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OFFISIËLE KOERANT

VAN SUIDWES - AFRIKA.

OFFICIAL GAZETTE

EXTRAORDINARY
OF SOUTH WEST AFRICA.



UITGAWE OP GESAG.

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INHOUD

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PROKLAMASIE

VAN SY EKSELLENSIE DIE EDELE HENRY ALLAN FAGAN, AMPTENAAR BELAS MET DIE UITOEFENING VAN DIE UITVOERENDE GESAG VAN DIE UNIE VAN SUID-AFRIKA.

No. 164 van 1957 (Unie).]

VOORLOPIGE TOEPASSING VAN DIE ALGEMENE OOREENKOMS OOR TARIWE EN HANDEL GESLUIT TE GENEVE — WYSIGING VAN PROKLAMASIE NO. 119 VAN 1948, SOOS GEWYSIG.

NADEMAAL die Regering van die Unie van Suid-Africa die Protokol van Voorlopige Toepassing van die Algemene Ooreenkoms oor Tariewe en Handel op 14 Mei 1948 onderteken het;

EN NADEMAAL die Regering van Pakistan genoemde Protokol van Voorlopige Toepassing op 30 Junie 1948 met 'n voorbehoud dat ingevolge Artikel XXXV van die Algemene Ooreenkoms, Pakistan nie meesgunstige nasie-behandeling met die toepassing van die bepaling van genoemde Ooreenkoms op Suid-Afrika sou verleen nie, onderteken het;

EN NADEMAAL die Regering van Pakistan op 15 April 1957 formeel kennis gegee het van die terugtrekking van genoemde voorbehoud tot sy ondertekening van genoemde Protokol van Voorlopige Toepassing;

SO IS DIT dat ek kragtens die bevoegdheid my verleen by artikels drie en vier van die Wet op die Geneefse Algemene Ooreenkoms oor Tariewe en Handel, 1948 (Wet No. 29 van 1948), hierby verklaar dat genoemde Ooreenkoms met betrekking tot Pakistan voorlopig met ingang van die datum van publikasie van hierdie Proklamasie toegepas word en hierby die Bylae van Proklamasie No. 119 van 1948, soos gewysig, verder wysig deur die byvoeging daarby van die gebied „Pakistan”.

GOD BEHOEDE DIE KONINGIN.

Gegee onder my Hand en die Goewerneur-generaal se Grootseël te Kaapstad op hede die Elfde dag van Junie Eenduisend Negehoonderd Sewe-en-vyftig.

H. A. FAGAN,
Amptenaar belas met die Uitoefening van die Uitvoerende Gesag.

Op las van Sy Eksellensie die Amptenaar belas met die Uitoefening van die Uitvoerende Gesag-in-rade.

J. F. NAUDÉ.

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PROCLAMATION

BY HIS EXCELLENCY THE HONOURABLE HENRY ALLAN FAGAN, OFFICER ADMINISTERING THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

No. 164 of 1957 (Union).]

PROVISIONAL APPLICATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE CONCLUDED AT GENEVA — AMENDMENT OF PROCLAMATION NO. 119 OF 1948, AS AMENDED.

WHEREAS the Government of the Union of South Africa signed the Protocol of Provisional Application to the General Agreement on Tariffs and Trade on the 14th May, 1948;

AND WHEREAS the Government of Pakistan signed the said Protocol of Provisional Application on the 30th June, 1948, subject to a reservation that under Article XXXV of the General Agreement, Pakistan would not extend most-favoured-nation treatment to South Africa in applying the provisions of the said Agreement;

AND WHEREAS the Government of Pakistan has on the 15th April, 1957, formally notified the withdrawal of the said reservation to its signature of the said Protocol of Provisional Application;

NOW THEREFORE under and by virtue of the powers vested in me by section three and four of the Geneva General Agreement on Tariffs and Trade Act, 1948 (Act No. 29 of 1948), I hereby declare that the said Agreement shall be applied provisionally in relation to Pakistan with effect from the date of publication of this Proclamation, and do hereby further amend the Schedule to Proclamation No. 119 of 1948, as amended, by the addition of the territory “Pakistan” thereto.

GOD SAVE THE QUEEN.

Given under my Hand and the Governor-General's Great Seal at Cape Town on this Eleventh day of June, One Thousand Nine Hundred and Fifty-seven.

H. A. FAGAN,
Officer Administering the Government.

By Command of His Excellency the Officer Administering the Government-in-Council.

J. F. NAUDÉ.

No. 37, 1957.]

ACT

To amend the Mental Disorders Act, 1916.

(English text signed by the Officer Administering the Government.)
(Assented to 3rd June, 1957.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Amendment of section 3 of Act 38 of 1916, as amended by section 2 of Act 7 of 1944.

1. Section *three* of the Mental Disorders Act, 1916 (hereinafter referred to as the principal Act), is hereby amended by the deletion of the description of Class VI of the classes of mentally disordered or defective persons.

Amendment of section 43 of Act 38 of 1916.

2. Section *forty-three* of the principal Act is hereby amended by the addition at the end of sub-section (2) of the following paragraph, the existing sub-section becoming paragraph (a):

„(b) The Minister shall not grant such consent in respect of any person who is not domiciled in the Union, unless the government of the proclaimed territory has undertaken to pay the maintenance and other expenses which may be incurred by the Government of the Union in connection with the detention of such person in an institution.”.

Amendment of section 53 of Act 38 of 1916, as amended by section 24 of Act 7 of 1944.

3. Section *fifty-three* of the principal Act is hereby amended by the substitution for the words “of mentally disordered and defective persons”, wherever they occur, of the words “for Mental Hygiene”.

Substitution of section 79 of Act 38 of 1916.

4. The following section is hereby substituted for section *seventy-nine* of the principal Act:

“Expenses in connection with the detention of any person in an institution by the Government. 79. (1) Subject to the provisions of sub-section (2), the maintenance and other expenses necessarily incurred in connection with the detention by the Government in any institution under the provisions of this Act, of any person, other than a person in respect of whom the provisions of section *forty-three* or *eighty* apply, shall be defrayed out of monies appropriated by Parliament for the purpose.

(2) The said maintenance and other expenses—

(a) in respect of any person detained under section *forty-four* or *fifty-two*; or

(b) which in terms of any law shall be borne by the Administration of the territory of South-West Africa,

may be recovered from the estate of the person detained or from any person liable by law to contribute towards his maintenance.”.

Amendment of section 80 of Act 38 of 1916.

5. Section *eighty* of the principal Act is hereby amended—

(a) by the substitution for the word “port”, wherever it occurs, of the words “seaport or airport”;

(b) by the insertion after the word “vessel” wherever it occurs, of the words “or aircraft”;

(c) by the substitution for the words “or master”, wherever they occur, of the words “master or pilot”; and

(d) by the substitution in sub-section (2) for the words “whence he was shipped” of the words “where he boarded such vessel or aircraft”.

Amendment of section 86 of Act 38 of 1916, as amended by section 30 of Act 7 of 1944.

6. Section *eighty-six* of the principal Act is hereby amended by the substitution for paragraph (e) of sub-section (1) of the following paragraph:

“(e) the payment of maintenance and other expenses

necessarily or otherwise incurred in connection with the detention and maintenance of any person in any institution, other than a licensed institution;".

Amendment of section 87 of Act 38 of 1916, as amended by section 31 of Act 7 of 1944.

7. Section *eighty-seven* of the principal Act is hereby amended—

(a) by the substitution for the definition of "Commissioner" of the following definition:

"'Commissioner' means the Commissioner or Deputy Commissioner for Mental Hygiene appointed under this Act;"; and

(b) by the substitution for the definition of "magistrate" of the following definition:

"'magistrate' includes an additional or assistant magistrate;".

Short title.

8. This Act shall be called the Mental Disorders Amendment Act, 1957.

No. 44, 1957.]

ACT

To provide for the defence of the Union and for matters incidental thereto.

(Afrikaans text signed by the Officer Administering the Government.)

(Assented to 10th June, 1957.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

CHAPTER I.

DEFINITIONS AND LIABILITY FOR SERVICE AND TRAINING.

Definitions.

1. (1) In this Act, unless the context otherwise indicates—
 - (i) "citizen" means a South African citizen within the meaning of the South African Citizenship Act, 1949 (Act No. 44 of 1949); (iv)
 - (ii) "commando" means a commando established under this Act; (ix)
 - (iii) "court", in relation to a visiting force, means any body which or person who by the laws of the country to which such visiting force belongs, is empowered to investigate any matter or to try any person for an offence under the military laws of that country or to review the proceedings in connection with the investigation of any such matter or the trial of any person in respect of any such offence; (vii)
 - (iv) "deferment" means the deferment for one year of the liability of a citizen to be included in any ballot under section *seventy*; (xxi)
 - (v) "enrol", in relation to any person, means accept and record the enlistment of that person as a member of any portion of the South African Defence Force; (viii)
 - (vi) "force" means a military force; (xi)
 - (vii) "member" includes an officer and an other rank, and in relation to a visiting force from any country, any person subject to the military laws of that country who is a member of another force and is attached to the visiting force, or is a civilian employed in connection with the visiting force, who entered into his engagement outside the Union and is not a South African citizen within the meaning of the South African Citizenship Act, 1949 (Act No. 44 of 1949); (x)
 - (viii) "military" includes army, air and naval; (xiii)
 - (ix) "military court" includes an officer on whom jurisdiction to try an offence has been conferred under this Act; (xiv)
 - (x) "Military Discipline Code" means the Military Discipline Code as defined in section *one hundred and four*; (xviii)
 - (xi) "Minister" means the Minister of Defence; (xv)
 - (xii) "officer", in relation to the South African Defence Force or the Reserve, means a person who holds commissioned rank conferred upon him under section *eighty-three*; (xvi)
 - (xiii) "other force" means a military force of a country or state other than the Union; (ii)
 - (xiv) "other rank" means a person other than an officer; (xii)
 - (xv) "prescribed" means prescribed by regulation; (xxiii)
 - (xvi) "registered address", in relation to a citizen, means the address of that citizen as notified from time to time to the proper authority in terms of this Act; (i)
 - (xvii) "regulation" means a regulation made and in force under this Act; (xix)
 - (xviii) "service in defence of the Union" means military service in time of war or in connection with the discharge of the obligations of the Union arising from any agreement between the Union and any other nation; (v)

- (xix) "this Act" includes any rule or regulation made thereunder; (vi)
- (xx) "time of war" means any time during which an actual state of war exists or may in the opinion of the Governor-General be anticipated; (xvii)
- (xxi) "Treasury" means any officer of the Department of Finance who has been authorized by the Minister of Finance to perform any function assigned to the Treasury in this Act; (xx)
- (xxii) "Union" includes the territory of South-West Africa; (xxii)
- (xxiii) "visiting force" means a military force of any country present in the Union at any time with the consent of the Government of the Union. (iii)

(2) Any reference in this Act to a year, when used in conjunction with an ordinal numeral adjective to denote the age of a citizen, shall be construed as a reference to the calendar year in which the age indicated by such ordinal numeral adjective is attained.

Application
of Act.

2. (1) This Act shall not apply—

- (a) in so far as it relates to liability for service or training, to any citizen who is a member of either House of Parliament or of a Provincial Council or of the Legislative Assembly of South-West Africa; or
- (b) except in so far as it relates to any auxiliary, nursing or civilian protective service established under this Act, to females or persons who are not white persons as defined in section one of the Population Registration Act, 1950 (Act No. 30 of 1950):

Provided that the Governor-General may with the approval by resolution of both Houses of Parliament by proclamation in the *Gazette*, apply any provision of this Act to females or any class of females or to such persons who are not white persons, as so defined, or any class of such persons: Provided further that nothing in this section shall be construed as preventing any female or any person who is not a white person as so defined from engaging voluntarily and in accordance with regulations for service in the South African Defence Force in such capacity and subject to such conditions as may be prescribed.

(2) The Minister or any person duly authorized thereto by him, may exempt from service or training under this Act any citizen who is also a citizen of any other country or is domiciled outside the Union, and who is a member of a military force of such other country or of the country in which he is domiciled, as the case may be, or is a member of a reserve of any such force, so long as he is by the laws of the country concerned obliged to serve or undergo training in such force or reserve.

Liability for
training and
service.

3. Subject to the provisions of this Act—

- (a) every person domiciled in the Union shall be liable between his twelfth and his seventeenth year, both included, to undergo training as a cadet; and
- (b) every citizen between his seventeenth and his sixty-fifth year, both included, shall be liable to undergo training in the South African Defence Force and to render service as hereinafter prescribed.

Duties of
employers.

4. (1) An employer shall afford any person in his employ all reasonable facilities to be enrolled for or to carry out any training or service under this Act.

(2) Any employer who—

- (a) fails to afford facilities as aforesaid; or
- (b) by dismissing an employee or reducing his salary or wages or altering his position to his disadvantage or in any other manner penalizes such employee on account of his having been enrolled for or being engaged in any such training or service; or
- (c) by words, conduct or otherwise directly or indirectly compels, induces or prevails upon, or attempts to compel, induce or prevail upon, any person in or seeking to enter his employment to evade or refrain from being enrolled for or carrying out any training or service under this Act,

shall be guilty of an offence: Provided that nothing in this section shall be construed as requiring any employer to pay to any person in his employ any salary or wages in respect of any

period during which he is absent from his work for the purpose of undergoing any training or carrying out any service under this Act.

(3) Whenever in any proceedings under paragraph (b) of sub-section (2), it is proved that an employer has dismissed the employee concerned or has reduced his salary or wages or altered his position to his disadvantage, or has in any other manner penalized such employee, that employer shall be deemed to have dismissed such employee or to have so reduced his salary or wages or to have so altered his position or to have so penalized him, as the case may be, by reason of such employee having been enrolled for or carried out the training or service in question, unless the contrary is proved.

CHAPTER II.

COMPOSITION AND ORGANIZATION OF THE SOUTH AFRICAN DEFENCE FORCE AND RESERVE.

Composition of the South African Defence Force.

5. The South African Defence Force shall consist of—
 (a) the Permanent Force;
 (b) the Citizen Force; and
 (c) Commandos.

Composition of the Reserve.

6. The Reserve shall consist of—
 (a) the Reserve of Officers;
 (b) the Permanent Force Reserve;
 (c) the Citizen Force Reserve; and
 (d) the National Reserve.

Organization of South African Defence Force and Reserve.

7. The South African Defence Force and the Reserve shall be organized in such armed services, arms, corps, formations and units as the Minister may determine or as may be prescribed, and any such service, arm, corps, formation or unit may consist of members of any one or more of the forces and reserves mentioned in section *five* or *six*.

Executive command

8. The executive military command of the South African Defence Force and the Reserve, or of any portion thereof, shall, subject to the provisions of this Act, be vested in such officer or officers of the South African Defence Force as the Minister may determine.

CHAPTER III.

THE PERMANENT FORCE.

Composition and organization of Permanent Force.

9. (1) The Permanent Force shall consist of officers appointed thereto and other ranks engaged for service therein, and shall be organized in such manner as may be prescribed: Provided that until such time as it is otherwise prescribed under this Act, the said Force shall be organized in accordance with the provisions which under the laws repealed by section *one hundred and fifty-two*, were immediately prior to the commencement of this Act applicable in respect of the South African Permanent Force referred to in section *one* of the South Africa Defence Act Amendment Act, 1922 (Act No. 22 of 1922).

(2) The procedure in connection with the appointment of officers and the engagement of other ranks and, subject to the provisions of any law relating to the grant of pensions to members of the Permanent Force, the conditions of such appointment or engagement shall be as may be prescribed.

(3) Different conditions may be prescribed under sub-section (2) for members of different ranks or in different armed services, arms, corps, formations or units of the Permanent Force or members performing specified duties and other members of that Force.

(4) Any person engaging for service in the Permanent Force shall be bound to serve therein until he has obtained his official discharge.

Qualifications of members of Permanent Force.

10. No person shall be enrolled for service in the Permanent Force unless he is a citizen and, except where the Minister otherwise directs, has passed in both official languages of the Union in the examination which he is in terms of the conditions prescribed under sub-section (2) of section *nine* required to pass as a condition precedent to appointment or engagement in terms of that section: Provided that the Minister may authorize the enrolment in such Force of any person in a temporary capacity, but not for a period exceeding three years at any one time in the case of a person who is not a citizen.

Appointment
of officers.

11. Officers of the Permanent Force shall as far as practicable be appointed from amongst persons who have been trained at a military training institution established under section *seventy-seven*, and members of the said Force.

Resignation
of officers
and discharge
of other
ranks.

12. (1) Subject to the provisions of sub-section (2) of this section and section *eighty-six*—

- (a) an officer of the Permanent Force may by notice in writing resign from that Force; and
- (b) an other rank in that Force may obtain his discharge therefrom by purchase on such conditions as may be prescribed or on the expiration of the period of service for which he engaged.

(2) An officer or other rank who has undergone special training in pursuance of an undertaking by him to serve the Government for a specified period after the completion of such training, shall not be entitled to be relieved of his duties or to be discharged until he has served for such period or has paid to the Government an amount specified in the undertaking by way of compensation for any expenditure incurred by the Government in providing such special training.

Service of
members of
Permanent
Force.

13. (1) The Permanent Force or any portion or member thereof may at all times be employed—

- (a) on service in defence of the Union;
- (b) on service in the prevention or suppression of internal disorder in the Union;
- (c) on service in the preservation of life, health or property or the maintenance of essential services; and
- (d) on such police duties as may be prescribed.

(2) A member of the Permanent Force may, subject to such limitations and restrictions as may be prescribed, be required to serve in any portion of that Force, and any such member serving in any armed service, arm, formation, corps or unit or performing any duty in respect of which a special allowance is prescribed, shall not be entitled to such allowance while serving in any other armed service, arm, formation, corps or unit or performing any other duty.

(3) Any such member who is employed on police duties may exercise all such powers and shall perform all such functions as are by law conferred upon or required to be performed by a member of the South African Police Force established under the Police Act, 1912 (Act No. 14 of 1912), and shall in respect of acts done or omitted to be done by him be liable to the same extent as he would have been liable in like circumstances if he were a member of the said Force, and shall have the benefit of all the indemnities to which a member of that Force would in like circumstances be entitled.

Member of
Permanent
Force not
eligible for
certain
offices.

14. No member of the Permanent Force shall be eligible for nomination or election as a senator or a member of the House of Assembly or any Provincial Council or the Legislative Assembly of South-West Africa or any prescribed public body.

Liability
to serve in
Permanent
Force
Reserve.

15. Any citizen who has served in the Permanent Force for not less than one year, shall on termination of his service therein, and subject to the provisions of Chapter VI, be liable to serve in the Permanent Force Reserve.

CHAPTER IV.

THE CITIZEN FORCE.

Composition and
organization of
Citizen Force.

16. (1) The Citizen Force shall consist of—

- (a) officers appointed thereto under this Act;
- (b) persons allotted thereto in terms of Chapter VIII;
- (c) citizens liable to render service in defence of the Union who engage to serve in that Force; and
- (d) citizens who are called up to render service in terms of Chapter X and are posted to that Force.

(2) Subject to the provisions of sub-section (3), the Citizen Force shall as far as may be expedient be organized in such armed services, arms, corps, formations and units as may be determined by the Minister or as may be prescribed, but nothing in this or any other section of this Act shall be deemed to preclude the training of any member of that Force in any depot or establishment which is not a unit of that Force or the attach-

ment of any such member to any other portion of the South African Defence Force for training or service.

(3) Until such time as it is otherwise determined by the Minister or prescribed under this Act, the Citizen Force shall be organized in accordance with the provisions which under the laws repealed by section *one hundred and fifty-two*, were immediately prior to the commencement of this Act applicable in respect of the Active Citizen Force referred to in section *sixteen* of the South Africa Defence Act, 1912 (Act No. 13 of 1912).

Officer
appointments.

17. (1) Officers of the Citizen Force shall as far as practicable be appointed from the ranks of that Force, but save as provided in sub-section (4), no member of that Force shall be eligible for appointment to commissioned rank unless—

- (a) he has satisfied the prescribed authority as to his capacity for leadership, military knowledge and experience and educational qualifications; and
- (b) he has undergone and qualified in such courses of instruction as may be prescribed and has thereafter satisfied the prescribed authority as to his qualifications and fitness to exercise command.

(2) Any person who accepts commissioned rank in the Citizen Force shall be deemed thereby to engage himself to serve as an officer in any part of that Force for a period of not less than six years from the date on which he is first commissioned, unless the Minister has agreed to his resignation or retirement at an earlier date or he has otherwise been released from his engagement.

(3) The age limits for officers in various ranks in the Citizen Force shall be as prescribed.

(4) Notwithstanding anything in this Act contained, the Governor-General may appoint as an officer in the Citizen Force any citizen who owing to his professional qualifications or civilian position is specially fitted for such appointment.

Promotion of
officers.

18. No officer of the Citizen Force shall be promoted to higher rank in that force until he has proved, in the manner prescribed, that he is fully qualified to undertake all the duties which may be required to be performed by an officer in that higher rank.

Voluntary
engagements.

19. (1) Any citizen liable to render service in defence of the Union, other than a citizen liable to be enrolled for training in terms of Chapter VIII, may apply to serve in the Citizen Force and may be engaged for such service under such conditions as may be prescribed.

(2) A citizen engaging or re-engaging for service in the Citizen Force shall be enrolled in the manner prescribed and shall be bound to serve therein until he has obtained his official discharge.

Voluntary
whole-time
service.

20. (1) Any officer or other citizen liable to render service in defence of the Union may apply to be appointed or engaged for temporary whole-time service in the Citizen Force and may be so appointed or engaged on such conditions as may be prescribed.

