissioned officer, airman, soldier or rating subject to service law lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or airman; but no officer shall be arrested under 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.

Provisions
for avoiding
delay after
arrest.

79. (1) The allegations against any person who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be either proceedings shall be taken for punishing his offence or he shall be released from arrest.

(2) If any person taken into air force custody, remains under arrest for a longer period than eight days without a court martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer as may be prescribed and a similar report shall be made not later than every eight days thereafter or (whichever event first happens) until a court martial is assembled or the offence is dealt with summarily or the person is released from arrest.

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as

it is not reasonably practicable having regard to the exigencies of air force operations.

(3) For the purposes of subsection (1) of section 58 of this Act, (which relates to irregular arrest and confinement) the question whether there has been unnecessary delay in 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

80. Before an allegation against a person that he has committed an offence against any provision of this Part of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the commanding officer of the person so charged and the commanding officer shall investigate the charge in the prescribed manner.

Investigation of charges by commanding officers.

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

Charges to be dealt with summarily or by court martial.

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

(3) Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court martial.

(4) Notwithstanding anything in the foregoing provisions of this section, where the commanding officer has investigated a charge against an officer or warrant officer he may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the person charged, as the case may require, of the following action, that is to say,

determining whether the person charged is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

Further proceedings on charges against non-commissioned officers and airmen.

82. (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or airman.

(2) If the charge is one which might be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with, he shall arrange for the charge to be tried by court martial.

(3) If the commanding officer is satisfied that the charge is one which might be dealt with summarily he shall deal with the charge accordingly; and if he records a finding of guilty he may award one or more of the following punishments, that is to say—

(a) if the accused is a non-commissioned officer—

(i) reduction to the ranks in the case of a leading aircraftsman;

(ii) a fine of a sum not exceeding the equivalent of one month's pay;

(iii) severe reprimand or reprimand;

(iv) admonition;

(v) where the offence has occasioned any expense, loss or damage, stoppages;

(b) if the accused is an airman other than a non-commissioned officer or a boy—

(i) imprisonment for a period not exceeding twenty-eight days or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days;

(ii) a fine of a sum not exceeding the equivalent of one month's pay;

(iii) confinement to barracks for a period beginning with the day of the sentence and not exceeding twenty-eight days;

(iv) extra guards or piquets not exceeding seven in number;

1965 No. 12.

1965 No. 12.

- (v) admonition;
- (iv) where the offence has occasioned any expense, loss or damage, stoppages;
- (c) if the accused is a boy—
 - (i) a fine of a sum not exceeding the equivalent of one month's pay; 1965 No. 12.
 - (ii) confinement to barracks for a period beginning with the day of the sentence and not exceeding seven days;
 - (iii) extra guards or piquets not exceeding seven in number;
 - (iv) admonition;
 - (v) where the offence has occasioned any expense, loss or damage, stoppages.

(4) Where a commanding officer, in dealing summarily with a charge, considers it appropriate that a punishment of reduction in rank or to the ranks, in the case of a non-commissioned officer (other than a leading aircraftman), or of dismissal from the service, in the case of an airman or a boy, should be awarded (either alone or in addition to any other punishment) he shall refer the case in the prescribed manner to the commander; and the commander shall, as he thinks fit, either—

- (a) awarded one or more of—
 - (i) the punishment of reduction in rank or to the ranks or dismissal, as the case may be; and
 - (ii) the punishments which the commanding officer could have awarded; or
- (b) quash the finding of guilty.

(5) Where the commanding officer has arranged for the charge to be tried by court martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference subsection (3) of this section shall have effect as if the commanding officer were satisfied that the charge should be dealt with summarily.

Further proceedings on charges against officers and warrant officers.

83. (1) Where the commanding officer has investigated a charge against an officer or warrant officer he shall, unless he dismisses the charge, refer the case to higher authority and if the charge is so referred, the higher authority shall prescribe the procedure to be followed by court martial or otherwise, and if he thinks it a case for court martial, he shall refer the case to the appropriate superior authority as a case for court martial. That authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge, and accordingly may record a finding of guilty, or dismiss the charge, or refer the case back for trial by court martial. If the case is referred back for trial by court martial, the appropriate authority shall do all things necessary to convene a court.

(2) If the higher authority or the appropriate superior authority as the case may be, records a finding of guilty, that authority may award one or more of the following punishments, that is to say—

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- (a) a fine of a sum not exceeding the equivalent of one month's pay;
- (b) severe reprimand or reprimand;
- (c) where the offence has occasioned any expense, loss or damage stoppages of pay.

(3) Notwithstanding anything in subsection (2) of this section, where the higher authority or an appropriate superior authority, as the case may be, is satisfied as to the guilt of the person charged and would, if the case were dealt with summarily award a fine or stoppages of pay, that authority shall not record a finding until the person charged elects whether or not to be tried by court martial; and if the accused elects to be so tried, that authority shall do all things necessary to constitute a court martial and shall not record his finding.

Dismissal of charges referred to higher authority.

84. (1) Notwithstanding anything in sections 82 and 83 of this Act, where a charge—

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

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

(2) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.

85. (1) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say, the commander and any officer of the rank of air commodore or above or officer of corresponding rank under whose command the person is for the time being.

Officers who are to act as appropriate superior authorities and to whom commanding officers may delegate powers.

(2) Rules may be made by the air council with the approval of the Minister for the purpose of this section and such rules may confer on commanding officers power to delegate their functions, in such cases and to such extent as may be specified in the rules, to officers of a class so specified.

Courts Martial

(a) General Provisions

86. (1) A court martial shall subject to the provisions of this section have the power to try any person subject to air force law under this Act for any offence which, under this Act, is triable by court martial and to award for any such offence any punishment authorised by this Act for that offence.

Powers of courts martial.

(2) A court martial for the trial of an officer or a warrant officer shall consist of at least five officers.

(3) A court martial consisting of less than five officers shall not award any punishment higher in the scale of punishment than imprisonment for two years.

(4) A court martial consisting of less than five officers shall not try any offence for which the maximum or only punishment is death.

87. A court martial may be convened by the commander or by any air officer, air commodore or group captain or officer of corresponding rank commanding a body of air force

Officers having power to convene courts martial.

personnel or any officer for the time being acting in place of the commander or such air officer, air commodore or group captain or officer of corresponding rank.

Constitution
of courts
martial.

88. (1) Subject to the provisions of section 86 of this Act a court martial shall consist of the president and not less than two other officers.

(2) An officer shall not be appointed to be a member of a court martial unless he is subject to service law and has been an officer in any of the armed forces of Nigeria for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3) The president of a court martial shall be appointed by order of the convening officer and shall not be under the rank of squadron leader or corresponding rank unless in the opinion of the convening officer a squadron leader or officer of corresponding rank having suitable qualifications is not, with due regard to the public service, available; and in any event the president of a court martial shall not be under the rank of flight lieutenant or corresponding rank.

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

Supplemen-
tary
provision as
to constitu-
tion of courts
martial.

89. (1) The officer convening a court martial shall not be a member of that court martial; but if in the opinion of the convening officer it is not practicable to appoint another officer as president, he may himself be president of the court martial.

(2) An officer who, at anytime between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under service law has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of a court martial or act as judge advocate at such a court martial.

(3) When the officer convening a court martial appoints a flight lieutenant or officer of corresponding rank to be president, being of opinion that a squadron leader or officer of corresponding rank having suitable qualifications is not with due regard to the public service available, the order convening the court martial shall contain a statement of such opinion; and the statement shall be accepted as conclusive for the purposes of the court martial.

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

Place for sitting of courts martial and adjournment to other places.

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

(b) Provisions relating to Trial

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

Challenges by accused.

(2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1) of this section the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those officers.

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

(4) If objection is made 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 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.

Administra-
tion of oaths.

92. (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) Every witness before a court martial shall be examined on oath;

Provided that where any child called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he 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.

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(3) An oath required to be administered under this section shall be in the form prescribed by the Oaths Act, or if no form is so prescribed, as near thereto as may be in any particular case, and shall be administered accordingly.

Courts mar-
tial to sit in
open court.

93. (1) Subject to the provisions of this section, a court martial shall sit in open court and in the presence of the accused.

(2) Nothing in subsection (1) of this section shall affect the power of a court martial to sit in camera on the ground that it is necessary or expedient in the interests of 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 might be 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.

94. (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.

Dissolution
of courts
martial.

(2) Without prejudice to the generality of the foregoing subsection, if after the commencement of the trial—

(a) 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;

(b) 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.

(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, then if the senior member of the court is of the rank of flight lieutenant or corresponding rank or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but if the senior member is not of any such rank, the court shall be dissolved.

(4) Where a court martial is dissolved under the foregoing provisions of this section the accused may be tried by another court martial.

95. (1) Subject to the provisions of this section, every 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.

Decisions of
courts
martial.

(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 is empowered to award is death shall not have effect unless it is reached with concurrence of all members of the court; and where there is such a finding but no such concurrence, the court shall be dissolved and the accused may be tried by another court.

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

(5) In the case of an equality of votes on the sentence or on any question arising after the commencement of a trial, except the finding, the president shall have a second or casting vote.

Finding and sentence.

96. (1) Without prejudice to the provisions of section 93 of this Act (which authorises the exclusion of the public in certain circumstances) the finding of a court martial on each charge shall be announced in open court; and where the finding of such court is one of guilty the finding shall be, and be announced as being, subject to confirmation.

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

Power to convict of offence other than that charged.

97. (1) Any person 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) Any person charged before a court martial with any offence may be found guilty of attempting to commit that offence.

