

ARRANGEMENT OF SECTIONS—continued

SECTION	
212.	Application of other Acts.
213.	Repeal and transitional provisions.
214.	Savings.
215.	Interpretation.
216.	Short title.

FIRST SCHEDULE

OFFICERS WHO CAN TRY RATINGS SUMMARILY AND POWERS, ETC

SECOND SCHEDULE

ALTERNATIVE OFFENCES ON CONVICTION BY COURT MARTIAL

THIRD SCHEDULE

TRANSITIONAL PROVISIONS

FOURTH SCHEDULE

ENACTMENTS REPEALED

CHAPTER 288

NAVY ACT

L.N.
99 of 1964

An Act to make other provision for the establishment, government and discipline of the Nigerian Navy and of the naval reserve and to provide for other matters connected therewith or ancillary thereto.

Commence-
ment.

[7th May, 1964]

PART I.—ESTABLISHMENT OF THE NAVY

Establish-
ment, etc.,
of the navy.

1. (1) There shall be established and maintained in and for the Federal Republic of Nigeria a naval force to be known as the Nigerian Navy (hereafter in this Act referred to as "the navy") which shall consist of such establishments as the President may, acting in accordance with the advice of the National Council of Ministers, think fit, and such numbers

think fit, and such numbers of ships and other vessels, officers, non-commissioned officers and men as the navy board as constituted under this Act may, from time to time, prescribe.

(2) The navy shall be charged with—

- (a) the naval defence of Nigeria;
- (b) the duty of assisting in the enforcement of the customs laws of Nigeria;
- (c) the making of hydrographic surveys;
- (d) training in naval duties; and
- (e) such other duties as the National Council of Ministers may from time to time direct.

(3) It is hereby declared that the authority created by this Act to establish and maintain a naval 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 195 of this Act and to such modifications and adaptations as the President may by order specify from time to time.

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

2. There shall be established and maintained a navy reserve consisting of such numbers of officers and ratings who are transferred to it on completion of their period of service in the navy and of such others as may be prescribed.

Establishment of naval reserve.

PART II.—ESTABLISHMENT OF NAVY BOARD

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

Establishment of Navy Board.

(2) Notwithstanding the provisions of the preceding subsection, the Board shall have no responsibility for the operational use of the navy and responsibility for any such use shall be vested in the commander subject to the overall directions of the National Council of Ministers:

Provided that the Minister may give to the commander such directions with respect to the operational use of the navy in Nigeria for the purpose of maintaining and securing public safety and public order, notwithstanding that the directions of the National Council of Ministers have not been obtained, and the commander shall comply with those directions accordingly.

Membership
of the Navy
Board.
1984 No. 11.

4. (1) The members of the Board shall be—

- (a) the President who shall be the Chairman of the Board;
- (b) the Chief of General Staff;
- (c) the Minister charged with responsibility for defence; and
- (d) the Chief of the Naval Staff.

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

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

Powers of
Board.

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

- (a) the organisation of the work of the Board 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 Board of any of the powers or duties of the Board;
- (c) the consultation by the Board with persons other than members thereof; and
- (d) the procedure to be followed by the Board in conducting its business.

PART III.—ADMINISTRATION AND GOVERNMENT

Command

6. (1) The President on the advice of the Minister may appoint such officer (in this Act referred to as "the commander") as he thinks fit, in whom the command of the navy and the naval reserve shall be vested and, subject to the terms of his appointment and to such directions in relation to the operational use of the navy as may be given under subsection (2) of section 3 of this Act, the commander shall have the command, direction and general superintendence of the navy and the naval reserve.

Command of the navy.

(2) The Minister before tendering advice shall consult with the Board, but the question as to whether any consultation was held or what happened in the course of a consultation, shall not be enquired into by any court.

7. In so far as powers of command depend on rank, a member of any army or air force unit who is acting together with any naval unit (either with or without his unit or any part of it) shall have the like powers as a member of the navy of corresponding rank; and for the purposes of sections 44, 45 and 85 of this Act any such member of any army or air force unit shall be treated as if he were a member of the navy of corresponding rank.

Powers of command of members of co-operating army or air force units.

8. (1) Any member of the navy may be attached temporarily to the army or the air force by order of the competent naval authority.

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

(2) Regulations made by the appropriate service authorities may prescribe circumstances in which officers, chief petty officers, petty officers and men of the navy shall be deemed to be attached to the army or the air force, 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 Board; and

(b) in relation to attachment to the air force, the Nigerian Air Council and the Board.

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

Attachment
of personnel
and powers
of command.

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 Board—

- (a) may attach temporarily to the navy 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 navy 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 navy as an officer or rating 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 navy of relative rank; and accordingly he shall be so treated and have like powers of command and punishment over members of the navy.

(3) When the navy 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 navy the like powers of command as if he were a member of the navy of relative rank; and
- (b) if the forces are acting in combination, any officer of the foreign force appointed by the Board, or in accordance with regulations made by the Board, to command the combined force, or any part thereof, shall have the combined force, or any part thereof, shall have over members of the navy 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 navy 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 Board declared to be so serving or so acting; and the relative rank of members of the navy and of the foreign force shall be such as may be prescribed by regulations made by the Board.

10. The President 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 command, its naval staff and officers, chief petty officers, petty officers and ratings.

Regulations
as to
command.

Officers

11. (1) No person shall be appointed to a commission in the navy unless he has been recommended by a Board of officers set up by the Board.

Appointment
of officers.

(2) A person recommended for appointment to a commission in the navy 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 14 of this Act and signed by the President.

(4) The appointment of a person to a commission in the navy 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. An officer who has retired or was permitted to resign may be recalled in an emergency in accordance with regulations made under this Act, and on such recall, shall be liable to serve until he is released or discharged.

Recall of
officers who
have retired,
etc.

Regulations
as to
officers.

14. 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 navy as seem to him necessary.

Enlistment and Terms and Conditions of Service

Recruiting
officers.

15. Any person authorised in that behalf by regulations made under this Part of this Act may enlist recruits in the navy.

Enlistment.

16. (1) A person offering to enlist in the navy 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 navy unless satisfied by that person that he has given such a notice, understands it and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the apparent age of 18 years unless consent to the enlistment has been given in writing by his parents or guardian or, where the parents or guardian are dead or unknown, by some persons approved by the secretary of the Local Government of the State or of the Administrative Area of the Federal Capital Territory, Abuja, as the case may be, in which such person applying for enlistment resides.

Terms of
enlistment.

17. (1) The term for which a person enlisting in the navy 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 18 years the term of enlistment shall, as may be prescribed, not exceed 12 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 naval reserve.

(3) Where the person enlisting has not apparently attained the age of 18 years the term shall be a term ending with the expiration of such period not exceeding 12 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 naval reserve.

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

Re-
engagement
and conti-
nuance in
service.

Provided that—

- (a) at the expiration of 12 years of continuous regular service from the date of his original attestation or the date when he apparently attained the age of 18 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 18 years of regular service from the date of the rating's original attestation or the date upon which he apparently attained the age of 18 years, whichever is the later.

(2) Any rating who has completed a period of eighteen years of regular service may, if he so desires and with the approval of the competent naval authority, continue to serve to complete twenty-two 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 rating who has completed a period of twenty-two years of regular service may, if he so desires and with the approval of the competent naval authority, continue to serve in all respects as if his term of regular service was still unexpired.

Prolongation
of service.

19. Any rating whose term of regular service expires during a state of war, insurrection, hostilities or public emergency may be retained in the navy and his service prolonged for such further period as the competent naval authority, with the approval of the Minister, may direct.

Discharge and Transfer to the Reserve

Discharge.

20. (1) Unless otherwise prescribed by this Act, if a rating becomes entitled to be discharged, he shall be discharged with all convenient speed; but until discharged he shall remain subject to naval law under this Act.

(2) If a rating 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, within six months from his arrival.

(3) Except in pursuance of the sentence of a court martial under service law, a rating shall not be discharged unless his discharge has been authorised by order of the competent naval authority in accordance with regulations made under this Part of this Act.

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

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

(5) A rating 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.

21. (1) Subject to the provisions of this Act, every rating whose term of service requires his transfer to the naval reserve shall, when so due, be transferred to that reserve; but until he is so transferred, he shall remain subject to this Act.

(2) When a rating due for transfer to the naval 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) A rating 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 rating due for transfer to the naval reserve may, instead of being so transferred, be discharged forthwith by a competent naval authority without assigning any reason; and if a rating is so discharged the provisions of section 20 of this Act shall have effect instead of the foregoing provisions of this section.

22. Notwithstanding anything in this Part of this Act—

(a) a rating shall not be entitled to be discharged or transferred to the naval 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 by way of trial by court martial;

(b) a rating 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 naval reserve during the currency of the sentence.

23. Unless there exists a state of war or public emergency or there is an insurrection or hostilities have commenced, if a chief petty officer is reduced to ordinary rating he may thereupon claim to be discharged.

24. A rating may be discharged by a competent naval authority at any time during his term of engagement.

Postpone-
ment of
discharge or
transfer
pending
proceedings
for offences,
etc.

Right of
chief petty
officer to
discharge on
reduction to
ordinary
rating.

Power to
discharge.

Right of rating to purchase discharge.

25. (1) Subject to the provisions of section 19 of this Act, a rating may claim his discharge within six months after the date of his first attestation, and if a competent naval authority approves, he shall, on payment of a sum of not more than ₦20 as may be determined by such authority, be discharged accordingly.

(2) Nothing in section 20 of this Act shall apply to any such discharge, and until his discharge the rating shall remain subject to naval law under this Act.

Miscellaneous and Supplementary

Rules for reckoning service.

26. (1) In reckoning the service of any rating for discharge or re-engagement or transfer to the naval 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 28 days; and

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

(2) Regulations under this Part of this Act may make provisions 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.

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

(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 other ground whatsoever (not being an error or omission in his attestation paper);

and accordingly he shall be a rating until his discharge under this Act.

(2) Where a person has received pay as a rating 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 naval authority who shall cause him to be discharged with all convenient speed; and until he is discharged, he shall be deemed to be a rating.

(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.

28. For the purpose of the Armed Forces Pensions Act, service with the navy shall be pensionable service within the meaning of that Act.

Pensions provisions.
Cap. 23.

29. (1) Every officer or rating of the navy to whom the 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 the provisions of section 28 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 rating of the navy 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 these expressions by regulations made under section 31 of this Act.

Liability for service outside Nigeria.

30. The President may by order direct that any officer or rating of the navy shall proceed to any place outside Nigeria for the purpose of undergoing instruction or training or for duty or employment.

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

31. (1) In this Part of this Act, "competent naval authority" means any officer designated as such by the Board for the purposes of this Part of this Act.

(2) The Board with the approval of the Minister may make such regulations as appear to the Board to be necessary or expedient for the purpose of, or in connection with, the enlistment of recruits for the navy 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 NAVAL OFFENCES

Application.

32. 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 this Act, unless the context otherwise requires.

Misconduct in Action and Assistance to the Enemy

Misconduct in action by persons in command.

33. Any officer or other person who, being in command of any ship, vessel, aircraft or shore establishment of the navy—

- (a) fails to use his utmost exertion to bring into action any such ship, vessel or aircraft which it is his duty to bring into action;
- (b) surrenders any such ship, vessel or aircraft to the enemy when it is capable of being successfully defended or destroyed;

- (c) fails to pursue any enemy whom it is his duty to pursue, or to assist to the utmost of his ability any friend whom it is his duty to assist;
- (d) in the course of any action by or against the enemy, improperly withdraws from the action or from his station, or fails in his own person and according to his rank to encourage the persons under his command to fight courageously; or
- (e) surrenders any such naval establishment, or any part of such establishment to the enemy when it is capable of being successfully defended or when it is his duty to cause it to be destroyed,

shall, if the offence is committed with intent to assist the enemy, be liable to death or any less punishment authorised by this Act, and in any other case shall be liable to imprisonment for any term or to any less punishment provided by this Act.

34. Any person, who not being in command of any ship, vessel, aircraft or shore establishment of the navy, fails when ordered to prepare for action by or against the enemy, or during any such action, to use his utmost exertions to carry the lawful orders of his superior officers into execution shall, if the offence is committed with intent to assist the enemy, be liable to death or any less punishment authorised by this Act, and in any other case shall be liable to imprisonment or to any less punishment provided by this Act.

Misconduct
in action by
other officers
and ratings.

35. Any person who wilfully delays or discourages, upon any pretext whatsoever, any action or service which has been commanded on the part of any of the armed forces of Nigeria, or of any forces co-operating therewith shall, if the offence is committed with intent to assist the enemy, be liable to death or any less punishment authorised by this Act, and in any other case, shall be liable to imprisonment for any term or to any less punishment provided by this Act.

Obstruction
of
operations.

36. Any person who—

- (a) communicates with or gives intelligence to the enemy;
- (b) fails to make known to the proper authorities any information received by him from the enemy;

Correspond-
ing with,
supplying or
serving with
the enemy.

(c) furnishes the enemy with supplies of any description; or
 (d) 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,
 shall, if the offence is committed with intent to assist the enemy, be liable to death or any less punishment authorised by this Act, and in any other case, shall be liable to dismissal with disgrace from the armed forces of Nigeria or to any less punishment provided by this Act.

Wilful neglect and failure to rejoin forces, etc.

37. (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.

(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 to any less punishment provided by this Act.

Offences against morale.

38. Any person who—

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

39. (1) Any person who, being in the presence or vicinity of the enemy or under orders to be prepared for action by or against the enemy, abandons his post improperly or sleeps upon his watch shall, on conviction by court martial, be liable to imprisonment for any term or to any less punishment authorised by this Act. Sleeping on watch or abandoning post.

(2) Any person who, not being in the presence or vicinity of the enemy or under such orders as aforesaid, abandons his post improperly or sleeps upon his watch shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or to any less punishment provided by this Act.