(2) An officer or other citizen shall not, except in time of war, be so appointed or engaged for a period in excess of two years, but may, on the expiry of any period for which he has been so appointed or engaged, be re-appointed or re-engaged for further periods not exceeding two years at a time.

(3) An officer or other citizen who has performed temporary whole-time service in terms of this section, may be exempted from training in terms of Chapter VIII on such conditions as may be prescribed.

(4) Officers or citizens appointed or engaged in terms of this section shall be liable to undergo the same training and to be employed in the same manner as members of the Permanent Force and shall be subject to the Military Discipline Code as if they were members of that Force.

Service and
training.

21. (1) Subject to the provisions of sections *twenty-three* and *twenty-four*, every person allotted to the Citizen Force in terms of Chapter VIII shall be liable to serve in that Force for a period of four years reckoned from the first day of January in the year in which his training commences and to undergo during that period such training as may, within the limits laid down in section *twenty-two*, be prescribed: Provided that a prescribed officer may, in any particular case on grounds

of educational or vocational training or ill health or such other grounds as he may deem sufficient, grant permission for the training to be completed within such period of not more than seven years as he may determine.

(2) Officers of the Citizen Force, and citizens engaged for service therein under section *twenty*, shall undergo such training as may, within the limits laid down in section *twenty-two*, be prescribed.

(3) Any member of the Citizen Force may voluntarily undergo additional training under such conditions as may be prescribed.

(4) Training of members of the Citizen Force shall take place in the units in which they have been enrolled or to which they may be transferred or in training or other military establishments, or partly in such units and partly in such establishments, as may be prescribed.

Maximum
periods of
compulsory
training.

22. (1) A member of the Citizen Force shall be liable to undergo both continuous and non-continuous training.

(2) (a) The continuous training to which members allotted to the said Force in terms of Chapter VIII are liable, shall be completed within not more than four periods of an aggregate duration of not more than nine months.

(b) The period of continuous training during any training year shall not exceed three months and not more than one such period shall be prescribed in respect of any one training year.

(3) The non-continuous training to which the members mentioned in sub-section (2) are liable during the period of four years mentioned in sub-section (1) of section *twenty-one*, shall be completed within a period not exceeding in the aggregate twenty-six days.

(4) The continuous training to which officers of the Citizen Force and members engaged in terms of section *nineteen* are liable, shall be completed within a single period of not more than thirty days in any training year, and the period of non-continuous training to which the said officers and members are liable shall not exceed six days in any training year.

(5) For the purpose of reckoning days of non-continuous training—

(a) a period of instruction or exercise lasting eight hours; or

(b) two periods of instruction or exercise each lasting four hours; or

(c) three periods of instruction or exercise each lasting three hours; or

(d) six periods of instruction or exercise each lasting one hour and a half,

shall be deemed to be equivalent to one day's training.

(6) The time occupied in proceeding to or returning from a camp or place of assembly or instruction shall not be reckoned as part of any period of training, instruction or exercise for the purpose of this section.

Whole-time
training.

23. (1) Notwithstanding anything to the contrary contained in section *twenty-one*, a citizen who is liable to undergo training or any other person domiciled in the Union may (subject in the case of a minor to the consent of his father or guardian) apply in the prescribed manner to undergo whole-time training in the Citizen Force, and may upon enrolment in accordance with the regulations undergo such training under such conditions and for such period not exceeding one year as may be prescribed.

(2) A citizen who has under sub-section (1) undergone whole-time training for the period prescribed in terms of that sub-section, shall be exempt from any further liability for training.

Training in
terms of
special
contracts.

24. (1) A citizen who desires to undergo any prescribed specialized training which cannot be provided under section *twenty-one*, *twenty-two* or *twenty-three*, may (subject in the case of a minor to the consent of his father or guardian), upon enrolment under special contract in the manner prescribed, undergo such specialized training in the Citizen Force.

(2) Any such special contract may provide for all matters for which it is necessary or expedient to provide, including—

(a) the duration and extent of the training;

- (b) the continued service of the citizen in the Citizen Force or in any reserve, or partly in such Force and partly in such reserve, for a period not exceeding ten years after completion of the training; and
 - (c) the re-imbursement by the citizen of the whole or any part of the cost of the training in the event of his failure for reasons within his own control to carry out the terms of the contract.
- (3) Except as may be provided in terms of paragraph (b) of sub-section (2), a citizen who has completed a course of training in terms of this section shall be exempt from any further liability for training.

Training year.

25. (1) The training year of members of the Citizen Force shall, except in the case of citizens enrolled for whole-time training in terms of section *twenty-three* or citizens enrolled for specialized training under special contracts in terms of section *twenty-four*, extend from the first day of January in any year to the last day of December in the same year.

(2) The training year of members of the Citizen Force enrolled for such whole-time training or such specialized training shall be as may be prescribed.

Conditions of service.

26. (1) Subject to the provisions of this Act, the conditions of enrolment, service, training and termination of service in the Citizen Force shall be as prescribed.

(2) Different conditions may be prescribed for citizens serving or undergoing training under different provisions of this Act.

Uniforms, arms and accoutrements.

27. (1) The prescribed uniform shall be supplied at public expense to every member of the Citizen Force and shall be maintained by him at his own expense for such period and under such conditions as may be prescribed.

(2) Distinctive marks or badges for the various corps and units of the Citizen Force, together with the necessary arms and accoutrements, shall be issued to members thereof at the public expense, and thereafter shall be maintained by them in good order and in accordance with prescribed conditions.

Liability for service of members of Citizen Force.

28. A member of the Citizen Force shall be liable to render any service on which any member of the Permanent Force may in terms of paragraph (a), (b) or (c) of sub-section (1) of section *thirteen* be employed.

Change of address.

29. (1) Every member of the Citizen Force shall, in such manner and at such times or within such periods as may be prescribed, notify the prescribed officer of his address and of any change therein.

(2) In any proceedings against any such member for a contravention of any provision of sub-section (1), the member concerned shall be presumed not to have notified the prescribed officer of his address or of any change therein unless he produces—

- (a) an acknowledgment by the prescribed officer of his notification of his address or of a change therein, as the case may be; or
- (b) other proof to the satisfaction of the court that he has in fact notified the prescribed officer of his address or of a change therein.

Termination of service in the Citizen Force.

30. Subject to the provisions of section *ninety-six*, a member of the Citizen Force shall be entitled to receive his discharge therefrom on the expiration of the period of service for which he engaged or for which he is liable, and may be discharged therefrom for other prescribed reasons.

Liability to serve in Citizen Force Reserve.

31. A citizen who has served in the Citizen Force shall on the termination of his service therein be liable to serve in the Citizen Force Reserve for the period and subject to the conditions provided in Chapter VI.

CHAPTER V.

COMMANDOS.

Establishment of commandos.

32. There shall be established under such designations as the Minister may determine, a system of commandos so as to ensure that citizens liable to render service in defence of the Union, and not serving in the Permanent Force, the Citizen Force, the South African Police or the Railways and Harbours

Police, and not being officers as defined in section *two* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911), shall as far as possible be proficient in the use of military weapons, and that as many of such citizens as possible shall be organized, trained and available to be called up in terms of Chapter X at short notice.

Organization of commandos.

33. The organization and command of commandos, and the ranks therein, the manner of appointment thereto and the conditions applicable in connection with any such appointment, shall be as prescribed.

Change of address.

34. Every member of a commando shall advise the prescribed officer of any change in his address within fourteen days of such change.

Compulsory service in a commando.

35. Every citizen whose name is required to be included but has not been drawn in a ballot held in terms of Chapter VIII shall, unless he proves that he is medically unfit for military service or entitled under sub-section (3) of section *ninety-seven* to exemption from serving in a combatant capacity, or unless there be other prescribed cause for exemption (which may include the lack of facilities for training in the area in which he is resident), be liable to be enrolled in accordance with regulations as a member of a commando during the month of January in the year following such ballot, and shall if so enrolled serve therein for four consecutive years unless he is sooner discharged.

Voluntary service in a commando.

36. Any citizen liable to render service in terms of this Act, or any person (other than a citizen) domiciled in the Union who, in either case, is not serving in the Permanent Force, the Citizen Force, the South African Police or the Railways and Harbours Police, or as an officer as defined in section *two* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911), may in accordance with regulations engage to serve as a member of a commando for such period and under such conditions as may be prescribed.

Honorary members of commandos.

37. (1) With the approval of the Minister, and under such conditions as may be prescribed, persons who are not eligible in terms of section *thirty-six* to engage as members of a commando may be appointed as honorary members thereof, but the number of such honorary members shall not exceed ten in any commando.

(2) Such honorary members shall be entitled to receive free of charge ammunition and the temporary use of a Government firearm provided for in sub-section (2) of section *thirty-nine*, and to take part in any exercise or competition, but shall not be entitled to any of the other privileges or rights or be liable to any of the duties or obligations of a member of a commando.

Liability of members of commandos for service.

38. No member of a commando shall, by reason of his membership of such commando, be exempted from any liability for training, service or duty in any other portion of the South African Defence Force, and every such member shall be liable to render service in terms of Chapter X in the commando to which he belongs or in any other commando or in the Citizen Force, as the public interest may require.

Issue of arms, ammunition and accoutrements to commandos.

39. (1) Arms, ammunition and the necessary accoutrements and military clothing shall be issued at public expense to citizens compulsorily serving in commandos in terms of section *thirty-five*.

(2) Other citizens shall be entitled, while serving voluntarily as members of a commando, to receive annually a free issue of ammunition for target practice, and may be allowed the temporary use of a Government firearm while carrying out target practice and the temporary use of other items of military clothing or equipment.

(3) The kind, number and quantity of arms, ammunition, accoutrements and military clothing which may be issued or allowed for temporary use in terms of this section, and the conditions pertaining to such issue or temporary use, shall be as may be prescribed.

Sales and loans of rifles and ammunition to members of commandos.

40. (1) A citizen serving voluntarily as a member of a commando may be allowed to obtain a military rifle from Government stores either—

(a) by purchase at such special rates (approximating to cost price) and under such conditions as may be prescribed; or

- (b) on loan for temporary use and custody on such conditions (which may include the making of a cash deposit or the giving of other satisfactory security therefor) as may be prescribed:

Provided that a member who has at any time either before or after the commencement of this Act obtained a military rifle from Government stores either by purchase or on loan, shall not be entitled to receive another military rifle under this section, unless the prescribed authority referred to in sub-section (3) has certified such rifle to be unserviceable or obsolete and has given permission for it to be sold or otherwise disposed of.

(2) Any person who has obtained a rifle under this section, shall at all times keep such rifle in his personal possession, and shall maintain it in good order and condition at his own expense and bring it with him whenever he is called upon to present himself for inspection or for service in terms of Chapter X of this Act.

(3) Any citizen who has been allowed to obtain a military rifle under paragraph (a) of sub-section (1), shall continue to serve as a member of a commando for a period of not less than five years and shall not during that period or while he is a member of a commando, sell or otherwise dispose of the rifle without the permission of a prescribed authority.

(4) If any such citizen contravenes or fails to comply with any provision of this section or fails to comply with the conditions of purchase or to attend in any year during the aforesaid period of five years, the minimum number of exercises prescribed as provided in sub-section (2) of section *forty-four*, the rifle shall be forfeited to the Government and may be taken possession of by a prescribed officer without payment of compensation or refund of the purchase price.

(5) No person shall purchase or otherwise acquire from any other person any rifle which has been purchased by that other person in terms of this section, unless there be delivered to him a certificate by a prescribed officer that the conditions of purchase in terms of this section have been complied with or waived by the prescribed authority, and any such purchase or other acquisition without the delivery of such certificate shall be null and void.

(6) No issuer of licences under the Arms and Ammunition Act, 1937 (Act No. 28 of 1937), shall issue a licence under that Act in respect of any rifle which has been purchased in terms of this section unless the certificate mentioned in sub-section (5) has been exhibited to him.

(7) Members of commandos may be permitted to purchase from Government stores, rifle components and accessories and a quantity of ammunition for target practice or competitions, at such prices and under such conditions as may be prescribed.

(8) Any rifle obtained by any person by purchase or on loan prior to the commencement of this Act, by virtue of his having been a member of a rifle commando established under the South Africa Defence Act, 1912 (Act No. 13 of 1912), shall be deemed to have been so obtained by such person under sub-section (1) of this section.

Inspection
of rifles,
ammunition and
accoutrements.

41. A member of a commando shall, whenever called upon to do so, produce for inspection by a prescribed officer his rifle, emergency reserve ammunition, and any accoutrements and military clothing which may have been issued to him.

Rifle ranges.

42. The provision of rifle ranges for the use of commandos and the payment of subsidies or allowances to commandos for the construction or upkeep of rifle ranges, shall be as may be prescribed.

Pay and
allowances.

43. Members of commandos called up for service in terms of Chapter X or performing any special prescribed duty or undergoing training may receive such pay and allowances as may be prescribed.

Training of
commandos.

44. (1) The training of members of commandos shall be as may be prescribed.

(2) Except in the case of members compulsorily enrolled in a commando in terms of section *thirty-five*, attendance at training exercises shall be voluntary, but a member who fails in any year to attend a prescribed number of such exercises

may be discharged from the commando and debarred from again engaging in any commando for a prescribed period.

(3) Members compulsorily enrolled in a commando in terms of section *thirty-five*, shall be liable to undergo annually such training, extending over a period not exceeding twenty-one days in any year, as may be prescribed.

(4) Members of commandos may, subject to the regulations, be permitted to attend any training or exercise of the Citizen Force, or any other training or course of instruction, under such conditions as may be prescribed.

Discipline of
commandos.

45. Members of commandos shall be subject to such provisions of the Military Discipline Code as are in terms of this Act applicable to them, and to such other disciplinary regulations as may be prescribed.

CHAPTER VI.

THE RESERVE.

Composition
of Reserve
of Officers.

46. The Reserve of Officers shall consist of citizens (other than members of the South African Defence Force, the Permanent Force Reserve or the Citizen Force Reserve) liable to render service in defence of the Union, who hold commissions as officers and who undertake to serve in the Reserve of Officers and are in accordance with the regulations and with the approval of the Minister or a person acting under his authority, appointed thereto under such conditions as may be prescribed.

Composition of
Permanent Force
Reserve.

47. The Permanent Force Reserve shall consist of citizens who, having served in the Permanent Force for a period of not less than one year, are on the termination of their services therein required with the approval of the Minister or a person acting under his authority, and in accordance with regulations, to complete a period of service in the Permanent Force Reserve as may be prescribed: Provided that no person shall be required to serve in the said Reserve in a rank lower than that which he held in the Permanent Force at the termination of his service therein or beyond his sixty-fifth year in the case of an officer or beyond his sixtieth year in the case of any other rank.

Composition and
organization of
Citizen Force
Reserve.

48. The Citizen Force Reserve shall consist of—

- (a) citizens who, having served in the Citizen Force, are, with the approval of the Minister or a person acting under his authority, and in accordance with regulations, required to complete a period of service in the Citizen Force Reserve as may be prescribed: Provided that no such citizen shall be required to serve in the said Reserve for more than ten years or beyond his fifty-fifth year; and
- (b) other citizens who fulfil the prescribed conditions and who with the approval of the Minister or a person acting under his authority, engage for service therein in the manner prescribed.

Composition
of National
Reserve.

49. The National Reserve shall consist of all citizens mentioned in paragraph (b) of section *three* who are not members of any of the forces constituting the South African Defence Force or of any other reserve established under this Act, and shall include all persons domiciled in the Union who are citizens of any country specified by the Governor-General by proclamation in the *Gazette*.

Organization
of Reserves.

50. The Reserve of Officers, the Permanent Force Reserve and the Citizen Force Reserve shall respectively be organized in such manner as may in the case of each of those Reserves be determined by the Minister or be prescribed.

Training of
Reserves.

51. (1) Members of the Permanent Force Reserve shall be liable to undergo such training as may be prescribed, subject to the condition that the period of such training shall not exceed a period of thirty days during any period of five years.

(2) Any officer who has received training of a special nature may, on the directions of the Minister, be required to undergo such refresher course as may be prescribed, but any such refresher course shall not exceed thirty days during any period of five years.

(3) Any member of the Reserve of Officers or of the Permanent Force Reserve or the Citizen Force Reserve may be permitted to attend voluntarily any course of training provided under this Act.

Liability of members of Reserves for service.

52. (1) A member of the Reserve of Officers or of the Citizen Force Reserve shall be liable to render service in terms of Chapter X in any portion of the South African Defence Force as the public interest may require, but except with his own consent or in pursuance of action taken in terms of any provision of the Military Discipline Code, no officer shall be required to serve in a rank lower than that which he holds in the Reserve to which he belongs.

(2) Members of the Permanent Force Reserve shall be liable to render service in terms of Chapter X in the Permanent Force, and may, if the Minister so directs, be attached to any other portion of the South African Defence Force as the public interest may require.

(3) Any member of the Permanent Force Reserve may at any time on the instructions of the Minister and by means of a registered letter addressed to him at his registered address by a prescribed officer, be called out for any service or duty in the Permanent Force and may be employed as if he were a member of that Force.

(4) No member of the Permanent Force Reserve called out for service in terms of sub-section (3), shall be required at any time to serve in the Permanent Force for a continuous period exceeding six months.

(5) If any member of the Permanent Force Reserve has been called out for service or duty under the provisions of sub-section (3), the Minister shall within fourteen days of such calling out communicate the reasons therefor to both Houses of Parliament, if Parliament is then in session, or, if Parliament is not then in session, within fourteen days of the commencement of its next ensuing session.

(6) Members of the National Reserve shall be liable to render service in terms of Chapter X in any portion of the South African Defence Force as the public interest may require.

Conditions of service in Permanent Force Reserve.

53. (1) The conditions of service in the Permanent Force Reserve shall be as prescribed, and members of that Reserve shall in respect of any training undergone or required to be undergone or any service or duty performed or required to be performed in pursuance of this Act, be subject to the Military Discipline Code as if they were members of the Permanent Force.

(2) No member of the Permanent Force Reserve who has been called out for training, service or duty in terms of this Act shall, except with his own consent or in pursuance of action taken under the Military Discipline Code, be required to serve in a rank lower than that which he holds in the said Reserve.

Liability to report.

54. (1) A member of the Reserve of Officers shall report in writing at such times and to such officer as may be prescribed and shall advise that officer of any change in such member's address within fourteen days after the change takes place, and shall in the event of a failure to comply with the provisions of this sub-section be liable on the directions of the Minister to cancellation of his commission and removal from the Reserve of Officers.

(2) Every member of the Permanent Force Reserve or the Citizen Force Reserve shall, in such manner and at such times or within such periods as may be prescribed, report in writing or in person to a prescribed officer and shall also advise that officer of any change in his address within thirty days after such change has occurred.

(3) Whenever any such member is charged with having failed to notify the prescribed officer of any change in his address as required by sub-section (1) or (2), he shall be presumed to have so failed, unless he produces—

(a) an acknowledgment by the prescribed officer of his notification of such change; or

(b) other proof to the satisfaction of the court that he has in fact notified the prescribed officer of such change.

Liability to maintain uniform and equipment.

55. (1) A member of the Permanent Force Reserve or the Citizen Force Reserve shall maintain in his possession and in good order any articles of uniform and equipment which may have been issued to him, under such conditions as may be prescribed.

(2) Any such member shall when called up for training or service or at such other times as may be prescribed, produce such articles of uniform and equipment.

CHAPTER VII.

THE CADET CORPS.

Establishment and organization of Cadet Corps.

56. (1) There shall be a Cadet Corps which shall consist of such cadet detachments and Cadet Officers Training Corps

as may under such conditions as may be prescribed be established under the directions of the Minister at any school or other educational institution.

(2) The Cadet Corps shall be organized in such manner as may be prescribed.

(3) Any cadet detachment established prior to the commencement of this Act elsewhere than at a school or other educational institution, shall be deemed to have been established under sub-section (1).

Liability for service as a cadet.

57. Every person domiciled in the Union may, if he is a scholar or student at a school or other educational institution, be required between his twelfth and his seventeenth year, both included, to undergo training as a cadet in accordance with regulations, unless—

(a) his parent or guardian has objected thereto in writing; or

(b) he has been exempted from such training under prescribed conditions,

and may voluntarily undergo such additional training as may be prescribed.

Extension of period of cadet training.

58. A citizen or any other person domiciled in the Union may if he is a scholar or student at a school or other educational institution where a cadet detachment has been established, while remaining a scholar or student at such school or institution continue to receive training as a cadet up to and including his twentieth year.

Training in Cadet Officers Training Corps.

59. (1) Every citizen whose name has been drawn in a ballot referred to in section *seventy*, who has been found to be medically fit to undergo training in the Citizen Force and who is a full-time student following a teacher's training course at an educational institution where a Cadet Officers Training Corps has been established, shall be allotted to that Corps and undergo such training therein as may be prescribed.

(2) Any citizen who is a full-time student at an institution referred to in sub-section (1), and any person who is not a citizen but is domiciled in the Union and is such a student may apply to the prescribed authority between his seventeenth and his twenty-fifth year, both included, to be enrolled as a member of the Cadet Officers Training Corps established at that institution and to undergo the training so prescribed.

(3) Any citizen who undergoes the training prescribed under sub-section (1), shall be exempt from training or duty in terms of Chapter IV.

Cadet officers.

60. (1) Officers of the Cadet Corps shall be appointed from amongst persons on the staff of schools and other educational institutions who volunteer for service as such officers.

(2) Any such officer who complies with prescribed conditions and holds prescribed qualifications may be appointed as an officer in the South African Defence Force.

Cost of training to be defrayed by State.

61. All arms, ammunition, uniforms, equipment, instruction and training prescribed for cadets or for members of the Cadet Officers Training Corps, shall be provided at public expense.