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

(4) Where a person is charged before a court martial under section 74 of this Act in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where a person is charged before a court martial with an offence against section 74 of this Act and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Nigeria, he might have been found guilty of another civil offence, then if the court finds that he has committed that other civil offence he may be convicted of an offence against the said section 74 in respect of the commission of the other civil offence.

(6) Any person charged before a court martial with an offence specified in the first column of the First Schedule to this Act may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

First
Schedule.

98. (1) Unless otherwise prescribed, the rules of evidence to be observed in proceedings before a court martial shall, for the avoidance of doubt, be the same as those observed in the Federal High Court; and accordingly no person shall in proceedings before a court martial be required to answer questions or produce documents which he could not be required to answer or produce in similar proceedings before such High Court.

Rules of
evidence.

(2) Notwithstanding anything in the last foregoing subsection, a statutory declaration shall, in a trial by court martial, be admissible as evidence of the fact stated therein in a case where and to the extent to which oral evidence to the like effect would be admissible in that trial; but no statutory declaration shall be admitted in evidence—

- (a) if such declaration is tendered on behalf of the prosecution unless a copy of such declaration has not less than seven days before the commencement of the trial been served on the accused; or
- (b) if such declaration is tendered on behalf of the defence, unless a copy of such declaration has not less than seven days or such lesser period as the commanding officer

- may allow before the commencement of the trial been served on the commanding officer of the accused; or
- (c) in any case, if not later than three days before the commencement of the trial or within such extended time as the court martial may in the circumstances of the case allow, notice in the prescribed form is served on the accused or, as the case may be, the commanding officer of the accused, requiring oral evidence to be given in substitution for that contained in the statutory declaration; or
- (d) in any case, if the court martial is of opinion that it is desirable in the interests of justice for oral evidence to be given.

(3) Every court martial shall take judicial notice of all matters of notoriety, including matters within the general service knowledge of the court and of all other matters of which judicial notice would be taken in a High Court.

Privilege of witnesses and others at courts martial.

99. A witness appearing before a court martial and any other person required to attend such court shall have and be entitled to the same immunities and privileges as are accorded to witnesses in a High Court.

Offences by civilians in relation to courts martial.

100. (1) Where in Nigeria any person other than a person subject to air force law under this Act—

- (a) having been duly summoned to attend as a witness before a court martial, fails to comply with the summons; or
- (b) refuses to swear on oath or make an affirmation when duly required by a court martial to do so; or
- (c) refuses to produce any document in his custody or under his control which a court martial has lawfully required him to produce; or
- (d) when a witness refuses to answer any questions which a court martial may lawfully require him to answer; or
- (e) wilfully insults any person, being a member of a court martial or a witness or any other person whose duty it is to attend on or before the court, while that person is

acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

- (f) wilfully interrupts the proceedings of a court martial or otherwise misbehaves before the court; or
- (g) does any other thing which would, if the court martial had been a court of law having power to commit for contempt, have been contempt of that court,

the president of the court martial may certify the offence of that person under his hand to a High Court, and that court may thereupon inquire into the alleged offence; and after hearing witnesses (if any) and after taking any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified.

(2) In this section "court martial" means a court martial held under service law.

(c) *Confirmation, Revision and Review of Proceedings of Courts Martial*

101. (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 findings and sentence of the court on that charge.

Confirmation of proceeding of courts martial.

(2) Until it is so confirmed, the finding of guilty or, as the case may be, the sentence of a court martial, shall not be treated as the finding or sentence of such court; but nothing in this subsection shall be construed to prohibit the keeping of the accused in custody pending confirmation or revision of the finding or sentence or the consideration of any petition under this Act.

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

Petitions against finding of sentence.

Revision of
findings of
courts
martial.

103. (1) A confirming authority may direct that a court martial shall revise any finding of guilty come to by the court in any case where it appears to him—

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

(2) Any such direction 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 any such revision the court shall not have power to receive further evidence.

(5) Where on any such 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;

Provided 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 of the court on a previous direction of a confirming authority, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision (other than the requirement of announcement in open court) as it applies to their deliberation on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court.

104. (1) Subject to the provisions of section 103 of this Act (which provides for revision of findings) and to the following provisions of this section, a confirming authority shall deal with the finding or sentence of a court martial—

Powers of confirming authority.

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

(2) Where a confirming authority is of opinion that the facts of the case as considered by the court martial would have justified a finding of guilty by that court on other grounds, the confirming authority may, instead of withholding confirmation of the finding, substitute a finding of guilty on those other grounds and direct whether the punishment should be remitted in whole or in part or be commuted under the provisions of subsection (4) of this section.

(3) Where it appears to a confirming authority that a sentence of a court martial is invalid, the confirming authority may, instead of withholding confirmation of the sentence, substitute therefor a proper sentence of any punishment which might have been awarded by the court, not exceeding or, in the opinion of the confirming authority, more severe than that awarded by the court martial.

(4) If the confirming authority confirms the sentence of a court martial the confirming authority may—

- (a) remit in whole or in part any punishment awarded by the court martial, or
- (b) commute any punishment so awarded for such other and lesser punishment or punishments as may be prescribed by this Act.

(5) A finding or sentence substituted by the confirming authority, or 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 as aforesaid, the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

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

Confirming
authorities.

105. (1) Subject to the provisions of this section, the following persons shall have power to confirm the finding and sentence of any court martial, that is to say—

- (a) the officer who convened the court martial or any officer superior in command to that officer; or
- (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer; or
- (c) any officer appointed by the air council to act as confirming authority in default of any officer under paragraphs (a) and (b) of this subsection whether for the particular case or for a specified number of cases.

(2) The following persons shall not have power to confirm the finding or sentence of a court martial, that is to say—

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

Sentence of
death to be
approved by
the President

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

107. (1) The finding or sentence of a court martial as duly confirmed by a confirming authority may be reviewed;—

Review of findings and sentences of courts martial.

(a) by a reviewing authority consisting of—

(i) the air council or (so far as the delegation extends) any officer to whom the powers of the air council as reviewing authority or any of those powers may be delegated, or

(ii) any officer superior in rank to the confirming authority; or

(b) in proper case on appeal to or after leave to appeal has been granted by a court of competent jurisdiction;

and where a case is taken on appeal, the powers of a reviewing authority under paragraph (a) of this subsection, shall cease.

(2) If after confirmation of a finding or sentence a petition under section 102 of this Act is duly presented against the finding or the sentence, or both as the case may be, the finding or sentence shall, subject to the provisions of this section, be reviewed as soon as may be after the presentation of the petition and consideration of its contents.

(3) Where a finding or sentence is reviewed under this section the reviewing authority or the court as the case may require may—

(a) to the extent that the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence; or

(b) in any case, exercise the like powers of substituting findings, or valid sentences for invalid sentences, or of remitting or commuting punishment as are conferred on a confirming authority under this Act,

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 martial duly confirmed.

(4) Any finding or sentence reviewed under this section shall be promulgated and shall have effect as from the date of such promulgation.

Reconsideration of sentences of imprisonment.

108. (1) Sentences of imprisonment passed by courts martial may be reconsidered by the commander or by such officers (not below the rank of group captain or corresponding rank) as may be from time to time appointed by the President; and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, it may be remitted accordingly.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and where, after review, (if any) a sentence remains effective it shall be reconsidered at intervals of six months; but no delay in complying with this section at any such interval shall invalidate the sentence.

Review of Summary Findings and Awards

Review of summary findings and awards.

109. (1) Where a charge has been dealt with summarily and the charge is not dismissed, the air council or any officer superior in command to the officer who dealt summarily with the charge, shall be the authority to review the finding or award at any time.

(2) Where by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings the reviewing authority is satisfied there has been a substantial injustice to the accused, that authority may quash the finding and any award on the finding.

(3) Where on a review under this section it appears to the said 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.

(4) If the confirming authority confirms the award, the confirming authority may—

- (a) remit in whole or in part any punishment awarded, or
- (b) commute any punishment so awarded for such other and lesser punishment or punishments as may be prescribed by this Act.

(5) A finding or sentence substituted by the confirming authority, or any sentence having effect after the confirming authority has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence 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 as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

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

Findings of Insanity, etc.

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

Provisions
where
accused
found insane.

(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 by reason of mental disease or natural mental infirmity not criminally responsible for the act or omission alleged as constituting the offence, the court shall find that the accused committed the act or omission but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be

provided by or under rules made under this Part of this Act until the directions of the President are known.

(3) In the case of any such finding as aforesaid the President may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the President thinks fit.

(4) A finding under subsection (1) of this section shall not have effect unless and until the finding has been confirmed by the authority having power to confirm a finding of guilty by the court martial in question and the finding has been promulgated.

(5) Where the court or the confirming authority comes to or substitutes a finding under subsection (2) of this section the confirming authority or, as the case may be, the reviewing authority shall not have power to substitute for that finding a finding of guilty; but save as aforesaid the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court martial in question) shall apply in relation to such findings as are provided for by subsection (2) of this section as those provisions apply in relation to findings of guilty.

(6) Unless otherwise provided in this Act or the context requires a different construction, references in this Act to a conviction or a finding of guilty in respect of any offence include references to findings under subsection (2) of this section in respect of the offence.

Commencement, Suspension and Duration of Sentences

Commence-
ment of
sentences.

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

Duration of
sentences of
imprison-
ment

112. (1) Where any person serving a sentence of imprisonment under this Act becomes unlawfully at large during the currency of the sentence, then, in calculating the period for

which he is liable to be imprisoned in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which he became at large unlawfully at large, he is taken into air force custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment Rules that during any time during the last-mentioned period he was—

- (a) in custody of a civil authority; or
- (b) if and in so far as Imprisonment Rules so provide, in the custody of any air force authority of any country or territory outside Nigeria as respects which arrangements have been made under section 114 of this Act,

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

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

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

(4) A person who for any period is released as mentioned in subsection (3) of this section or who is otherwise allowed, in pursuance of Imprisonment Rules, out of air force 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) of this section as being unlawfully at large.