40. Any person who neglects to perform or negligently performs any duty imposed on him shall be liable to dismissal with disgrace from the armed forces of Nigeria or to any less punishment provided by this Act. Neglect of duty.

Mutiny

41. In 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— Definition of mutiny.

- (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;
- (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 the said forces.

42. (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 opera-

Offences of mutiny.

tions 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 takes part in any other form of mutiny or incites some other person subject to service law to take part therein whether such form of mutiny is actual or intended, shall be liable to imprisonment for any term or to any less punishment provided by this Act.

Failure to suppress mutiny.

43. Any person who, knowing that a mutiny is take place or is intended—

(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, if the offence is committed with intent to assist the enemy, be liable, on conviction by court martial, to death or any less punishment authorised by this Act, and in any other case shall be liable to imprisonment for any term or to any less punishment provided by this Act.

Insubordination and Similar Offences

Striking superior officer.

44. Any person who strikes or otherwise uses violence to, or offers violence to, his superior officer, whether or not that officer is exercising authority as such, shall, on conviction by court martial, be liable to imprisonment for any term or to any less punishment provided by this Act.

Disobedience or threatening superior officer.

45. Any person who—

(a) wilfully disobeys any lawful command of his superior officer (by whatever means communicated to him); or

(b) uses threatening or insulting language to, or behaves with contempt to his superior officer,

shall, on conviction by court martial, be liable to imprisonment or to any less punishment provided by this Act; but 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, a sentence of a term of imprisonment shall not exceed two years.

46. Any person who—

- (a) fights or quarrels with any other person, whether subject to this Act or not; or
- (b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance,

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

Fighting and quarrelling.

47. Any person who—

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

any person known to him to be a provost officer, or to be a person (whether subject to 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 to any less punishment provided by this Act.

Obstruction of provost officers.

48. (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 not exceeding two years or to any less punishment provided by this Act.

Disobedience to standing orders.

(2) This section applies to naval regulations, standing orders or memoranda, captain's or departmental orders or routine orders of a continuing nature.

Desertion and Absence without Leave

49. (1) Any person who—

- (a) deserts; or

Desertion.

(b) persuades or procures any 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 a rating 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.

(3) For the purposes of this Act, a person deserts 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 a rating, enlists in 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 outside Nigeria or to avoid service or any particular service when before the enemy,

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

Absence
without
leave, etc.

50. Any person who—

(a) absents himself without leave; or

(b) persuades or procures any 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 to any less punishment provided by this Act.

51. Any person who—

(a) knowingly assists any person subject to service law to desert or absent himself without leave; or

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

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

Assisting and concealing desertion and absence without leave.

Navigation and Flying Offences

52. Any person who, either wilfully or by negligence—

(a) causes or allows to be lost, stranded or hazarded any ship or vessel in the Nigerian service; or

(b) causes or allows to be lost or hazarded any aircraft in the Nigerian service,

shall, on conviction by court martial be liable, if he acts wilfully or with wilful neglect, to imprisonment or to any less punishment provided by this Act, and in any other case shall be liable to imprisonment for a term not exceeding two years or to any less punishment provided by this Act.

Loss or hazarding ship or aircraft.

53. 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 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.

Dangerous flying, etc.

Low flying.

54. Any person 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 Board 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 to any less punishment provided by this Act.

Annoyance by flying.

55. Any person 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 to any less punishment provided by this Act.

Prize Offences

Prize offences by commanding officers.

56. Any person who, being in command of a Nigerian service ship, vessel or aircraft—

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

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

Other prize offences.

57. Any person who—

- (a) strikes or otherwise ill-treats any person who is on board a ship, vessel or aircraft when taken as prize, or unlawfully takes from any such person anything in his possession;
- (b) removes out of any ship, vessel or aircraft taken as prize (otherwise than for safe keeping or for the necessary use and service of any of the armed forces of Nigeria)

any goods not previously adjudged by a High Court in Nigeria to be lawful prize; or

- (c) breaks bulk on board any ship, vessel or aircraft taken as prize or detained in exercise of any belligerent right or under any enactment, with intent to embezzle or fraudulently misapply anything therein,

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

58. 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) steals 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 to any less punishment provided by this Act.

Looting.

Other Offences in respect of Ships and Aircraft

59. Any person who signs a certificate relating to any matter affecting the seagoing or fighting efficiency of any of the Nigerian service ships or vessels or any certificate relating to any of the Nigerian service aircraft or 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 to any less punishment provided by this Act.

Inaccurate certification of ships, etc.

60. Any person who, being in command of any of the Nigerian service ships, vessels or aircraft, without lawful authority—

Improper carriage of goods.

- (a) receives or permits to be received on board the ship, vessel or aircraft any goods or merchandise intended for disposal or delivery by way of trade or business

(whether on his own account or on account of any other person), not being merchandise received in the course of salvage; or

- (b) agrees to carry any goods or merchandise on board the ship, vessel or aircraft in consideration of the payment of freight, or demands or receives any payment in respect of such carriage,

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

Malingering and Drunkenness

Malingering.

61. 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, or 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 to any less punishment provided by this Act.

Drunkenness.

62. (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 to any less punishment provided by this Act:

Provided that where the offence is committed by a rating 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

63. 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 to any less punishment provided by this Act.

Misapplication and destruction of public and service property.

64. Any person who—

- (a) loses or destroys 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 wastefully expends any such properties; or
- (b) by negligence destroys or 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 destroys or 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

Loss and waste of public and service property.
1970 No. 8

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

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

1970 No. 8

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

Offences in relation to property of members of forces.

65. 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
- (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 to any less punishment provided by this Act.

Offences relating to and by Persons in Custody

Irregular arrest and confinement.

66. (1) Any person who, when an officer or rating or other person subject to naval law is under arrest—

- (a) unnecessarily delays the investigation of allegations against that officer, rating or other person or, as the case may be, his trial; or
 - (b) fails to release, or effect the release of, that officer, rating 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 petty 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 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 so far as known to him, the name of the prisoner with particulars of the alleged offences, 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 to any less punishment provided by this Act.

67. (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 to any less punishment provided by this Act.

Permitting escape and unlawful release of prisoners.

(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 to any less punishment provided by this Act.

Resisting
arrest.

68. (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.

(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 to any less punishment provided by this Act.

Escape from
confinement.

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

*Offences in relation to Courts Martial
and Civil Authorities*

Offences in
relation to
courts
martial.

70. (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
- (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 proceedings 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 to 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.

71. (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 to any less punishment provided by this Act.

False evidence.

(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.

Obstruction
of police
officer
arresting
officer or
rating.

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

- (a) the execution by a police officer of a warrant for the arrest of a person subject to service law 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 to any less punishment provided by this Act.

Miscellaneous Offences

Injurious
disclosures.

73. (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 to any less punishment provided by this Act.

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

74. Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part III 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 naval law, be liable to imprisonment for a term not exceeding three months or to any less punishment provided by this Act.

Making of false statements on enlistment.

75. Every officer who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court martial, be dismissed with disgrace from the armed forces of Nigeria.

Scandalous conduct of officer.

76. If—

- (a) any officer strikes or otherwise ill-treats any officer subject to service law of inferior rank or less seniority or any rating subject to service law; or
- (b) any petty officer strikes or otherwise ill-treats any person subject to service law, being a rating of inferior rank or less seniority,

Ill-treatment of officers or ratings of inferior rank.

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

77. 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 to any less punishment provided by this Act.

Disgraceful conduct.

78. Any person who—

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

False accusation.

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

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

Conduct to
prejudice of
naval
discipline.

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

Attempts and Aiding and Abetting of Naval Offences

Attempts to
commit
naval
offences.

80. 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:

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

Aiding and
abetting
naval
offences.

81. Any person who aids, abets, counsels or procures the commission by another person of an offence against any of the provisions of this Act shall be guilty of the like offence and shall be liable to be charged, tried and punished as a principal offender.

Civil Offences

Civil
offences.

82. (1) Any person 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 the foregoing subsection, the expression "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 dismissal with disgrace in the case of an officer, or discharge with ignominy in the case of a rating, 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

83. (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) dismissal with disgrace from the armed forces of Nigeria;
- (d) dismissal from the armed forces of Nigeria;
- (e) forfeiture of seniority;
- (f) a fine of a sum not exceeding the equivalent of ninety days' pay;
- (g) severe reprimand or reprimand;
- (h) stoppages, where the offences has occasioned any expense, loss or damage.

(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 punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale.

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

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

(6) A severe reprimand or reprimand may be awarded by a court martial in addition to a fine.

(7) Where an officer is sentenced by a court martial to imprisonment, he shall also be sentenced to be dismissed with disgrace from the armed forces of Nigeria:

Provided that if the court martial fails to sentence him to be so dismissed, the sentence of imprisonment shall not be invalid, but shall be deemed to include a sentence of dismissal with disgrace.

Punishment
of ratings.

84. (1) The punishment which may be awarded to a rating 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 rating reference in this Act to punishments provided by this Act are references to those punishments.

- (2) The said scale is—
- (a) death;
 - (b) imprisonment;
 - (c) dismissal with disgrace from the armed forces of Nigeria;
 - (d) dismissal from the armed forces of Nigeria;
 - (e) disrating to any rate not lower than that in which the rating was enlisted;
 - (f) a fine of a sum not exceeding the equivalent of ninety days' pay;
 - (g) in the case of a chief petty officer or petty officer, severe reprimand or reprimand;
 - (h) where the offence is desertion; forfeiture of service;
 - (i) stoppages, where the offence has occasioned any expense, loss or damage.

(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) Notwithstanding the provisions of subsections (1) and (2) of this section, a court martial may, where it thinks fit, award any punishment specified in the First Schedule to this Act, being a punishment not already specified in subsection (2) of this section; and where a court martial awards any such punishment the qualification (if any) specified in the said Schedule in respect of such punishment shall not apply.

First
Schedule.

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

(6) A rating sentenced by a court martial to imprisonment may in addition thereto be sentenced to be discharged with disgrace from the armed forces of Nigeria.

(7) Where any rating is sentenced by a court martial to imprisonment he shall also be sentenced to be disrated to the rate in which he enlisted:

Provided that if the court martial fails to sentence him to be so disgraced the sentence shall not be invalid but shall be deemed to include a sentence of disgracing.

(8) In the case of a rating, a severe reprimand or reprimand may be awarded by a court martial in addition to a fine.

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

Arrest

Power to
arrest
offenders.

85. (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) A rating may be arrested by an officer or another rating subject to service law but no rating 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, rating, soldier or airman subject to service law lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or rating; but no officer shall be arrested under this subsection except on the order of another officer.

(5) The power of a

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 (whichever event happens first) 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 naval operations.

(3) For the purposes of subsection (1) of section 66 of this Act, 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

87. 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, where the person charged is an officer, or to the officer of the watch, or the officer of the day or the executive officer, as the case may be, where the person charged is a rating, and the officer to whom the charge is reported shall investigate the charge in the prescribed manner.

Investigation
of charges
by comman-
ding officer.

88. (1) If an officer of the navy or of the reserve below the rank of commander is charged with an offence to which this section applies, the commander may, if it appears to him that the offence is not of such a nature as to necessitate trial by court martial, and subject to the provisions of this section and of any orders made thereunder, deal with the charge summarily; and if he records a finding of guilty, he may award one or more of the following punishments, that is to say—

Summary
trial of
officers.

- (a) a fine not exceeding twenty-five days' pay;
- (b) severe reprimand or reprimand;
- (c) stoppages, where the offence has occasioned any expense, loss or damage.

(2) This section shall apply to any offence triable by court martial under this Act other than offences under the following provisions of this Act, that is to say—

(a) sections 33, 34, 35, 36, 39, 42, 43, 56, 57, 58, 63, 73, 77 and 82;

(b) sections 80 and 81, so far as they are applicable to an offence under any of the provisions mentioned in paragraph (a) of this subsection.

(3) Notwithstanding anything in subsection (1) of this section, where the commander has determined that the person charged is guilty and if the charge is dealt with summarily will award a fine or stoppages, the commander shall not record a finding until after affording such person an opportunity of electing to be tried by court martial; and if such person so elects, the commander shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court martial.

(4) The commander may by order direct that the powers conferred upon him by this Act to investigate charges against officers and try and punish officers summarily may be exercised by officers not below the rank of captain.

89. (1) Subject to the provisions of this section, a rating who is charged with an offence to which this section applies may be summarily tried and punished to the extent permitted and in accordance with the First Schedule to this Act by the officer in command of the ship or establishment to which the rating belongs either at the time of commission of the offence or at the time of the trial thereof.

(2) Where an officer holding a post specified in the First Schedule to this Act has been absent from his post on duty or approved leave for more than ninety-six hours continuously or has otherwise ceased to carry out his duties through sickness or any other cause, any officer temporarily authorised to carry out the duties of the post may while so authorised exercise the same powers of punishment as may be exercised by the substantive holder of the post, and the said First Schedule shall be construed accordingly.

Summary
trial of
ratings.

First
Schedule.

(3) The power conferred by subsection (1) of this section on the officer in command of a ship or naval establishment may, subject to any rules made under this Act, be exercised—

- (a) in respect of persons on board a single tender or boat which is absent from the ship or establishment on detached service, by the officer in command of that tender or boat;
- (b) in respect of persons on board one or two or more tenders or boats which are absent as aforesaid on detached service in company or acting together, by the officer in immediate command of those tenders or boats; and
- (c) in respect of other persons absent from the ship or establishment on detached service either on shore or elsewhere, by the officer in immediate command of those persons.

(4) The power conferred on any officer by subsection (1) or subsection (3) of this section may, subject to such conditions as may be prescribed, be delegated to any officer not below the rank of lieutenant or corresponding rank.

(5) The President may by order amend the First Schedule.