CHAPTER VIII.

REGISTRATION AND SELECTION OF CITIZENS FOR TRAINING.

Appointment of registering officer.

62. The Minister shall appoint an officer of the South African Defence Force as the registering officer for the purposes of this Chapter.

Registration.

63. (1) Every citizen shall apply to the registering officer for registration under this Chapter—

(a) during the month of January of the year in which he will attain the age of seventeen years; or

(b) in the case of a citizen who is outside the Union during the whole of that month or who has for any other reason failed to apply for registration during that month, within thirty days after his return to the Union or the disappearance of such other reason, unless he is then over the age of twenty-five years.

(2) Any person who becomes a citizen between the thirty-first day of January in his seventeenth year and the date upon which he attains the age of twenty-five years, shall apply for registration as aforesaid within thirty days after the date upon which he becomes a citizen.

(3) The registering officer shall issue to every person who applies for registration under this section, a certificate of registration in the form prescribed.

(4) Any person between the ages of seventeen and twenty-five years who without lawful excuse, the onus of proof whereof shall lie upon him, refuses or fails on demand by an officer or a non-commissioned officer of the Permanent Force or a policeman, to produce the certificate issued to him under sub-section (3), shall be guilty of an offence.

Notification
of address.

64. (1) Every person shall when applying for registration under this Chapter, furnish his address on his form of application and shall, unless he has been relieved of the obligation to do so by the prescribed officer, notify that officer in such manner and at such times or within such periods as may be prescribed, of every change in his address.

(2) Whenever any person is charged with having failed to notify the prescribed officer of any change in his address as required by sub-section (1), such person shall be deemed to have so failed, unless he produces—

- (a) an acknowledgment by the prescribed officer of the notification of such change; or
- (b) other proof to the satisfaction of the court that he has in fact notified the prescribed officer of such change; or
- (c) proof to the satisfaction of the court that he has been duly relieved of the obligation to notify such change.

Voluntary
enrolment for
training.

65. (1) Any citizen whose name has been included in a ballot referred to in section *seventy* but who has not been enrolled for training in the Citizen Force and has not been allotted to a Cadet Officers Training Corps in terms of sub-section (1) of section *fifty-nine*, and any other person domiciled in the Union who is not a citizen and has not been enrolled as a member of such a Corps in terms of sub-section (2) of section *fifty-nine* may, if he is under a prescribed age or has prescribed qualifications, apply in accordance with regulations to be enrolled for training in the Citizen Force by appearing personally before or submitting a written application to the registering officer on or before a date to be appointed by the Minister, and may in his application name any unit which has its headquarters within the military area in which he resides, as the unit in which he wishes to serve.

(2) Such a citizen or person who is accepted for training shall at his own expense present himself for and shall at the public expense undergo the prescribed medical examination at a time and place to be notified to him by the registering officer.

(3) The Minister shall not later than the first day of March in every year, fix the maximum number of citizens and other persons who may during that year be accepted for training on application made in terms of sub-section (1).

Provisional
ballot list.

66. (1) The registering officer shall every year prepare a provisional ballot list for each magisterial district in which shall be entered the name of every citizen whose registered address is in that district, and who—

- (a) is in his eighteenth year and has not yet been enrolled for training;
- (b) is between his nineteenth and his twenty-fifth year, both included, and—
 - (i) has in the previous year been granted deferment; or
 - (ii) has applied for registration under paragraph (b) of sub-section (1) or sub-section (2) of section *sixty-three* and has not been included in any previous ballot list; or
- (c) is between his eighteenth and his twenty-fifth year, both included, and is required but has failed, to the knowledge of the registering officer, to comply with the provisions of section *sixty-three*.

(2) Every provisional ballot list shall not later than the fifteenth day of March of the year in which it is prepared, be posted at the office of the registering officer and at the magistrate's office of the district for which it is framed.

Appointment
of number of
citizens to
be trained.

67. (1) The Minister may in each year by notice in the *Gazette*, published not later than the fifteenth day of April of that year, appoint the number of persons to be enrolled for training in the Citizen Force in the next ensuing training year.

(2) The difference between the number so appointed and the number of persons voluntarily enrolled for training in the Citizen Force during the year in question shall be made good by ballot in the manner hereinafter provided.

Exemption
board.

68. (1) The Minister shall not later than the fifteenth day of April in each year appoint an exemption board (hereinafter referred to as the board) consisting of a chairman and three other members, of whom two shall be members of one or other of the Forces constituting the South African Defence Force, and one shall be a member of the public service in a department of State other than the Department of Defence, to consider applications for deferment or for exclusion from any provisional ballot list prepared under section *sixty-six*.

(2) The chairman of the board shall be a magistrate or a person who has at some time held office as a magistrate for a continuous period of not less than five years.

(3) A member of the board who is not in the whole-time employment of the Government shall be paid such remuneration and allowances in respect of his services as the Minister may, in consultation with the Treasury, determine.

Applications
for deferment
or exclusion
from ballot
list.

69. (1) An application for deferment or for exclusion from a provisional ballot list referred to in section *sixty-six* may be made by the citizen concerned or by some other interested person on his behalf, either with or without his consent, and shall not later than the fifteenth day of April in the year in which the said list is framed, be lodged in writing with the registering officer who shall refer it to the board appointed under section *sixty-eight*.

(2) The board shall make such investigations in connection with any application under sub-section (1) as it may consider necessary, and for that purpose the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), except section *one* thereof, shall apply with reference to the board, and in the application of the said provisions the reference in section *three* of that Act to the secretary of a commission shall be construed as a reference to the registering officer.

(3) The Minister may make such rules, not inconsistent with this Act, as he may deem necessary for regulating the procedure and the conduct of the business of the board.

(4) The board may with due regard to any general instructions issued by the Minister grant an application for deferment or for exclusion from any ballot list where in its opinion such deferment or exclusion is justified—

- (a) in order to prevent the interruption of the course of educational studies of the citizen concerned; or
- (b) by reason of the nature and extent of such citizen's domestic obligations or any circumstances connected with any trade, profession or business in which he is engaged; or
- (c) on the ground of physical defects or mental incapacity on the part of such citizen; or
- (d) on the ground that such citizen is being compulsorily detained in an institution:

Provided that no application shall be granted except where the board is satisfied that undue hardship would otherwise be caused or that it is in the public interest that the application be granted: Provided further that the board may in its discretion, if it is so satisfied, grant exclusion from a ballot list or deferment irrespective of whether or not the application is for such exclusion or deferment.

(5) After considering all applications received as aforesaid, the board shall amend the provisional ballot lists in question by the removal therefrom of the names of those citizens in respect of whom applications for deferment or exclusion from such ballot lists have been granted.

(6) The decision of the board on any application as aforesaid shall be final and every ballot list as amended by the board shall be posted up at the office of the registering officer before the thirty-first day of May of the year in respect of which the board was appointed.

The ballot.

70. (1) As soon as possible after the posting up of the final ballot lists, the registering officer shall take a ballot of the citizens whose names appear on those lists, to select the number of citizens mentioned in sub-section (2) of section *sixty-seven*.

(2) The procedure and rules for taking the ballot shall be as prescribed, but so that the names on the final ballot lists shall be drawn singly and the percentage of names drawn from each list shall as nearly as possible be the same.

(3) A percentage of names to be determined by the Minister from time to time in excess of the said number shall be drawn in order to make good any loss likely to be caused by reason of the fact that persons drawn in the ballot may subsequently be found medically unfit or otherwise unsuitable for training, or by reason of the fact that the training of any persons so drawn may be postponed, as it is hereby authorized to be postponed, on the directions of the Minister or an officer acting under his authority.

(4) Every citizen whose name has been drawn by ballot in pursuance of this section, shall at his own expense attend and submit to medical examination at a time, date and place notified to him in writing by the registering officer, or some other prescribed officer, and such examination shall take place at the public expense.

Exemption from training if medically unfit.

71. Any citizen who has been medically examined and has been pronounced by the prescribed medical authorities to be unfit for military service in any capacity, shall so long as the unfitness continues be exempt from liability for training or service in the Citizen Force or a Commando.

Allotment to Citizen Force.

72. (1) Subject to the provisions of sub-section (1) of section *fifty-nine*, all persons required to be enrolled for training in terms of this Chapter shall be allotted to the Citizen Force in such manner as may be prescribed, but so that persons who have been accepted for training in terms of section *sixty-five* shall as far as possible, have preference in the choice of the units in which they wish to serve and that persons who *bona fide* belong and adhere to any recognized religious denomination by the tenets whereof its members may not participate in war, shall undergo such training as will enable them to render service in defence of the Union in a non-combatant capacity.

(2) Every person whose name has been drawn in a ballot referred to in section *seventy* or who has been accepted for training in terms of section *sixty-five* shall be notified by the registering officer of that fact and by a prescribed officer of the name of the unit to which he has been allotted and the date upon which he is required to commence his training.

CHAPTER IX.

ADMINISTRATION AND GENERAL POWERS OF THE GOVERNOR-GENERAL, THE MINISTER AND OFFICERS.

Council of Defence.

73. The Governor-General may establish a Council of Defence which shall be constituted in such manner and shall perform such functions as he may prescribe.

Defence Staff Council.

74. (1) The Minister may appoint a Defence Staff Council, consisting of officers of the South African Defence Force, or of such officers and officers of the public service as he may determine, to deal with and make recommendations to him concerning such matters relating to the defence of the Union as he may refer to it.

(2) The Minister shall designate one of the members of the said Council as chairman and another such member as secretary thereof, and may make such rules, not inconsistent with this Act, as he may consider necessary for regulating the procedure and the conduct of the business of such Council.

Establishment of commands, areas, armed services, corps and units.

75. (1) The Governor-General may establish and designate military commands, areas and districts throughout the Union and armed services.

(2) The Minister may establish and designate corps and units of the Permanent Force and the Citizen Force, or of members of both such Forces.

General powers of Minister.

76. (1) The Minister may do or cause to be done all things which in his opinion are necessary for the efficient defence and protection of the Union or any part thereof.

(2) Without derogating from the generality of his powers under sub-section (1), the Minister may—

(a) acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes;

- (b) establish, maintain and operate factories for the manufacture and repair of arms, ammunition, vehicles, aircraft, vessels, military clothing and other stores and equipment;
- (c) notwithstanding anything contained in any law relating to the seashore or aviation, but subject to the provisions of any law relating to harbours, acquire, construct, maintain, manage and control harbours, docks, quays, jetties, aerodromes (as defined in sub-section (2) of section *ninety-nine*) and other facilities necessary for vessels or aircraft of the South African Defence Force;
- (d) acquire arms, ammunition, vehicles, aircraft, vessels, clothing, animals, stores and other equipment required for defence purposes; and
- (e) sell, let or otherwise dispose of any land, building, animal or thing mentioned in any of the preceding paragraphs which is no longer required for defence purposes.

Military
training
institutions.

77. (1) The Governor-General may establish and designate military training institutions for the purpose of providing training and instruction for members of the South African Defence Force.

(2) Subject to the provisions of this Act, the appointment of the staff of a military training institution, the duration and description of the courses of instruction and training therein, the conditions of admission thereto of students (including the admission as students of members of other forces), the conditions of future service required from graduates of the institution and all matters relating to the management, control and good government of any such institution shall be as prescribed.

(3) All students under instruction at a military training institution shall be subject to the Military Discipline Code.

(4) Any institution established prior to the commencement of this Act for the purpose of providing military training or instruction, whether under a law hereby repealed or otherwise, shall be deemed to have been duly established under this Act.

Expropriation
and acquisition
of land and
interests in
land.

78. (1) The Governor-General may expropriate for defence purposes any land or any right in respect of land, whether such land or right be held privately or by any public or other body corporate or unincorporate.

(2) The provisions of any expropriation law for the time being in force in that portion of the Union wherein is situated any land which is to be expropriated or in respect of which any right is to be expropriated under this section, shall apply to any expropriation thereunder in so far as those provisions relate to the method of and procedure for carrying out the expropriation and for determining the sum to be paid to the person from whom the land or right is expropriated and the expenses (if any) of arbitration: Provided that if any such expropriation law requires that written notice be given to any person by an officer in the public service, that notice may be given by the Secretary for Defence instead of by such officer.

(3) Notwithstanding anything to the contrary in any other law, dominium in any land or right in respect of land which the Governor-General requires to expropriate in terms of this section, shall vest in the State upon the expiration of a period of sixty days after the date of service on the owner of such land or right, of a notice in terms of the expropriation law applicable to the land or right concerned stating that the Governor-General requires to expropriate, take or purchase the land or right in question.

Areas for
training.

79. (1) (a) The Governor-General may from time to time appoint areas wherein any portion of the South African Defence Force may, without the consent of any person affected or likely to be affected thereby, conduct military exercises, and may prescribe the conditions under which compensation may be claimed by and paid to an owner or occupier of land in any such area for damage or loss sustained by him in consequence of the conduct of such exercises on such land: Provided

that no camp shall be erected within a radius of five hundred yards of a private dwelling, except with the consent of the owner or occupier thereof.

- (b) No area shall be appointed under paragraph (a) unless the Secretary for Defence has published in respect of every district in which any land forming portion of that area is situate, a notice in one English and one Afrikaans newspaper circulating in that district, to the effect that such area, which shall be defined in the notice, is proposed to be appointed as a training area under paragraph (a) and inviting all interested persons to furnish him not later than a date specified in the notice, with any representations they may wish to make in regard thereto, and has duly considered all representations so received.

(2) The officer in command of any portion of the South African Defence Force which is undergoing training or is engaged in military exercises may temporarily stop all traffic by land, air or water in or in the vicinity of any area appointed under sub-section (1) or any other area used for range practice or other training, in so far as may in his opinion be necessary for the security of life or the proper conduct of the training or military exercises, and any person who disobeys or disregards any order or signal given in the exercise of the powers conferred by this sub-section shall be guilty of an offence.

Establishment
of auxiliary
services.

80. (1) The Governor-General may establish and designate for the purposes of the South African Defence Force, or any portion thereof, auxiliary services consisting of persons engaged to serve as guards or watchmen or to perform other non-combatant duties.

(2) The organization and conditions of employment in such auxiliary services, including engagement, attestation, discharge, ranks, pay and allowances, leave, duties and uniforms, and any other matters convenient or necessary for the establishment or control of such auxiliary services shall be as prescribed.

(3) The members of such auxiliary services shall be subject to such disciplinary rules as may be prescribed, which may include provisions relating to—

- (a) the exercise of authority over members of such auxiliary services by other members of such auxiliary services or by members of the South African Defence Force;
- (b) the trial and sentence of members of such auxiliary services by a military court or by an officer of such auxiliary services or of the South African Defence Force;
- (c) the review of proceedings at trials and of sentences;
- (d) the attendance and examination of witnesses, including witnesses who are not members of such auxiliary services, at such trials;
- (e) penalties for offences under such disciplinary rules by way of a fine not exceeding two hundred pounds or imprisonment with compulsory labour for a period not exceeding two years, or both such fine and such imprisonment, or by way of confinement to barracks or the performance of extra duties: Provided that no officer shall have jurisdiction to impose a penalty of imprisonment or a fine exceeding five pounds;
- (f) the recovery of any fine imposed upon a member of such auxiliary services by deductions from any pay or allowances or other moneys due or which may become due to him by the Government;
- (g) the recovery by deductions from any pay and allowances or other moneys due or which may become due by the Government to a member of such auxiliary services of the amount of any deficiency, loss, injury, damage or destruction of Government property or of any expense to the Government caused by his wrongful act, omission, negligence or failure to carry out a duty; and
- (h) any other matter affecting the conduct and discipline of members of such auxiliary services.

Voluntary
nursing
service.

81. (1) The Governor-General may establish and designate a voluntary nursing service for tending the sick and wounded.

(2) Notwithstanding anything in any other law contained, the organization of such service and the conditions of appointment thereto and of training and duty therein and all other matters pertaining thereto shall be as prescribed.

Civilian
protective
services.

82. (1) The Governor-General may establish and designate civilian protective services, for the assistance in time of war or internal disorder of the South African Defence Force, the South African Police and other established authorities in the maintenance of law and order, the giving of warning of and the taking of precautions against air raids, the fighting of fires and dealing with any other special conditions arising from a state of war, enemy action or internal disorder in the Union.

(2) The organization of such services and the conditions of appointment thereto and of training and duty therein and all other matters pertaining thereto shall be as prescribed.

(3) The Governor-General may assign the administration of any such service or any portion thereof to any Minister of State.

Commissioned
rank.

83. (1) The Governor-General may confer commissioned rank, including temporary commissioned rank, in the South African Defence Force on any citizen or any other person who is or is eligible to become a member of such Force, and may issue to such citizen or person a commission under his hand.

(2) Subject to the provisions of sub-section (3), a citizen on whom commissioned rank, other than temporary commissioned rank, has been conferred in terms of sub-section (1), shall retain his commission on being transferred to the Reserve.

(3) All officers of the South African Defence Force or the Reserve shall hold their commissions during the pleasure of the Governor-General, but the commission of an officer shall not be cancelled without the holder thereof being notified in writing of any complaint or charge made against him and of any action proposed to be taken in respect thereof, nor without his being called upon to show cause in relation thereto: Provided that no notification shall be necessary in the case of an officer absent from duty without leave or failing to perform the duties of his appointment, for a period of three months or more, or an officer of the Reserve who has failed to advise the prescribed officer of any change in his address in accordance with any requirement of this Act.

Retirement
of officers.

84. (1) The ages of retirement of officers of the South African Defence Force shall be as prescribed, but in special cases, and subject, in the case of members of the Permanent Force, to the provisions of section *nine*, the Minister may, with the consent of any officer, extend the date of his retirement to a date beyond that on which he attains the prescribed age.

(2) The Governor-General may place officers of the South African Defence Force on a retired list, and any officer on that list shall retain his commission and shall be entitled to wear uniform as prescribed.

Termination
of service.

85. The Governor-General may terminate the services of any member of the South African Defence Force, but no citizen shall thereby become exempt from liability to render any service which he may in terms of Chapter X be required to render.

Resignation
of officers.

86. (1) An officer may by notice in writing tender the resignation of his commission or his appointment.

(2) Any such notice shall take effect upon the expiration of a period of three months after the date upon which it is lodged with such officer's commanding officer or on such earlier date as may be approved by the Minister and made known by notice in the *Gazette*: Provided that an officer shall not in consequence of his resignation be exempt from any service or training for which he may be liable under this Act.

Regulations.

87. (1) The Governor-General may make regulations, not inconsistent with this Act, relating to—

- (a) the training and inspection of the South African Defence Force, the Reserve, the Cadet Corps and any auxiliary, nursing or civilian protective service established under this Act;
- (b) the establishment of training camps;
- (c) courses of instruction for persons undergoing training or engaged for service under this Act;
- (d) the control of funds which are administered by a committee or other like body under the chairmanship of a member of the South African Defence Force and

have been collected or accepted by or from members of that Force or any service, corps or unit therein, or by or from members of a force which prior to the commencement of this Act formed part of the defence forces of the Union, for the benefit of such members or their dependants;

- (e) the seniority and precedence of services, corps and units and of members of the South African Defence Force, the Reserve, the Cadet Corps and any auxiliary nursing or civilian protective service established under this Act;
- (f) the leave of absence of members of the South African Defence Force;
- (g) the execution of police duties by members of the South African Defence Force;
- (h) the registration of citizens liable for training;
- (i) the exemption of any member of the South African Defence Force, the Reserve or the Cadet Corps from carrying out any full course of training prescribed for any one training year;
- (j) the standards of physical fitness and the medical examination of members of the South African Defence Force and the Reserve;
- (k) the formation, maintenance, control and management of commandos and cadet detachments;
- (l) the design, award, use, care and custody of colours, standards and flags for military use, and all matters pertaining to military ceremony;
- (m) honorary appointments and ranks in the South African Defence Force;
- (n) the furnishing by the employers of persons engaged in specified occupations or industries of specified particulars in respect of such persons, the furnishing by such persons of their addresses to a specified officer, and the notification by them to such an officer of any changes in their addresses;
- (o) the furnishing by any person in the Union of full and accurate information as to buildings, premises, vehicles, aircraft, vessels, animals, foodstuffs, forage, fuels, oils, materials, articles or things in his possession or under his control;
- (p) the issue and care of arms, accoutrements, ammunition, including ammunition to be held in reserve for use in cases of emergency, supplies, animals, transport, clothing and equipment;
- (q) the government and management of, and the discipline which may be enforced in places appointed as prisons under this Act;
- (r) the registration of motor vehicles which are the property of the State in its Department of Defence, and the licensing of drivers of such vehicles;
- (s) all other matters which are by this Act required or permitted to be prescribed or which are necessary or convenient to be prescribed for securing the discipline and good government of the South African Defence Force, the Reserve, the Cadet Corps or any auxiliary, nursing or civilian protective service established under this Act or for carrying out and giving effect to this Act; and
- (t) the penalties which may be imposed for breaches of the regulations, not exceeding a fine of fifty pounds or imprisonment for a period of six months.

(2) The Governor-General may under sub-section (1) make different regulations for male and female persons or for persons of different races.

(3) Notwithstanding anything to the contrary contained in any other law, any such regulation relating to the conditions of service of members of the South African Defence Force, the Reserve, the Cadet Corps or any auxiliary, nursing or civilian protective service established under this Act, may be made with retrospective effect for a period not exceeding twelve months, except in so far as it provides for any reduction in the salary, pay, allowances or privileges of such members or for penalties in respect of acts or omissions for which no penalty was previously prescribed.

(4) For the purposes of sub-section (1), "motor vehicle" means any vehicle which is self propelled by mechanical or electrical power, and is intended or adapted for the conveyance of persons or goods.