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

Air force prisoners in civil prisons.

113. Where a person is sentenced to death or to imprisonment and is committed or transferred to a civil prison in pursuance of rules made under this Part of this Act, or of Imprisonment Rules, he 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.

Special provisions as to carrying out or serving of sentences outside Nigeria.

114. The Minister may from time to time make arrangements with the authorities of any country or territory outside Nigeria whereby sentences of death passed by courts martial may in accordance with rules made under this Part of this Act be carried out in establishments under the control of those authorities and air force sentences of imprisonment or detention may, in accordance with Imprisonment Rules, be served wholly or partly in such establishments.

Country in which sentence of imprisonment to be served.

115. (1) A person who is serving a sentence of imprisonment in Nigeria may, in so far as may be specified by or under Imprisonment Rules, be removed out of Nigeria to any place where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place.

(2) Subject to the following provisions of this section, a person sentenced under this Act, by a court martial held out of Nigeria, to imprisonment for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to Nigeria.

(3) Where a person has been sentenced under this Act, by a court martial held outside Nigeria, to imprisonment for more than twelve months, the confirming authority or reviewing authority may, notwithstanding anything in subsection (2) of this section, direct that he shall not be required to be removed to Nigeria until he has served such part of his sentence, not exceeding two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection, a confirming authority 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 may be superseded by any direction of the confirming authority or a reviewing authority which either authority might have given under subsection (3) of this section; and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or be superseded as aforesaid.

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

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

116. (1) It shall be the duty, in so far as rules made under this Part of this Act or Imprisonment Rules so provide, of the superintendent or other person in charge of a prison (not being an air force prison) to receive any person duly sent to that prison in pursuance of any such rules and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

Duties of persons in charge of prisons and others to receive prisoners.

(2) Where a person is in air force custody in pursuance of a sentence of imprisonment, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such superintendent or other person as aforesaid, or the police

officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless said person is earlier discharged or delivered over in due course of law.

Trial and Time Limit of Persons ceasing to be subject to Air Force Law

Trial, etc. of offences although offender no longer subject to Act.

117. (1) Subject to the provisions of this Act whereby a time limit for prosecution of offences may be prescribed, where an offence triable by court martial has been or is reasonably suspected of having been committed by any person who, before arrest or trial as the case may be, ceases to be subject to air force law under this Act, then in relation to that offence he shall be treated for all purposes of this Act relating to trial and punishment as if he were still a member of the air force, and may be dealt with accordingly.

(2) Where at any time before or after trial any person in custody by virtue of this section commits, or is reasonably suspected of having committed an offence which, if he were subject to air force law under this Act would be an offence under this Act triable by court martial he shall, in relation to that offence or suspected offence, be treated for the purposes of trial and punishment as if he were still subject to air force law under this Act as a member of the air force at the time of the commission or suspected commission of the offence and as thereafter continuing subject thereto.

(3) If under the provisions of this section a person is treated as continuing to be subject to air force law under this Act, for the purpose of trial and punishment, the provisions of such law shall apply to him—

- (a) if he holds any air force rank, as to a person having that rank;
- (b) if he no longer holds air force rank, as if he was of the rank he had when last actually subject to air force law under this Act:

Provided that if he is sentenced in respect of the offence in question and the sentence is confirmed, the provisions of such law shall at any time thereafter in any case have effect and apply to him as they would to an airman.

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

118. (1) No person shall be tried by court martial for any offence (other than mutiny, failure to suppress mutiny, or the offence of desertion) unless the trial is begun within three years after the commission of the offence, regard not being had to any period of time during which that person was a prisoner of war or was illegally absent:

Limitation of
time for trial
of offences
under this
Act.

Provided that—

(a) in the case of an offence against section 74 of this Act (which relates to civil offences) where proceedings for the corresponding civil offences are, by virtue of any written law, to be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section 74 in substitution of the foregoing provisions of this subsection;

(b) a person may, subject to any time limit prescribed by any written law mentioned in the foregoing paragraph (a) and to the consent of the Attorney-General of the Federation, be tried by court martial for a civil offence committed outside Nigeria notwithstanding that it was committed more than three years before the beginning of the trial.

(2) Where a person who has committed an offence of desertion (other than desertion on active service) has since the offence served as an airman of the regular air force continuously in an exemplary manner to the satisfaction of his immediate commanding officer or commanding officers, as the case may be, for not less than three years, he shall not be tried for that offence.

(3) A person shall not be triable by virtue of subsection (1) of section 117 of this Act (which relates to offences by persons deemed to continue to be subject to air force law) unless his trial is begun within three months after he ceases to be subject to air force law under this Act, or the trial is for a civil offence

committed outside Nigeria and the Attorney-General of the Federation consents to the trial; but nothing in this subsection shall apply to offences of mutiny, failure to suppress mutiny or desertion.

(4) A person shall not be arrested or kept in custody by virtue of subsection (1) of section 117 of this Act for an offence at any time after he has ceased to be triable for the offence.

*Relations between Air Force and Civil Courts and
Finality of Trials*

Powers of
civil courts.

119. (1) Subject to the provisions of this Act restricting further trial of an offence, where conviction for an offence is duly quashed under air force law, 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 air force law under this Act, for any offence.

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

Offences
already
disposed of
not to be
retried.

120. (1) Where a person subject to air force law under this Act—

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

he shall not be liable in respect of that offence to be tried by court martial or to have the case dealt with summarily by his commanding officer 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 is guilty of the offence;
 - (b) a case shall be deemed to have been dealt with summarily by a commanding officer 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;
 - (c) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;
 - (d) a person ordered under subsection (2) of section 62 of this Act, 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) Where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court martial for that offence unless the order convening the later court martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.
- (4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or an appropriate superior authority or before a court martial) shall not be barred on the ground of condonation.

Inquiries

121. (1) Subject to and in accordance with the provisions of rules made under this Part of this Act (hereinafter referred to as "Boards of Inquiry Rules"), the air council or any air force officer commanding a body of air force personnel may

Board of
inquiry.

convene a board of inquiry to investigate and report on the facts relating to any matter which may be referred to such board by the air council or any such officer as aforesaid; and a board of inquiry shall, if directed so to do, express their 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 Boards 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 flying officer or corresponding rank.

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court martial, commanding officer or appropriate superior authority other than in proceedings for an offence against section 63 of this Act or for an offence against section 74 of this Act when the corresponding civil offence is perjury.

(4) The power to make Boards of Inquiry Rules shall be exercisable by the air council.

Inquiries into
absence.

122. (1) Where a board of inquiry inquiring into the absence of an officer or airman reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one clear days, a record of the report shall in accordance with Boards of Inquiry Rules be entered in the service books.

(2) A record entered in pursuance of subsection (1) of this section shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the air council or a subsequent board of inquiry, have the like effect as a conviction by court martial for desertion.

Miscellaneous Provisions

Restitution
or compensa-
tion for theft,
etc

123. (1) The following provisions of this section shall have effect where a person has been convicted by court martial of unlawfully obtaining any property, whether by stealing it, receiving it or retaining 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 thereof.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made, that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said 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

authority, or by any reviewing authority; and in this section the expression "appearing" means appearing to the court 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 of this Act 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 V of this Act as the period within which an application for leave to appeal to the Court of Appeal against the conviction must be lodged; and

(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;

and where the operation of such an order as aforesaid is suspended under this section—

(i) it shall not take effect if the conviction is quashed on appeal;

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

(iii) such steps shall be taken for the safe custody, during the period when 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 the said Part V.

(10) Notwithstanding anything in subsection (9) of this section, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, 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.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming

through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

124. Without prejudice to the powers conferred by the President on the Judge Advocate General, the appointment of a judge advocate to act at any court martial may, failing the making thereof by or on behalf of the Judge Advocate General, be made by the convening officer.

Appointment of judge advocates.

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

Promulgation.

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

Custody of proceedings of courts martial and right of accused to a copy thereof.

(2) Subject to the provisions of this section, any person tried by a court martial shall be entitled to obtain from the commander on demand at any time within the relevant period and on payment therefor at such rate as may be prescribed a copy of the record of the proceedings of the court.

(3) Where a person tried by court martial dies within the relevant period, his personal representatives or any person who in the opinion of the commander ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the commander on demand at any time within the period of twelve months from the death and on payment therefor at the prescribed rate 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) of this section for a copy of the record of any proceedings, the Minister certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section the expression "the relevant period", in relation to any person tried by court martial, means the period of five years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the finding and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided 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 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 the respect to the confirmation or revision of the findings and sentence of the court martial.

Indemnity
for prison
officers, etc.

127. No action shall lie in respect of anything done by any person in pursuance of an air force sentence of imprisonment 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.

Redress of Complaints

Complaints
by officers.

128. (1) If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer he does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the air council.

1966 No. 6.

(2) On receiving any such complaint it shall be the duty of the air council to investigate the complaint and to grant any redress which appears to the air council to be necessary or if the nature of the complaint so requires, the air council shall report the complaint to the directions (if any) of the President.

Complaints
by airmen.

129. (1) If an airman thinks himself wronged in any matter by any officer other than his commanding officer or by any airman, he may make a complaint with respect to that matter to his commanding officer.

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(2) If an airman thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) of this section or for any other reason, he may make a complaint with respect thereto to any military, naval or air force officer under whom the complainant is for the time being serving, being an officer not below the rank of air commodore or corresponding rank.