(6) This section shall apply to any offence triable by court martial under this Act, other than an offence punishable by sentence of death.

90. (1) Any charge not dealt with summarily shall after investigation be remanded for trial by court martial.

Charges to be dealt with summarily or by court martial.

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

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

Courts Martial: General Provisions

Jurisdiction
of courts
martial.

91. A court martial may try any person subject to naval law under this Act for any offence under Part IV of this Act and award any punishment authorised by this Act for that offence and, subject to the provisions of subsections (4) and (5) of section 82 of this Act, a court martial shall have jurisdiction to try any such offence whether committed within Nigeria or elsewhere.

Officers
having
power to
convene
courts
martial.

92. (1) The commander shall have the power to convene a court martial.

(2) Where the commander is absent from his post on duty or approved leave for more than ninety-six hours continuously or has otherwise ceased to carry out his duties through sickness or any other cause, any officer, temporarily authorised to carry out the duties of the commander, shall have the power to convene a court martial.

(3) The senior officer of a detached unit or squadron may be authorised by the Board to order a court martial in special circumstances.

Composition
of courts
martial.

93. (1) A court martial shall consist of not less than three nor more than nine officers, being officers of or seconded to the navy and subject to service law who are of or above the rank of lieutenant in the navy.

(2) An officer shall not be appointed to be a member of a court martial unless he has held a commission 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 members of a court martial and such spare members as the convening officer considers appropriate for the purpose of filling vacancies, shall be nominated by the convening officer.

(4) The president of a court martial shall not be below the rank of commander.

(5) A court martial for the trial of a commander shall include at least two members in addition to the president, who are not below the rank of commander.

(6) If a court martial is to be convened at any place where in the opinion of the convening officer the necessary number of naval officers having suitable qualifications is not available to form the court, and cannot be made available with due regard to the circumstances, the convening officer may, with the consent of the proper military or air force authority, appoint any military or air force officer as president in lieu of a naval officer or as any other member of the court in lieu of or in addition to a naval officer or officers:

Provided that no military or air force officer shall be qualified to act in relation to a court martial unless he is of corresponding rank to that which would have been required in the case of a naval officer and has held a commission in any of the armed forces of Nigeria for the like period or periods as would have been so required.

(7) Where the officer convening any court martial appoints an officer not being a naval officer as president or any other member of the court, being of opinion that the necessary number of naval officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the circumstances, the order convening the court martial shall contain a statement of the said opinion, and that statement shall be conclusive.

(8) The officer who convenes a court martial shall not be a member of that court martial; and no court martial shall consist of officers all of whom belong to the same ship or naval establishment.

(9) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has investigated the charge against the accused, or who under service law has held, or 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.

(10) A court martial for the trial of an officer shall consist of at least five officers.

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

(12) Unless it consists of at least five officers, a court martial shall not try any offence for which the maximum or only punishment is death.

Appointment
of judge
advocate.

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

Place and
time for
sitting of
court
martial.

95. (1) A court martial shall be held on board such of the Nigerian ships or vessels, or such premises on shore, whether within or without Nigeria as may be specified in the order convening the court.

(2) If it appears to a court martial to be expedient in the interests of justice the court may be adjourned, either generally or for the purpose of any part of the proceedings, to any other ship, vessel or place and shall, if so required by the convening officer, be adjourned to any other ship, vessel or place appointed by that officer.

(3) Without prejudice to the provisions of subsection (2) of this section, a court martial may, if it appears to the court that an adjournment is desirable for any reason, be adjourned for such period as the court thinks fit:

Provided that except with the consent of the accused and the prosecutor the period for which the court may be adjourned under this subsection shall not on any occasion exceed six days.

(4) Subject to the provisions of this section, a court martial shall, unless prevented by weather or other unavoidable cause, sit from day to day until the court has arrived at a finding and, in the case of a conviction, until sentence is pronounced; but the court shall not sit on a Sunday, or any day that is a public holiday, unless, in the opinion of the court or of the

convening officer, exigencies of the service make it necessary to do so.

96. (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 court
martial.

(2) Without prejudice to the generality of subsection (1) of this section, if after the commencement of the trial, a court martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

(3) The proceedings of a court martial shall be valid notwithstanding the absence of one or more of the members other than the president, so long as the number of members present throughout the proceedings is not reduced below the legal minimum:

Provided that a member of the court who has been absent for any time during a sitting shall take no further part in the proceedings.

(4) 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—

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

(b) if he is not, the court shall be dissolved.

(5) Without prejudice to the generality of subsection (1) of this section, if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

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

Challenges
by accused.

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

(2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1) of this section, the names of the members of the court 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 should be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

Administra-
tion of
oaths.

98. (1) An oath shall be administered separately to every member of a court martial and to any person in attendance on a court martial as judge advocate, the clerk of the court, 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 on 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.

(3) A person shall be permitted to make a solemn affirmation instead of taking an oath under this section—

(a) if he objects to being sworn, and states as the grounds of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or

(b) if it is not reasonably practicable to administer an oath to him in the manner appropriate to his religious belief.

(4) An oath or affirmation 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. Cap. 333.

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

(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 directly or indirectly useful to an enemy.

(3) A court martial shall sit in closed court while deliberating on its findings 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.

100. (1) Subject to the provisions of this section, every question to be determined on trial by court martial shall be Decision of court martial.

determined by a majority of the votes of the members of the court.

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

(3) A finding of guilty where the only punishment which the court is empowered to award is death shall not have effect unless it is reached with the 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 findings, the president shall have a second or casting vote.

Finding and sentence.

101. (1) Without prejudice to the provisions of section 99 of this Act the finding of a court martial on each charge shall be announced in open court; and where the finding of that 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.

102. (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 82 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 82 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 82 in respect of the commission of that other civil offence.

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

103. (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 High Court of Lagos; and accordingly no person shall in proceedings before a court martial be required to answer questions or produce in similar proceedings before that Court.

(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

Second
Schedule.

Rules of
evidence.

- (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) if 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 the High Court of Lagos.

Privileges of witnesses and others at courts martial.

104. A witness 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 the High Court of Lagos.

Summoning of witnesses.

105. (1) Any person, whether subject to this Act or not, who is required to give evidence before a court martial may be summoned by notice in writing given by order of the convening officer.

(2) Any person not subject to this Act who attends a court martial in pursuance of a notice under this section shall be entitled to receive such expenses of his attendance as may be prescribed.

Offences by civilians in relation to courts martial.

106. (1) Where in Nigeria any person other than a person subject to this Act—

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

- (b) refuses to swear on oath when duly required by a court martial to do so; or
- (c) refuses to produce 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 a court martial, 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 a court martial; 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 the High Court having jurisdiction in that part of Nigeria where the offence is alleged to have been committed or in the place where the offender is to be found, and the High Court may thereupon inquire into the alleged offence and after hearing witnesses (if any) and 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) A person shall not be dealt with under this section in respect of failure to comply with a summons requiring him to attend as a witness before a court martial unless any expenses to which he is entitled under this Act in respect of his attendance have been paid or tendered:

Provided that for the purpose of this subsection—

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

(b) the tender of a written undertaking on behalf of the Board to defray at the trial any other expenses to which such a person may be entitled under this Act in respect of his attendance shall be deemed to constitute tender of those expenses.

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

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

Confirmation
of proceed-
ings of court
martial.

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

(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.

Petitions
against
finding or
sentence.

108. 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.

Revision of
findings of
court
martial.

109. (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.

110. (1) Subject to the provisions of section 109 of this Act and to the following provisions of this section, a confirming authority shall deal with the finding or sentence of a court martial—

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 the 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.

111. (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—

Confirming
authorities.

- (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 Board 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.

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

Death
sentence to
be approved.

113. (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
court
martial.

(a) by a reviewing authority consisting of—

- (i) the Board or (so far as the delegation extends) any officer to whom the powers of the Board 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 108 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 by a reviewing authority and shall have effect as from the date of such promulgation.

Reconsideration of sentences of imprisonment.

114. (1) Sentences of imprisonment passed by courts martial may be reconsidered by the Board 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, a sentence remains effective it shall be reconsidered at intervals of six months; but no delay in complying with this section at any such intervals shall invalidate the sentence.

Review of Summary Findings and Awards

115. (1) Where a charge has been dealt with summarily and the charge is not dismissed, the Board 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.

Review of summary findings and awards.

(2) Where by reason or 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 had 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.

Findings of Insanity etc.

116. (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 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 act or omission constituting that offence, the accused was by reason of mental disease or natural mental infirmity not criminally

responsible for the act or omission alleged as constituting 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 would 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

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

Commence-
ment of
sentences.

118. (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 the time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into military, naval or 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:

Duration of sentences of imprisonment.

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 the custody of a civil authority; or
- (b) if and in so far as Imprisonment Rules so provide, in the custody of any military, naval or air force authority of any country or territory outside Nigeria as respects which arrangements have been made under section 120 of this Act otherwise than on account of an offence committed by him while unlawfully at large, the last mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the 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 the time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(4) A person who for any period is released as mentioned in subsection (3) of this section or is otherwise allowed, in pursuance of Imprisonment Rules, out of naval custody for any period or subject to any conditions shall, on failure to return at the expiration of the period or to comply with the conditions be treated for the purposes of subsection (1) of this section as being unlawfully at large.

(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.

Special provisions as to civil prisons.

119. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of rules made under this Part of this Act or of Imprisonment Rules, shall while in that prison be confined and otherwise dealt with in the same manner as a person confined therein under the sentence of a civil court.

Serving of sentences outside Nigeria.

120. The President 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 sentences of imprisonment or detention under this Act may, in accordance with Imprisonment Rules, be served wholly or partly in such establishments.

Country in which sentence of imprisonment is to be served.

121. (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 out of 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.

122. (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 civil prison (not being a naval 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.

(2) Where a person is in naval custody in pursuance of a sentence of imprisonment, then on receipt of a written order

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

in that behalf purporting to be signed by that person's commanding officer or the officer in command of any Nigerian naval ship or naval establishment 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 the said person is earlier discharged or delivered over in due course of law.

Trial and Time Limit of Persons ceasing to be subject to Naval Law

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

123. (1) Subject to the provisions of section 124 of this Act, where an offence under this Act triable by court martial has been committed, or is reasonably suspected of having been committed, by any person while subject to this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charge, trial and punishment by court martial (including confirmation, review and reconsideration) and execution of sentences as continuing subject to this Act notwithstanding his ceasing at any time to be subject thereto.

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

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

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

(b) otherwise as to a person having rank which he had when last actually subject to this Act:

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to a rating.

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

124. (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 82 of this Act where proceedings for the corresponding civil offences are, by virtue of any written law, to be brought within the limited time, that limit of time shall apply to the trial of the offence under the said section 82 in substitution for the foregoing provisions of this subsection;

(b) a person may, subject to any time limit prescribed by any written law mentioned in paragraph (a) of this paragraph 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) A person shall not be triable by virtue of subsection (1) of section 123 of this Act unless his trial is begun within three months after he ceases to be subject to this Act or the trial is for a civil offence committed outside Nigeria and the Attorney-General of the Federation consents to the trial; but this subsection shall not apply to the offences of mutiny, failure to suppress mutiny and desertion under this Act.

Relations between Naval and Civil Courts and Finality of Trials

Powers of
civil courts.

125. (1) Subject to the provisions of section 147 of this Act, nothing in this Act shall restrict the offences for which a person may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to 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 on summary trial under section 88 or 89 of this Act 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.

126. (1) Where a person subject to this Act—

(a) has been tried for an offence by a competent civil court or a court martial under service law; or

(b) has been charged with an offence under service law, and has had the charge dismissed, or has been found guilty on the charge on summary trial under section 88 or 89 of this Act; or

(c) has had an offence condoned by his commanding officer, he shall not be liable in respect of that offence to be tried by court martial or to have the case dealt with summarily under section 88 or 89 of this Act.

(2) For the purposes of this section—

(a) a person shall not be deemed to have been tried by a court martial if confirmation is withheld of a finding by the court martial that he is guilty of the offence;

(b) a case shall be deemed to have been dealt with summarily notwithstanding that the finding of the officer who summarily tried the charge has been quashed or varied on review thereof;

(c) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;

(d) a person ordered under subsection (2) of section 70 of this Act, or the corresponding provision of any service law, to be imprisoned for an offence against this 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 the 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 summarily or before a court martial) shall not be barred on the grounds of condonation.

Inquiries

127. (1) Subject to and in accordance with the provisions of rules made under this Part of this Act (in this Act referred to as "Boards of Inquiry Rules"), the Board or any naval, military or air force officer commanding a body of naval personnel may convene a board of inquiry to investigate and report on the facts relating to any matter which may be referred to such board of inquiry by the Board 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 matter referred to them.

Boards of inquiry.

(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 sub-lieutenant or corresponding rank.

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court martial or at a summary trial other than proceedings for an offence against section 71 of this Act or for an offence against section 82 of this Act when the corresponding offence is perjury.

128. (1) Where a board of inquiry inquiring into the absence of an officer or rating reports that he has been absent without

Inquiries into absence.

leave or other sufficient cause for a period specified in the report, not being less than twenty-one clear days, a record of the report shall in accordance with the Board of Inquiry Rules be entered in the service books.

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

Miscellaneous Provisions

Restitution
or compensa-
tion for
theft, etc.

129. (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, or by the confirming authority, or any reviewing authority, but an order under this section made by a court martial shall not have effect until 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.

(8) 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 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 during which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court made under Part V of this Act.

(9) Notwithstanding anything in subsection (8) 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.

(10) 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.

(11) In this section, "appearing" in relation to an order, means appearing to the court martial, or to the confirming authority, or reviewing authority making the order, as the case may require.

Promulgation
of findings
etc.

130. 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.

Custody of
proceeding
of court
martial and
right to
copies.

131. (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.