Protection of
Defence stores.

88. (1) The Minister may from time to time, by notice in the *Gazette*, designate a mark or marks to be applied to animals or articles to denote the ownership of the Union Government or of any visiting force in those animals or articles.

(2) Any person who, without lawful authority, the onus of the proof whereof shall be upon him, applies to any animal or article any such mark, or defaces or conceals any such mark on any animal or article or receives, possesses, sells or delivers any animal or article bearing any such mark or any animal or article which is forbidden under this Act to be sold, pledged or otherwise disposed of, shall be guilty of an offence.

(3) No animal or article the property of the Union Government or of any visiting force, which bears any such mark or which is forbidden by or in pursuance of this Act to be sold, pledged or otherwise disposed of, shall be capable of being seized or attached by or under any writ of execution which may be sued out against any member of the South African Defence Force or any visiting force, nor shall ownership of such animal or article pass by or under any order made for the sequestration of the estate of any such member.

Prohibition of
access to
military
premises.

89. (1) The Minister may by order issued under his hand and published in the *Gazette* or made known in any other manner which he considers sufficient in the circumstances, prohibit or restrict the access of all persons to any military camp, barracks, dockyard, installation or other premises or any land or area of water, used for military or defence purposes or which is under military control.

(2) The officer in command of any such camp, barracks, dockyard, installation, premises, land or area may by order issued under his hand and made known in such manner as he considers sufficient in the circumstances, temporarily prohibit or restrict the access of all persons to such camp, barracks, dockyard, installation, premises, land or area.

(3) Any person who enters or is within or on any such camp, barracks, dockyard, installation, premises, land or area contrary to any prohibition or restriction contained in an order issued under sub-section (1) or (2), shall be guilty of an offence.

CHAPTER X.

PROVISIONS APPLICABLE IN TIME OF WAR, INTERNAL DISORDER OR OTHER EMERGENCY.

Employment
of Permanent
Force.

90. Subject to the provisions of this Act, the whole or any portion or member of the Permanent Force may at any time be employed on service as provided in section *thirteen*.

Mobilization of
Citizen Force,
Reserve and
commandos in
time of war.

91. (1) The Governor-General may in time of war by proclamation in the *Gazette* call out and mobilize the whole or any portion of the Citizen Force, the whole or any portion of the Reserve and the whole or any portion of any commando for service in defence of the Union.

(2) If Parliament be sitting at the date of publication of any such proclamation, the Governor-General shall forthwith communicate the reason for the issue thereof to both Houses of Parliament, and if Parliament be not then sitting, the Governor-General shall summon Parliament to meet as soon as possible but not later than thirty days after the said date, and shall thereupon at its first sitting communicate the reason aforesaid.

Mobilization
of Citizen
Force, Reserve
and commandos
in time of
internal dis-
order or other
emergency.

92. (1) The Governor-General may by proclamation in the *Gazette* call out and mobilize the whole or any portion of the Citizen Force, the whole or any portion of the Reserve and the whole or any portion of any commando for service in the prevention or suppression of internal disorder in the Union or in the preservation of life, health or property or the maintenance of essential services.

(2) Where in the opinion of the Minister the urgency of the circumstances requires that the whole or any portion of the

said Force or the Reserve or a commando be called out for the aforesaid service before a proclamation in terms of sub-section (1) can be issued, he may in anticipation of such proclamation by order call out the whole or that portion of the said Force or the Reserve or a commando, and any such order shall have the same force and effect as if it were a proclamation issued in terms of that sub-section calling out the whole or that portion of the said Force or the Reserve or a commando, as the case may be, and shall remain in force until such proclamation is issued, but not in any case for a period of more than four days.

(3) Notwithstanding anything contained in sub-section (1) or (2), any member of the said Force or the Reserve or a commando who is at any time present at any place during a period of instruction or exercise while undergoing training, or is at any time engaged in performing military duty, shall on the orders of a prescribed officer perform service in the preservation of life, health or property or the maintenance of essential services: Provided that the duration of such service shall not extend beyond the time which would have been occupied by the said instruction, exercise or duty.

Definition of
expression
"any portion".

93. For the purposes of sections *ninety*, *ninety-one* and *ninety-two*, the expression "portion", in relation to any Force or the Reserve or a commando, includes persons belonging to that Force or the Reserve or that commando, who are of or below or above a specified age or are engaged in a specified profession, trade, occupation or calling or in a profession, trade, occupation or calling other than a specified profession, trade, occupation or calling or are resident in a particular area, and, in relation to the Reserve of Officers, the Permanent Force Reserve, the Citizen Force Reserve or any commando, also any member of such Reserve or commando to whom a registered letter addressed to his registered address and calling upon him to present himself at a stated time and place, is sent by an officer designated for the purpose in the proclamation or order issued in terms of one or other of the said sections.

Members of the
Reserve to be
posted to
Defence Force

94. (1) Except as provided in sub-sections (2) and (3), any member of the Reserve called out for service in terms of section *ninety-one* or *ninety-two* shall be posted to the Citizen Force and shall while rendering such service be deemed to be a member of that Force.

(2) A member of the Permanent Force Reserve called out for such service shall be posted to the Permanent Force, but nothing in this sub-section contained shall be construed as preventing his secondment to or employment in or with the Citizen Force.

(3) A member of a commando called out for such service may, if the public interest so requires, be posted to the Citizen Force, and shall, while rendering such service and while so posted, be deemed to be a member of that Force.

Territorial
restrictions
on employment
of Defence
Force in time
of war.

95. (1) (a) A member of the South African Defence Force may be required in time of war to perform service against an enemy anywhere in South Africa, whether within or outside the Union and may with his written consent be required to perform such service outside South Africa.

(b) For the purposes of this sub-section, service on a ship or in an aircraft which operates from a base in South Africa, shall be deemed to be service in South Africa.

(2) No member of the South African Defence Force who has consented to perform service as aforesaid outside South Africa, shall be entitled to withdraw such consent—

(a) in time of war if he has so consented in respect of such war; or

(b) during the period of his appointment or engagement in the Permanent Force or for whole-time service in the Citizen Force.

(3) Notwithstanding anything to the contrary contained in sub-section (1), any member of the South African Defence Force who is in enemy detention, or has escaped or has been released from such detention, beyond the territorial limits within which he is liable to serve, shall, notwithstanding that he is beyond those territorial limits, remain subject to the provisions of this Act and of any other law to which he would have been subject as a member of the said Force had he not been beyond such territorial limits: Provided that no such member who has escaped or has been released from enemy detention as aforesaid

and who, by reason of the circumstances of war, is necessarily detained in military service at any place beyond the said territorial limits shall while so detained be compelled to render any military service except in the performance of such duties as he may be required to perform in or within the precincts of any military camp or other place where he is being necessarily so detained or in the course of his conveyance by means of any aircraft, vehicle or vessel.

Release and
discharge
from service.

96. (1) Any person called out for service in terms of section *ninety-one* or *ninety-two*, may be held to that service until such time as the Governor-General may, by proclamation in the *Gazette*, declare that the portion of the South African Defence Force with which he is serving is released from that service.

(2) Notwithstanding anything to the contrary contained in this Act, and notwithstanding the expiration of the period of any appointment, engagement or compulsory service, no member of the South African Defence Force employed on service in defence of the Union or in the prevention or suppression of internal disorder in the Union or in the preservation of life, health or property or in the maintenance of essential services, shall be entitled to obtain his release or discharge from that Force during the continuance of such service.

Exemption
from service.

97. (1) No person shall be liable to be called out for service in terms of section *ninety-one* or *ninety-two*, if he is—

- (a) certified by the prescribed medical authority as medically unfit for that service;
- (b) an officer of Parliament;
- (c) a judge of the Supreme Court of South Africa or an officer thereof (other than an advocate, attorney, notary or conveyancer) or a judicial officer of any other court of law of the Union;
- (d) a minister of religion of a prescribed denomination;
- (e) a member of the South African Police or the South African Railways and Harbours Police;
- (f) an officer as defined in section *two* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911);
- (g) employed in a lighthouse;
- (h) employed in a full-time capacity in a public hospital as a medical or dental officer;
- (i) the secretary or other head of a department of State or of a Provincial Administration or the Administration of South-West Africa; or
- (j) engaged in any prescribed employment or occupation.

(2) Any other person called out for service as aforesaid may be exempted from such service if it appears to an exemption board, constituted as provided in section *ninety-eight*, that it is in the public interest that he should be so exempted.

(3) A person who *bona fide* belongs and adheres to a recognized religious denomination, by the tenets whereof its members may not participate in war, may be granted exemption from serving in any combatant capacity in time of war, but shall, if called upon to do so, serve in a non-combatant capacity.

(4) Where any question arises as to whether a person is exempt from service under this section, the burden of proving the claim to exemption shall lie on the claimant, and all claims to and applications for exemption shall be heard and decided by an exemption board constituted as provided in section *ninety-eight*.

(5) Any exemption from service under this section shall hold good only during the continuance of the employment, occupation, condition, status, public interest or other consideration on which it is based.

Appointment
and proceedings
of exemption
boards.

98. (1) Whenever the circumstances so require, the Minister shall appoint one or more exemption boards whose duty it shall be to consider and decide upon applications for exemption under section *ninety-seven*.

(2) Any such board shall be constituted as prescribed, but so that the chairman thereof shall be a magistrate or a person who has at some time held office as a magistrate for a continuous period of not less than five years, and so that not more than fifty per cent of the members (including the chairman) thereof shall be members of the South African Defence Force.

(3) The provisions of sub-section (3) of section *sixty-eight* and sub-sections (2) and (3) of section *sixty-nine* shall *mutatis mutandis* apply with reference to an exemption board appointed

under this section, and in the application of the said sub-section (2) the reference therein to the registering officer shall be construed as a reference to a prescribed officer.

**Security of
harbours and
aerodromes.**

99. (1) In time of war the Governor-General may issue orders and instructions, which may be made known in such manner as he deems most suitable in the circumstances—

- (a) forbidding or restricting in any way he may think fit all entrance to or egress of vessels or aircraft from a harbour or aerodrome;
- (b) forbidding or restricting in any way he may think fit the movements of vessels or aircraft when within the limits of a harbour or aerodrome;
- (c) for the examination of all vessels or aircraft seeking to enter or leave a harbour or an aerodrome or being within a harbour or on an aerodrome or within the airspace above the Union and for requiring or forcing any such aircraft within the airspace above the Union to land within the Union for the purpose of being examined;
- (d) for the taking of such other steps as may be thought necessary or desirable for securing the safety of any harbour or aerodrome or otherwise for the purposes of defence, the generality of this provision not being limited by the particular matters provided for in paragraphs (a), (b) and (c) of this sub-section.

(2) For the purposes of this section—

“harbour” means any harbour under the jurisdiction of the South African Railways and Harbours Administration, any area of land and sea which the Governor-General may designate as a harbour or any area of land and sea which the Governor-General may assign to any harbour; and

“aerodrome” means a defined area of land or water (including any building, installation and equipment thereon) intended to be used either wholly or in part in connection with the arrival, departure or movement of aircraft, and includes any area which the Governor-General may by Proclamation in the *Gazette* designate as an aerodrome, and the airspace above any aerodrome.

(3) The Governor-General may vest in any person such powers as he may deem necessary for the execution or enforcement of any order or instruction issued in pursuance of this section.

Commandeering.

100. (1) In time of war or internal disorder the Governor-General may authorize and appoint officers of the South African Defence Force or of the public service to obtain in the manner and subject to the conditions prescribed, from any person or any public or other body corporate or unincorporate, and without the consent of such person or body, to take possession of buildings and other premises, vehicles, aircraft, vessels, machinery, equipment, animals, foodstuffs, forage, fuels, oils and any other materials, articles or things necessary for the mobilization or the maintenance of the South African Defence Force or any portion thereof or of other forces acting in co-operation therewith.

(2) Compensation shall be payable in respect of anything obtained or taken under sub-section (1), to the person or body concerned.

Censorship.

101. (1) In time of war the Governor-General may establish and do all things necessary to enforce a censorship over all or any description of postal, telegraphic, telephonic or radio matter or communications passing within, into or from the Union, and over all or any description of letters, written or printed matter, parcels, pictures, drawings, sketches, photographs or gramophone records (including any article, apparatus or device upon which or by means of which intelligence or sounds of any kind have been recorded and can be reproduced) addressed or intended to be delivered or conveyed to any person, and prescribe the conditions under which the postal, telegraph, telephone or radio services may be used.

(2) The conditions so prescribed, and any regulations, orders or instructions relating to the establishment or enforcement of a censorship in terms of this section, shall override any provisions of any law or regulations relating to the management of the postal, telegraph, telephone or radio services of the Union.

(3) Any person who contravenes or fails to comply with any regulation, order or instruction issued in terms of this section shall be guilty of an offence.

(4) In addition to the powers vested in him under any law, the Postmaster-General may delay the transmission of any telegraphic or radio communication which in his opinion improperly discloses or deals with information relating to defence, the publication of which is prohibited under section *one hundred and eighteen*, and may with the sanction of the Minister or a person acting under his authority refuse to transmit any such communication in whole or in part.

(5) No person shall be entitled to the refund of any charges paid in respect of any postal article, telegram, radio-telegram or telephone call which is detained, delayed, diverted or interrupted in pursuance of this section.

Railway
facilities and
air services.

102. (1) The Governor-General may in time of war authorize any officer of the South African Defence Force to assume control over any railway system or air service, or any portion thereof, within the Union.

(2) The Minister may in time of war requisition the authorities controlling any line of railway or air service in the Union to supply suitable engines and rolling stock or aircraft for the conveyance of members of the South African Defence Force or other forces acting in co-operation therewith, and their guns, armament, ammunition, baggage, stores, supplies, vehicles and animals, and to convey the same by rail or by air to or from any point within or outside the Union, as may be necessary.

Emergency
regulations.

103. (1) In time of war the Governor-General may, subject to the provisions of sub-sections (3), (4) and (6), by proclamation in the *Gazette* make such regulations as appear to him to be necessary or expedient for providing for the defence of the Union, the safety of the public, the maintenance of public order and the effective prosecution of such war, and for making adequate provision for dealing with circumstances which in his opinion have arisen as a result of such war.

(2) Without prejudice to the generality of the powers conferred by this section—

(a) such regulations may provide for—

(i) the empowering of such persons or bodies as may be specified therein to make orders, rules and by-laws for any of the purposes for which the Governor-General is by this section authorized to make regulations, and to impose penalties, to be specified in such orders, rules or by-laws, for any contravention of or failure to comply with the provisions thereof;

(ii) the imposition and recovery of such fees as may be specified therein; and

(iii) the imposition of penalties specified therein for any contravention of or failure to comply with any provisions of the regulations or any directions issued or conditions prescribed by or under the regulations, which penalties may include the confiscation of property by means of which the offence has been committed, but which penalties, exclusive of any such confiscation of property, shall not exceed a fine of two thousand pounds or imprisonment with or without compulsory labour for a period of two years or both such fine and such imprisonment; and

(b) different regulations may be made for different areas and for different classes of persons.

(3) Nothing in this section contained shall be deemed to authorize the making of any regulation whereby—

(a) is imposed any liability to render compulsory military service other than that provided for in this Act; or

(b) any law relating to the qualifications, nomination, election or tenure of office of members of the Senate or the House of Assembly or a Provincial Council or the Legislative Assembly of South-West Africa, or to the holding of sessions of Parliament or a Provincial Council or the said Legislative Assembly, or to the

powers, privileges or immunities of Parliament or a Provincial Council or the said Legislative Assembly, or of the members or committees thereof, is altered or suspended.

(4) Any regulation made under this section shall be laid on the Tables of both Houses of Parliament within fourteen days after promulgation thereof if Parliament is then in ordinary session, or if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session, and shall remain on the said Tables for a period of at least twenty-eight consecutive days, and if Parliament is prorogued before that period has elapsed, such regulation shall again be laid on the said Tables as aforesaid within fourteen days after the commencement of its next ensuing ordinary session.

(5) If both Houses of Parliament by resolution passed in the same session (being a session during which any such regulation has in terms of sub-section (4) been laid on the Tables of both Houses of Parliament) disapprove of such regulation or of any provision thereof, such regulation or such provision thereof shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such regulation or of such provision thereof up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such regulation or such provision thereof.

(6) This section shall not apply in respect of any war until it has been declared to be applicable in respect thereof by the Governor-General by proclamation in the *Gazette*, and any such proclamation shall cease to have any force or effect upon the expiration of a period of thirty days after the date of publication thereof unless it has within that period been approved by resolution by both Houses of Parliament, but without prejudice to the validity during the said period of any regulation issued thereunder or of anything done under any such regulation or to any right, privilege, obligation or liability acquired, accrued or incurred during the said period under and by virtue of any such regulation.

CHAPTER XI.

DISCIPLINE, LEGAL PROCEDURE AND OFFENCES.

Military
Discipline
Code.

104. (1) The provisions of the First Schedule together with the rules made under sub-section (3) shall comprise, and may for all purposes be cited as, the Military Discipline Code.

(2) The Governor-General may, with the approval by resolution, of both Houses of Parliament, by proclamation in the *Gazette* insert any new provision in or amend or repeal any provision of the First Schedule.

(3) The Governor-General may in consultation with a rules board consisting of the Chiefs of Staff, the Adjutant-General and the Senior Legal Officer of the South African Defence Force and of such other persons as he may determine, make, alter or repeal such rules for giving effect to the First Schedule as he may deem necessary or expedient or as may be provided for in the said Schedule.

(4) No rule or alteration or repeal of a rule made under sub-section (3) shall come into operation until a period of thirty days from the date of promulgation thereof has elapsed.

(5) The Military Discipline Code shall to the extent and subject to the conditions prescribed therein, apply—

(a) to all members of the Permanent Force;

(b) to members of the Citizen Force, Commandos, the Cadet Officers Training Corps and the Reserve in relation to any service, training or duty undertaken or to be undertaken by them in pursuance of this Act: Provided that no such member shall, except when called out for service in defence of the Union or in the prevention or suppression of internal disorder in the Union, or, in the case of members of the Citizen Force, when engaged for temporary whole-time service in terms of section *twenty*, or in pursuance of a sentence imposed by a competent court, other than a military court, be subject under the Military Discipline Code to any punishment other than—

(i) cashiering;

(ii) dismissal from the South African Defence Force;

- (iii) discharge with ignominy from the South African Defence Force;
- (iv) forfeiture of service or of seniority in rank;
- (v) reduction to the ranks or to a lower rank or grade;
- (vi) detention not extending beyond the date of expiration of the period of service, training or duty upon which he is engaged;
- (vii) fines and deprivations, forfeitures and stoppages of pay and allowances;
- (viii) severe reprimand;
- (ix) reprimand;
- (x) admonition;
- (xi) confinement to barracks; or
- (xii) extra guards and pickets.

Jurisdiction of ordinary courts in regard to offences under Military Discipline Code.

105. (1) Any division of the Supreme Court of South Africa or, subject to any other law prescribing its jurisdiction, a magistrate's court may try any person for any offence under the Military Discipline Code and may impose any punishment which may be imposed for that offence under that Code and which is within the jurisdiction of such court, including, in the case of a magistrate's court, a sentence of detention: Provided that no person shall be sentenced to corporal punishment in respect of any offence under the said Code.

(2) In imposing any punishment for an offence under this Act or the said Code the court shall take cognizance of the gravity of the offence in relation to its military bearing and have due regard to the necessity for the maintenance in the South African Defence Force of a proper standard of military discipline.

(3) If a non-commissioned officer of the South African Defence Force is convicted of any offence under this Act or the said Code he may, in addition to any penalty imposed by the court, be reduced to the ranks or to a lower rank or grade by the prescribed authority.

Jurisdiction of ordinary and military courts.

106. (1) Any person subject to military law who has been tried for an offence by any division of the Supreme Court of South Africa or by a magistrate's court, shall not be liable to be tried in respect of that offence by a military court.

(2) Whenever any person who has been sentenced by a military court for any offence is convicted of the same offence by any division of the Supreme Court of South Africa or by a magistrate's court, such court shall in imposing punishment have regard to the punishment imposed for the offence by the military court.

Appeals and reviews.

107. There shall be no appeal from the finding or sentence of a military court, but nothing in this Act shall be construed as derogating from the right of any division of the Supreme Court of South Africa to review the proceedings of a military court.

Jurisdiction of military courts in respect of offences under this Act.

108. A military court may try any member of the Permanent Force, or any other member of the South African Defence Force called out for service in terms of Chapter X, for any offence under this Act as if the offence were an offence under the Military Discipline Code: Provided that such court shall not impose in respect of any such offence a penalty which is beyond the jurisdiction of such a court in terms of the Military Discipline Code or exceeds the penalty prescribed for that offence by this Act.

Offences by persons against members of other forces.

109. Whenever the South African Defence Force and any other force are associated together under one command, the provisions of this Act and the Military Discipline Code shall *mutatis mutandis* apply with reference to any act or omission on the part of a member of the South African Defence Force in respect of or in relation to the members or institutions of that other force in the same manner as if it were an act or omission on the part of that member in respect of or in relation to the members or institutions of the South African Defence Force.

Arrest and trial.

110. (1) Any member of the Citizen Force or of the Reserve charged with an offence under this Act, including any offence under the Military Discipline Code, may—

- (a) if he is on service or undergoing training or on duty with any portion of the South African Defence Force,

be arrested and taken into military custody by any other member of the South African Defence Force acting under prescribed authority, pending the investigation and disposal of the charge; or

- (b) if he is not so on service or undergoing training or on duty, be summoned to appear or be arrested and brought before a magistrate's court in accordance with law, or be summoned under the Military Discipline Code to appear before a military court for the investigation and disposal of any charge brought against him under that Code.