(3) It shall be the duty of a commanding officer or other officer to have any complaint received by him under this section investigated and to take steps for redressing the matter complained of, which appear to him to be necessary.

Rules of Procedure, etc.

130. (1) The President may make rules of procedure generally for the purposes of this Part of this Act, and without prejudice to the generality of the foregoing, rules may be made—

Rules of
procedure
and other
rules.

- (a) for the convening, constitution and conduct of courts martial;
- (b) with respect to the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;
- (c) for the execution of sentences of imprisonment including the prisons, civil or otherwise, in which they are to be served, the classification, treatment, employment, discipline, control, removal and temporary release on compassionate grounds of persons serving such sentences and the appointment, powers and duties of inspectors, visitors, governors and other members of the staff and officers in charge of persons serving sentences of imprisonment;
- (d) with respect to field punishment;
- (e) for the convening, constitution and procedure of boards of inquiry, the rules of evidence to be observed and the taking of evidence by such boards, including the ad-

- ministration of oaths and affirmations to witnesses and the making of reports by such boards;
- (f) in respect of matters for which rules may be made under the foregoing provisions of this Part of this Act;
- (g) for such incidental and supplementary matters as appear requisite for the purpose of the foregoing.
- (2) Until such time as rules of procedure are made under this section, the rules of procedure prescribed for or used by the military forces of Nigeria may be used for the purposes of this Act with such adaptations, modifications and exceptions as may be necessary to give effect thereto.

Interpretation of this Part

Interpreta-
tion of Part
IV.

131. (1) In this Part of this Act—

“air force prison” means separate premises designated by the commander for persons serving air force sentences of imprisonment;

“civil prison” means a prison in Nigeria in which a person sentenced by a civil court to imprisonment can for the time being be confined;

“convening officer”, in relation to a court martial, means the officer convening that court martial and includes his successor or any person for the time being exercising his or his successor’s functions;

“prescribed” means prescribed by Rules of Procedure;

“prison” includes a civil prison and any military, naval or air force prison.

(2) References in this Part of this Act to a sentence of imprisonment or to an air force sentence of imprisonment, shall include references to a sentence of imprisonment passed by a court martial or to such a sentence awarded by a commanding officer.

(3) References in this Part of this Act to detention or to air force sentences of detention shall include references to detention passed by a court martial or to any such sentence by the offender’s commanding officer.

Air Force Act

(4) References in this Part of this Act to warrant officers do not include references to acting warrant officers.

(5) References in this Part of this Act to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

PART V—APPEALS FROM COURTS MARTIAL

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

Right of appeal.

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

133. (1) Leave to appeal against the finding of a court martial may be granted by the Court of Appeal on application made to it by the appellant in the prescribed form setting out the grounds on which leave to appeal is sought and such other particulars (if any) as may be prescribed, and lodged with the registrar of that court or if rules of court otherwise allow, lodged with any other person.

Procedure for applying for leave to appeal or lodging appeal.

(2) The application shall, in the case of any finding involving a sentence of death, be lodged within ten days of the date of promulgation of the finding, and in any other case within forty days thereof.

(3) The Court of Appeal may extend the period within which application for leave to appeal is made in respect of any finding other than one involving a sentence of death, and whether or not the said period of forty days has expired.

(4) Rules of court may provide that, in such circumstances as may be specified therein, any application for leave to appeal or the appeal itself may, when lodged with such person other than the registrar as may be specified in such rules, be treated for the purposes of this section as having been duly lodged with the registrar.

(5) In considering whether or not to grant leave to appeal, the Court of Appeal shall have regard to any opinion expressed by the judge advocate, if any, who acted at the court martial on the merits of the case as one for appeal.

(6) Where the Court of Appeal dismisses an application for leave to appeal it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismisses the application.

Determina-
tion of
appeals in
ordinary
cases.

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

(2) Notwithstanding the provisions of subsection (1) of this section, the Court of Appeal may dismiss an appeal if it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, but no substantial miscarriage of justice has occurred.

(3) If the Court of Appeal allows an appeal against a conviction under this Part of this Act it shall quash the conviction.

(4) On an appeal under this Part of this Act against sentence the Court of Appeal shall, if it is of the opinion that a different sentence should have been passed, quash the sentence passed by the court martial and pass such other sentence (whether more or less severe) in substitution therefor as it thinks ought to have been passed, being a sentence which under section 75 or 76 of this Act, could lawfully have been passed for the offence of which the appellant was convicted or, if it is not of opinion that a different sentence should have been passed, it shall dismiss the appeal.

(5) The term of any sentence imposed by the Court of Appeal under subsection (4) of this section shall, unless that court otherwise directs, begin to run from the time from which it would have begun to run if it had been imposed in the proceedings from which the appeal was brought, and any such sentence shall be deemed for the purposes of this Act to be a sentence passed by the court martial and duly confirmed.

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135. (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some charge preferred against him before the court martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court martial on the appellant was not one which could lawfully be passed by the court martial for the offence of which he was convicted on the other charge, the Court of Appeal shall pass on the appellant, in substitution for the sentence passed on him by the court martial, such sentence as it thinks proper, being a sentence which, under section 75 or 76 of this Act, could lawfully have been passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.

Powers of the
Court of
Appeal in
special cases.

(2) Where an appellant has been convicted of an offence and the court martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Court of Appeal that the court martial must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the finding of the court martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court martial, such sentence as it thinks proper, being a sentence, which, under section 75 or 76 of this Act could lawfully have been passed for that other offence but not being a sentence of greater severity.

(3) Where—

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

the Court of Appeal may, instead of allowing or dismissing the appeal substitute for the finding of the court martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court martial, such sentence as it thinks proper, being a sentence which, under section 75 or 76 of this Act, could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the Court of Appeal that, although the appellant committed the act or omission charged against him, he was insane at the time the act was done, or the omission made, so as not to be responsible according to law for his actions, the Court of Appeal may quash the sentence passed at the trial and order the appellant to be kept in custody under the provisions of section 110 of this Act, in like manner as on a special finding of insanity by the court martial by which the appellant was convicted.

(5) The term of any sentence imposed by the Court of Appeal under any of the foregoing provisions of this section shall, unless that 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 was brought, and any such sentence shall be deemed for the purposes of this Act to be a sentence imposed by the court martial and duly confirmed.

Further
appeals to
the Supreme
Court.

136. An appeal shall lie from the determination by the Court of Appeal of any appeal or other matter which it has power to determine under the provisions of this part of this Act.

Supplemen-
tary powers
of the Court
of Appeal

137. For the purpose of this Part of this Act the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, appoint any person with special expert knowledge to act as assessor in any case where it appears to

the Court of Appeal that such special knowledge is required for the proper determinations by it of the case.

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

Proceedings to be heard in absence of appellants.

139. It shall be the duty of the air council on an appeal against the decision of a court martial to arrange for the defence of the appeal.

Defence of appeals.

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

Right of appellant to present his case in writing.

141. Where a conviction by court martial involves sentence of death, the sentence shall not in any case be executed until the expiration of the period within which an appeal to the Court of Appeal against the conviction may be lodged; and if any such appeal is lodged the sentence shall not be executed pending the determination or dismissal of the appeal, or as the case may be, the appeal is abandoned.

Suspension of death sentences.

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

Persons not to be tried again where conviction quashed.

143. Imprisonment Rules may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for the purposes of this Part of this Act or any place to which the Court of Appeal or a justice thereof may order him to be taken for the purpose of any proceedings of the Court of Appeal.

Removal of prisoners for purposes of proceedings.

Furnishing,
on appeal, of
documents
relating to
trial.

144. In the case of every appeal, or application for leave to appeal, under this Part of this Act to the Supreme Court against a decision of a court martial, it shall be the duty of the commander to furnish to the registrar of the Court of Appeal, in accordance with rules of court, the proceedings of the court martial (including any proceedings with respect to the revision of the findings or sentence of the court martial in pursuance of subsection (1) of section 103 of this Act with respect to the confirmation of the finding and sentence of the court martial).

Duties of
registrar of
the Court of
Appeal in
respect of
appeals, etc.

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

(2) The registrar of the Court of Appeal shall forthwith upon receipt of an appeal or application for leave to appeal under this Part of this Act, obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things relating to the proceedings in the court martial by which the appellant or applicant was tried, which appear necessary for the proper determination of the appeal or of the application, as the case may be.

Rules of
court.

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

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

(3) Reference in this Part of this Act to "prescribed" shall be to any matter or thing prescribed by rules of court.

147. Nothing in this Part of this Act shall—

(a) affect the exercise by reviewing authorities of the powers conferred upon them by section 107 of this Act in respect of a decision of a court martial so far as regards the exercise by them of those powers at any time before the lodging with the registrar of the Court of Appeal of an appeal or an application for leave to appeal, as the case may be, against the decision; or

(b) affect the exercise by the President of the prerogative of mercy under the Constitution of the Federal Republic of Nigeria.

Saving of reviewing authorities' powers.

Cap. 62.

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

Composition of Court of Appeal.

149. Notwithstanding the provisions of section 148 of this Act, any Justice of the Court of Appeal may—

(a) give leave to appeal, or

(b) extend the time limit within which an application for leave to appeal otherwise than in the case of sentence of death may properly be lodged under section 133 of this Act, or

(c) allow an appellant to be present at any proceedings under this Part of this Act,

Exercise of certain powers of the Court of Appeal by a Justice.

but nothing in this section shall be construed to preclude the hearing and determination of any such application if a Justice refuses the application, and accordingly the appellant or applicant, as the case may be, shall be entitled, notwithstanding such refusal, to have the application dealt with before the Court of Appeal sitting with not less than three Justices under the provisions of the said section 148.