(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 proceeding 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 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 findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation;

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

132. No action shall lie in respect of anything done by any person in pursuance of a sentence of imprisonment under this Act 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.

Indemnity
for prison
officers, etc.

Redress of Complaints

Complaints
by officers
and ratings.

133. (1) If any officer or rating of the navy or the reserve thinks he has suffered any personal oppression, injustice or other ill-treatment from a superior officer or authority, he may make a complaint in accordance with such procedure as may be prescribed; and if the complainant is not satisfied with the decision of any authority to whom his complaint is made or that authority neglects or refuses, when requested to do so, to forward the complaint to the next superior officer or authority, the complainant shall be entitled to make his complaint direct to the next superior officer or authority, and so on up to the Board whose decision shall be final.

(2) It shall be the duty of any superior officer or authority to whom a complaint is made under this section to have the complaint investigated as soon as practicable and to take any steps for redressing the matter complained about which appear to that officer or authority to be necessary.

(3) No officer or rating shall be penalised for having made a complaint in accordance with this section.

Power to
refer com-
plaints by
officer to the
President.

134. (1) In the case of a complaint by an officer, the Board may report the complaint through the Minister for the directions (if any) of the President.

(2) If a rating 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 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 any steps for redressing the matter complained of which appear to him to be necessary.

Rules of Procedure, etc.

135. (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 administration 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) Notwithstanding the repeal of any Act by section 213 of this Act, all regulations, rules or instructions relating to discipline and trial of offences in operation immediately before the repeal of the Royal Nigerian Navy Act, shall continue in force and may be used with such adaptations, modifications and exceptions as are necessary to give effect thereto under this Act.

1960 No. 9.

*Interpretation of this Part*Interpreta-
tion of
Part IV.**136.** (1) In this Part—

“air-force prison” means separate premises designated by the commander of the Nigerian Air Force 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;

“military prison” means separate premises designated by the commander of the Nigerian Army for persons serving military sentences of imprisonment;

“naval prison” means premises or vessels or parts of premises or vessels designated by the commander for persons serving naval sentences of imprisonment;

“prescribed” means prescribed by Rules of Procedure;

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

(2) Reference in this Part of this Act to a sentence of imprisonment are references to a sentence of imprisonment passed by a court martial or awarded summarily under section 88 or 89 of this Act.

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

(4) Where persons subject to this Act are appointed or drafted to a naval ship or establishment for duty those persons shall be treated for the purposes of this Act as belonging to the ship or establishment to which they are appointed or drafted.

(5) References in this Part of this Act to chief petty officers do not include references to acting chief petty officers.

(6) References in this Part of this Act to petty officers include references to acting petty officers and to acting chief petty officers.

PART V.—APPEALS FROM COURTS MARTIAL

137. 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; and shall lie as of right without such leave, from any decision of a court martial involving a sentence of death.

Right of appeal.

138. (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.

139. (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 the foregoing subsection, the Court of Appeal may dismiss an appeal if 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 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 83 or section 84 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.

140. (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 83 or 84 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 83 or 84 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 exception 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 83 or 84 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 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 116 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 the Court of Appeal otherwise directs, begin to run from the time 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.

Appeals to
be final.

141. The determination by the Court of Appeal of any appeal or other matter which it has power to determine under the provisions of this Part of this Act shall be final.

Supplemen-
tary powers
of the Court
of Appeal.

142. For the purposes 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 determination by it of the case.

143. 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.

144. It shall be the duty of the Board on an appeal against a decision of a court martial to undertake the defence of the appeal.

Defence of appeals.

145. 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.

146. 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 such an 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.

147. 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.

148. 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.

149. In the case of every appeal, or application for leave to appeal, under this Part of this Act to the Court of Appeal against a decision of a court martial, it shall be the duty of the commander to furnish to the registrar of the Court of Appeal, in accordance with rules of court, the proceedings of the court martial (including any proceedings with respect to the revision of the findings or sentence of the court martial in pursuance of subsection (1) of section 113 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.

150. (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.

151. (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.

152. Nothing in this Part of this Act shall affect the exercise by reviewing authorities of the power conferred upon them by section 113 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; and nothing in the Part of this Act shall 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.

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

Composition of Court.

154. Notwithstanding the provisions of section 153 of this Act, any Justice of the Court of Appeal may—

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

(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 138 of this Act; or

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

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 153 of this Act.

155. Subject to the provisions of this Part of this Act and to any rules of court, the provisions of the Court of Appeal Act, relating to the hearing of appeals from subordinate courts

General provisions as to procedure. Cap. 75.

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.

156. The President shall make regulations governing the pay, allowances and other emoluments of the officers and ratings of the navy (in this Act 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.

157. (1) No forfeiture of the pay of an officer or rating 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 deduction 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 rating, 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 rating 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 recovered from him by deduction from pay.

(6) Any amount authorised to be deducted from the pay of an officer or rating may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or rating and references in this Act to the making of deduction from pay shall be construed accordingly; and the whole or any part of any sum forfeited from an offender's pay may be recovered by deduction from any such balance.

158. (1) The pay of an officer or rating may be forfeited—

- (a) for any day of absence in such circumstances as to constitute an offence under section 49 or 50 of this Act, or, if the commander so directs, of other absence without leave;
- (b) for any day of imprisonment, detention or cells awarded under service law by a court martial or upon summary trial, 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 or upon summary trial) of an offence under service law, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

Forfeiture of pay for absence from duty.

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

- (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 of Nigeria; or
- (c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not 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.

Deductions
for payment
of civil
penalties.

159. Where an officer or rating charged with an offence before a civil court (whether within or without Nigeria) is sentenced or ordered by the court to pay any fine, penalty, damages, compensation or costs, and the whole or part thereof is met by a payment made by or on behalf of any naval authority, the amount of the payment may be deducted from his pay.

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

160. (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 Board, 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 rating (in this Act referred to as "the person responsible").

(2) The Board, the commander or authorised officer, as the case may be, may order the person responsible to pay as or towards compensation for the loss or damage, such sum as may be specified in the order, and such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under the provisions of subsection (2) of this section if, in proceedings before a court martial under service law, or upon summary trial, 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 prevent the making of an order or deductions under subsection (2) of this section.

161. (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 references to premises, quartering and occupation shall be construed accordingly.

162. Any forfeiture of deduction imposed under the provisions of section 158, 159, 160 or 161 of this Act or under pay regulations may be remitted by the Board or in such manner and by such authority as may be provided by such regulations.

Remission of
forfeitures
and
deductions.

PART VII.—GENERAL PROVISIONS

Exemptions for Members of Navy

163. (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—

Exemption
from tolls,
etc.

(a) a member of the navy on duty;

(b) vehicles in naval service, being vehicles belonging to the Federation of any State thereof or other vehicles driven by persons (whether a member of the navy or

not) in the public service of the Federation of any State thereof;

(c) goods carried in such vehicles.

(2) Harbour dues or other charges for entering, leaving, and anchoring or mooring in, any harbour or port in Nigeria, shall not be payable in respect of any naval ship or vessel belonging to the Federation.

(3) In subsection (1) of this section, the expression "in naval service" means employed under proper naval authority for the purposes of any ship, vessel or establishment of the navy.

Exemption from taking in execution of property used for naval purposes.

164. No judgment, decree or order given or made against a member of the navy by any court in Nigeria shall be enforced by the levying of execution on any property of the person against whom it is given or made, being public property, used by him for naval purposes.

Exemptions as to arms and explosives.

165. The officers and ratings of the navy and the reserve shall, for purposes of the navy, 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 and in the same manner 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.

166. (1) Any police officer may arrest without a warrant any person whom he has reasonable cause to suspect of being an officer or rating 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 rating 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 the officer or rating.

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

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

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

(2) If the person so before such court admits that he is illegally absent from the navy 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 naval 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 naval custody) or until sooner delivered into such custody; and 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; and if the court is satisfied that he is subject to naval 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 naval custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if any such person is in custody for some 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' court holding

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

inquiries and conferring powers of adjournment and remand on such court 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.

168. (1) Where a person elsewhere than at a police station surrenders himself to a police officer as being illegally absent from the navy, the police officer shall forthwith bring him to a police station; and 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 navy, he may in his discretion, cause such a person to be delivered into naval 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, the person appearing before a magistrate's court under this section, shall not be admitted to bail.

Certificates
of arrest or
surrender.

169. (1) Where a magistrate's court under this Part of this Act deals with a person illegally absent, and that person is delivered into naval 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 naval 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 naval custody, and such certificate shall contain particulars relating to the surrender.

(3) In any proceedings for an offence under section 49 or 50 of this Act—

(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 presented, shall be evidence of the matter stated in the document;
- (b) where the proceedings are against a person who has been taken into naval custody on arrest or surrender, 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 matter stated in the certificate.

170 (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 navy and to detain him until in accordance with the directions of the court he is delivered into naval 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 Naval Matters punishable by Civil Courts

171. Any person who falsely represents himself to any naval, military, air force or civil authority to be a deserter from the navy shall be guilty of an offence and liable on conviction to a fine not exceeding ₦100 or to imprisonment for a term not exceeding three months or to both.

Punishment for pretending to be a deserter.

172. Any person who—

- (a) procures or persuades any officer or rating of the navy to desert or to absent himself without leave; or
- (b) knowing that any such officer or rating is about to desert or absent himself without leave, assists him in so doing; or

Punishment for procuring and assisting desertion.

- (c) knowing any person to be a deserter or absentee without leave from the navy, conceals him or assists in his rescue from custody,

shall be guilty of an offence and liable on conviction to a fine not exceeding ₦100 or to imprisonment for a term not exceeding one year, or to both.

Punishment
for obstruct-
ing members
of the navy.

173. Any person who wilfully obstructs or otherwise interferes with any officer or rating of the navy acting in the execution of his duty shall be guilty of an offence and liable on conviction to a fine not exceeding ₦100 or to imprisonment for a term not exceeding three months, or to both.

Punishment
for aiding
malingering.

174. Any person who—

- (a) produces in any officer or rating of the navy 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 naval service, whether permanently or temporarily shall be guilty of an offence and liable on conviction to a fine not exceeding ₦100 or to imprisonment for a term not exceeding one year, or to both.

Unlawful
purchase,
etc., of
naval stores.

175. (1) Any person who acquires any naval stores or solicits or procures any person to dispose of any naval stores, or acts for any person in the disposing of any naval 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 naval 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 Board or of some person or authority who had, or whom he had reasonable cause to believe to have, power to give 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 a rating

who had been discharged, or of the personal representative of a person who had died, and shall be liable on conviction to a fine not exceeding ₦1,000 or 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 has 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 a crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having in his possession any property which has been the subject of an offence 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; and for the purpose 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” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

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

“naval stores” means any chattel of any description belonging to the government of the Federation, which has been issued for use for naval purposes or is held in store for the purpose of being issued when required, and includes any chattel which had belonged, and had been issued or held, as aforesaid at some past time.

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

176 (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 respect of his or any other person's naval 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 ₦100 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 or for the use or benefit of another.

Unauthorised use of and dealing in decorations, etc.

177. (1) Any person who—

- (a) without authority uses or wears any naval decoration, or any badge, wound stripe or emblem supplied or authorised by the President or the Board; or
- (b) uses or wears any decoration, badge, wound stripe or emblem so nearly resembling any naval 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 section,

shall be guilty of an offence against this section:

Provided that nothing in this subsection shall prohibit the use of wearing of badges, emblems, brooches or ornaments representing them.

(2) Any person who purchases or takes in pawn any naval 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 ₦100 or to imprisonment for a term not exceeding three months, or to both.

178 (1) Any person who shall, without the previous consent of the commanding officer, bring on board any naval ship any spirituous or fermented liquor of any description, or without such consent approach or hover about any such ship for the purpose of bringing on board, giving or selling spirituous or fermented liquor, shall be guilty of an offence against this section and shall be liable on conviction to a fine not exceeding ₦20 or imprisonment for a term not exceeding three months, or to both.

Intoxicating liquor not to be conveyed on board any naval ship.

(2) Any officer or petty officer of the navy may, with or without ratings or persons under his command, search any vessels hovering about or approaching any ship of the navy, in circumstances giving rise to a reasonable suspicion that an offence under subsection (1) of this section is intended; and if on search any such liquor is found in or upon such vessel, the officer or petty officer may seize it, and such liquor shall be forfeited.

Evidence

179. (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 the navy or the reserve or was discharged from the navy or the reserve at or before any specified time; or

(b) held or did not hold at any specified time any specified rank or appointment in the navy or the reserve, or had at or before any specified time been attached, posted or transferred to any naval ship or establishment, 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 matter 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 regulations, or otherwise in pursuance of naval duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document as aforesaid, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or original document, as the case may be, shall be evidence of the record.

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

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

- (a) that a decoration of a description specified in or annexed to the certificate is a naval decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the President or the Board,

shall be evidence of the matter 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 any naval ship or naval establishment, shall in the proceedings against the said person be evidence of the matters stated in the certificate.

180. (1) Where a person subject to 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—

- (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.

Proof of
outcome of
civil trial.

Evidence of proceedings of court martial.

181. (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 lawful custody of the commander or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the original 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 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.

Reduction in Rank

Restrictions on disrating.

182. (1) A chief petty officer shall not be disrated except by sentence of a court martial under service law or by order of the commander.

(2) A petty officer shall not be disrated except—

(a) by sentence of a court martial under service law; or
(b) in the case of a petty officer or a leading rating, by award or order of the commander or of an officer by whom the commander's powers of disrating are exercisable by virtue of this Act; or

(c) in the case of an able rate, by award or order of his commanding officer.

(3) Where it appears to the commander that a chief petty officer or a petty officer or a leading rating is unable to perform satisfactorily the functions of his rating, the commander may by order reduce the chief petty officer or petty officer to such rating as may be specified by the order or to ordinary rating; and where it appears to a commanding officer that a leading rating serving under his command is unable to perform satisfactorily the functions of his rating, the commanding officer may by order reduce the leading rating to ordinary rating.