(2) If the charge brought against any such member taken into military custody be not disposed of by the military court before the expiry of the period of his service, training or duty, he shall on the expiry of that period be released from military custody and may thereupon be summoned to appear or arrested and brought before a magistrate's court on that charge.

Warrants.

111. The prescribed officer may issue warrants for the detention in any prison or gaol of any member of the South African Defence Force charged with an offence triable by a military court or for the imprisonment in any prison or gaol of any person sentenced to imprisonment by a military court, and the superintendent, gaoler or other keeper of any such prison or gaol to whom any such warrant is addressed shall act in accordance therewith.

Place of imprisonment for military offences.

112. Any person sentenced under the Military Discipline Code to imprisonment or detention may be ordered to undergo the sentence of imprisonment or detention in any place which the Governor-General may appoint for such purpose in lieu of a place established as a prison or gaol under the law relating to prisons, and whenever a court orders that any person be imprisoned for any offence under this Act, including any offence under the Military Discipline Code, for a period not exceeding fourteen days, the court may in its discretion order the offender to be imprisoned in a place so appointed.

Limitation of actions.

113. No civil action shall be capable of being instituted against the State or any person in respect of anything done or omitted to be done in pursuance of this Act, if a period of six months (or where the cause of action arose outside the Union and outside the territorial waters thereof, two years) has elapsed since the date on which the cause of action arose, and notice in writing of any such civil action and of the cause thereof shall be given to the defendant one month at least before the commencement thereof.

Desertion.

114. Any member of the South African Defence Force or of the Reserve who, when called out for service in terms of Chapter X, fails to join the unit to which he has been assigned or otherwise fails to comply with the requirements of any proclamation, notice or letter issued in terms of that Chapter, within seven days after the date on which he was so called out or the proclamation, notice or letter was published or served upon him, as the case may be, may be apprehended as a deserter and may be tried and punished under the Military Discipline Code for the offence of desertion.

Misuse of uniforms.

115. (1) Any person who wears any uniform of the South African Defence Force or any dress having the appearance or bearing the regimental badge or other distinctive marks of any such uniform, or who in time of war wears a uniform of any force of a country which is allied to the Union, or any dress having the appearance or bearing the regimental badge or other distinctive marks of any such uniform, shall be guilty of an offence, unless—

- (a) he is a member of the South African Defence Force or of a force of such country, as the case may be, who by reason of his rank is entitled to wear such uniform; or
- (b) he has been granted permission by the proper authority to wear such uniform.

(2) Any person who wears or displays any uniform of the South African Defence Force or any dress having the appearance or bearing the marks of any such uniform, or who in time of

war wears or displays a uniform of any force of a country which is allied to the Union, or any dress having the appearance or bearing the marks of any such uniform, in such a manner and in such circumstances as to bring or to be likely to bring contempt or ridicule upon the uniform or service of any such Force, or who employs any other person so to wear or display that uniform or dress, shall be guilty of an offence.

(3) Any person who, without due authority, uses as a crest or other distinctive mark, any representation of a badge or of any distinctive mark of the South African Defence Force or of any service, corps or unit thereof, shall be guilty of an offence.

Unauthorized
use of
decorations.

116. (1) Any person who—

- (a) wears or uses any military decoration or the distinctive ribbon thereof; or
- (b) represents himself to be a person who is or has been entitled to wear or use any such decoration or ribbon, shall be guilty of an offence, unless he is a person to whom such decoration has been awarded or he has been authorized by competent authority to wear or use such decoration or ribbon.

(2) Any person who for gain supplies or offers to supply any military decoration, or the distinctive ribbon thereof, to a person who is not entitled to wear or use such decoration or ribbon, or who is not authorized to acquire such decoration or ribbon, shall be guilty of an offence.

(3) For the purposes of this section, "military decoration" means any order, decoration, medal, bar or clasp instituted by Her Majesty or by the Governor-General which has been or may be awarded to members of the South African Defence Force and includes, in time of war, any order, decoration, medal, bar or clasp of a force of any country which during such war is allied to the Union, and any other decoration, medal, emblem, badge or wound stripe which the Governor-General has by proclamation in the *Gazette* declared to be a military decoration, but shall not include a regimental badge or any brooch or ornament containing or representing such badge.

Use of name,
title, etc.
indicating connec-
tion with Force.

117. (1) No organization, association or other body of persons, corporate or unincorporate, shall, without the approval of the Minister, take, use or in any manner whatever publish any name, title, description or symbol indicating or purporting to indicate or calculated or likely to lead persons to infer that it has been established under or in pursuance of any provision of this Act or in or by the South African Defence Force or any arm, service, corps or unit therein or that it is in any manner connected or associated with such force, arm, service, corps or unit, if it has not been so established or is not so connected or associated.

(2) Any approval granted under sub-section (1) may in the discretion of the Minister be withdrawn by notice sent by registered post to the chairman, secretary or other executive officer of the organization, association or body concerned as from a date specified in such notice which shall not be earlier than three months after the date of the notice.

Improper dis-
closure of
information.

118. (1) No person shall in time of war publish in any newspaper, magazine, book or pamphlet or by radio or any other means, any information relating to the movements or dispositions of the South African Defence Force or any force of a country which is allied to the Union, or of any South African or allied ships or aircraft or any statement, comment or suggestion calculated directly or indirectly to convey such information, except where the information has been furnished or the publication thereof has been authorized by the Minister or under his authority.

(2) No person shall at any time publish in any manner whatsoever any secret or confidential information relating to the defence of the Union, or any information relating to any works proposed, undertaken or completed for or connected with the fortification or defence of the Union except where the information has been furnished or the publication thereof has been authorized by the Minister or under his authority.

(3) Any proprietor, printer, publisher or editor of any newspaper, magazine, book or pamphlet in which any such information as aforesaid is published, and any person responsible for the publication of such information by such or any other means,

shall be guilty of an offence, and proceedings in respect thereof may be taken against all or any of such persons.

(4) Any person who discloses to any other person any secret or confidential information relating to the defence of the Union which came to his knowledge by reason of his membership of the South African Defence Force or by reason of his employment in the public service of the Union or in any other office, post, appointment or capacity under the Government or by reason of any contract relating to the defence of the Union or any employment by a contractor under such a contract, or which was given to him in confidence by any person who was authorized or whose duty it was to give him such information, shall be guilty of an offence, unless such disclosure was authorized by the Minister or under his authority or by order of a competent court or it was the duty of such person in the interests of the State to disclose such information to such other person.

(5) In any proceedings in respect of a contravention of sub-section (2) or (4), it shall be presumed, until the contrary is proved—

- (a) that any information relating to the defence of the Union is secret or confidential; and
- (b) where the accused is proved to be or to have been a member of the South African Defence Force or to be or to have been employed in the public service of the Union or in any other office, post, appointment or capacity under the Government, or to hold or to have held any contract relating to the defence of the Union or to be or to have been employed by a contractor under such a contract, that the secret or confidential information came to his knowledge by reason of such membership, employment or contract.

(6) For the purposes of this section any information relating to military equipment shall be deemed to be secret or confidential unless publication of such information has been authorized by the Minister or under his authority.

(7) Nothing in this section contained shall be construed as preventing any person from being prosecuted and punished under any other law relating to the unlawful disclosure of information.

Prohibition on taking of photographs or making of sketches, etc. in defined areas.

119. (1) No person shall unless authorized thereto by the Minister or on his authority—

- (a) take any photograph or make any sketch, plan, model or note of any area defined by the Minister by notice in the *Gazette*, or of any part thereof or object therein; or
- (b) have in his possession in any area so defined any camera or other apparatus which may be used for the taking of photographs.

(2) Any photograph taken or sketch, plan, model or note made in contravention of paragraph (a) of sub-section (1), any camera or other apparatus in the possession of any person in contravention of paragraph (b) of that sub-section, and any film or negative used or prepared in connection with a photograph taken in contravention of paragraph (a) of sub-section (1), may be seized by any member of the South African Defence Force and may after investigation by and on the authority of the Secretary for Defence, be declared by him to be confiscated to the State.

Obstructing South African Defence Force.

120. Any person who wilfully obstructs or interferes with any portion of the South African Defence Force or of any auxiliary service, voluntary nursing service or civilian protective service established under this Act, or any member of any such Force or service, in the performance of any service or duty shall be guilty of an offence.

Aiding or inducing member of South African Defence Force to dereliction of duty.

121. Any person who—

- (a) agrees with or induces, or attempts to induce, any member of the South African Defence Force to neglect or to act in conflict with his duty in that Force; or
- (b) is a party to or aids or abets or incites to the commission of any act whereby any lawful order given to any member of that Force, or any law or regulation with which it is the duty of any member of that Force to comply, may be evaded or infringed,

shall be guilty of an offence.

Offences relating to intoxicating liquor.

122. (1) Any person who—

- (a) supplies or is a party to supplying any member of the South African Defence Force with intoxicating liquor when that member is on duty and is prohibited

- under regulations, orders or instructions from receiving or taking intoxicating liquor;
- (b) supplies intoxicating liquor for other than medicinal purposes to any cadet in uniform or to any citizen in uniform who has been enrolled for training under section *twenty-three* or Chapter VIII or has been enrolled as a member of a commando under section *thirty-five*; or
 - (c) is in possession of intoxicating liquor within a camp or barracks used for the training or exercise of cadets or of citizens who are undergoing any course of training for which they have been so enrolled,

shall be guilty of an offence.

(2) For the purposes of paragraph (c) of sub-section (1), "camp" or "barracks" shall not include any officers' mess or Permanent Force mess or any institution or other place to which access by the cadets and citizens mentioned in that paragraph is prohibited.

Personation.

123. Any person who by word, conduct or demeanour falsely represents himself to be a member of the South African Defence Force or a particular member thereof or a person holding a particular rank or appointment therein, shall be guilty of an offence.

Offences in connection with commandeering.

124. Any person who falsely represents himself to be an officer authorized and appointed in terms of section *one hundred* or who in any manner contravenes the regulations made for the purpose of that section, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand pounds or to imprisonment with or without compulsory labour for a period not exceeding ten years or to both such fine and such imprisonment.

Wrongful disposal of property.

125. Any member of the South African Defence Force who without authority gives, sells, pledges, lends or otherwise disposes of any moneys, animals, arms, ammunition, accoutrements, clothing, supplies or any other articles entrusted to or held by him for the service of the South African Defence Force, shall be guilty of an offence, and may, apart from any penalty which may be imposed upon him for such an offence under this Act, be ordered by the court or other competent authority which imposes that penalty, to make good any loss or deficiency caused by the gift, sale, pledge, loan or other disposition, and every such gift, sale, pledge, loan or other disposition shall be null and void.

Failure to attend training.

126. Any member of the South African Defence Force or the Reserve who without just cause, the burden of proof whereof shall lie on him, fails to attend at any time and place appointed for instruction, training or exercise, or who evades or fails to perform duly and with proper zeal the full course of training allotted to him in any training year, shall be guilty of an offence.

Offences and penalties.

127. (1) Any person who contravenes or fails to comply with any provision of this Act for which no penalty is specially prescribed, shall be guilty of an offence and liable on conviction—

- (a) in the case of an offence referred to in section *eighty-eight*, *one hundred and one* or *one hundred and eighteen*, to a fine not exceeding five hundred pounds or imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (b) in the case of an offence referred to in section *one hundred and twenty-two*, to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (c) in the case of any other offence, to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding six months.

CHAPTER XII.

VISITING AND OTHER FORCES.

Discipline and internal administration of visiting forces.

128. (1) A military court or other authority of any country may exercise within the Union in relation to members of a visiting force of that country in matters concerning discipline

and the internal administration of that force (including the administration of the property or the estate of a deceased member of that force) all such powers as are conferred upon such court or authority by the law of that country.

(2) The provisions which under the laws of the Union are applicable in connection with the powers, immunities and privileges of a military court of the Union and in connection with proceedings before such a court shall, in so far as they can be applied, be applicable also with reference to a military court of a country exercising jurisdiction by virtue of this Act.

(3) (a) Where any sentence has, whether within or without the Union, been passed upon a member of a visiting force by a military court of any country, that country shall, for the purposes of any legal proceedings within the Union, be deemed to have been properly constituted and its proceedings shall be deemed to have been regularly conducted and the sentence shall be deemed to be within the jurisdiction of the court and in accordance with the law of that country, and if executed according to the tenor thereof shall be deemed to have been lawfully executed, and any member of such visiting force who is detained in custody in pursuance of any such sentence, or pending the determination by a military court of that country of a charge brought against him, shall for the purposes of any such proceedings be deemed to be in legal custody.

(b) For the purposes of such proceedings a certificate under the hand of the officer in command of a visiting force that a member of that force is being detained for either of the causes aforesaid, shall be conclusive evidence of the cause of his detention, but not of his being such a member, and a certificate under the hand of such an officer that the persons specified in the certificate sat as a military court of the country to which that force belongs, shall be conclusive evidence of that fact.

(4) No proceedings in respect of pay, terms of service or discharge of a member of a visiting force shall be entertained by any court of the Union.

(5) For the purpose of enabling the military courts and military authorities of any country to exercise more effectively the powers conferred upon them by this section, the Minister may, if so requested by the government of that country or by the officer in command of a visiting force, from time to time by general or special orders to the South African Defence Force direct the members thereof to arrest members of the visiting force alleged to have been guilty of offences against the law of that country and to hand over any person so arrested to the appropriate authorities of the visiting force.

Relations of
visiting forces
to the civil
power and
civilians.

129. (1) The Governor-General may by proclamation in the *Gazette* authorize any Minister of State or any other person in the Union to perform, at the request of such authority of any country as may be specified in the proclamation, but subject to such limitations as may be so specified, any function in relation to a visiting force of that country and members thereof which that Minister or person performs or could perform in relation to any portion of the South African Defence Force of like nature to the visiting force, or in relation to members of such a portion thereof, and for the purpose of the performance of any such function, any power exercisable by virtue of any law by such Minister or person in relation to the South African Defence Force or members thereof, shall be exercisable by him or them in relation to the visiting force and members thereof: Provided that nothing in this sub-section shall be deemed to authorize any interference with the visiting force in matters relating to discipline or to the internal administration of that force.

(2) If the Governor-General by proclamation in the *Gazette* so provides, members of the visiting force, if sentenced by a military court of the country to which such force belongs, to penal servitude, imprisonment or detention, may under the authority of the Minister, given at the request of the officer in command of the visiting force, be detained in custody in prisons, gaols or detention barracks in the Union during the whole or any part of the term of their sentences, and the Governor-

General may by the same or a subsequent proclamation in the *Gazette* make provision relating to any of the following matters, namely—

- (a) the reception of such persons from and their return to the military authorities of the country concerned;
 - (b) their treatment while in such custody or while so imprisoned;
 - (c) the circumstances under which they are to be discharged; and
 - (d) the manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody or while so imprisoned.
- (3) Any costs incurred in the maintenance and return of, or otherwise in connection with, any person dealt with in accordance with the provisions of sub-section (2), shall be defrayed in such manner as may, with the consent of the Minister of Finance, be agreed upon between the Minister and the government of the country concerned.

(4) Save as hereinafter provided, the provisions of any law, including this Act, which—

- (a) exempts or provides for the exemption of any vessel, vehicle, aircraft, machine or apparatus of, or employed for the purposes of, the South African Defence Force or any portion thereof from the operation of any law; or
- (b) confers a privilege or immunity on any person by virtue of a connection with the South African Defence Force or any portion thereof; or
- (c) exempts any property, trade or business, in whole or in part, from the operation of any law or from any tax, rate, licence, imposition, toll or charge, by virtue of such a connection; or
- (d) imposes upon any person or undertaking obligations in relation to the South African Defence Force or any portion thereof, or any member or military court thereof; or
- (e) penalizes misconduct by any person in relation to the South African Defence Force or any portion thereof, or any member or military court thereof,

shall, with any necessary modifications apply in relation to a visiting force as it would apply in relation to the South African Defence Force: Provided that the Governor-General may, by proclamation in the *Gazette*, direct that any such law either shall not apply or shall apply with such exceptions and subject to such adaptations or modifications as may be specified in the proclamation.

(5) A proclamation under this section may apply either generally or in relation to any particular visiting force or in relation to any particular place.

Deserters from
other forces.

130. (1) Subject to the provisions of this section, section *one hundred and forty-one* of the Military Discipline Code shall within the Union apply in relation to a deserter or absentee without leave, from any military force of any country (including any member of a reserve or auxiliary force of that country, who, having failed to obey a notice calling upon him to appear at any place for service, is by the law of that country liable to the same punishment as a deserter, or to the same punishment as an absentee without leave), as it applies in relation to a deserter or absentee without leave from the South African Defence Force.

(2) No person who is alleged to be a deserter from a force of any country shall be apprehended or dealt with under this section except in compliance with a request from the government of that country, and a person so dealt with shall be handed over to the authorities of that country at such a place within the Union as may be agreed: Provided that a person who is alleged to be a deserter or absentee without leave from a visiting force may be apprehended and dealt with in compliance with a request from the officer in command of that force.

(3) For the purposes of any proceedings under this section—

- (a) a document purporting to be a certificate under the hand of the Minister of External Affairs or of the Minister, that a request has been made under sub-section (2) of this section, shall be admissible without proof as evidence of the making of such a request;

- (b) a document purporting to be a certificate under the hand of the officer in command of a unit or detachment of a force of any country that a named and described person was at the date of the certificate a deserter or absentee without leave from that force, shall be admissible without proof as evidence of the facts so certified.

Attachment of
personnel.

131. (1) The Minister may—

- (a) attach temporarily to the South African Defence Force any member of a force or of a reserve of any country who is placed at his disposal for that purpose by the military authorities of that country;
- (b) subject to anything to the contrary contained in the conditions applicable to his service, place any member of the South African Defence Force at the disposal of the military authorities of any country for the purpose of being attached temporarily by those authorities to the forces of that country.

(2) While a member of a force of any other country is attached temporarily to the South African Defence Force, he shall be subject to the law applying to that portion of the South African Defence Force to which he is attached and shall be treated and shall have the same power of command and punishment over members of the South African Defence Force as if he were a member of that Force of a rank equivalent to that held by him as a member of the force of such country: Provided that the Governor-General may, by proclamation in the *Gazette*, direct that in relation to members of a force of any country specified in the proclamation, the laws relating to the South African Defence Force shall apply with such exceptions and subject to such adaptations and modifications as may be so specified.

Members of
visiting forces
not subject to
jurisdiction of
local courts in
certain respects.

132. (1) Notwithstanding anything to the contrary in any other law, no court of the Union shall have jurisdiction to try any member of a visiting force or of a civilian component of such a force for an offence against the person or against property which, in the case of—

- (a) an offence against the person, was committed with or in relation to a person who, at the time of the commission of the offence, was a member of or directly associated with the same or another visiting force of the same country; or
- (b) an offence against property, was committed in relation to the property of the country to which the visiting force belongs or of a member of the same or another visiting force of the same country or of a person directly associated with any such force,

or for any offence which arose out of and in the course of the performance of his duties as such a member.

(2) The provisions of sub-section (1) shall not apply—

- (a) if the alleged offender, at the time of the commission of the offence, was not subject to the jurisdiction of the military courts of the country to which the visiting force belongs;
- (b) in relation to a member of a civilian component of a visiting force unless the offence in question is also an offence under the law of the country to which the visiting force concerned, belongs;
- (c) in respect of any case in which the competent Attorney-General or the Solicitor-General has certified that he has been notified by the appropriate authority of the country to which the visiting force belongs, that it is not proposed to charge the offender under the law of that country.

(3) Nothing in sub-section (1) shall affect the validity of any trial or of anything done or omitted in the course of a trial unless either before its commencement or during the course thereof, objection was made on the ground that by virtue of that sub-section, the court has no jurisdiction to try the offender.

(4) For the purpose of this section—

“offence against the person” means—

- (a) murder, administering poison with intent to murder, culpable homicide, assault whether coupled with any particular intent or not, rape, criminal injuria, incest, sodomy, procuring abortion, abduction, child-stealing;

- (b) a contravention of section *one hundred and thirteen* or *one hundred and fourteen* of the General Law Amendment Act, 1935 (Act No. 46 of 1935), section *two* or *four* of the Girls' and Mentally Defective Women's Protection Act, 1916 (Act No. 3 of 1916), section *seventy-four* of the Mental Disorders Act, 1916 (Act No. 38 of 1916), sub-section (1) of section *sixteen*, section *seventeen*, *nineteen* or *twenty-three* of the Children's Act, 1937 (Act No. 31 of 1937), or section *ninety-two* of the Liquor Act, 1928 (Act No. 30 of 1928); or
 - (c) any offence relating to—
 - (i) the negligent driving of a motor vehicle whereby any person is injured;
 - (ii) the procuring or detention of a female for the purpose of unlawful carnal intercourse; or
 - (iii) the keeping of a brothel;
- “offence against property” means—
- (a) theft whether at common law or as provided by statute, housebreaking with intent to commit a crime, robbery, fraud, forgery and uttering a forged instrument knowing it to be forged, extortion, receiving stolen property knowing it to have been stolen, malicious injury to property;
 - (b) any offence relating to the driving of a motor vehicle without the consent of the owner; or
 - (c) a contravention of section *one* of the General Law Amendment Act, 1956 (Act No. 50 of 1956).
- (5) Any reference to an offence mentioned in sub-section (4) shall be deemed to include a reference to—
- (a) an attempt to commit that offence;
 - (b) a conspiracy to aid or procure the commission of or to commit that offence;
 - (c) an incitement or instigation, or a command or procurement to commit that offence; or
 - (d) being accessory to the commission of that offence.

Mutual powers of command.