150. Subject to the provisions of this Part of this Act and to any rules of court made thereunder, the provisions of the Court of Appeal Act, relating to the hearing of appeals from

General provisions as to procedure. Cap. 75.

subordinate courts shall apply to the hearing and determination of an appeal under this Part of this Act.

PART VI—PAY, FORFEITURES AND DEDUCTIONS

Regulations
as to pay.

151. The President may make regulations governing the pay, allowances and other emoluments of the officers and airmen of the air force (hereinafter referred to as pay regulations) and other matters pertaining thereto and in particular governing the following provisions of this Part of this Act.

Forfeitures
and deduc-
tions:
general
provisions.

152. (1) No forfeiture of the pay of an officer or airman shall be imposed unless authorised by service law or some other written law and no deduction from such pay shall be made unless so authorised or authorised by pay regulations.

(2) Pay 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 pay 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 airman he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed in pay regulations.

(5) Notwithstanding that forfeiture of pay of an officer or airman for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such a minimum rate as aforesaid, but the amount received for that period may be received from him by deduction from pay.

(6) Any amount authorised to be deducted from the pay of an officer or airman may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or airman and references in this Act to the making of deductions from pay shall be construed accordingly.

153. (1) The pay of an officer or airman may be forfeited—
- (a) for any period of absence in such circumstances as to constitute offences of desertion or absence without leave (where such offences are triable by courts martial) or, if the commander so directs, of other absence without leave;
 - (b) for any period of imprisonment, detention or field punishment awarded under service law by a court martial or commanding officer, or of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court;
 - (c) where he is found guilty (whether by court martial, an appropriate superior authority or his commanding officer) of an offence under service law, for any period (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

Forfeiture
of pay for
absence from
duty.
1965 No. 12.

(2) The pay of an officer or airman may be forfeited for any period of absence by reason of his having been made a prisoner of war if the commander is satisfied—

1965 No. 12.

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

but, save as aforesaid, nothing in paragraph (a) of subsection (1) of this section shall apply to absence by reason of having been made a prisoner of war.

(3) Pay 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.

Deduction
for payment
of civil
penalties.

154. Where an officer or airman charged with an offence before a civil court (whether within or outside Nigeria) is sentenced or ordered by the court to pay any fine, penalty, damage, compensation or costs, and the whole or part thereof is met by a payment made by or on behalf of any air force authority, the amount of the payment may be deducted from his pay.

Compensa-
tion for loss
occasioned
by wrongful
act or
negligence.

155. (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 pay regulations, it appears to the air council, the commander or an officer authorised in pay regulations that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or airman (hereinafter referred to as "the person responsible").

(2) The air council, the commander or officer authorised by pay regulations, as the case may be, may order the person responsible to pay a specified sum as or towards compensation for the loss or damage, and such sum, if not otherwise paid by the person responsible, may be deducted from this pay.

(3) No order shall be made under the provision of subsection (2) of this section if, in proceedings before a court martial under service law, an appropriate superior authority or a commanding officer, the person responsible—

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

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

but save as aforesaid, the fact that such proceedings have been brought in respect of the wrongful act or negligence in question shall not preclude the operation of the said subsection (2).

156. (1) Where damage occurs to any premises in which one or more units or parts of such units 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 the provisions of pay 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 units in occupation of such premises, but that the said persons cannot be identified, any person belonging to any of such units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with pay regulations be determined to be just, and the amount may be deducted from his pay.

Deductions
for barrack
damage.

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

157. Any forfeiture or deduction imposed under the authority of this Part of this Act may be remitted by the President or as the case may be, under the authority of pay regulations.

Remission of
forfeitures
and
deductions.

PART VII—GENERAL PROVISIONS

Exemptions for Members of Air Force

158. (1) Duties or tolls for embarking from or disembarking on any pier, wharf, quay or landing place in Nigeria, or for passing over any road, ferry or bridge in Nigeria, shall not be payable in respect of—

Exemptions
from tolls,
etc.

- (a) members of the air force on duty;
- (b) vehicles in air force service, being vehicles belonging to the Federation or any Region thereof or other vehicles driven by persons (whether a member of the air force or not) in the public service of the Federation or of any Region thereof;
- (c) goods carried in such vehicles;
- (d) horses or other animals in air force service.

(2) For the purposes of this section the expression "in air force service" means employed under proper air force authority for the purposes of any unit or accompanying any body of air force personnel.

Exemption from taking in execution of property used for air force purposes.

159. No judgement, decree or order given or made against a member of the air force by any court in Nigeria shall be enforced by the levying of execution on any property of the member against whom it is given or made, being public property, used by him for air force purposes.

Exemptions as to arms and explosives.

160. The officers and airmen who are subject to this Act shall, for purposes of the air force, be exempt from the provisions of any enactment relating to the storage, possession or transmission of firearms, explosives, gunpowder or munitions of war to the same extent as members of any other of the armed forces of Nigeria are so exempt.

Deserters and Absentees without Leave

Arrest of deserters and absentees without leave.

161. (1) Any police officer may arrest without a warrant a person whom he has reasonable cause to suspect of being an officer or airman who has deserted or is absent without leave; and where no police officer is available, any other person may in like circumstances arrest without a warrant any such person.

(2) If any person authorised to issue a warrant for the arrest of a person charged for a criminal offence is satisfied by evidence on oath that there is, or there is reasonably suspected of being, within the jurisdiction an officer or airman who has deserted or is absent without leave, or is reasonably suspected of having deserted or of being absent without leave, he may issue a warrant for the arrest of such person.

(3) Any person in custody under this section shall, as soon as practicable, be brought before a magistrate's court.

(4) Notwithstanding the provisions of any other Act or rule of law, a person appearing before a magistrate's court under this section, shall not be admitted to bail.

162. (1) Where a person who is brought before a magistrate's court is alleged to be an officer or airman of the air force who has deserted or is absent without leave, the following provisions shall have effect.

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

(2) If the person so before such court admits that he is illegally absent from the air force and the court is satisfied of the truth of the admission, then unless he is in custody for some other cause the court shall, or notwithstanding that he is in custody for some other cause, the court may, forthwith either cause him to be delivered into air force custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into air force custody) or until sooner delivered into such custody. Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

(3) If such person does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused. If the court is satisfied that he is subject to air force law under this Act and the court is also of opinion that there is sufficient evidence to justify trial of such person for an offence of desertion or absence without leave then, unless he is in custody for some other cause, the court shall cause him to be delivered into air force custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if any such person is in custody for any other reason the court may if it thinks fit, and in its discretion act in accordance with this subsection.

(4) If proceedings are taken in a magistrate's court under this section, the law applicable in that court in relation to the constitution and procedure of magistrates courts holding preliminary inquires and conferring powers of adjournment and remand on such courts so acting, and as to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to such proceedings.

(5) Notwithstanding the provisions of any other Act or rule of law, a person appearing before a magistrate's court under this section, shall not be admitted to bail.

Deserters and absentees without leave surrendering to police.

163. (1) Where a person elsewhere than at a police station surrenders himself to a police officer as being illegally absent from the air force, the police officer shall forthwith bring him to a police station. The police officer in charge of any such police station shall thereupon enquire into the case, and if it appears that such person is illegally absent from the air force, he may at his discretion, cause such person to be delivered into air force custody without bringing him before a magistrate's court, or may bring him before such court.

(2) Notwithstanding the provisions of any other Act or rule of law, a person appearing before a magistrate's court under this section, shall not be admitted to bail.

Certificates of arrest or surrender.

164. (1) Where a magistrate's court under this Part of this Act deals with a person as illegally absent and that person is delivered into air force custody, there shall at the time of such delivery be handed over a certificate in the prescribed form signed by a magistrate, containing particulars as to the arrest or surrender, as the case may be, and of the proceedings before the court.

(2) Where after surrender a person is delivered into air force custody without being brought before a court under the provisions of this or any other Act, there shall be handed over a certificate in the prescribed form signed by the police officer causing the delivery into air force custody, and such certificate shall contain particulars relating to the surrender.

(3) In any proceedings in respect of the offences of desertion or absence without leave (being offences triable at court martial)—

(a) a document purporting to be a certificate under the relative subsection of this section, or under the corresponding provisions of any other Act relating to service law, and to be signed as therein prescribed, shall be evidence of the matters stated in the document;

(b) where the proceedings are against a person who has been taken into air force custody on arrest or surrender,

a certificate in the prescribed form purporting to be signed by a provost officer or any corresponding officer of a force raised under the law of any other country, or by any other 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.

165. (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's court as illegally absent from the air force and to detain him until in accordance with the directions of the court he is delivered into air force custody.

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

(2) Subsection (1) of this section 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 Air Force Matters Punishable by Civil Courts

166. Any person who falsely represents himself to any air force authority to be a deserter from the air force shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both.

Punishment for pretending to be a deserter.

167. Any person who—

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

Punishment for procuring and assisting desertion.

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a term not exceeding one year, or to both.

Punishment
for obstruct-
ing members
of the air
force in
execution of
duty.

168. Any person who wilfully obstructs or otherwise interferes with any officer or airman of the air force acting in the execution of his duty shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a term not exceeding three months, or to both.

Punishment
for aiding
malingering.

169. Any person who—

- (a) produces in an officer or an airman of the air force any sickness or disability; or
- (b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is permanently or temporarily unfit for service, with a view to enabling him to avoid air force service, whether permanently or temporarily, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a term not exceeding one year, or to both.

Unlawful
purchase,
etc., of air
force stores.