(4) The commander may by order direct that the powers conferred upon him by this Act to disrate any petty officer

or a leading rating, may be exercised by officers not below the rank of captain under whose command the petty officers are serving; and references in those subsections to the commander shall be construed accordingly.

(5) For the purposes of this section disrating does not include reversion from acting rate.

Miscellaneous Provisions

183. (1) Where a person in naval 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 136 of this Act.

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

Avoidance of assignment of, or charge on naval pay, etc.

(2) Except 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.

185. (1) An officer of a rank not below that of lieutenant-commander (in this Act referred to as an "authorised officer") may, outside Nigeria, take statutory declarations from persons subject to this Act.

Power of certain officers to take statutory declarations.

(2) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation, a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

PART VIII.—RESERVISTS AND PENSIONERS

Reservists
and
pensioners.

186. Notwithstanding the provisions of section 194, this Part of this Act shall apply—

- (a) to every officer or rating who by virtue of this Act, is a member of the reserve; and
- (b) to every person who having served as an officer or rating in the navy is in receipt of a pension or annual allowance in respect of such service, and in this Act is referred to as a pensioner.

Annual
training.

187. (1) Every reservist shall be liable to be called out for training at such a place and for such periods not exceeding twenty-eight days in any one year as may be specified in regulations made under section 193 of this Act.

(2) Every reservist may, during any training for which he may be called out, be attached to and trained in any ship, vessel or establishment.

Calling out
of reservists
and pen-
sioners to
aid the civil
power.

188. (1) The President may, at any time when occasion appears to require, call out reservists and pensioners or as many of them as he thinks necessary, to aid the civil power in the preservation of the public peace.

(2) Reservists and pensioners called out for service under this section shall not be liable to serve at any one time for a period exceeding twenty-eight days.

Calling out
of reservists
and pen-
sioners on
permanent
service.

189. (1) In the event of a state of war being declared or of insurrection, hostilities or public emergency it shall be lawful for the President, by proclamation, to call out any reservists and pensioners on permanent service; and the President may,

in any such proclamation give, or authorise the Minister to give, such directions as may deem necessary or proper for calling out such reservists and pensioners.

(2) A proclamation under this section and directions given in pursuance thereof shall be obeyed, and every reservist and pensioner called out by such directions shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be called out on permanent service.

(3) Every reservist or pensioner when called out on permanent service shall be liable to serve as an officer or rating of the navy until he is released or discharged.

190. (1) Any reservist or pensioner who, without leave lawfully granted or other reasonable excuse, fails to appear at the time and place appointed for annual training, or when called out to aid the civil power or on permanent service, shall—

Punishment
for non-
attendance.

- (a) if called out on permanent service, be guilty, according to the circumstances, of desertion within the meaning of section 49 of this Act or of absenting himself without leave within the meaning of section 50 of this Act; or
- (b) if called out to aid the civil power or for annual training, be guilty of absenting himself without leave within the meaning of section 50 of this Act.

(2) Any reservist or pensioner who commits any offence under this section shall be liable—

- (a) to be tried by court martial, and, on conviction, to suffer imprisonment for a term not exceeding two years or such less punishment as is provided by this Act; or
- (b) to be tried by a magistrate's court and, on conviction, be liable to a fine not exceeding ₦100, or to imprisonment for a term not exceeding two years.

(3) Section 85 and sections 166 to 170 inclusive shall apply to reservists and pensioners who commit, or are alleged to have committed, or are reasonably suspected of having committed, an offence against this section as they apply to persons otherwise subject to naval law under this Act.

Record of
illegal
absence.

191. Where a reservist fails to appear at the time and place appointed for annual training or where a reservist or pensioner fails to appear when called out to aid the civil power or on permanent service, and his absence continues for not less than twenty-one clear days, an entry of such absence shall be made by an officer in the service books prescribed by regulations made under this Part of this Act and such entries shall be *prima facie* evidence of the fact of such absence.

Discharge
during
service.

192. A reservist or pensioner may be discharged by the commander at any time during the currency of any term of service as a reservist or pensioner, as the case may be, in accordance with regulations made under this Part of this Act.

Regulations
as to reser-
vists and
pensioners.

193. The President may make regulations with respect to the government and discipline of the reservists and pensioners, and, without prejudice to the generality of the foregoing regulations may provide for—

- (a) the calling out for training of reservists;
- (b) the calling out of reservists and pensioners to aid the civil power and on permanent service;
- (c) the pay of reservists when on the reserve and for the pay of reservists and pensioners when called out under this Part of this Act;
- (d) requiring reservists and pensioners to report themselves from time to time, and to obtain the permission of the commander, or such other officer so authorised by regulations, before leaving Nigeria; and
- (e) any matter 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.

- 194.** (1) The following persons shall be subject to this Act—
- (a) officers and ratings of the navy;
 - (b) officers of the reserve and pensioners when called out on service; and

- (c) reservists called out for training, to aid the civil power or on permanent service;
 - (d) pensioners called out to aid the civil power or on permanent service.
- (2) This Act shall apply to the persons subject thereto under the provisions of this section and in relation to the units raised under this Act as well outside as within Nigeria.

195. (1) The provisions of this or any other Act in so far as they contain or refer to the word "rating" or other word importing reference to persons of the male sex only as, or as having been, members of the navy and accordingly subject to service 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.

Application
of the Act to
women.

(2) In relation to women members of the navy, 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 reserve shall not apply;
- (b) the punishment of extra work or drill specified in the First Schedule to this Act shall not apply;
- (c) references in sections 200 and 202 of this Act to a widow shall be construed as references to a widower.

First
Schedule.

196. (1) Subject to the modifications specified in subsection (2) of this section, 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, Part IV of this Act shall apply to the person so employed or accompanying the unit as the said Part applies to members of the navy.

Application
of the Act to
civilians.

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

- (a) the punishments which may be awarded by a court martial shall include a fine, but shall not include any other punishment less than imprisonment;

- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding ₦20, but no other punishment;
- (c) the following provision shall have effect in substitution for subsections (2) to (4) inclusive of section 85 of this Act, that is to say that a person may be arrested by a provost officer, by any chief petty officer or petty officer legally exercising authority under a provost officer or on his behalf, or by order of any officer;
- (d) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided, apply as they apply to ratings;
- (e) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer shall be such officer as may be appointed by an officer authorised to convene a court martial;
- (f) for references in sections 123 and 124 of this Act to being, continuing, or ceasing to be subject to naval law under this Act there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that Part IV applies, and subsection (3) of section 123 of this Act shall not apply.

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

Application
of the Act to
passengers.

197. The provisions of Part IV of this Act shall, to such extent and subject to such modifications as may be prescribed by regulations made by the President, apply to persons embarked as passengers on board ships or aircraft of the navy (not being persons who are subject to this Act by virtue of any of the provisions of this Act or are subject to military or air force law), as they apply to persons subject to this Act.

Wills and Distribution of Property

198. (1) Every rating on enlistment shall declare the name of the person or persons to whom, in 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 a rating may direct 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, and the record shall be verified periodically; and it shall be the duty of the rating to report any alteration in the record which he wished made.

Ratings on enlistment to register the name of person to whom estate is to be paid in event of his dying intestate.

(2) Any officer of the navy or of 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 rating 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 rating, in the manner prescribed.

199. (1) Any will made by a rating 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 navy or any government medical officer; and 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.

Ratings' wills: special provisions.

(2) Any officer of the navy or of the Accountant-General or any public department, having in his or its charge or control any pay accumulation of pay, gratuity or other allowance, or any personal property or money belonging to such testator, not exceeding in the aggregate the value of ₦200, 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 ₦200, 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.

Distribution
in case of
deceased
rating's
intestacy.

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

(2) Where the rating was a moslem, the distribution of the estate may be carried out by the area court of the district from which the deceased person came, and the area court shall be responsible to the State Administrator-General or the Federal Administrator-General as the case may require, for the carrying out of the distribution in accordance with Islamic law; and if there is no such court in the district, the distribution may be made as nearly as may be in accordance with such law.

Payment of
debts of
deceased
rating.

201. (1) Where probate of the will or administration with or without the will annexed of the estate of a deceased rating is not taken out, and an officer of the navy, 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 a demand for the payment of the debt was made within one year after such death; and
- (c) that the debt was incurred within three years before the death of the rating.

(2) A person claiming to be a creditor of a deceased rating shall not be entitled to obtain payment of his debt out of any money in the hands of any officer of the navy or of the Accountant-General or any public department, except by means of a claim on any officer responsible for a rating's pay, and proceedings thereon under and in accordance with this Act; and 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 rating under this section.

202. Where money or personal property of a deceased rating 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 rating distributed subject to the rights of creditors.

203. (1) Subject to the provisions of this section, if money or personal property belonging to a deceased rating, 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

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

a fund for the benefit of ratings and ex-ratings of the navy who are in distress, or for the benefit of the navy generally, or for charitable purposes.

(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 after consultation with the board, may make regulations for the formation of the fund and any disbursements may be made out of such fund in accordance with the regulations; and the regulations may provide for the fund to be identical with the Nigerian Navy Benefit Fund under this Act or for the fund to be a separate fund administered for the purposes of this section.

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

204. Money or other property of a deserter under this Act in charge or control of an officer of the navy, the Accountant-General or any public department shall be disposed of as nearly as may be in accordance with the provisions of section 201 of this Act or as may otherwise be prescribed under this Act, and if that section is invoked it shall have effect accordingly.

Uniforms and decorations of deceased rating.

205. Notwithstanding any other provisions of this Act, uniforms, medals and decorations shall not comprise part of the personal estate of any deceased rating for the purpose of satisfying claims of creditors or for any of the purposes of administration under this Act or otherwise, and they shall be delivered to and held by the commander or officer authorised by him and be disposed of in such manner as may be prescribed.

Miscellaneous

Power to make regulations generally.

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

Powers exercisable in subsidiary legislation.

207. (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 as aforesaid 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 navy, empower such powers 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.

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

Provisions as to 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.

Execution of orders, instruments, etc.

209. An order or determination by a naval officer or naval 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.

Nigerian Navy Benefit Fund.

210. (1) All fines awarded under Part IV and section 196 of this Act shall be paid over to the Accountant-General and be applied towards forming a fund to be known as the Nigerian Navy Benefit Fund for the purpose of making money available to the benefit of ratings and ex-ratings of the navy who are in distress, or for the benefit of the navy generally, or for charitable purposes.

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

Rights of officers.

211. Officers of the navy 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.

212. (1) The President may, by order, apply, with all necessary modifications and adaptations, in relation to the Board, the Chairman of the Board and the navy (including officers, rating, property and institutions) any of the enactments relating to the Army Council, the Minister of Defence and to the Army (including officers, other ranks, 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.

213. (1) The enactment set out in the Fourth Schedule to this Act are repealed to the extent specified in the third column of that Schedule.

Repeal and transitional provisions. Fourth Schedule.

(2) The transitional provisions set out in the Third Schedule to this Act shall have effect in connection with the repeal of the Royal Nigerian Navy Act, 1960.

Third Schedule. 1960 No. 9

214. Notwithstanding the provisions of subsection (1) of section 213 of this Act, all ratings who were raised under the Royal Nigerian Navy Act, 1960, and serving in the navy on the day on which this Act comes into operation shall be deemed to have been enlisted under this Act but such ratings shall not be required to serve in the navy for a longer period than that for which they were required to serve at the time of their original enlistment or re-engagement.

Savings.

1960 No. 9

215. (1) In this Act, unless the context otherwise requires—
“Accountant-General” means the Accountant-General of the Federation;

Interpretation.

“acting rank” means rank of any description in the navy and however called and being such that a commanding officer may, with or without preferring a charge under this Act, order the holder to revert to a lower rank or to his substantive rank as the case may be; and

“acting chief petty officer” and “acting petty officer” shall be construed accordingly;

“aircraft” means any machine for flying, whether propelled by mechanical means or not, and includes any machine of the type known as a hovercraft as well as any description of balloon;

“air council” means the air council established under section 3 of the Air Force Act;

Cap. 15.

“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;

“aircraft papers” includes books, documents, forms and writings of whatsoever description and whether or not relating to the flight of the aircraft when captured or to any other flight, which are delivered up or found aboard such aircraft;

Cap. 15.

“air force” means the Nigerian air force raised under the Air Force Act;

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

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

“armed forces of Nigeria” means any of the military, naval and air forces raised by the Government of the Federal Republic of Nigeria;

Cap. 294.