133. (1) Whenever a Union force and any other force are serving together, whether alone or not—

- (a) any member of the other force shall be treated and shall have over members of the Union force, the like powers of command as if he were a member of the Union force of relative rank; and
- (b) if the forces are acting in combination any officer of the other force appointed by, or in accordance with regulations made by or on the authority of the Governor-General after consultation with the appropriate authority of the country to which that force belongs, to command the combined forces or any part thereof, shall be treated and shall have over members of the Union force, the like powers of command and punishment and may be invested with the like authority to convene and confirm the findings and sentences of courts martial as if he were an officer of the Union force of relative rank and holding the same command.

(2) For the purpose of this section, a Union force and any other force shall be deemed to be serving together or acting in combination whenever the Governor-General has by proclamation in the *Gazette*, declared that they are so serving or acting, and the relative rank of members of the Union force and of such other force shall be as prescribed.

Proof of membership of visiting force.

134. A certificate issued under the hand or on the authority of the appropriate authority of any country, stating that at a time specified therein a person so specified was or was not a member of a visiting force of that country or of a civilian component of such a force shall, unless the contrary is proved, be evidence of the facts so stated.

Inquests on and removal of bodies of deceased members of visiting forces.

135. (1) Notwithstanding anything to the contrary in any law, no inquest shall, unless the Minister otherwise directs, be held as to the cause of death of any deceased person who at the time of his death was a member of a visiting force or of a civilian component of such a force.

(2) Whenever a magistrate holding an inquest is satisfied that a person subject to the jurisdiction of the military courts of

any other country is being detained for the purpose of being charged or has been charged before a court of that country with an offence arising out of the death which is the subject of the inquest, he shall, unless the Minister otherwise directs, adjourn the inquest and furnish the assistant registrar of births and deaths with such particulars necessary for the registration of the death as he may have ascertained at the inquest up to the time of its adjournment.

(3) No inquest which has been adjourned in terms of sub-section (2), shall be resumed unless the Minister so directs: Provided that where an inquest is resumed on the Minister's directions, the magistrate having jurisdiction shall commence the proceedings *de novo* but shall not furnish the assistant registrar of births and deaths with any particulars or further particulars for the registration of the death.

(4) Section *twenty-seven* of the Births, Marriages and Deaths Registration Act, 1923 (Act No. 17 of 1923), shall not apply in respect of any case where the body of a deceased person who at the time of his death was a member of a visiting force or of a civilian component of such a force, is to be buried at any place outside the Union except as regards the burial of the body of a deceased person in relation to whose death an inquest has been held or resumed in pursuance of instructions given by the Minister under sub-section (1) or (3).

CHAPTER XIII.

GENERAL.

Decorations and medals.

136. (1) The Governor-General may, in respect of conduct or service in peace or war which in his opinion requires or deserves suitable recognition, institute decorations and medals which he may award subject to such rules as he may in the case of every such decoration or medal consider necessary, to members of the South African Defence Force or the Cadet Corps or any auxiliary service, voluntary nursing service or civilian protective service established under this Act or any armed force attached to, serving with or rendering service to the South African Defence Force.

(2) No decoration or medal instituted under sub-section (1), shall be awarded to a member of any armed force other than the South African Defence Force unless the government of the force to which such member belongs has signified its concurrence in the award of such decoration or medal to such member.

(3) The Governor-General may in respect of every decoration or medal instituted under sub-section (1), make regulations relating to the grant, forfeiture and restoration thereof and such other matters concerning such decoration or medal as he may deem expedient.

(4) Any decoration or medal instituted prior to the commencement of this Act by Royal Warrant on the advice of Her Majesty's Ministers of State for the Union may, notwithstanding anything to the contrary in such Warrant contained, but subject to the rules for the governance thereof, be awarded, and any Warrant relating to any such decoration or medal may be amended or cancelled, by the Governor-General.

Language of instruction.

137. (1) Every officer and every non-commissioned officer of the South African Defence Force shall be instructed in giving and receiving executive words of command in each of the official languages of the Union, and the training and instruction of any citizen shall be given in the official language which he best understands.

(2) Whenever it is not practicable in the case of a particular unit of the said Force to give training or instruction entirely in one of such official languages, provision shall be made for the training or instruction of the minority of the members of that unit to be given as far as possible in the official language which they best understand.

Places for training or service.

138. Any training required to be undergone and, subject to the provisions of section *ninety-five*, any service to be performed under this Act, shall be undergone or performed at such places, whether within or outside the Union, as the Minister may direct.

Pay and allowances not to be assigned or attached.

139. No member of the South African Defence Force shall, without the approval of the Minister or a person thereto authorized by the Minister, assign the whole or any part of any pay or allowance due to him in respect of service in that Force, nor shall the whole or any part of such pay or allowance be capable of being seized or attached under or by virtue of any writ of execution, other than a garnishee order issued in terms

of any law in force in the Union, sued out against any member entitled to such pay or allowance, nor shall the same pass under or by virtue of any order made for the sequestration of the estate of any such member.

Exemption from stamp duties.

140. Notwithstanding anything in any other law contained, no stamp duty shall be payable in time of war in respect of the receipt of pay or allowances by any member of the South African Defence Force, or at any other time in respect of the receipt of such pay or allowances by any member of that Force other than a member of the Permanent Force.

Exemption from registration and licensing of Defence vehicles and drivers.

141. Nothing in any law relating to the registration and licensing of motor vehicles or the licensing of drivers of such vehicles, shall apply in respect of any motor vehicle as defined in sub-section (4) of section *eighty-seven* which is the property of the State in its Department of Defence.

Exemption from laws relating to conveyance of firearms.

142. The provisions of any law relating to the conveyance of firearms shall not apply with reference to the conveyance of firearms by any person where such conveyance takes place in connection with training, service or duty under this Act.

Exemption from tolls, etc.

143. (1) At any wharf, landing place, bridge, pont, ferry or toll-bar where the payment of a toll or due may lawfully be demanded, that toll or due shall not be payable by any member of the South African Defence Force if he is proceeding to or from any place on the service of that Force, or in respect of any animal or vehicle when employed on any such service.

(2) Any person duly authorized to collect tolls or dues at any such place aforesaid who wilfully subjects a member of the South African Defence Force, or any animal or vehicle on service as aforesaid, to unreasonable delay or detention shall be guilty of an offence.

Railway charges.

144. Any member of the South African Defence Force travelling on the service of that Force shall when provided with a Government warrant, be conveyed over any portion of any railway system in the Union at fares which shall be determined by agreement between the South African Railways and Harbours Administration and the Department of Defence acting in consultation with the Treasury.

Death or disablement caused by military service.

145. (1) The provisions of this section shall apply—

(a) to a member of the South African Defence Force (other than a member of the Permanent Force) who is suffering from disablement caused or aggravated by his military service or training, irrespective of the date on which such disablement arose or was so aggravated, provided such disablement is not due to the member's own serious misconduct; and

(b) to a widow, child, parent or other dependant of such a member who dies as a result of a wound, injury or disease which was caused or aggravated by his military service or training, irrespective of the date on which such wound or injury was received or such disease was contracted or was so aggravated.

(2) The provisions of the War Pensions Act, 1942 (Act No. 44 of 1942), shall *mutatis mutandis* apply to or in respect of a discharged member whose disablement (in the opinion of the military pensions board to which the matter is referred in terms of the said Act) arose in the circumstances described in paragraph (a) of sub-section (1).

(3) A member whose disablement arose in the circumstances described in paragraph (a) of sub-section (1), but who is not as a result of such disablement discharged from the South African Defence Force, may be provided with any medical or other treatment necessary for such disablement, and the Secretary for Defence may with the approval of the Treasury grant to such member for any period during which he is undergoing treatment or during which, in the opinion of the said Secretary, his disablement renders him incapable of pursuing his normal occupation, an allowance at a rate not exceeding four hundred and fifty pounds *per annum*, in addition to the emoluments of his rank.

(4) The provisions of the War Pensions Act, 1942, shall *mutatis mutandis* apply to or in respect of a widow, child, parent or other dependant of a member whose death in the opinion of the aforesaid military pensions board occurred in the circumstances described in paragraph (b) of sub-section (1).

Injuries received or illness contracted on service or training.

146. (1) A member of the South African Defence Force (other than a member of the Permanent Force) or the Cadet Corps who receives a wound or injury or contracts an illness while on military service or undergoing training, in circumstances other than those described in paragraph (a) of sub-section (1) of section *one hundred and forty-five*, may under such conditions and for such period as may be prescribed, be provided with any medical or other treatment necessary for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond the period of the service, camp, course, parade or other training on which he was engaged when he received the wound or injury or contracted the illness.

(2) Any member while receiving the treatment referred to in sub-section (1) may, for such period and under such conditions as may be prescribed, be paid the emoluments of his rank, provided the wound, injury or illness was not due to the member's own serious misconduct.

Conveyance of members of South African Defence Force.

147. Any member of the South African Defence Force may in connection with or for the purposes of his service, training or duty, be conveyed by any means whatever as may be ordered by his superior officer.

Clubs, messes, etc.

148. Clubs, messes and trading and other institutions for the use or benefit of members of the South African Defence Force, or other forces, the families of such members, and other prescribed persons or classes of persons, may be established and conducted under such conditions and in such manner as may be prescribed.

Exemption from licences, etc.

149. (1) No licence moneys, tax, duty or fee (other than customs or excise duty where leviable by law) shall be payable by any person under any law in respect of any certified institution in or in connection with any camp, station or ship for any portion of the South African Defence Force or in connection with any naval station in the Union, or in respect of any article on sale at such an institution.

(2) The production of an official document bearing the signature of the Minister or of a person authorized by the Minister to sign any such document, and indicating that he has certified the institution, shall be sufficient evidence that it is an institution falling within this section.

(3) For the purpose of this section "institution" means any club, mess or other institution established in terms of section *one hundred and forty-eight*.

Presumption as to delivery of notices.

150. (1) Any notice sent by registered post to any person's registered address shall, unless the contrary is proved, be deemed to have been delivered to him at the time when it would have reached him in the ordinary course of post, and any notice issued under this Act relating to any person and exhibited at a prescribed public office in the magisterial district in which his registered address is, shall be deemed to have been duly served on such person.

(2) All magistrates, postmasters and officers in charge of police stations are required to exhibit such notices issued under this Act, and to keep on hand and issue on request to applicants such forms as are sent to them by the prescribed authority.

Act to apply both within and outside Union.

151. This Act shall apply to all members of the South African Defence Force, and the Reserve, and of any auxiliary or nursing service established under this Act, whether such members are serving within or outside the Union, and whenever it is necessary to enforce this Act outside the Union, any sentence, fine or penalty pronounced or imposed for the purpose of such enforcement shall be as valid and effectual and shall be carried into effect as if it had been pronounced or imposed in the Union.

Repeal of laws and savings.

152. (1) Subject to the provisions of sub-sections (2), (3) and (4), the laws mentioned in the Second Schedule are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by sub-section (1), shall be deemed to have been issued, made or done under the corresponding provisions of this Act, and shall in so far as it relates to any force, reserve or service established or any training or service provided for under any such repealed law, be construed as if it related to the corresponding force,

reserve, service or training established or provided for under this Act.

(3) Any person who at the commencement of this Act is a member of any force, reserve or service established under any such repealed law, shall be deemed to have been duly enrolled as a member of the corresponding force, reserve or service established under this Act and to have been assigned to the unit, corps or duties in which he is serving at such commencement, and any training undergone or service performed by any such person in any such force, reserve or service prior to such commencement, shall be deemed to have been undergone or performed in the corresponding force, reserve or service established under this Act.

(4) For the purposes of this section, any force, reserve or service established or training or service provided for under any such repealed law, shall be deemed to correspond to the force, reserve or service established or training or service provided for under this Act, to which in name, designation or description it most closely corresponds.

Application to
South-West
Africa.

153. (1) This Act shall apply also in the territory of South-West Africa.

(2) The cost of administration of this Act, in so far as it applies in the said territory, shall, subject to such contribution by the Administration of the said territory towards such cost as may be agreed upon by the said Administration and the Treasury, be defrayed from moneys appropriated by Parliament for the purpose.

Short title
and commence-
ment.

154. This Act shall be called the Defence Act, 1957, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

First Schedule.

DEFINITIONS.

1. (1) In this Code any expression to which a meaning has been assigned in the Act, bears the meaning so assigned thereto, and unless the context otherwise indicates—

- (i) "board of inquiry" means a board of inquiry convened under section *one hundred and thirty-five* or *one hundred and thirty-six*; (xxii)
- (ii) "board of review" means a board of review established under section *one hundred and forty-six*; (x)
- (iii) "camp" includes a ship; (xv)
- (iv) "capital offence" means any offence, whether under this Code or otherwise, in respect of which sentence of death may be imposed; (ix)
- (v) "civil court" means any court of criminal jurisdiction in the Union; (iv)
- (vi) "civil offence" means any offence in respect of which any penalty may be imposed by a court of law, not being an offence under sections *four* to *fifty*, inclusive, of this Code; (v)
- (vii) "convening authority" means any person empowered by warrant to convene courts martial; (i)
- (viii) "counsel" means any advocate entitled to practise and appear before a provincial division of the Supreme Court of South Africa, and includes any attorney entitled to practise and appear in a magistrate's court in the Union and any defending officer; (xxiii)
- (ix) "council of review" means the council of review established under section *one hundred and forty-five*; (xi)
- (x) "court martial" means a court martial convened by virtue of the provisions of section *sixty-six* or *sixty-seven*; (xvii)
- (xi) "defending officer" means an officer subject to this Code appointed by a convening authority to undertake the defence at a trial by court martial of an accused not represented by any other counsel; (xxi)
- (xii) "desert", in relation to any person, includes, without in any way limiting its ordinary meaning—
 - (a) be absent without authority while on service from the unit or formation of such person with the intention of avoiding service;
 - (b) miss any form of transport, by which such person has been warned to travel, with the intention of not accompanying his unit or formation on service or not proceeding on service; and
 - (c) fail to report for any service under the Act within seven days after having been called up for such service; (vi)
- (xiii) "enemy" includes any armed rebels or mutineers; (xxviii)
- (xiv) "field punishment" means the performance in custody in the field of such labour and extra drills and duties as may be prescribed; (xxvi)
- (xv) "field rank" means any rank not lower than that of major or any equivalent rank; (xiii)
- (xvi) "General Officer Commanding, South African Defence Force", means the chief military executive officer of the South African Defence Force, and in section *one hundred and twenty-eight* includes the officer commanding any portion of the South African Defence Force on service beyond the borders of the Union; (ii)
- (xvii) "hospital" includes any military medical institution for the treatment of patients; (xiv)

- (xviii) "imprisonment" means imprisonment with or without compulsory labour; (viii)
 - (xix) "member", when used in relation to a court martial or board of inquiry, includes the president; (xviii)
 - (xx) "military court" means any court or officer deriving jurisdiction from this Code or from an officer, to try persons charged with offences under this Code and to impose punishment; (xx)
 - (xxi) "oath" includes a solemn declaration or affirmation; (vii)
 - (xxii) "pay", in relation to any person, includes all amounts to which such person is entitled in respect of any training, duty or service undergone or performed by him as a member of the South African Defence Force, except amounts payable to him under the Government Service Pensions Act, 1955 (Act No. 58 of 1955); (xxiv)
 - (xxiii) "prescribed" means prescribed in the rules made under section one hundred and four of the Act; (xxvii)
 - (xxiv) "public property" means any property belonging to or in the possession or under the control of the Union Government or belonging to any force acting in co-operation with the South African Defence Force; (xxv)
 - (xxv) "safeguard" means a party of soldiers detached for the protection of any person or of any place, including any village or house or other property; (iii)
 - (xxvi) "service" means service in defence of the Union or in the prevention or suppression of internal disorder in the Union; (xvi)
 - (xxvii) "superior court" means a provincial or local division of the Supreme Court of South Africa; (xii)
 - (xxviii) "superior officer", in relation to a person subject to this Code, means any person subject to this Code who holds a higher rank than such firstmentioned person, or who holds the same or an equivalent rank but is in a position of authority over such firstmentioned person, and for the purposes of this definition any warrant officer or non-commissioned officer shall be deemed to be an officer; (xix)
 - (xxix) "vary" includes alter, remit, mitigate and commute. (xxix).
- (2) Any reference in this Code to the South African Defence Force shall be construed as including a reference to any portion of that Force.

APPLICATION OF CODE.

2. (1) Save as is otherwise provided therein, the provisions of this Code shall apply only to the persons who are in terms thereof or in terms of the Act subject to those provisions, and to persons not otherwise subject thereto who, with the consent of the commanding officer of any portion of the South African Defence Force which is on service are with or accompany or perform duty with that portion of the said Force.

(2) Any person subject to this Code by virtue of any consent given under sub-section (1), shall be so subject thereto—

- (a) where such consent has been given in writing, on the basis indicated in such consent; or
- (b) where consent has not been given in writing, on the basis on which he has been accepted and treated for living and messing facilities.

APPLICATION OF CODE BEYOND AREA OF COMPULSORY SERVICE.

3. Any person subject to this Code who in time of war and owing to circumstances connected with such war is moved or taken beyond the area in which he may be required to render service, shall at all times remain subject to this Code as if he were within the said area until his return thereto can reasonably be effected.

OFFENCES ENDANGERING SAFETY OF FORCES PUNISHABLE WITH DEATH.

4. Any person who, being on service—

- (a) shamefully abandons or surrenders or induces or compels any other person on service shamefully to abandon or surrender any garrison, place, post, guard, aircraft or vessel which it was the duty of such person or, as the case may be, such other person to defend;
- (b) treacherously communicates with or gives intelligence to the enemy;
- (c) treacherously makes known the parole, watchword or countersign to any person not entitled to receive it or treacherously gives a parole, watchword or countersign different from what he received;
- (d) goes over to the enemy;
- (e) having been made a prisoner of war, voluntarily serves with or aids the enemy;
- (f) gives to the enemy or assists the enemy to acquire arms or ammunition or any material or equipment;
- (g) knowingly commits any act calculated to imperil the success or safety of the South African Defence Force or any forces co-operating with the South African Defence Force or any part of any such forces; or
- (h) conspires with any other person to mutiny or cause mutiny in the South African Defence Force or joins in any such mutiny,

shall be guilty of an offence and liable on conviction to be sentenced to death.

OFFENCES BY A PERSON IN COMMAND OF TROOPS, VESSELS OR AIRCRAFT.

5. Any person in command of troops of the South African Defence Force or of any vessel or aircraft who—

- (a) when his duty requires him to engage the enemy, fails to do so or to do so as expeditiously or effectively as circumstances permit;

- (b) being in action without proper cause withdraws from the action or forsakes his post; or
 - (c) improperly fails to pursue an enemy or to consolidate any position gained,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

OFFENCES IN RELATION TO CONDUCT IN ACTION.

6. Any person who—

- (a) shamefully and in the presence of the enemy abandons or casts away any arms, ammunition, equipment or tools;
- (b) behaves before the enemy in such a manner as to show cowardice;
- (c) improperly delays or discourages any action against the enemy;
- (d) improperly does or omits to do anything which results or is calculated to result in the capture by the enemy of any member of the South African Defence Force or of any forces co-operating with the South African Defence Force, or endangers or is calculated to endanger any such member, or which results or is calculated to result in the capture or destruction by the enemy of any aircraft, vessel, arms, ammunition or other war material;
- (e) in action or prior to going into action, acts in a manner or uses words calculated to create alarm or despondency;
- (f) without authority communicates with the enemy or sends a flag or signal of truce to the enemy;
- (g) knowingly harbours or protects an enemy, not being a prisoner of war; or
- (h) is taken prisoner of war through want of precaution, neglect of duty or disobedience to orders, or having been taken prisoner of war fails to rejoin the South African Defence Force when able to do so,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

OFFENCES RELATING TO FAILURE TO REPORT ACTIVITIES LIKELY TO ENDANGER SAFETY OF FORCE.

7. Any person who, being aware or having reasonable suspicion that any other person—

- (a) is communicating with the enemy or giving intelligence to the enemy;
- (b) is giving to the enemy or is assisting the enemy to acquire arms, ammunition or any material or equipment; or
- (c) is about to commit any act calculated to imperil the success or safety of the South African Defence Force or any forces co-operating with the South African Defence Force or any part of any such forces,

fails to report without delay to his superior officer the facts within his knowledge concerning the activities or contemplated or suspected activities of such other person, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

OFFENCES RELATING TO SIGNALS, WATCHWORDS AND DISCLOSURE OF INFORMATION.

8. Any person who—

- (a) without authority or contrary to his duty in any way uses, alters, adjusts or interferes with any instrument, machine or device designed or used for signalling, directing or detecting;
- (b) without authority or contrary to his duty alters, mutilates or delays any signal;
- (c) makes known the parole, watchword or countersign to any person not entitled to receive it;
- (d) wilfully or negligently gives or conveys to a person entitled to receive it, any parole, watchword or countersign different to that which he has received;
- (e) without proper authority discloses any information concerning the numbers, movements, location or preparations of the South African Defence Force or any forces co-operating therewith, or concerning any weapons, aircraft, vessels, stores, machines, instruments, devices or signal codes used or intended for use by such Force or forces, to the prejudice of such Force or forces; or
- (f) contrary to his duty discloses the contents of any document, or is negligent in the performance of any duty, in consequence of which an unauthorized person becomes or might become aware of the contents of any document, to the prejudice of the South African Defence Force,

shall be guilty of an offence and liable on conviction, if he committed the offence while on service, to imprisonment for a period not exceeding five years, and in any other case to imprisonment for a period not exceeding two years.

INTERFERENCE WITH AIRCRAFT, VEHICLES, VESSELS, ETC.