170. (1) Any person who acquires any air force stores or solicits or procures any person to dispose of any air force stores, or acts for any person in the disposing of any air force stores, shall be guilty of an offence, unless he proves either—

- (a) that he did not know, and could not reasonably be expected to know, that the chattels in question were air force stores; or
- (b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of the President or some person or authority who had, or whom he 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 who had retired or ceased to be an officer, or of an airman who had been discharged, or of the personal representatives of a person who had died.

and shall be liable on conviction to a fine not exceeding one thousand naira or to imprisonment for a term not exceeding two years, or to both.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having

committed an offence against this section, and may seize any property which he had reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person authorised to issue a warrant for the arrest of a person charged with crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a magistrate's court. For the purposes of this subsection property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

(4) In this section—

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

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

“air force stores” means chattels of any description belonging to the government of the Federation, issued for use for air force purposes or held in store for the purpose of being so issued when required, or which had so issued or belonged, or been issued or held, at some past time.

171. (1) Any person who—

(a) as a pledge or a security for a debt; or

(b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in

Illegal
dealings in
documents
relating to
pay,
pensions,
mobilisation,
etc.

respect of his or any other person's air force service shall be guilty of an offence against this section.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid or any official document issued in connection with the mobilisation or demobilisation of any of the armed forces of Nigeria or any member thereof, shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall be liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a term not exceeding six months, or to both.

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

Unauthorised
use of and
dealing in
decorations,
etc.

172. (1) Any person who—

- (a) without authority uses or wears any air force decoration or any badge, wound stripe or emblem supplied or authorised by the President or the air council; or
- (b) uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any air force decoration, or any such badge, stripe or emblem as aforesaid, as to be calculated to deceive; or
- (c) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem as is mentioned in paragraph (a) of this subsection,

shall be guilty of an offence against this section:

Provided that nothing in this subsection shall prohibit the use or wearing of ordinary regimental badges or of broaches or ornaments representing them.

(2) Any person who purchases or takes in pawn any air force decoration awarded to any member of the armed forces

of Nigeria, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence against this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of those forces.

(3) Any person guilty of an offence against this section shall be liable on conviction to a fine not exceeding one hundred naira or to imprisonment for a term not exceeding three months, or to both.

Evidence

173. (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court martial, a civil court or otherwise. Special provisions as to evidence.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person—

(a) was or was not serving at any specified time or during any specified period in any part of the armed forces of Nigeria or was discharged from any part of those forces at or before any specified time; or

(b) held or did not hold at any specified time any specified rank or appointment in any of those forces, 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 purporting to be issued by or on behalf of the commander, be evidence of the matters stated in the document.

(5) A record made in any service book or other document prescribed by regulations under this Act for the purposes of this subsection, being a record made in pursuance of service law or regulation or otherwise in pursuance of air force duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein and a copy of a record (including the signature thereto) in one of the said service books and a copy of such document, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or the original document, as the case may be, shall be evidence of the record.

(6) A document purporting to be issued by the order of the air council or the commander and to contain instructions or orders given or made by the air council or the commander shall be evidence of the giving of the instructions, or making of the orders and of the contents.

(7) A certificate purporting to be issued by or on behalf of the air council or the commander and stating—

(a) that a decoration of a description specified in or annexed to the certificate is an air force decoration; or

(b) that the badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the President or the air council,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for—

(a) any formation, unit or body of air force personnel; or

(b) any area, garrison or place; or

(c) any ship, train or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate.

174. (1) Where a person subject to air force law under this Act has been tried before a civil court (whether at the time of the trial he was so subject or not), a certificate signed by a judge or a magistrate and stating all or any of the following matters—

Proof of
outcome of
civil trial.

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

175. (1) The original proceedings of a court martial under service law purporting to be signed by the president of the court and being in the custody of the commander or any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

Evidence of
proceedings
of court
martial.

(2) A document purporting to be a copy of the original proceedings of a court martial under service law or any part thereof and to be certified by the commander or any person authorised by him, or by any other person having the lawful custody of the proceedings, to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Reductions in Rank

176. (1) A warrant officer shall not be reduced in rank except by sentence of a court martial under service law or by order of the commander.

Restrictions
on reduction
in rank of
warrant
officers and
non-commis-
sioned
officers

(2) A non-commissioned officer shall not be reduced in rank except—

- (a) by sentence of a court martial under service law; or
 (b) in the case of a non-commissioned officer other than a leading aircraftman, by award or order of the commander or of an officer by whom the commander's powers of reduction are exercisable by virtue of this Act; or
 (c) in the case of a leading aircraftman, by award or order of his commanding officer.

(3) Where it appears to the commander that a warrant officer or non-commissioned officer (other than a leading aircraftman) is unable to perform satisfactorily the functions of his rank, the commander may by order reduce the warrant officer or non-commissioned officer to such rank or to the ranks as he may specify in the order; and where it appears to a commanding officer that a leading aircraftman serving under his command is unable to perform satisfactorily the functions of his rank, the commanding officer may by order reduce the leading aircraftman to the ranks.

(4) The commander may by order direct that the powers conferred upon him by this Act to reduce corporals in rank or to the ranks may be exercised in respect of such non-commissioned officers by officers not below the rank of air commodore under whose command the corporals may be serving.

(5) Nothing in this section shall apply to any acting rank, and the holders thereof may be reduced accordingly to their substantive ranks as occasion may require.

Miscellaneous

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

Temporary
reception
into civil
custody of
persons
under escort.

(2) In this section "civil prison" has the meaning ascribed to it in section 131 of this Act.

178. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, air force award, grant, pension or allowance payable to any person in respect of his or any other person's service in the armed forces of Nigeria shall be void.

Avoidance of assignment of, or charge on, air force pay, pensions, etc.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any enactment providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

179. (1) Notwithstanding the provisions of any other Act, an officer of a rank not below that of squadron leader may, outside Nigeria, take statutory declarations from persons subject to this Act, and for the purposes of this Act.

Power of certain officers to take statutory declarations

(2) Where a document purporting to be a statutory declaration is signed by the declarant in the presence of an officer not below the rank of squadron leader, and that officer has set out therein his full name and rank together with a statement of the date and place where the declaration was made, such document shall be received by all courts and persons as sufficient evidence of entitlement without proof of the signature of the officer before whom the declaration was made, or of the facts set out therein by him.

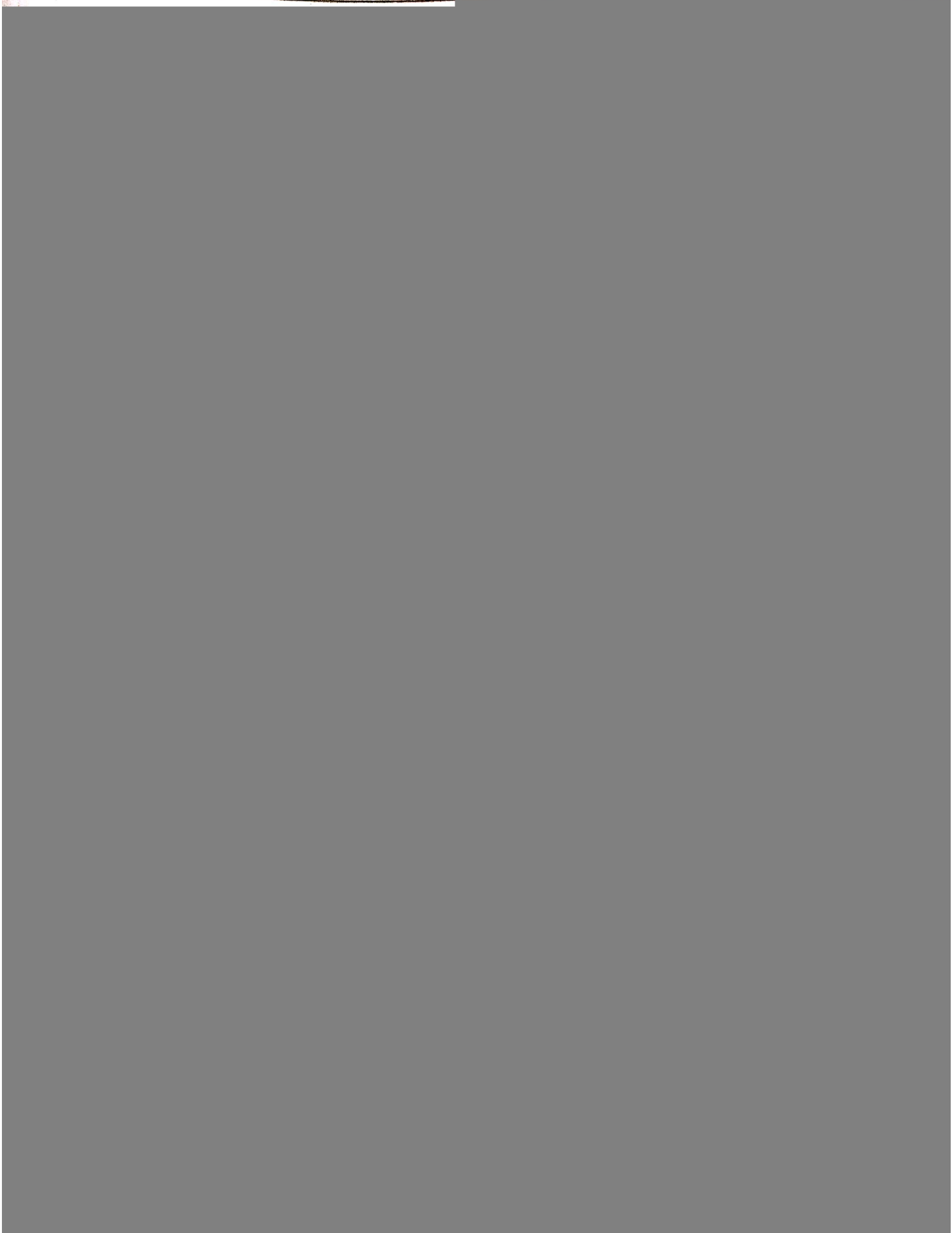
PART VIII.—AIR FORCE RESERVE

180. This Part of this Act shall apply to all persons (in this Part referred to as "reservists") who, as members of the air force reserve, are liable to be called out for training or service, as the case may be, and notwithstanding the provisions of any other Part of this Act.