“Army” means the Nigerian army raised under the Nigerian Army Act;

“army council” means the Nigerian army council established under section 6 of the Nigerian Army Act;

“arrest” includes open arrest;

“before the enemy”, in relation to a person, means that he is in action against the enemy or about to go into action against the enemy or is under attack or threat of imminent attack by the enemy;

“Board” means the Navy Board established under section 3 of this Act;

- “Boards of Inquiry Rules” means rules regulating boards of inquiry made under this Act;
- “civil court” means a court of competent criminal jurisdiction, but does not include any customary court by whatever name called;
- “civil offence” has the meaning assigned to it in subsection (2) of section 82 of 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 armed forces of Nigeria 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”, except where expressed to be under service law, means a court martial under this Act;
- “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 navy;
- “decoration” includes any medal, medal ribbon, clasp and good conduct badge;
- “desertion” shall be construed in accordance with subsection (3) of section 49 of this Act;
- “enemy” means all persons engaged in armed operations against Nigeria or allied forces, and includes armed mutineers, armed rebels, armed rioters and pirates;
- “executive officer” means the officer carrying out the executive duties of the ship or establishment;
- “imprisonment rules” means rules regulating imprisonment made by the President under this Act;
- “independent command” means a ship whose officers and men are appointed or drafted direct to her and borne on her books;
- “junior rating” means a rating enlisted in accordance with the provisions of subsection (2) of section 16 of this Act;
- “Minister” means the Minister charged with responsibility for matters relating to defence;

- “navy” means the Nigerian Navy;
- “naval service” means service under the provisions of this Act otherwise than service in the reserve;
- “officer” means in relation to the navy, a person of or above the rank of cadet, and, in relation to any other forces, means an officer of rank corresponding to the said rank or any superior rank;
- “petty officer” includes chief petty officers and petty officers and ratings of equivalent status in all branches, except when used as the title of seaman ratings;
- “provost officer” means a provost marshal or officer appointed to exercise the functions conferred by or under service law on provost officers;
- “public”, when used adjectivally, means belonging to the Government of the Federation or of any State thereof, or to the government of the country to which any allied force serving or operating in Nigeria belongs;
- “rating” means a member of the navy of or below the rank of chief petty officer, and references in this Act to a rating, or to a rating of any particular rank, include references to a soldier or airman of rank corresponding with that rate, as the case may be;
- “the reserve” means the body of naval personnel comprised of those persons who are subject to reserve service or liability under this Act;
- “service” when used adjectivally, means belonging to or connected with the armed forces of Nigeria;
- “service law” means this Act, the Nigerian Army Act, and the Air Force Act, and includes the military, naval or air force law of any allied force;
- “ship” includes any description of vessel;
- “ship papers” includes books, documents, forms and writings of whatsoever description and whether or not relating to the voyage of the ship when captured or to any other voyage, which are delivered up or found aboard such ship;
- “steals” has the meaning assigned to it in the Criminal Code;
- “stoppages” means in relation to pay, the recovery by deductions from the pay of the offender, of a specified sum

Cap. 294.

Cap. 15.

Cap. 77.

by way of compensation for any expense, loss or damage occasioned by the offence;

“tender” means a ship or vessel whose officers and men are appointed or drafted to and borne on the books of another ship or vessel being a parent ship or vessel;

“unit” means an establishment, base or any other formation of naval personnel which has been declared to be a unit by the Board.

(2) Where by this Act it is provided that any person subject to naval 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.

216. This Act may be cited as the Navy Act.

Short title.

FIRST SCHEDULE

Section 89

A. Officers who can try ratings summarily and their powers of summary punishment

(i) *Commanding officer of a ship or establishment if of the rank of lieutenant or above*

<i>Punishment</i>	<i>Qualification</i>
1. Imprisonment	Not exceeding three calendar months. Warrant required
2. Dismissal from the navy	Warrant required
3. Detention	Not exceeding three calendar months. Warrant required
4. Disrating	Warrant required
5. Reduction to 2nd class for conduct	Warrant required
6. Deprivation of loyal services medal	Warrant required
7. Deprivation of good conduct badges	Warrant required
8. Severe reprimand by the captain	Only to leading ratings and above

<i>Punishment</i>	<i>Qualification</i>
9. Extra work and drill	Not exceeding fourteen days
10. Stoppage of leave	Not exceeding thirty days
11. Mulcts for improper absence	
12. Mulcts of pay for drunkenness	
13. Extra work or drill	Not exceeding seven days, and for not longer than two hours on any one day
14. Reprimand	

(ii) *Commanding officer of a ship or establishment if below the rank of lieutenant*

<i>Punishment</i>	<i>Qualification</i>
9. Extra work and drill	Not exceeding seven days
10. Stoppage of leave	Not exceeding fourteen days
11. Mulcts for improper absence	
12. Mulcts of pay for drunkenness	
13. Extra work or drill	Not exceeding seven days, and for not longer than two hours on any one day
14. Reprimand	

(iii) *Executive officer (if of the rank of commander) when delegated with powers of punishment by the commanding officer*

<i>Punishment</i>	<i>Qualification</i>
9. Extra work and drill	Not exceeding fourteen days
10. Stoppage of leave	Not exceeding fourteen days
13. Extra work or drill	Not exceeding seven days and for not longer than two hours in one day.
14. Reprimand	

(iv) *Executive officer (if of the rank of lieutenant or above) when delegated with powers of punishment by the commanding officer*

<i>Punishment</i>	<i>Qualification</i>
9. Extra work and drill	Not exceeding seven days
10. Stoppage of leave	Not exceeding seven days but not to chief petty officers or petty officers if executive officer is below the rank of commander

<i>Punishment</i>	<i>Qualification</i>
13. Extra work or drill	Not exceeding seven days and for not longer than two hours in one day
14. Reprimand	

(v) *Officer of the watch or day (if of the rank of lieutenant or above) when delegated with power of punishment by commanding officer, or a departmental officer of the rank of lieutenant or above when delegated with power by commanding officer to punish any rating of his department for an offence in connection with the duties of that department but not connected with the general duties of the ship or naval establishment.*

<i>Punishment</i>	<i>Qualification</i>
13. Extra work or drill	For one day only and for not longer than two hours on that day

B. Warrant Punishment

Punishments No. 1 to No. 7 above inclusive (which may be known as warrant punishments) shall not have effect unless a warrant is made out, approved as required by the Schedule and formally read to the accused in public

C. Approval of warrants is required as follows—

<i>Punishment</i>	<i>Approving Authority</i>
1. Imprisonment	The commander
2. Dismissal	The commander
3. Detention	The commander
4. Disrating	The commander if in Nigerian waters or if on detached service an officer of captain's rank or above in the case of a Petty Officer or a leading seaman
5. Reduction to 2nd class for conduct	The commander if in Nigerian waters or if on detached service an officer of the rank of commander or above
6. Deprivation of Loyal Service Medal	The commander
7. Deprivation of good conduct badges	The commander if in Nigerian waters; if on detached service, an officer of the rank of commander or above may approve the deprivation of one good conduct badge.

SECOND SCHEDULE

Section 102

Alternative Offences of which Accused may be convicted by Court Martial

<i>Offence Charged</i>	<i>Alternative Offence</i>
1. Communicating with or giving intelligence to the enemy, either with intent to assist the enemy or without authority.	1. Disclosing information without authority.
2. Any offence against subsection (1) of section 42.	2. Any offence against subsection (2) of section 42.
3. Striking his superior officer.	3. (a) Using violence to his superior officer otherwise than by striking him; or (b) Offering violence to his superior officer.
4. Using violence to his superior officer otherwise than by striking him.	4. Offering violence to his superior officer.
5. Using threatening language to his superior officer.	5. (a) Using insolent language to his superior officer; or (b) Behaving with contempt to his superior officer.
6. Using insolent language to his superior officer.	6. Behaving with contempt to his superior officer.
7. Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to the accused personally.	7. Behaving with contempt to his superior officer.
8. Desertion.	8. Absence without leave.
9. Attempting to desert.	9. Absence without leave.
10. Stealing any property.	10. Fraudulently misapplying the property.
11. Any offence under section 63 involving wilfulness.	11. The corresponding offence involving negligence.
12. Any offence against subsection (1) of section 67.	12. Any offence against subsection (2) of section 67.
13. Any offence against section 68 involving striking.	13. The corresponding offence involving the offering of violence.
14. Any offence against section 68 involving the use of violence other than striking.	14. The corresponding offence involving the offering of violence.

THIRD SCHEDULE

Section 213

Transitional Provisions

1. In this Schedule, "the old Act" means the Royal Nigerian Navy Act, 1960, repealed by this Act.

2. (1) In relation to an offence against any section in Part V of the old Act or against Part I of the Naval Discipline Act, 1957, sections 83 to 122 inclusive, sections 129 to 132 inclusive, sections 135 and 136 and section 182 of this Act shall apply as if the said section of the old Act had been contained in this Act and this Act had been in force when the offence was committed, and as if any finding or punishment having effect before the date upon which this Act comes into operation, and anything done before that day by virtue of or in relation to such a finding or sentence, had been come to, awarded or done under this Act: 5 and 6 Eliz II Ch. 53.

Provided that nothing in this sub-paragraph shall render an offence capable of being tried by court martial or dealt with summarily, if by reason of the time or place of the commission of the offence it could not have been so tried or dealt with under the old Act.

(2) Notwithstanding anything in sub-paragraph (1) of this paragraph where any proceedings for such an offence as aforesaid have been begun before the date upon which this Act comes into operation, any step in the proceedings taken after that day shall be deemed to be validly taken if taken in accordance with the old Act and the rules made thereunder.

(3) In section 147 of this Act (which provides against trial for offences already disposed of), references to this Act or to any provision thereof shall be construed as including respectively references to the old Act and to the corresponding provision thereof.

3. Where after the date upon which this Act comes into operation a person is alleged—

- (a) to have committed an offence continuing over a period beginning before that day and ending thereon or thereafter; or
- (b) to have committed an offence between two dates falling within such a period,

and the offence would be one against a provision in Part IV of this Act if it had been in operation at all material times, he may be proceeded against as if this Act had so been in operation.

4. Any officer who immediately before the date upon which this Act comes into operation was authorised to recruit or attest ratings shall, without prejudice to any subsequent withdrawal of the authorisation, be deemed without further authorisation a recruiting officer for the purposes of Part III of this Act.

5. Any document made before the date upon which this Act comes into operation which would have been admissible in evidence under the

provision of the old Act, or those provisions as applied by any other enactment, shall be admissible to the like extent and in the like proceedings notwithstanding that the old Act has ceased to be in operation.

6. Any forfeiture of, or deduction from, pay having effect under the old Act immediately before the date upon which this Act comes into operation shall continue to have effect notwithstanding the repeal of the old Act.

FOURTH SCHEDULE

Section 213

Enactments Repealed

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal</i>
1960 No. 9	The Royal Nigerian Navy Act, 1960	The whole Act.
No. 31 of 1959	Nigerian Navy (Change of Title) Act, 1959.	The whole Act.
Cap. 128	The Navy Discipline Act.	The whole Act.
Cap. 131	Nigerian Naval Defence Force Act.	The whole Act.

NAVY ACT
CHAPTER 288

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	PAGE
1. Nigerian Navy Regulations	11327
2. Nigerian Navy (Courts-Martial) (Appeals) Rules of Court	11344

NIGERIAN NAVY REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATIONS

PART I.—PRELIMINARY

1. Short title.
2. Interpretation.

PART II.—PRECEDENCE OF MEMBERS OF THE NIGERIAN NAVY

3. Precedence of officers and warrant ranks.
4. Precedence of ratings.

PART III.—OFFICERS AND WARRANT RANKS:
APPOINTMENT, RETIREMENT AND RESIGNATION

5. Nationality of officers.
6. Persons eligible for commissions.
7. Appointment of warrant ranks.
8. Persons eligible for warrants.
9. Retirement and resignation, etc. of officers and warrant ranks.

PART IV.—RATINGS: ENLISTMENT, SERVICE ENGAGEMENTS
AND DISCHARGE

10. Delegation to Director: the engagement and discharge of ratings.
11. Application of regulations.
12. Qualifications for enlistment in the Nigerian Navy.
13. Procedure upon enlistment.
14. Fraudulent enlistment.
15. Periods of service and liability to serve.
16. Maximum permissible service.
17. Re-engagement after discharge.
18. Re-enlistment.
19. Oath upon engagement.
20. Resignation during service
21. Expiration of period of service in time of war.
22. Duty of Director to discharge upon termination of period of service.
23. Powers of Director to discharge in certain circumstances.
24. Retirement and resignation of ratings transferred to the Nigerian Navy.
25. Certificate of discharge.

PART V.—CUSTODY AND CONTROL OF PUBLIC FUNDS
AND STORES

26. Paymaster to be responsible for control of public funds.
27. Paymaster to be responsible for control of stores.
28. Superior officers to be charged with issued public funds and stores.

PART VI.—DISCIPLINE

- 29. Delegation to Director: powers of summary trial and punishment.

PART VII.—PENSIONS AND OTHER BENEFITS

- 30. Saving of existing benefits of persons transferred to the Nigerian Navy.
- 31. Application of Pensions Ordinance, 1951, with modifications.
- 32. Gratuities and annual allowances for ratings.
- 33. Benefits upon discharge for unfitness or on reduction of establishment.
- 34. Accrued gratuities where rating dies in the service.
- 35. Pensions, etc., not to be assignable.
- 36. Pensions and annual allowances to cease on bankruptcy.
- 37. Pensions and annual allowances may cease on sentence of imprisonment.

PART VIII.—MISCELLANEOUS

- 38. Deductions from salary or basic pay.

SCHEDULE

10	Delegation to Director: the engagement and discharge of ratings.
11	Application of regulations.
12	Qualifications for enlistment in the Nigerian Navy.
13	Procedure upon enlistment.
14	Transfer of enlistment.
15	Periods of service and liability to serve.
16	Maximum permissible service.
17	Re-engagement after discharge.
18	Re-enlistment.
19	Death upon engagement.
20	Resignation during service.
21	Expiration of period of service in time of war.
22	Duty of Director to discharge upon termination of period of service.
23	Powers of Director to discharge in certain circumstances.
24	Retention and re-engagement of ratings transferred to the Nigerian Navy.
25	Contracts of discharge.
Part V.—Control and Control of Public Funds and Stores	
26	Payment to be responsible for control of public funds.
27	Payment to be responsible for control of stores.
28	Superior officers to be charged with issued public funds and stores.

CHAPTER 288

NIGERIAN NAVY REGULATIONS

*under sections 206 and 207**Commencement: 1st May, 1958*L.N. 90 of
1958.

1. These Regulations may be cited as the Nigerian Navy Regulations.

Short title.

2. In these Regulations, unless the context otherwise requires—

Interpreta-
tion.