9. Any person who, in circumstances not amounting to an offence under any other provision of this Code, contrary to his duty or without proper authority alters, adjusts or interferes with any aircraft, motor vehicle, vessel, weapon, machine or instrument used or intended for use by the South African Defence Force or any part or accessory of any such aircraft, motor vehicle, vessel, weapon, machine or instrument, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

MUTINY.

10. Any person who, in circumstances not amounting to an offence under any other provision of this Code, conspires with any other person

to mutiny or to cause a mutiny or joins in any mutiny or being present at a mutiny fails to do his utmost to suppress it, or being aware or suspecting that any other person is conspiring to cause any mutiny or has joined in any mutiny, fails to report without delay to his superior officer all the facts within his knowledge in that regard, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

INTERFERENCE WITH GUARDS, SENTRIES, ETC.

11. Any person who—

- (a) forces or evades any safeguard;
- (b) assaults any sentry or watchkeeper;
- (c) in any manner whatever prevents a sentry or watchkeeper from doing his duty; or
- (d) occasions false alarm,

shall be guilty of an offence and liable on conviction, if he committed the offence while on service, to imprisonment for a period not exceeding five years, and in any other case to imprisonment for a period not exceeding one year.

DERELICTION OF DUTY BY SENTRY, WATCHKEEPER, ETC

12. Any person who—

- (a) while on sentry duty or on duty as a watchkeeper leaves his post before he is regularly relieved or sleeps or is under the influence of intoxicating liquor or narcotic drugs; or
- (b) while on duty with his unit or at a post or guard leaves such unit, post or guard without orders or good and sufficient cause,

shall be guilty of an offence and liable on conviction, if he committed the offence while on service, to imprisonment for a period not exceeding two years, and in any other case to imprisonment for a period not exceeding one year.

DESERTION.

13. Any person who deserts from the South African Defence Force shall be guilty of an offence and liable on conviction, if he committed the offence while on service, to imprisonment for a period not exceeding ten years, and in any other case to imprisonment for a period not exceeding two years.

ABSENCE WITHOUT LEAVE AND NON-ATTENDANCE WHERE REQUIRED TO ATTEND.

14. Any person who—

- (a) absents himself without leave;
- (b) fails to appear at a place of parade or duty or at any other place appointed by his commanding officer, or leaves any such place without good and sufficient cause;
- (c) without good and sufficient cause goes into any prohibited area or beyond the fixed confines of his camp; or
- (d) being required to attend any school or other educational institution, whether civilian or otherwise, fails to attend thereat or absents himself therefrom without leave,

shall be guilty of an offence and liable on conviction, if he committed the offence while on service, to imprisonment for a period not exceeding one year, and in any other case to imprisonment for a period not exceeding three months.

ASSAULTING SUPERIOR OFFICER.

15. Any person who assaults or points a firearm at or draws any weapon against his superior officer, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

ASSAULTING OR ILL-TREATING SUBORDINATE.

16. Any person who assaults or points a firearm at or draws any weapon against or ill-treats any person who is by reason of rank or appointment subordinate to him, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three years.

USING THREATENING, INSUBORDINATE OR INSULTING LANGUAGE.

17. Any person who uses threatening or insulting language to, or by word or conduct displays insubordination or behaves with contempt towards his superior officer, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

MALINGERING, FEIGNING OR PRODUCING DISEASE, MAIMING ETC.

18. Any person who—

- (a) malingers or feigns or produces disease or infirmity;
- (b) maims or injures himself with the intention of avoiding any service or duty;
- (c) wilfully commits or omits to perform an act, in consequence whereof he becomes or is likely to become unable to perform any service or duty; or
- (d) wilfully maims or injures any other person subject to this Code, whether at the request or with the connivance of such other person or otherwise, thereby rendering such person unfit for service or duty,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

DISOBEYING LAWFUL COMMANDS OR ORDERS.

19. (1) Any person who in wilful defiance of authority disobeys any lawful command given personally by his superior officer in the execution of his duty, whether orally, in writing or by signal, shall be guilty of an offence and liable on conviction, if he committed the offence while on service, to imprisonment for a period not exceeding five years, and in any other case to imprisonment for a period not exceeding two years.

(2) Any person who disobeys any lawful command given by his superior officer, in circumstances not amounting to an offence under sub-section (1), shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(3) Any person who disobeys any lawful direction of the commander of any aircraft or vessel in which he is being conveyed, whether such commander is a member of any armed force or a civilian, and irrespective of the rank or status of such commander, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(4) Any person who, being a patient in any hospital, wilfully disobeys any lawful direction concerning his hospital or medical treatment, given to him by any member of the hospital staff within whose hospital duty and authority it is to give such a direction, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

(5) Any person who neglects to obey any unit, formation or garrison order of which it is his duty to have knowledge, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

THEFT OF PUBLIC PROPERTY OR PROPERTY BELONGING TO A COMRADE, MESS, ETC.

20. Any person who—

(a) steals any public property or property belonging to any mess, wardroom or institution of the South African Defence Force; or

(b) steals any property belonging to a person subject to this Code; or

(c) receives any property referred to in paragraph (a) or (b) knowing it to have been stolen,

shall be guilty of an offence and liable on conviction, in the case of—

(i) an offence referred to in paragraph (a), to imprisonment for a period not exceeding ten years;

(ii) an offence referred to in paragraph (b), to imprisonment for a period not exceeding two years; or

(iii) an offence referred to in paragraph (c), to the punishment provided in sub-paragraph (i) or in sub-paragraph (ii), according as to whether the property received was property referred to in paragraph (a) or property referred to in paragraph (b).

OFFENCES IN RELATION TO THE ACQUISITION OR DISPOSAL OF PUBLIC PROPERTY.

21. Any person who—

(a) without authority sells, barter or otherwise disposes of or lends or pledges any public property or, being aware or suspecting that any other person is without authority selling, bartering or in any other way disposing of or lending or pledging such property, fails to report the facts within his knowledge in that regard to his superior officer without delay;

(b) when it is his duty to acquire by purchase or otherwise any property for the use of the South African Defence Force, demands, solicits or accepts contrary to his duty any commission, fee, reward or personal advantage in respect of such acquisition;

(c) having acquired property which it was his duty to acquire by purchase or otherwise for the use of the South African Defence Force, fails or neglects to cause such property to be delivered to an appropriate place or store; or

(d) agrees to pay or connives at the payment of any exorbitant price for any property purchased for the use of the South African Defence Force,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

CAUSING OR ALLOWING A VESSEL OR AIRCRAFT TO BE HAZARDED, STRANDED OR WRECKED.

22. Any person who wilfully or negligently causes or allows a vessel or aircraft to be hazarded, stranded or wrecked, shall be guilty of an offence and, where no other penalty is prescribed in this Code, liable on conviction to imprisonment for a period not exceeding five years.

ABANDONING OR DIVERTING PUBLIC PROPERTY OR SUPPLIES.

23. Any person who—

(a) without good and sufficient cause wilfully abandons, damages or destroys any public property; or

(b) improperly diverts or detains supplies,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

NEGLIGENTLY LOSING KIT, EQUIPMENT, ARMS, ETC.

24. (1) Any person who—

(a) negligently loses his kit, arms or equipment or any public property or any property issued to him at public expense for personal use in the execution of his duties; or

- (b) negligently damages or destroys any public property or any property issued to him at public expense for personal use in the execution of his duties,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(2) If in any proceedings for a contravention of paragraph (a) of subsection (1), it is proved that any article or property mentioned in that paragraph which is alleged in the charge to have been lost, was issued to the accused and that on a date subsequent to such issue the accused was found not to be in possession of such article or property, it shall be presumed unless the contrary is proved, that such article or property was negligently lost by the accused.

NEGLIGENTLY OR WILFULLY CAUSING DAMAGE TO OR DESTRUCTION OF PUBLIC PROPERTY.

25. Any person who—

- (a) negligently or wilfully commits any act which causes or is likely to cause damage to or destruction of public property; or
(b) negligently or wilfully omits to take action to prevent damage to or destruction of public property,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

DEFICIENCIES IN STORES, ETC.

26. Any person who, being responsible for stores, stocks or moneys in any South African Defence Force store, office, mess or institution, so negligently performs his duties as to cause any deficiency in such stores, stocks or moneys shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

USING OR TAKING ARTICLE ISSUED TO OR UNDER CONTROL OF ANOTHER PERSON.

27. Any person who—

- (a) improperly uses or takes or removes from the possession or control of any other person subject to this Code any article issued to such other person for personal use in the execution of his duties or the personal property of such other person without the permission of the said person; or
(b) without proper authority takes or removes any article of public property from its appointed place, or uses such article for any purpose otherwise than in the public interest,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

OFFENCES IN RELATION TO THE DRIVING OF VEHICLES AND THE FLYING OF AIRCRAFT.

28. Any person who—

- (a) drives any motor vehicle being public property in a negligent or reckless manner or at an excessive speed or while he is under the influence of intoxicating liquor or narcotic drugs; or
(b) flies any aircraft being public property in a negligent or reckless manner or at an unauthorized altitude or while he is under the influence of intoxicating liquor or narcotic drugs,

shall be guilty of an offence and liable on conviction, where no other penalty is prescribed in this Code, to imprisonment for a period not exceeding one year.

FRAUDULENT ENLISTMENT.

29. (1) Any person who—

- (a) being a member of any portion of the South African Defence Force and not having been regularly discharged therefrom, enrolls in any other portion of that Force;
(b) having been discharged with disgrace from the South African Defence Force or from a military, naval or air force of any country, enrolls in the South African Defence Force without disclosing such discharge with disgrace at the time of enrolment; or
(c) wilfully gives a false answer to any question set forth on any enrolment or enlistment paper,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(2) For the purposes of this section the expression "discharged with disgrace" means cashiered, discharged with ignominy, dismissed because of misconduct or discharged on account of imprisonment.

(3) Any person who, having given a false answer to any question set forth on an enlistment or enrolment paper, is thereupon enrolled as a member of the South African Defence Force, shall be deemed to have been subject to this Code at the date upon which such false answer was given.

FALSE STATEMENTS IN OFFICIAL DOCUMENTS.

30. Any person who—

- (a) knowingly or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes;
(b) orders any other person to make or sign a statement or entry in a document that is required for official purposes, well knowing such statement or entry to be false;

- (c) when signing a document for official purposes leaves in blank any material part for which his signature is a voucher;
 - (d) with intent to deceive, alters, defaces, suppresses or makes away with any document made, kept or issued for official purposes; or
 - (e) forges any signature upon any document required for official purposes or uses any document for official purposes knowing the signature thereon to be forged,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

FALSE ACCUSATIONS OR STATEMENTS.

31. Any person who makes any false accusation or statement against or concerning any other person subject to this Code, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

SCANDALOUS BEHAVIOUR.

32. Any officer who behaves in a scandalous manner unbecoming the character of an officer and a gentleman, shall be guilty of an offence and shall on conviction be cashiered.

DRUNKENNESS.

33. Any person who—
- (a) is drunk whether on or off duty; or
 - (b) unfits himself for the proper performance of his duty by excessive use of alcohol or narcotic drugs,
- shall be guilty of an offence and liable on conviction, where no other penalty is prescribed in this Code, if he committed the offence while on service and on duty to imprisonment for a period not exceeding one year, and in any other case to imprisonment for a period not exceeding three months.

OFFENCES IN RELATION TO A COURT MARTIAL.

34. (1) Any person who—
- (a) having been duly summoned or warned to attend as a witness before a court martial, fails to attend or to remain in attendance until authorized to leave;
 - (b) being present at a court martial after having been duly summoned or warned to attend as a witness, refuses to be sworn or to affirm;
 - (c) when giving evidence at a court martial, refuses to answer any questions which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his possession or under his control which in law he could be compelled to produce; or
 - (d) uses threatening or insulting language at a court martial or wilfully causes a disturbance or interruption thereat or wilfully commits any other act calculated or likely to bring such court martial into contempt, ridicule or disrepute,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

(2) The court martial at a sitting whereof an offence mentioned in paragraph (d) of sub-section (1) is committed, may summarily order the offender to be imprisoned for a period not exceeding twenty-one days, or to undergo any less severe punishment to which a person convicted of an offence under this Code by a court martial could be sentenced, and any such order shall have the same effect and may be executed in the same manner as if it were a sentence imposed by a court martial in the course of a trial in respect of an offence under this Code before such court, and the provisions of section *ninety-six* shall apply in connection with any such order.

FALSE EVIDENCE BEFORE A COURT MARTIAL.

35. Any person who at a court martial wilfully gives false evidence, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding the maximum period of imprisonment which could in terms of this Code be imposed in respect of any offence which formed the subject of the charge in connection with which such evidence was given.

REFUSING TO ANSWER QUESTIONS OR PRODUCE DOCUMENTS OR GIVING FALSE EVIDENCE AT PRELIMINARY INVESTIGATION, SUMMARY TRIAL OR BOARD OF INQUIRY.

36. (1) Any person who, being present at a preliminary investigation, summary trial or board of inquiry after having been duly warned or summoned to attend as a witness, refuses to be sworn or to affirm or to answer any question which in law he could be compelled to answer or to produce any document or thing in his possession or under his control which in law he could be compelled to produce, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.

(2) Any person who at any board of inquiry, preliminary investigation or summary trial under this Code wilfully gives false evidence, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

OBSTRUCTION IN RELATION TO THE ARREST, CUSTODY OR CONFINEMENT OF A PERSON SUBJECT TO THE CODE.

37. Any person who—
- (a) resists or wilfully obstructs any member of the South African Defence Force in the performance of any duty relating to the arrest, custody or confinement of a person subject to this Code;

- (b) when called upon by any such member, refuses or neglects to assist that member in the performance of any such duty; or
 - (c) when called upon by an appropriate civil authority to deliver over any person under his control, accused of an offence punishable by civil court, fails or neglects to do so,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

OFFENCES IN RELATION TO ARREST.

38. Any person who—
- (a) without due and just cause orders any person into arrest or custody;
 - (b) unnecessarily detains a person in arrest or custody;
 - (c) contrary to his duty fails to bring the case of a person in arrest or custody before the proper authority within the prescribed time; or
 - (d) having committed a person to the custody of any authorized person, fails to deliver to such authorized person within twenty-four hours of such committal an account in writing signed by himself of the offence with which the person so committed is charged,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

RESISTING ARREST.

39. Any person who—
- (a) being ordered into arrest, refuses to obey such order or assaults the person ordering him into arrest;
 - (b) being ordered into arrest, resists the person whose duty it is to apprehend him or have him in charge;
 - (c) assaults any person in whose custody he has been placed;
 - (d) escapes from custody; or
 - (e) hinders or obstructs any person lawfully carrying out a search of his person, personal kit or belongings or his living quarters,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

OFFENCES IN RELATION TO A PERSON IN CUSTODY.

40. Any person who—
- (a) without reasonable excuse allows any person committed to his custody or charge to escape;
 - (b) without proper authority releases any person committed to his custody or charge; or
 - (c) uses unnecessary violence to any person in custody or otherwise ill-treats such person,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

FALSE COMPLAINTS IN WRITING.

41. Any person who in any complaint made and lodged by him or in any document made or signed by him relating to the South African Defence Force or any member thereof or affecting any interest of such Force or any such member, knowingly makes a false statement, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

OFFENCES IN RELATION TO THE REDRESS OF WRONGS.

42. Any person who—
- (a) when a complaint by another person subject to this Code has been made to him, unduly delays in redressing the wrong complained of or sending the complaint to higher authority in accordance with this Code; or
 - (b) complains to higher authority or to the Minister when it is his duty to direct his complaint to his commanding officer or other authority as directed in this Code,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one month.

FALSE REPRESENTATIONS CONCERNING RANK.

43. Any person who holds himself out to be the holder of a rank other than his own rank in the South African Defence Force, whether such holding out is by the wearing of rank badges, rank stripes or other insignia of rank or in any other manner, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

OFFENCES IN RELATION TO DECORATIONS OR MEDALS.

44. Any person who knowingly wears—
- (a) any decoration, medal or clasp or any decoration or medal ribbon or wound stripe to which he is not entitled; or
 - (b) any badge, emblem, colours or other insignia of a political organization,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.

RIOTOUS OR UNSEEMLY BEHAVIOUR.

45. Any person who—
- (a) at any time behaves in a riotous or an unseemly manner; or

(b) when able to do so, does not suppress any riotous or unseemly behaviour by any person subject to this Code, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

CONDUCT TO THE PREJUDICE OF MILITARY DISCIPLINE.

46. Any person who by act or omission causes prejudice to good order and military discipline, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

CIVIL OFFENCES COMMITTED OUTSIDE THE UNION.

47. Any person who beyond the borders of the Union commits or omits to do any act in circumstances under which he would, if he had committed or omitted to do that act in the Union, have been guilty of a civil offence, shall be guilty of an offence under this Code and liable on conviction to such penalty applicable in respect of that civil offence as could be imposed under section *ninety-one* of this Code.

AIDING, ABETTING, INCITING, ETC.

48. Any person who aids, abets, induces, incites, instigates, instructs or commands any person to commit an offence under this Code, or who procures the commission of such an offence, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the principal offence.

DEFEATING THE COURSE OF JUSTICE.

49. Any person who, with intent to defeat or obstruct the course of justice, assists or harbours any person who to his knowledge has committed an offence under this Code, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the offence committed by the person he so assisted or harboured.

ATTEMPT.

50. Any person who attempts to commit any offence under this Code, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the offence he so attempted to commit.

ALTERNATIVE PUNISHMENTS.

51. The court convicting any person—

- (a) of an offence under section *four* may, instead of imposing sentence of death on that person, impose upon him any other punishment within the jurisdiction of that court;
- (b) of any other offence under this Code may, instead of imposing upon that person any penalty prescribed herein in respect of such offence, impose upon him any other penalty within the court's jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed.

ARREST.

52. (1) Any person who in the presence of his superior officer commits or who is on reasonable grounds suspected by his superior officer of having committed an offence under this Code, may be arrested or ordered into arrest by such superior officer.

(2) Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits a capital civil offence or any offence under section *four* of this Code or any other prescribed offence, may be arrested by any person subject to this Code in whose presence he is so engaged or commits any such offence: Provided that an officer shall not be liable to arrest by any person other than an officer.

(3) Any person who in terms of this section arrests any other person or orders any other person into arrest, shall forthwith inform the person arrested or ordered into arrest of the cause of the arrest.

SEARCH.

53. (1) Whenever it appears to a convening authority from information contained in at least one sworn statement that there are reasonable grounds for suspecting that there is upon any person under his command who is subject to this Code, or upon or at any premises, place, vehicle or receptacle of whatever nature belonging to or occupied by or under the control of the South African Defence Force within the area in which he exercises command—

- (a) stolen property or anything with respect to which any offence under this Code has been or is suspected on reasonable grounds to have been committed; or
- (b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence,

he may in writing authorize any superior officer of the person on whom or the person in charge or control of the premises, place, vehicle or receptacle upon or at which such property or thing is suspected to be, to search such person, premises, place, vehicle or receptacle or any person found in or upon such premises, place, vehicle or receptacle, to seize any such property or thing, if found, and to deliver it safely to the commanding officer of the person on whom or the person in charge or control of the

premises, place, vehicle or receptacle upon or at which such property or thing was found.

(2) If an officer of field rank believes on reasonable grounds that the delay in obtaining written authority in terms of sub-section (1), would defeat or prejudice the object of a search, he may, if he is the superior officer of the person upon whom or the person in charge or control of the premises, place, vehicle or receptacle upon or at which such property or thing is suspected to be, authorize the search without such authority.

(3) Any search in terms of sub-section (1) or (2) shall be conducted in the presence of the person upon whom or the person in charge or control of the premises, place, vehicle or receptacle upon or at which the property or thing in question is suspected to be: Provided that if the delay in securing the presence of such person is likely to prejudice the object of the search or if his presence cannot with due regard to the exigencies of the service be readily secured, the search may be made in his absence but in the presence of one or more other persons subject to this Code.

JURISDICTION OF CIVIL COURTS.

54. Nothing in this Code shall affect the jurisdiction of any civil court in the Union to try a person for any offence within its jurisdiction.

PERSON CONVICTED OR ACQUITTED NOT TO BE TRIED AGAIN.

55. No person who has been convicted or acquitted by a civil or military court of any offence under this Code, shall be triable by a military court for any offence of which he might have been found guilty by the court which tried him in the first instance.

CIVIL OFFENCE MAY BE TRIED UNDER CODE.

56. A person subject to this Code may be tried by a military court having jurisdiction for any civil offence (other than treason, murder, rape or culpable homicide committed by him within the Union), and may in respect of such offence be sentenced to any penalty within the jurisdiction of the court convicting him.

OFFENCE AGAINST CODE MAY BE TRIED AT ANY PLACE.

57. Any person charged with an offence under this Code may be tried and punished for such offence at any place by a military court having jurisdiction in respect of such person at the time of the commencement of the trial and having jurisdiction in respect of the offence with which such person is charged.

PRESCRIPTION OF OFFENCES.

58. No person shall be triable by a military court for any offence under this Code unless the trial is commenced within three years after the date of the commission of the offence: Provided that a person charged with a capital civil offence or an offence under section *four* or *thirteen* of this Code may be tried by a military court at any time after the commission of the offence.

TRIAL UNDER CODE WHEN ACCUSED NO LONGER SUBJECT TO CODE.

59. (1) Any person who, while he is subject to this Code, commits an offence under this Code, may be tried and punished for that offence at any time within a period of three months after he has ceased to be so subject, and any person who commits an offence under section *four*, *ten*, *thirteen* or *twenty-nine*, may be tried and punished for such offence at any time after he has ceased to be subject to this Code.

(2) For the purpose of effecting the arrest of any such person, bringing him to trial and imposing punishment, such person shall be deemed to be subject to this Code in the rank and status he had at the time of the commission of the offence.