Reservists.

181. (1) Every reservist shall be liable to be called out for training at such place and for such periods not exceeding

Annual training



(a) if called out on perm...



- (b) for the calling out of the air force reserve to aid the civil power and on permanent service;
- (c) for providing for the pay of reservists, whether on the reserve or called out under this Part of this Act;
- (d) for requiring reservists to report themselves from time to time, and to obtain the permission of a competent air force authority before leaving Nigeria; and
- (e) for any other matter or thing which is required by this Part of this Act to be prescribed.

PART IX.—APPLICATION OF THE ACT AND SUPPLEMENTARY PROVISIONS

Application

Application of the Act.

188. (1) The following persons shall be subject to air force law under this Act—

- (a) officers and airmen of the air force;
- (b) officers of the reserve when called out on service; and
- (c) reservists called out for training, to aid the civil power or on permanent service.

(2) This Act shall apply to the persons subject thereto under the provisions of this section, and in relation to the units raised in Nigeria or elsewhere as part of the air force.

Application of the Act to women.

189. (1) The provisions of this or any other Act in so far as they contain or refer to the word “airman” or other word importing reference to persons of the male sex only as, or as having been, members of the air force and accordingly subject to air force law under this Act, shall have effect as if for any such word there had been substituted therein words having a like meaning in other respects but importing a reference to persons of either sex.

(2) In relation to women members of the air force, this Act shall have effect subject to the following modifications—

- (a) so much of Parts I, II, III and VIII as relate to service in, and transfer to, the air force reserve shall not apply;
- (b) so much of Part IV as provides for field punishment shall not apply;

Air Force Act

- (c) References in sections 194 and 196 of this Act to a widow shall, for the avoidance of doubt, be construed as references to a widower, and the Interpretation Act, ^{Cap. 192.} shall have effect accordingly.

190. (1) Subject to the modifications in the next succeeding subsection, where any unit is on active service and a person is employed in the service of that unit or any part thereof or accompanies such unit or part thereof and is not otherwise subject to service law, the person so employed or accompanying the unit shall be subject to air force law under this Act, and Part IV of this Act shall apply to any such person as it applies to members of the air force. ^{Application of the Act to civilians.}

- (2) The said modifications are 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) where a charge is dealt with summarily, the punishment awarded shall in no case exceed ten pounds in respect of any one offence;
- (c) subsections (2) to (4) of section 78 of this Act (which relates to the power to arrest certain offenders) shall not apply, and the person so employed may be arrested by a provost officer, or by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any such officer;
- (d) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided apply to persons so employed as they apply to airmen;
- (e) for the purposes of this Act in its application to the investigation of offences, the commanding officer shall be such officer as may be appointed by an officer authorised to convene a court martial;
- (f) references in sections 117 and 118 of this Act to being, continuing, or ceasing to be subject to air force law shall be omitted, and there shall be substituted references to

being, continuing to be, or ceasing to be so subject in such circumstances that Part IV of this Act applies (other than in the reference in section 117 to the holding of air force rank in any trial and punishment of offences).

(3) Any fine awarded by virtue of this section, whether by a court martial or a commanding officer, shall be recoverable as a debt due to the Government of the Federation.

Application
of the Act to
passengers.

191. (1) The provisions of Part IV of this Act with all necessary modifications and subject to the provisions of this section, shall apply to passengers on board any aircraft of the air force.

(2) For the purposes of this section, "passengers" does not include personnel of the army, navy or air force who under this or any Act are otherwise subject to discipline as members of the armed forces of Nigeria.

Wills and Distribution of Property

Airman on
enlistment to
register the
name of
person
entitled on
his intestacy,
etc.

192. (1) Every airman on enlistment shall—

(a) declare the name of the person or persons to whom, in the event of his dying without having made a valid will, any money or personal property due or belonging to him should be paid or delivered or

(b) declare that his estate is to be administered by a customary court (by whatever name called) of some named place according to the customs of his tribe;

and the name of such person or customary court shall be recorded on his attestation paper. The record shall be verified periodically, and it shall be the duty of the airman to report any alteration in the record which he wishes made.

(2) Any officer of the air force, the Accountant-General or any public department, having in his or its charge or control any pay, accumulations of pay, gratuity or other allowance, or any personal property or money belonging to any airman dying intestate who has complied with the above conditions, may pay or deliver the same to the person whose name has been recorded, or to a customary court of the place named, by the airman in the manner prescribed.

193. (1) Any will made by an airman shall be valid for disposing of any money or personal property which is due or belonging to him at his decease if it is in writing and signed or acknowledged by him in the presence of, and in his presence attested by one witness, being an officer of the air force or any government medical officer. The will shall be deemed well made for the purpose of being admitted to probate, and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to the money or personal property thereby bequeathed.

Special provisions relating to airmen's wills.

(2) Any officer of the air force, the Accountant-General, or any public department, having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance, or any personal property or money belonging to such testator, not exceeding in the aggregate the value of two hundred naira, may pay or deliver the same to any person entitled thereto under the will, or to the person entitled to procure probate of or administration under such will, although probate or administration may not have been taken out.

(3) If the value of the money and personal property exceeds two hundred naira, the paymaster or other officer, or public department having charge or control thereof shall require probate, or administration to be taken out and thereupon pay or deliver the said money and effects to the legal representative of the deceased.

194. (1) If any airman dies without having complied with the requirements of this Part of this Act as to the disclosure of next of kin, or has not made a will valid under this or any other enactment relating to wills and for the time being in force, any officer of the air force or the Accountant-General or any public department having in his or its charge or control money or personal property of the deceased may, with the concurrence of the commander or any officer acting on behalf of the commander, pay or deliver such money or personal property to any claimant who proves to the satisfaction of the commander or such officer, relationship as the widow of the deceased or the child or other near relative of the deceased, as the case may be, according to the rules of succession of the tribe to which the deceased belonged. If there are more of such

Distribution in case of deceased airman's intestacy.

claimants than one, payment or delivery may be made in such shares and proportions as the claimants would be entitled to receive under the rules of succession prevailing among such tribe, or as nearly as may be.

(2) Where the airman was a moslem, the distribution of the estate may be carried out by the Alkali's court of the district from which the airman came, and the alkali shall be responsible to the State Administrator-General for the carrying out of the distribution in accordance with Islamic law. If there is no such court in the district, the distribution may be made as nearly as may be in accordance with such law.

Payment of
debts of
deceased
airman.

195. (1) Where probate of the will or administration with or without the will annexed of the estate of a deceased airman is not taken out, and an officer of the air force, the Accountant-General or officer of any public department before disposing of the money and personal property of the deceased has notice of any debt due by the deceased, he shall, anything to the contrary in this Part of this Act notwithstanding, apply such money and property as may remain in his authority or control, or so much thereof as may be requisite in or towards the payment of such debt, if he is satisfied—

- (a) that the claimant has proved the debt to the satisfaction of the commander or of the officer acting on behalf of the commander; and
- (b) that demand for payment of the debt is made within one year after such death; and
- (c) that the debt was incurred within three years before the death of the airman.

(2) A person claiming to be a creditor of a deceased airman shall not be entitled to obtain payment of his debt out of money in the hands of any officer of the air force, the Accountant-General or any public department, except by means of a claim on any officer responsible for an airman's pay, and proceeding thereon under and in accordance with this Act. If the estate is being administered by a customary court, any government debt shall be paid by the officer concerned before the balance of the estate is passed to the customary court, and that court shall thereafter be responsible

to see that all other debts are settled before final distribution of the estate of the deceased airman under this section.

196. Where money or personal property of a deceased airman or any part thereof is paid or delivered to any person recorded as next of kin under this Part of this Act or as beneficiary under the will of the deceased, or as his widow or child, or otherwise in accordance with this Act as a near relative, any creditor of the deceased shall have the same rights and remedies against the person to whom the money or personal property is paid or delivered as if such person had received the money or personal property as legal personal representative of the deceased.

Property of deceased airman distributed subject to rights of creditors.

197. (1) Subject to the provisions of this section, if money or personal property belonging to a deceased airman, or any part thereof, remains for one year undisposed of or unappropriated, and without any valid claim thereto having been made, it shall after conversion into cash where necessary, be paid over to the Accountant-General and be applied towards forming a fund for the benefit of airmen and ex-airmen of the air force who are in distress, or for the benefit of the air force generally, or for charitable purposes.

Deceased airman's money undisposed of applied to prescribed fund.

(2) The application under the foregoing subsection of any such money or property or part thereof towards such fund shall not be a bar to any subsequent claim by any person, established within twelve months after such application.

(3) The Minister may, after consultation with the air council, make regulations for the formation of the fund and any disbursements may be made out of such fund in accordance with the regulations, and such regulations may provide for the fund to be identical with the Nigerian Air Force Benefit Fund under this Act or for the fund to be a separate fund administered for the purposes of this section.

198. The claims of creditors shall not extend to uniforms and decorations of a deceased airman, and accordingly nothing in this Act shall prohibit the delivery to and disposal of any such uniform or decoration by the officer concerned under the provisions of this Part of this Act.

Uniforms and decorations of deceased airman.

Application of money, etc., in case of desertion.