“Able Seaman” includes Artificer, Mechanic, Recorder, Writer, Supply Assistant, Senior Cook, Cook, Assistant Cook, Senior Steward, Steward, Assistant Steward, Senior Patrolman, Patrolman, Senior Assistant Patrolman and Craftsman;

“Chief Petty Officer” includes Chief Artificer, Chief Mechanic, Chief Recorder and Chief Petty Officer Writer;

“Leading Seaman” includes Leading Artificer, Leading Mechanic, Leading Recorder, Leading Writer, Leading Supply Assistant and Leading Craftsman;

“permanent commission” means a commission granted to an officer engaged to serve for a period qualifying for pension, but does not include a short service commission;

“permanent warrant” means a warrant granted to a warrant rank engaged to serve for a period qualifying for pension, but does not include a short service warrant;

“Petty Officer” includes a Petty Officer Artificer, Petty Officer Mechanic, Petty Officer Recorder and Petty Officer Writer;

“petty officer” means a Chief Petty Officer or a Petty Officer;

“Senior Warrant Officer” includes a Senior Warrant Engineer, Senior Warrant Surveyor, Senior Warrant Writer and Senior Warrant Instructor;

“short service commission” means a commission granted to an officer for a specific term of years, whether with an option to extend the term or otherwise;

“short service warrant” means a warrant granted to a warrant rank for a specific term of years, whether with an option to extend the term or otherwise;

“superior officer” includes an officer, a warrant rank and a petty officer;

“Paymaster” means the officer detailed to be responsible for the receipt, custody, control and disbursement of public funds of the Nigerian Navy;

“Special List Agreement” means the Special List Agreement made the 25th June, 1957, between Her Majesty’s Government in the United Kingdom and the Government of the Federation;

L.N. 4 of
1960.

“Supply Officer” means the senior officer of the Supply and Secretariat Branch of the Nigerian Navy;

“Warrant Officer” includes a Warrant Engineer, Warrant Surveyor, Warrant Writer and Warrant Instructor;

“warrant rank” means a Senior Warrant Officer or a Warrant Officer.

PART II.—PRECEDENCE OF MEMBERS OF THE NIGERIAN NAVY

Precedence
of officers
and warrant
ranks.

3. (1) The precedence of officers and warrant ranks of the Nigerian Navy shall be—

Captains	Lieutenants
Commanders	Sub-Lieutenants and Senior Warrant Officers
Lieutenant-Commanders	Warrant Officers

(2) Officers of the same rank shall take precedence according to the order in which their names stand in the official list of officers of the Nigerian Navy:

Provided that the officer for the time being executing the duties of Director of Naval Services shall take precedence of all Captains.

(3) Warrant ranks of the same rank shall take precedence according to the order in which their names stand in the official list of warrant ranks of the Nigerian Navy.

(4) Sub-Lieutenants and Senior Warrant Officers shall take precedence according to the dates of their appointment to such ranks.

4. (1) The precedence of ratings of the Nigerian Navy shall be—

Chief Petty Officers	Able Seamen
Petty Officers	Ordinary Seamen
Leading Seamen	

Precedence of ratings.

(2) Ratings of the same rate shall take precedence according to their dates of appointment or advancement to such rate or, if such dates are the same, according to the order of publication of such appointment or advancement.

PART III.—OFFICERS AND WARRANT RANKS:
APPOINTMENT, RETIREMENT AND RESIGNATION

5. Candidates for commissions in the Nigerian Navy must be Nigerian Citizens, and shall be required to produce satisfactory proof of such nationality.

Nationality of officers.

6. The President may grant permanent or short service commission to—

- (a) any rating of the Nigerian Navy; or
- (b) any person who has been engaged to serve as an officer in the Nigerian Navy.

Persons eligible for commissions.

7. Warrant ranks of the Nigerian Navy shall be appointed by warrant of the President acting in his direction.

Appointment to warrant ranks.

8. The President may grant permanent or short service warrants to—

- (a) any rating of the Nigerian Navy; or
- (b) any person who has been engaged to serve as a Senior Warrant Officer in the Nigerian Navy.

Persons eligible for warrants.

9. (1) Every application from an officer or warrant rank to retire or resign his commission or warrant shall be made to the President through the Chief of Naval Staff who shall certify on any such application that he is satisfied with the

Retirement and resignation, etc., of officers and warrant ranks.

conduct of such officer or warrant rank, or state any grounds that may exist for dissatisfaction.

Cap. 23.

Cap. 62.

(2) Subject to section 3 of the Armed Forces Pensions Act, the Constitution of the Federal Republic of Nigeria, and the provisions of any scheme of compensation for loss of career, applications to retire or resign a commission or warrant shall be considered by the President with reference to the urgency of each individual case and to the exigencies of the service.

(3) When an officer or warrant rank retires or resigns, he shall be superseded or discharged as soon as possible, but shall be retained in the ship in the rank in which he has been serving and shall otherwise continue to do duty until superseded or until instructions for his discharge are issued by the Chief of Naval Staff.

PART IV.—RATINGS: ENLISTMENT, SERVICE ENGAGEMENTS AND DISCHARGE

Delegation to Director: the engagement and discharge of ratings.

10. In pursuance of section 15 of the Act, the President hereby delegates to the Chief of Naval Staff all powers of engaging and discharging ratings of the Nigerian Navy in accordance with these Regulations.

Application of regulations 12 to 23.

11. The provisions of regulations 12 to 23 of these Regulations shall not apply to ratings serving on transfer to the Nigerian Navy under the Act.

Qualifications for enlistment in the Nigerian Navy.

12. (1) The qualifications of a person applying to enlist in the Nigerian Navy shall be as follows—

- (a) he must be not less than 18 and not more than 30 of age;
- (b) he shall conform with the physical standards prescribed by the President from time to time;
- (c) he shall be certified by a medical board appointed by the President to be physically and mentally fit for service in the Nigerian Navy;
- (d) he must be literate in the English language and must have reached a standard of education equivalent to that of the First School Leaving Certificate approved by or on behalf of the Federal Ministry of Education; and
- (e) he shall be of good character and shall not within a period of three years immediately before his applica-

tion have been sentenced by a court in any part of Nigeria to imprisonment (by whatever name called) for a term exceeding six months.

(2) The President may vary or dispense with any of these qualifications if he considers that it will be in the interests of the Nigerian Navy to do so.

13. A person applying to enlist in the Nigerian Navy shall answer the questions and make the declarations contained in the prescribed form of attestation; and if such attestation is considered to be true and satisfactory and if such person is certified to be physically and mentally fit for service and he is in other respects qualified and desirable, he may, after making the declaration on oath prescribed by regulation 19 of these Regulations, be enlisted in the lowest rate of the branch which he enters or in such other rate for which he may be qualified and shall serve for six months on probation.

Procedure upon enlistment.

14. (1) When a rating who has completed six months of service is found to have made a false statement as to his fitness or as to his previous service in the Nigerian armed forces in any document relating to his enlistment, a report shall be forwarded by the Chief of Naval Staff to the President for a decision as to the disposal of such rating.

Fraudulent enlistment.

(2) When a rating who has not completed six months of service is found to have made a false statement as to his fitness or as to his previous service in any of Nigeria's armed forces in any document relating to his enlistment, the Director may order the discharge of such rating and may cause criminal proceedings to be instituted in a civil court having jurisdiction in the place where such false statement was made:

Provided that if such rating is found to have entered the Nigerian Navy whilst serving in some other part of the Nigerian armed forces, the Chief of Naval Staff shall ascertain from the officer commanding the unit to which such rating belonged whether it is desired to claim such rating under his original engagement before deciding to discharge such rating or to institute criminal proceedings as aforesaid.

15. (1) Every rating shall upon enlistment be engaged to serve for a period of six years from the date of his enlistment and to remain liable for a period of three years from the date

Periods of service and of liability to serve.

of his discharge to be recalled to serve in the event of an emergency declared by the President.

(2) A rating of good character who has completed or is within six months of completing a first period of service of six years may, with the approval of the Chief of Naval Staff, re-engage to serve for a second period of six years.

(3) A rating of good character who has completed or is within six months of completing a second period of service of six years may, with the approval of the Chief of Naval Staff, re-engage to serve for a third period of three years and thereafter may similarly re-engage for a further period or periods of three years.

(4) The period for which a rating engaged under this regulation can be compelled to serve is to be reckoned from the date upon which he entered into his engagement without regard to any break in its continuity that may have been occasioned by desertion, invaliding, imprisonment or any other cause.

(5) When a rating re-engages to serve, the period or unexpired portion of the period of his liability to serve in the event of an emergency in accordance with regulation 15(1) shall be postponed until the date of his discharge:

Provided that a rating who has served for a total of fifteen years shall not remain liable to serve in the event of an emergency by reason only of this regulation, and the period or unexpired portion of the period of his liability so to serve shall be cancelled.

Maximum permissible service.

16. No rating shall serve for more than a total of thirty-six years, except with the approval of the President.

Re-engagement after discharge.

17. A rating may within six months from the date of his discharge, with the approval of the Chief of Naval Staff, re-engage to serve for a further period reckoned in accordance with regulation 15 of these Regulations.

Re-enlistment.

18. (1) After six months from the date of his discharge, a rating shall not be permitted to re-engage, but may apply to re-enlist and, if re-appointed, his previous periods of service and of liability to serve in the event of an emergency shall

be taken into account in determining the period for which he shall be engaged to serve and the period for which he shall remain liable to serve in the event of an emergency.

(2) A re-enlisted rating may, if the Chief of Naval Staff in his discretion sees fit, be reinstated to the rank which he held before his discharge.

19. (1) Every person applying to enlist, re-enlist, or re-engage shall make the following declaration and shall confirm such declaration by oath in such manner as he may declare to be binding on his conscience—

Oath upon engagement.

I,, do hereby solemnly and sincerely declare and promise that I shall be faithful and bear true allegiance to the Government of the Federation of Nigeria for the period of my engagement so long as the President may require my services, and will obey all orders of the President and of the officers placed over me, and subject myself to all statutes, regulations, rules and orders in force for the time being within the said period.

Signature

Declared at this.....
day of 19.....

Signature of officer

(2) The declaration and oath shall be made before an officer authorised by the Chief of Naval Staff to administer the oath and attest the declaration and shall be signed by the person making the declaration and by the officer before whom it is made.

20. A rating shall not be allowed to resign from the Nigerian Navy during a period of service without the approval of the President.

Resignation during service.

21. A rating whose period of service expires during time of war, insurrection or hostilities may be compulsorily retained in the Nigerian Navy for such further period as the President may direct.

Expiration of period of service in time of war.

Duty of Director to discharge upon termination of period of service.

22. Subject to the provisions of these Regulations, a rating who has completed the period of service of his engagement or been permitted to resign shall be discharged by the Chief of Naval Staff, except that, if upon the completion of the period of service of his engagement a rating is undergoing punishment for or stands charged with the commission of any offence under any enactment with respect to the government of the Nigerian Navy, the service of such rating shall be prolonged and his discharge deferred until he has undergone his punishment or until he has stood his trial and undergone any punishment then awarded to him.

Powers of Director to discharge in certain circumstances.

23. (1) A rating may be discharged by the Chief of Naval Staff at any time—

- (a) when certified by a medical board appointed by the President to be physically or mentally unfit for further service;
- (b) when sentenced to be dismissed from the Nigerian Navy;
- (c) when with less than six months of service, he is considered by the Chief of Naval Staff unlikely to become an efficient member of the Nigerian Navy.

(2) Subject to the provisions of regulation 14 of these Regulations, a rating may be discharged by the Chief of Naval Staff if he has been irregularly enlisted.

(3) Upon a reduction of establishment prescribed by order of the President, any rating may, subject to such order, be discharged by the Naval Staff.

(4) A rating with more than six months of service who is considered by the Chief of Naval Staff to be inefficient may be discharged by the Chief of Naval Staff by order of the President at any time.

(5) A rating may be discharged by the Chief of Naval Staff by order of the President if at any time his services are no longer required.

(6) A rating may be discharged by the Chief of Naval Staff by order of the President if at any time his services are dispensed with by virtue of subsection (4) of section 5 of the Act.

(7) Nothing contained in this regulation shall affect the period or unexpired portion of the period for which under the terms of his engagement a rating remains liable to serve in the event of an emergency.

24. (1) Every application to retire or resign made by a rating transferred to the Nigerian Navy under section 9 of the Nigerian Navy Act, who immediately before such transfer was holding a pensionable office in the public service of the Federation, shall be made to the President through the Chief of Naval Staff, who shall certify on any such application that he is satisfied with the conduct of such rating, or state any grounds that may exist for dissatisfaction.

Retirement and resignation of ratings transferred to the Nigerian Navy.

(2) Subject to section 3 of the Armed Forces Pensions Act and the Constitution of the Federal Republic of Nigeria, applications to retire or resign made in accordance with paragraph (1) of this regulation shall be considered by the President with reference to the urgency of each individual case and to the exigencies of the service.

Cap. 23.
Cap. 62.

25. (1) Every rating at the time of his discharge from the Nigerian Navy shall receive a certificate of discharge signed by the Chief of Naval Staff or by an officer authorised by the Chief of Naval Staff certifying that he has been discharged with effect from the date specified therein.

Certificate of discharge.

(2) Every rating, until he has received a certificate of discharge, shall remain subject to the Act in all respects.

(3) No rating shall be entitled to a certificate of discharge unless he shall have delivered up all public funds, clothing, equipment and other stores whatsoever which may have been issued or entrusted to him.

(4) Upon the issue of a certificate of discharge to a rating, all powers and authorities vested in him shall cease.

PART V.—CUSTODY AND CONTROL OF PUBLIC FUNDS AND STORES

26. The Paymaster shall be responsible for the receipt, custody, control and disbursement of all public funds of the Nigerian Navy, but he shall obtain the authority of the Chief of Naval Staff for any purchase, payment or issue which is

Paymaster to be responsible for control of public funds.

not specifically authorised by these Regulations or by any other regulations or instructions of the President.

Paymaster
to be
responsible
for control
of stores.
L.N.
4 of 1960.

27. The supply officer shall be responsible for the receipt, custody, control and issue of all equipment, clothing and other stores whatsoever of the Nigerian Navy, but he shall obtain the authority of the Chief of Naval Staff for any issue which is not specifically authorised by these Regulations or by any other regulations or instructions of the President.

Superior
officers to
be charged
with issued
public funds
and stores.

28. Every superior officer in command of any vessel or shore establishment of the Nigerian Navy shall be charged with all the public funds, equipment, clothing and other stores whatsoever issued and delivered for the use of such vessel or shore establishment and shall account for such public funds, equipment, clothing and other stores to his superior officer.

PART VI.—DISCIPLINE

Delegation to
Director:
powers of
summary
trial and
punishment.

29. In pursuance of subsection (2) of section 4 of the Act and of Part III of the Schedule thereto, the President hereby delegates to the Chief of Naval Staff all the powers of summary trial and punishment, which in the Act are expressed to be conferred upon a commanding officer.

PART VII.—PENSIONS AND OTHER BENEFITS

Saving of
existing
benefits of
persons
transferred
to the
Nigerian
Navy.
No. 29 of
1951.
Cap. 23.

30. (1) The Armed Forces Pensions Act shall apply to all persons in the public service of the Federation transferred to the Nigerian Navy, to the same extent as that Act applies to members of the Nigerian Navy.

(2) When a person in the public service of the Federation holding a pensionable office in which he has not been confirmed is transferred to the Nigerian Navy he shall, for the purposes of the application of the Armed Forces Pensions Act under paragraph (1) of this regulation, be deemed to have been confirmed in a pensionable office after three years from the date of his first appointment to the service of the Federation.

31. (1) If any member of the Nigerian Navy to whom a pension or annual allowance has been granted under the Armed Forces Pensions Act hereto is adjudicated bankrupt or is declared insolvent by judgment of any competent Court, then such pension or annual allowance shall forthwith cease.

Pensions and annual allowances to cease on bankruptcy. Cap. 23.

(2) If any member is adjudicated bankrupt or declared insolvent as aforesaid, either—

- (a) after retirement or discharge from the Nigerian Navy in circumstances in which he is eligible for a pension or annual allowance under any provision of these Regulations or the Schedule hereto, but before the pension or annual allowance is granted; or
- (b) before such retirement or discharge from the service, and he shall not have obtained his discharge from bankruptcy or insolvency at the date of retirement or discharge from the Nigerian Navy,

then in the former case any pension or annual allowance eventually granted to him shall cease as from the date of adjudication or declaration as the case may be and, in the latter case, the pension or annual allowance may be granted, but shall cease forthwith and not become payable.

(3) Where a pension or annual allowance ceases by reason of this regulation, it shall be lawful for the Minister, from time to time during the remainder of such member's life, or during such shorter period or periods, either continuous or discontinuous, as the Minister shall think fit, to direct all or any part of the moneys to which such member would have been entitled by way of pension or annual allowance, had he not become bankrupt or insolvent, to be paid to, or applied for the maintenance or benefit of, all or any to the exclusion of the other or others, of the following, that is to say, such member and any wife, child or children of his, in such proportions and manner as the Minister thinks proper, and such moneys shall be paid or applied accordingly.

(4) Moneys applied for the payment of the debts of the member whose pension or annual allowance has so ceased shall, for the purposes of this regulation, be regarded as applied for his benefit.

(5) When a member whose pension or annual allowance has so ceased obtains his discharge from bankruptcy or insolvency, it shall be lawful for the Minister to direct that the pension or annual allowance shall be restored as from the date of such discharge from bankruptcy or insolvency or any later date, and the pension or annual allowance shall be restored accordingly.

Pensions and annual allowances may cease on sentence of imprisonment.

32. (1) If any member of the Nigerian Navy to whom a pension or annual allowance has been granted under the Armed Forces Pensions Act is sentenced to a term of imprisonment by any competent Court for any offence, such pension or annual allowance shall, if the Minister so directs, cease as from such date as the Minister determines.

(2) If any member is sentenced as aforesaid after his retirement or discharge from the Nigerian Navy in circumstances in which he is eligible for a pension or annual allowance under the Armed Forces Pensions Act, but before the pension or annual allowance is granted, then the provisions of paragraph (1) of this regulation shall apply as respects any pension or annual allowance which may be granted to him.

(3) Where a pension or annual allowance ceases by reason of this regulation, it shall be lawful for the Minister to direct all or any part of the moneys to which such member would have been entitled by way of pension or annual allowance had he not been sentenced as aforesaid to be paid, or applied, in the same manner in all respects as prescribed in regulation 31, and such moneys shall be paid or applied accordingly.

(4) If such member after conviction at any time receives a free pardon, the pension or annual allowance shall be restored with retrospective effect; but in determining whether arrears of such pension or annual allowance are payable to such member and in computing the amount thereof, account shall

be taken of all moneys paid or applied under paragraph (3) of this regulation.

PART VIII.—MISCELLANEOUS

33. Deductions may be made from the salary or basic pay of any member of the Nigerian Navy in respect of sums owing and due to the Government of the Federation. Deductions from salary or basic pay.

NIGERIAN NAVY (COURTS-MARTIAL) (APPEALS) RULES OF COURT

ARRANGEMENT OF RULES OF COURT

RULE

1. Short title.
2. Interpretation.
3. Application for leave to appeal and notices.
4. Extension of time.
5. Application to single judge.
6. Abandonment of appeal.
7. Presentation of appeal in writing.
8. Courts-martial proceedings.
9. Copies of proceedings, etc.
10. Documents and exhibits.
11. Security of documents, etc.
12. Witnesses.
13. Registrar and cause list.
14. Presence of appellant at hearing.
15. Notifying results of appeals, etc.
16. Right of audience.
17. Non-compliance with rules.
18. Enforcement of duties.

SCHEDULES

NIGERIAN NAVY (COURTS-MARTIAL) (APPEALS) RULES OF COURT

under sections 206 and 207

Commencement: 1st April, 1962

1. These Rules may be cited as the Nigerian Navy (Courts-Martial) (Appeals) Rules of Court.

2. In these Rules, unless the context otherwise requires—
 “appellant” includes a person who has applied for leave to appeal;
 “the Court” means the Court of Appeal;

“the Act” means the Navy Act;

“exhibits” means all documents and things which have been produced and used in evidence at a trial by court-martial, whether they are attached to the proceedings of the court-martial or not;

“Registrar” means the Chief Registrar of the Court;

“respondent” means the Attorney-General of the Federation.

3. (1) A person desiring to appeal to the Court against his conviction by a court-martial shall give notice of appeal or notice of application for leave to appeal in Form 1 or Form 2 set out in the First Schedule hereto and shall answer the questions and comply with the requirements set forth herein.

Application
for leave to
appeal and
notices.
First
Schedule.

(2) A notice of appeal or of application for leave to appeal and any other notice required or authorised to be given to the Court under these Rules shall be signed by the appellant or by his legal representative:

Provided that notice of abandonment shall, subject to the provisions of paragraph (2) of rule 6 hereof, be signed by the appellant himself.

(3) A notice of appeal or of application for leave to appeal, and any other notice required or authorised to be given to the Court under these Rules, shall, subject to paragraph (4) of this rule, be addressed to the Registrar.

(4) In any of the circumstances specified in the first column of the Second Schedule hereto, any application or notice which is required or authorised to be given to the Court under these Rules may be lodged with the person specified in relation to these circumstances in the second column of that Schedule.

Second
Schedule.

(5) Where an appellant, or any other person required or authorised to make an application or give any notice for the purpose of these Rules, is unable to write, he may affix his mark thereto, in the presence of a witness who shall attest the same, and thereupon such application or notice shall be deemed to be signed by the appellant.

Extension of
time.
First
Schedule.

4. A notice of application to the Court for an extension of time within which to make application for leave to appeal, shall be in Form 3 set out in the First Schedule hereto and shall be sent to the Registrar.

Application
to single
judge.

5. (1) Where an application has been dealt with by a single judge, in exercise of the powers of the Court under section 34 of the Act, the Registrar shall notify the appellant of the decision.

(2) If the judge refuses an application on the part of the appellant to exercise in his favour any of the powers prescribed in section 154 of the Act, the appellant may make a requisition in terms of the said section within ten days from the date on which he receives a notification under paragraph (1) of this rule and such requisition shall be made in Form 4 set out in the First Schedule hereto.

First
Schedule.

(3) A judge who has refused an application to exercise the powers of the Court under section 154 of the Act may sit as a member of the Court determining such application.

Abandon-
ment of
appeal.
First
Schedule.

6. (1) An appellant may, at any time after he has given notice of appeal or of application for leave to appeal, abandon his appeal by giving to the Registrar notice of abandonment thereof in Form 5 set out in the First Schedule hereto.

(2) Where it is contended that the appellant is insane a notice of abandonment may be given and signed by the legal representative.

Presentation
of appeal in
writing.
First
Schedule.

7. Where in accordance with section 26 of the Act an appellant desires to present his case in writing, the form to be given shall be the Form 1 or Form 2 set out in the First Schedule hereto.

Courts-
martial
proceedings.

8. (1) The Registrar, on receipt of a notice of appeal or of application for leave to appeal under the Act, shall request the Commander to forward to him the proceedings of the court-

martial and any petition presented by the appellant praying that his conviction be quashed.

(2) After an application is finally refused or is withdrawn or the appeal is determined or abandoned the proceedings of the court-martial and any petition shall, subject to any order which the Court may make, be returned by the Registrar to the Commander.

(3) A copy of any document which is required for the use of the Court may be made by such person and in such manner as the Commander may direct.

9. (1) At any time after the Registrar has received a notice of appeal or of application for leave to appeal, an appellant or the respondent may, subject to the provisions of these Rules, obtain from the Registrar copies of any document in the possession for the purpose of the appeal. Copies of proceedings, etc.

(2) Copies of any documents shall be supplied by the Registrar to the appellant at a charge not exceeding 14 Kobo per folio of 72 words.

10. Subject to rule 11 of these Rules, any document or exhibit forwarded to the Registrar for the purpose of an appeal or application shall, pending the determination of the appeal or application, be open, as and when the Registrar may arrange, for inspection by the appellant or the respondent. Documents and exhibits.

(2) Subject to rule 11 of these Rules, the Court may, at any stage of an appeal, whenever it thinks it necessary or expedient in the interests of justice so to do, order any document, exhibit or other thing connected with the proceedings to be produced to the Registrar or before it by any person having the custody or control thereof.

(3) After an application is finally refused or is withdrawn, or the appeal is determined or abandoned, documents and exhibits shall, subject to any order which the Court may make, be returned by the Registrar to the person who produced or forwarded them.

(4) Service of any order made under this rule shall be personal service unless the Court otherwise orders.

Security of documents, etc.

11. (1) If the President or any other person authorised by him in that behalf, certifies that, for reasons of security, the whole or part of the proceedings of the court-martial or other document, exhibit or other thing ought not to be disclosed subject to certain conditions specified by the person who so certifies, the Registrar shall, notwithstanding any provisions of these Rules to the contrary, not permit inspection or supply a copy thereof without an order of the Court which may direct upon what conditions, if any, inspection shall be permitted or a copy supplied.

(2) Nothing in these Rules shall affect any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Witnesses.
First
Schedule.

12. (1) An order of the Court that a witness shall attend and be examined shall be in Form 6 set out in the First Schedule hereto and shall specify the time and place at which such witness shall attend.

(2) Such an order may be made on the application at any time by the appellant or the respondent, but if the appellant is in custody and is not legally represented the application shall be made by him in Form 7 set out in the First Schedule hereto.

(3) Service of any order required by this rule to be given to any witness shall be personal service, unless the Court otherwise orders.

First
Schedule.

Registrar and
cause list.

13. (1) The Registrar shall keep a register of all cases in which he shall receive a notice of appeal or of application for leave to appeal under the Act, and such register shall be open for public inspection in such place and at such hours as the Registrar, subject to the approval of the Court, shall decide.

(2) The Registrar shall also publish a list of appeals and applications which the Court may consider on the days on which the Court, as constituted for the hearing and determination of appeals under the Act, shall sit, and shall cause such list to be published at such times and in such places and in

such a manner as he, subject to the approval of the Court, shall think convenient for giving due notice to any parties interested therein of the hearing of the cases in such list by the Court.

14. Where an appellant is in custody and has obtained leave to be present at the hearing and determination of his application or appeal, or at any stage thereof, the Registrar shall notify the appellant, the person in charge of the place where the appellant is confined, and the Commander or the Director of Prisons, as the case may be, of the probable date thereof.

Presence of appellant at hearing.

15. (1) On the final determination of any appeal or of any application, the Registrar shall, unless it appears to him unnecessary to do so, give to the appellant, the respondent, and, where the appellant is in custody, to the person in charge of the place where he is confined, written notice of the determination.

Notifying results of appeals, etc.

(2) In the case of an appeal against a conviction involving sentence of death, the Registrar shall on receiving a notice of appeal, send a copy thereof to the President and, on the final determination of an appeal, shall forthwith give written notice to the appellant and to the President and to the person in charge of the place where the appellant is confined.

16. In any proceedings before the Court, any of the following persons may address the Court—

Right of audience.

- (a) a legal practitioner retained by or on behalf of the appellant; and
- (b) the appellant, if he has the leave of the Court to be present;
- (c) the respondent or his representative.

17. Non-compliance with these Rules by an appellant shall not prevent the further prosecution of his appeal, unless the Court otherwise directs; and the Registrar shall forthwith notify the appellant of any directions given by the Court under this rule, where the appellant was not present at the time when such directions were given.

Non-compliance with rules.