199. Money or other property of a deserter under this Act in the charge or control of an officer of the air force, the Accountant-General or any public department shall be disposed of as nearly as may be in accordance with the provisions of section 195 of this Act or as may otherwise be prescribed under this Act, and if that section is invoked it shall have effect accordingly.

Miscellaneous

Power to make regulations generally.

200. The President may in any case not otherwise provided for under this Act make regulations generally of prescribing or providing for an act, matter or thing.

Powers exercisable in subsidiary legislation.

201. (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 of cases, and for the purposes of any such instrument, classes of cases may be defined by reference to any circumstances specified in the instrument.

(2) Any such regulations, rules, orders, or other instruments may impose conditions, require acts or things to be performed or done to the satisfaction of any person named therein whether or not such persons are members of the air force or of other of the armed forces of Nigeria, 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.

Provisions as to active service.

202. (1) In this Act the expression "on active service" means in relation to any unit, that it is engaged in operations against an enemy, and in relation to a person, that the person is serving in or with a unit which is on active service.

(2) Where it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the service of the public that a unit

should be deemed to be or continue to be on active service he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein, that unit shall be deemed to be on active service.

(3) Where it appears to the President that it is necessary for the service of the public that the period specified in a declaration under subsection (2) of this section should be prolonged or, if previously prolonged under this subsection should be further prolonged, he may declare that the said period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while any unit is deemed to be on active service by virtue of the foregoing provisions of this section, it appears to the President that there is no necessity for the unit to continue to be treated as being on active service, he may declare that as from the coming into operation of the declaration the unit shall cease to be, or to be deemed to be, on active service.

203. Any order or determination by an air force officer or air force authority may, unless otherwise prescribed by rules or regulations made under this Act, be signified under the hand of any officer authorised in that behalf; and any instrument signifying such an order or determination and purporting to be signed by an officer stated therein to be so authorised shall, unless the contrary is proved, be accepted by all courts and persons as sufficient evidence accordingly.

Execution of orders, instruments, etc.

204. (1) All fines awarded under Part IV of this Act shall be paid over to the Accountant-General and be applied towards forming a fund to be known as the Nigerian Air Force Benefit Fund for the purpose of making money available to the benefit of airmen and ex-airmen of the air force who are in distress, or for the benefit of the air force generally, or for charitable purposes.

Nigerian Air Force Benefit Fund.

(2) The Minister, after consultation with the air council may make regulations for the formation of such benefit fund, and any disbursements may be made out of such fund in accordance with the regulations.

Rights of
officers.

205. Officers of the air force shall have and enjoy the like powers, rights, immunities and privileges as are by any means conferred upon and enjoyed by commissioned officers of any other of the armed forces of Nigeria.

Application
of other
Acts.

206. (1) The President may by order apply with all necessary modifications and adaptations, in relation to the air council, the chairman of the air council and to the air force (as well officers and airmen as property and institutions) any of the enactments relating to the Army Council, the Minister of Defence and to the army (as well officers and other ranks as military property and institutions).

(2) Where any enactment is to be applied under the foregoing subsection, the expression "enactment" shall include any enactment conferring powers, rights, exemptions or abatements from taxation or immunities, or imposing duties or disabilities on such officers or airmen, or other ranks, as the case may be.

Conse-
quential
amendments.
Second
Schedule.

207. The Acts set out in the Second Schedule to this Act are hereby amended to the extent therein set forth (being amendments consequential on the establishment of an air force for Nigeria).

Interpreta-
tion.

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

"Accountant-General" means the Accountant-General of the Federation;

"air council" means the Nigerian Air Force Council established under this Act;

"air force" means the Nigerian Air Force;

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

“airman” does not include an officer but, with the modifications contained in this Act in relation to warrant officers and non-commissioned officers, includes a warrant officer and a non-commissioned officer and every person subject to air force law under this Act during the time that he is so subject;

“acting rank” means rank of any description in the air force and however called so that a commanding officer may with or without preferring a charge under this Act order the holder to revert to a lower rank or to his substantive rank as the case may be, and references to “acting warrant officer” and “acting non-commissioned officer” shall be construed accordingly;

“aircraft material” includes—

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

“allied forces” means any military, naval or air force of a country allied or associated with Nigeria and includes any Commonwealth force;

“arrest” includes open arrest;

“boy” means any member of the air force who has not attained the age of eighteen years;

“civil court” means a court of competent criminal jurisdiction but does not include any customary court by whatever name called;

- “the commander” means the officer appointed by the President to command the air force and the air force reserve under this Act;
- “commanding officer” in relation to any person means the officer commanding the unit to which the person belongs or is attached;
- “corresponding rank” in relation to any rank of any other of the Nigerian forces or an allied force means such rank in that force as may be declared under this Act to correspond with a rank under this Act;
- “court martial” save where expressed to be under service law, means a court martial under this Act;
- “customary court” includes an Alkalis’ court, and any other court at any time before or after the coming into operation of this Act, known as a native court;
- “damage” and cognate expressions include destruction;
- “date of attestation” in relation to any person means the date on which he is attested as having enlisted in the air force;
- “decoration” includes any medal, medal ribbon, clasp and good conduct badge;
- “enemy” means persons engaged in armed operation against Nigeria, and includes armed mutineers, armed rebels, armed rioters and pirates;
- “imprisonment rules” means rules regulating imprisonment made by the President under this Act;
- “mutiny” means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—
- (a) to overthrow or resist lawful authority in any of the armed forces of Nigeria or any forces co-operating therewith or in any part of any of the said forces, or
 - (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against the enemy, or
 - (c) to impede the performance of any duty or service in any of the armed forces of Nigeria or in any

forces co-operating therewith or in any part of any of those forces;

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

“regular service” means service in the air force under this Act other than service in the air force reserve;

“service law” means this Act and any Act relating to the army or navy of Nigeria, and includes as occasion may require, the military, naval or air force law of any allied force;

“ship” includes any description of vessel;

“steals” has the meaning for the time being assigned to it in the Criminal Code;

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

“unit” means a flight, squadron, wing, group or other formation of the air force presently declared to be a unit by the air council.

(2) Any person who—

(a) leaves any of the armed forces of Nigeria or, when it is his duty to do so, fails to join or rejoin any of those forces with (in either case) the intention, subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty; or

(b) being an officer, enlists in or enters any other of the armed forces of Nigeria without having resigned his commission, or being an airman enlists or enters in any other of the armed forces of Nigeria without having been discharged from his previous enlistment; or

(c) absents himself without leave with intent to avoid serving at any place out of Nigeria or to avoid service or any particular service when before the enemy,

shall be a deserter under this Act and references to desertion shall be construed accordingly.

(3) Where by this Act it is provided that any person subject to air force law under this Act shall be liable on conviction by court martial to imprisonment, and no term or maximum term is specified the person so convicted shall be liable to imprisonment for any term.

Short title. **209.** (1) This Act may be cited as the Air Force Act.

SCHEDULES

FIRST SCHEDULE

Section 97.

Alternative offences of which accused may be convicted by court martial

<i>Offence charged</i>	<i>Alternative offences</i>
1. Any offence against subsection (1) of section 32.	1. Any offence against subsection (2) of section 32.
2. Any offence against subsection (1) of section 33.	2. Any offence against subsection (2) of section 33.
3. Communicating with or giving intelligence to the enemy either with intent to assist the enemy or without authority.	3. Disclosing information without authority.
4. Any offence against subsection (1) of section 39.	4. Any offence against subsection (2) of section 39.
5. Striking his superior officer.	5. (a) Using violence to his superior officer otherwise than by striking him. (b) Offering violence to his superior officer.
6. Using violence to his superior officer otherwise than by striking him.	6. Offering violence to his superior officer.
7. Using threatening language to his superior officer.	7. Using insubordinate language to his superior officer.
8. Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally.	8. Disobeying a lawful command.

*Air Force Act*FIRST SCHEDULE—*continued*

<i>Offence charged</i>	<i>Alternative offences</i>
9. Desertion.	9. Absence without leave.
10. Attempting to desert.	10. Absence without leave.
11. Stealing any property.	11. Fraudulently misapplying the property.
12. Any offence against any section involving wilfulness.	12. The corresponding offence involving negligence.
13. Any offence against subsection (1) of section 59.	13. Any offence against subsection (2) of section 59.
14. Any offence against section 60 involving striking.	14. (a) The corresponding offence involving the use of violence other than striking. (b) The corresponding offence involving the offering of violence.
15. Any offence against section 60 involving the use of violence other than striking.	15. The corresponding offence involving the offering of violence.

SECOND SCHEDULE

Section 207.

Consequential Amendments

<i>Number</i>	<i>Short Title</i>	<i>Extent of Amendment</i>
No. 26 of 1960	The Royal Nigerian Army Act 1960	In section 2 in subsection (1) by repealing in the definition of "service law" the figures "1955" and substituting the figures "1964". In section 159 in subsection (1) by deleting the word "military".
1960 No. 9	The Royal Nigerian Navy Act 1960	In section 39 in subsection (1) by substituting the word "armed" for the word "military"; and in subsection (2) by substituting the word "armed" for the word "military" where it first occurs. In section 40 in subsection (1) by repealing the words "under the Royal Nigerian Army Act 1960" (as substituted by the Act of that title) and substituting the words "or to air force law".

SECOND SCHEDULE—*continued**Consequential Amendments*

<i>Number</i>	<i>Short Title</i>	<i>Extent of Amendment</i>
		In section 42 in subsection (1) by repealing the words "the military" and substituting the words "any other of the armed".
		In the First Schedule in Part II in paragraph (2) by repealing in sub-paragraph (viii) the words "Royal Nigerian Army" (as substituted by the Royal Nigerian Army Act 1960) and substituting the words "army and air force of Nigeria".