PERSON ARRESTED TO BE BROUGHT BEFORE OFFICER.

60. (1) Any person charged with an offence under this Code shall within the prescribed period be brought before a prescribed officer who shall within the prescribed time direct that the accused be tried summarily or that a preliminary investigation be held.

(2) Any preliminary investigation shall be held by a prescribed officer in the manner prescribed.

JURISDICTION OF CONVENING AUTHORITY.

61. Subject to the provisions of section *sixty-three*, a convening authority may in such manner, under such conditions and for such offences as may be prescribed, try summarily any officer below field rank or any warrant officer under his command, and may on conviction sentence the offender to a fine not exceeding twenty pounds or such lesser punishment as may be prescribed.

JURISDICTION OF COMMANDING OFFICER.

62. (1) Subject to the provisions of section *sixty-three*, any commanding officer may in such manner, under such conditions and for such offences as may be prescribed, try summarily any person (other than an officer or a warrant officer) subject to this Code who is under his command, and may on conviction sentence the offender—

- (a) in the case of a non-commissioned officer—
 - (i) to a fine not exceeding ten pounds; or
 - (ii) to reversion from any acting or temporary non-commissioned rank to his substantive rank; or
 - (iii) to a reprimand; or
- (b) in the case of a private—
 - (i) to detention or field punishment for a period not exceeding twenty-eight days; or
 - (ii) to a fine not exceeding five pounds; or
 - (iii) to a reprimand,

or in either case to such other punishment as may be prescribed: Provided that field punishment shall be imposed only beyond the borders of the Union.

(2) A commanding officer may delegate in writing to any officer under his command, all or any of the powers conferred upon him under this section.

(3) For the purposes of this section, "commanding officer" means any officer under the command of a convening authority who has been empowered in writing by such convening authority to exercise all or any of the powers conferred upon a commanding officer by that sub-section, and includes any officer to whom powers have been delegated under sub-section (2).

OBJECTIONS TO TRIAL OFFICER.

63. (1) No person charged with an offence under this Code shall have the right to object to being tried by an officer authorized thereto by or under section *sixty-one* or *sixty-two* or this section, except on the ground that the officer in question has such knowledge concerning the facts of the case that his decision is likely to be prejudiced thereby.

(2) Any objection under sub-section (1) shall be heard and determined by the person against whom the objection is raised, who shall record such objection and his finding thereon, and shall—

- (a) if he overrules the objection, proceed with the trial of the accused; or
- (b) if he upholds the objection, report accordingly to the convening authority or commanding officer concerned or, if the objection was against such authority or officer himself, proceed as in sub-section (3) provided.

(3) Where an objection has been upheld, the convening authority or commanding officer concerned may delegate power to try the accused to some other officer or (unless the objection was against such convening authority or commanding officer) himself try the accused.

REVIEW OF SENTENCES PASSED BY COMMANDING OFFICER.

64. (1) Whenever an officer has in pursuance of powers vested in him by or under section *sixty-two* or *sixty-three*, convicted an offender, he shall as soon as possible after the expiration of a period of three days from the date of the conviction, cause the record of proceedings to be sent for review to the appropriate convening authority, who may thereupon exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by sub-sections (1), (2) and (3) of section *one hundred and fifteen*.

(2) Such convening authority shall thereupon submit the record of proceedings to the appropriate chief of staff who may, if the proceedings do not appear to him to be in accordance with real and substantial justice, refer the case together with his views thereon to the Adjutant-General.

REVIEW OF SENTENCES PASSED BY CONVENING AUTHORITY.

65. Whenever a convening authority has convicted an offender in pursuance of a trial under section *sixty-one*, he shall as soon as possible after the expiration of a period of three days from the date of the conviction cause the record of the proceedings to be sent for review to the appropriate chief of staff who may exercise *mutatis mutandis* in respect of such proceedings the powers conferred upon the council of review by sub-sections (1), (2) and (3) of section *one hundred and fifteen* and shall thereafter submit the record of the proceedings to the Adjutant-General.

POWER TO CONVENE GENERAL COURTS MARTIAL.

66. The Governor-General may—

- (a) convene general courts martial;
- (b) issue a warrant to the General Officer Commanding, South African Defence Force, to convene general courts martial; and
- (c) delegate power by warrant to the General Officer Commanding, South African Defence Force, to issue warrants to officers under his command, of rank and command not below that of a brigadier or its equivalent, to convene general courts martial,

for the trial of persons subject to this Code for any offence under this Code.

POWER TO CONVENE ORDINARY COURTS MARTIAL.

67. Any officer authorized by warrant to convene general courts martial may also, unless such warrant is for the convening of one or more general courts martial for the trial of named persons or a fixed number of persons—

- (a) convene ordinary courts martial; and
- (b) issue warrants to officers under his command, of rank and command not below that of a commandant or its equivalent, to convene ordinary courts martial,

for the trial of persons subject to this Code for any offence against this Code triable by ordinary court martial.

LIMITATION OF POWER TO CONFIRM FINDINGS AND SENTENCES OF COURTS MARTIAL.

68. (1) Notwithstanding the provisions of section *ninety-eight*, every person authorized by this Code to issue to an officer a warrant to convene courts martial, may in such warrant limit either generally or specially

the powers of such officer to confirm the findings and sentences of courts martial convened by him or may prohibit him from exercising such powers.

(2) Any person who has under sub-section (1) limited the powers of any officer to confirm the findings and sentences of courts martial convened by him, or prohibited such officer from exercising those powers, may confirm the finding or sentence or the unconfirmed finding or sentence of any court martial which but for such limitation or prohibition might have been confirmed by that officer.

CONVENING OF COURT MARTIAL FOR TRIAL OF MORE THAN ONE PERSON.

69. Where two or more persons are charged jointly with the same offence, the officer having power to convene a court martial for the trial of the most senior in rank of such persons may convene a court martial for the joint trial of all such persons.

JURISDICTION OF GENERAL COURT MARTIAL.

70. A general court martial shall have jurisdiction to try any person subject to this Code for any offence other than an offence which in terms of section *fifty-six* is not triable by a military court, and may, subject to the provisions of this Code, impose in respect of any such offence—

- (a) in the case of an offence under this Code, any penalty prescribed therein in respect of such offence; or
- (b) in the case of a civil offence, any penalty within the punitive jurisdiction of a general court martial, which could be imposed in respect of that offence by a competent civil court.

JURISDICTION OF ORDINARY COURT MARTIAL.

71. An ordinary court martial shall have jurisdiction to try any person subject to this Code, not being an officer, for any offence, other than a capital civil offence or an offence under section *four* or *five* and may in respect of any such offence impose any penalty which could be imposed in respect thereof by a general court martial, except imprisonment for a period exceeding two years.

COMPOSITION OF GENERAL COURT MARTIAL.

72. (1) A general court martial shall, subject to the provisions of sub-section (2), consist of not less than three or (in the case of a trial for a capital offence or culpable homicide) not less than five members, all of whom shall be officers of the South African Defence Force who have held commissioned rank for not less than three years, and shall be constituted and convened as may be prescribed: Provided that—

- (a) the president of a general court martial shall not be below the rank of colonel or its equivalent, or less than one rank above that of the accused or the most senior in rank of the accused in a joint trial;
- (b) no member thereof shall be of lower rank than the accused or the most senior in rank of the accused in a joint trial, and not more than one member shall be of the same rank as the accused or the most senior in rank of the accused in a joint trial; and
- (c) a judge advocate shall be appointed to every general court martial.

(2) A general court martial convened by the Governor-General shall consist of so many members, not being more than five, as the Governor-General may determine, and no person other than an officer of the South African Defence Force or a judge or retired judge of the Supreme Court of South Africa or a practising advocate of the said Supreme Court of at least ten years' standing shall be a member of any such general court martial.

(3) The provisions of paragraph (b) of the proviso to sub-section (1) shall apply with reference to any officer appointed as a member of a court martial convened by the Governor-General.

COMPOSITION OF ORDINARY COURT MARTIAL.

73. An ordinary court martial shall consist of not less than three members, all of whom shall be officers of the South African Defence Force who have held commissioned rank for not less than three years, and shall be constituted and convened as may be prescribed: Provided that the president of an ordinary court martial shall not be below the rank of captain or its equivalent.

DISQUALIFICATIONS FOR SERVICE ON COURT MARTIAL.

74. (1) No officer shall be qualified to serve on a court martial as president, member or judge advocate, if he—

- (a) convened that court martial;
- (b) investigated the charge or any of the charges to be tried by that court martial;
- (c) being the commanding officer of the accused, applied for his trial by court martial;
- (d) is the prosecutor or defending officer or a witness; or
- (e) has personal knowledge of any material fact or evidence relating to the charge or any of the charges.

(2) The provisions of paragraph (d) of sub-section (1), shall not be deemed to prevent any member of a court martial which has convicted an offender of any offence under this Code, from being called by the defence as a witness to give evidence in respect of the offender's character or his service in the South African Defence Force or any other military force or in mitigation of sentence.

(3) Any officer appointed to serve as president, member or judge advocate on any court martial, who is not qualified to serve on such court martial, or who has any doubt as to whether he is so qualified,

shall report to the convening authority or the president of the court martial as soon as he becomes aware that he is not qualified or of the fact giving rise to his doubt, and shall not serve or continue to serve on such court martial unless the convening authority or the president is satisfied that he is qualified to serve.

ACCUSED MAY OBJECT TO MEMBERS OF COURT MARTIAL.

75. When a court martial has assembled, the names of the members shall be read out to the accused who shall be asked if he objects to be tried by any of them, and any objection by the accused shall be decided by the court martial in the manner prescribed.

MEMBERS OF COURT MARTIAL TO BE SWORN.

76. (1) A court martial composed of members in respect of whom no objection has been made and sustained, shall be sworn in, and for that purpose the president may administer the prescribed oath to each of the members and to the judge advocate, if one has been appointed, and the judge advocate or, in the absence of a judge advocate, the most senior in rank of the members of the court may administer the prescribed oath to the president.

(2) The president of a court martial or the judge advocate may administer the prescribed oath to any witness at a trial before that court martial and to any interpreter or shorthand writer employed at or during the trial.

VACANCIES IN MEMBERSHIP OF COURT MARTIAL.

77. (1) If after the commencement of a trial by court martial—

(a) the number of members thereof is, through death or otherwise, reduced below the minimum number required in terms of this Code, the court martial shall be dissolved;

(b) the president dies or is for any other reason unable to attend, and the number of members is not reduced below the said minimum number, the convening authority may appoint the most senior in rank of the members of the court, if of sufficient rank, to be president, and if that member is not of sufficient rank, the court shall be dissolved.

(2) If on account of the illness of the accused before the finding or for any other reason it is impossible to continue the trial, the court martial shall be dissolved.

(3) Where a court martial is dissolved under any provision of this section, the accused may be tried again, and in that event his trial shall commence *de novo* before a new court martial.

TRIAL TO BE IN OPEN COURT IN PRESENCE OF ACCUSED.

78. (1) Save as provided in sub-section (2), (3) or (4), the trial of any person by court martial shall be in open court in the presence of such person.

(2) If an accused person so conducts himself at his trial that the continuance of the proceedings in his presence is impracticable, the court martial may after due warning to the accused, order his removal and continue the trial in his absence.

(3) Whenever it appears to a convening authority or a court martial that, in the interests of good order or public morals or the administration of justice or for reasons of security, a trial ought not to be conducted or continued in open court, the convening authority or the court martial may at any time either before the commencement or during the course of the trial, order that persons other than the accused, his counsel and the necessary court officials, or females, juveniles or other classes of persons, shall not be permitted to be present at the trial.

(4) A court martial may at any time order any witness, whether for the prosecution or the defence, to leave the courtroom.

WHEN TRIAL IS DEEMED TO HAVE COMMENCED.

79. The trial of an accused shall be deemed to have commenced when the reading to him of the charge, or the first charge, in case more than one charge is preferred against him, has been commenced at the court martial.

HOW CHARGE TO BE FRAMED.

80. Every charge and every charge sheet shall be framed as prescribed, but so that every charge shall disclose the nature of the offence, the time and place of the commission of the offence and sufficient particulars to enable the accused to identify the act or omission with which he is charged.

MORE THAN ONE CHARGE MAY BE JOINED IN SAME CHARGE SHEET.

81. (1) Any number of charges, including alternative charges, may be brought against an accused either separately or on the same charge sheet: Provided that no other charge shall be brought on a charge sheet on which an accused is charged with an offence under section four of this Code or the civil offence of murder or treason.

(2) Where an accused is charged with more than one offence in the same charge sheet, except in the alternative, the court may, on the application of the accused, dispose of each charge or some of the charges separately if it is satisfied that the accused will be prejudiced in his defence if the trial were to proceed on all the charges simultaneously.

JOINDER OF PERSONS.

82. (1) Any number of persons may be charged jointly in one charge sheet with the same offence.

(2) Any person who is charged jointly with one or more other persons and whose defence is likely to be prejudiced by a joint trial, may apply to be tried separately.

(3) A court martial may in the case of a joint trial in its discretion direct that the trial of the accused persons or any of them shall be held separately from the trial of the other or others of such persons.

ACCUSED ENTITLED TO MAKE HIS DEFENCE.

83. Every person charged with an offence before a court martial shall be entitled to make his defence at his trial and to be represented thereat by his counsel.

RULES OF EVIDENCE APPLICABLE IN CIVIL COURTS TO APPLY ALSO IN MILITARY COURTS.

84. The rules of evidence as applied by the civil courts of the Union shall be followed in and by military courts, and no person shall be required to answer any question or to produce any document or thing which he could not be compelled to answer or produce in similar proceedings before a civil court.

EVIDENCE MUST BE GIVEN *viva voce* AND IN OPEN COURT.

85. (1) Every witness appearing to give evidence at a trial by court martial shall give his evidence *viva voce*.

(2) If through incapacity a witness is unable to attend court to give evidence, the court martial may hear the evidence of such witness at his home or at any other place where the witness may be, in the presence of the accused, his counsel and the prosecutor.

PROCEEDINGS MUST BE RECORDED.

86. The judge advocate or, in the absence of a judge advocate, the president of a court martial shall be responsible for the proper recording as may be prescribed of the proceedings at any trial.

COURT MARTIAL MAY ADJOURN FROM TIME TO TIME AND PLACE TO PLACE.

87. (1) A court martial may adjourn from time to time and from place to place: Provided that if the adjournment is for a period longer than fourteen days, the accused shall be released from custody for the period of the adjournment.

(2) A court martial may adjourn to view any place or any object which cannot conveniently be brought to the court, but such viewing shall be in the presence of the accused, his counsel and the prosecutor.

ALTERNATIVE VERDICTS.

88. (1) An accused who is charged—

- (a) with desertion, may be found guilty of having been absent without leave;
- (b) with having used threatening language to his superior officer, may be found guilty of having used insulting language to or of having by word or conduct displayed insubordination or of having behaved with contempt towards his superior officer;
- (c) with having by word or conduct displayed insubordination or of having behaved with contempt towards his superior officer, may be found guilty of having used insulting or threatening language to his superior officer;
- (d) with malingering, may be found guilty of feigning or producing disease or infirmity;
- (e) with feigning disease or infirmity, may be found guilty of producing disease or infirmity;
- (f) with producing disease or infirmity, may be found guilty of feigning disease or infirmity;
- (g) with maiming, may be found guilty of injuring;
- (h) with theft, may be found guilty of receiving stolen property knowing it to have been stolen;
- (i) with any other offence under this Code, may, failing proof of the commission of an offence in circumstances involving a higher degree of punishment, be found guilty of the same offence as having been committed in circumstances involving a lesser degree of punishment;
- (j) with any offence under this Code, may be found guilty of having attempted to commit that offence or of having aided, abetted, induced, incited, instigated, instructed or commanded any person to commit that offence or having procured the commission of that offence.

(2) If an accused is charged before a court martial with an offence under section *forty-seven*, and the charge is one on which he could, if he had been tried by a civil court for such offence committed in the Union, have been found guilty of any other offence, the court martial may find him guilty of that other offence.

(3) Where an accused is charged before a court martial with a civil offence, and the charge is one on which he could, if he had been tried by a civil court in the Union for such an offence, have been found guilty of any other offence, the court martial may find him guilty of that other offence.

HOW FINDING AND SENTENCE OF COURT MARTIAL TO BE ARRIVED AT.

89. (1) The finding of a court martial shall be determined by the vote of a majority of its members, all of whom shall vote, and in the event of an equality of votes the accused shall be acquitted: Provided that a finding of guilty of a capital offence shall require the votes of at least two-thirds of the members of a court martial.

(2) The sentence of a court martial and all other questions arising for decision at a trial shall be determined by the vote of the majority of the members, all of whom shall vote, and in the event of an equality of votes the president shall have and exercise a casting vote: Provided that sentence of death shall not be imposed unless at least two-thirds of the members of the court martial vote in favour of that sentence.

FINDING AND SENTENCE TO BE ANNOUNCED IN OPEN COURT.

90. The finding and sentence and the decision on any other question arising at a trial shall be announced by the president of the court martial to the accused in open court.

PUNISHMENTS.

91. (1) Whenever a court martial convicts any person of any offence, it may subject to the maximum punishment provided in this Code for that offence, the limits of its own penal jurisdiction, and the provisions of sections *thirty-two* and *ninety-three* impose upon the person convicted a penalty of—

- (a) in the case of an officer—
 - (i) death;
 - (ii) imprisonment;
 - (iii) cashiering;
 - (iv) dismissal from the South African Defence Force;
 - (v) reduction to any lower commissioned rank;
 - (vi) reduction in seniority in rank;
 - (vii) a fine not exceeding two hundred pounds; or
 - (viii) reprimand; or
 - (b) in the case of a warrant officer or non-commissioned officer—
 - (i) death;
 - (ii) imprisonment;
 - (iii) discharge with ignominy from the South African Defence Force;
 - (iv) detention for a period not exceeding two years;
 - (v) reduction to any lower rank, to non-commissioned rank or to the ranks;
 - (vi) discharge from the South African Defence Force;
 - (vii) a fine not exceeding fifty pounds; or
 - (viii) reprimand; or
 - (c) in the case of a private—
 - (i) death;
 - (ii) imprisonment;
 - (iii) discharge with ignominy from the South African Defence Force;
 - (iv) detention for a period not exceeding two years;
 - (v) field punishment for a period not exceeding three months;
 - (vi) discharge from the South African Defence Force;
 - (vii) a fine not exceeding twenty-five pounds; or
 - (viii) reprimand.
- (2) Any penalty provided for in any sub-paragraph of paragraph (a), (b) or (c) of sub-section (1), shall for the purposes of this Code be deemed to be less severe and less serious in its consequences than any penalty provided for in any preceding sub-paragraph of the applicable paragraph.

ONE SENTENCE IMPOSED IN RESPECT OF ALL THE CHARGES.

92. Whenever an accused is convicted by court martial of more than one offence alleged in the same charge sheet, such court shall, subject to the provisions of section *ninety-three*, impose only one sentence in respect of all the charges, and if such sentence is a valid sentence in respect of any one of the charges on which the accused has been convicted, it shall be deemed to be a valid sentence in respect of all the charges on which he has been convicted.

CERTAIN PROVISIONS TO APPLY IN CASE OF PARTICULAR PUNISHMENTS.

93. (1) No other punishment may be combined with the punishment of death.
- (2) (a) Save as provided in sub-section (2) of section *thirty-four*, no sentence of imprisonment shall be for a shorter period than thirty days, and the court which imposes any sentence of imprisonment shall clearly indicate whether the imprisonment is to be served with or without compulsory labour.
- (b) The punishment of imprisonment shall not be combined with field punishment or the punishment of detention.
- (3) An officer sentenced to imprisonment shall also be sentenced to be cashiered, and the latter sentence shall be executed before the officer concerned is lodged in any prison, gaol or other place to serve the sentence of imprisonment.
- (4) (a) A warrant officer, non-commissioned officer or private who is sentenced to imprisonment, shall also be sentenced to be discharged with ignominy.
- (b) A warrant officer or non-commissioned officer who is sentenced to detention, shall also be sentenced to reduction to the ranks, and may also be sentenced to be discharged from the South African Defence Force.
- (5) Field punishment shall be imposed only beyond the borders of the Union and shall not be combined with the punishment of detention.
- (6) (a) Any person whose trial commences or is concluded after he has ceased to be subject to this Code, may on conviction, if a sentence of a fine is imposed, be sentenced to a period of imprisonment not exceeding two months in default of the payment of the fine.
- (b) A sentence of imprisonment or detention shall continue to run even though the offender ceases to be subject to this Code during the currency of the sentence.

SUSPENSION OF SENTENCES.

94. (1) Whenever a military court sentences any offender to detention, it may order the operation of the whole or any portion of the sentence to be suspended for a period not exceeding three years on such conditions as it may specify in the order.

(2) A confirming or reviewing authority may when considering any sentence of detention for confirmation or on review, or at any later stage during the currency of the sentence, order the operation of the sentence or the unexpired portion thereof to be suspended for a period not exceeding three years on such conditions as may be specified in the order.

(3) Any authority having power to confirm the findings and sentences of general courts martial, may at any time during the currency of any sentence of imprisonment, order the operation of the unexpired portion of the sentence to be suspended for such period not exceeding three years and on such conditions, which may include the payment of compensation, as may be specified in the order.

(4) If the operation of any sentence or the unexpired portion of a sentence has been suspended under sub-section (1), (2) or (3), and the offender has, during the period of suspension, observed all the conditions of suspension, the sentence or the unexpired portion of the sentence shall not be enforced.

(5) Any authority empowered by this Code to suspend a sentence, may cause investigation to be made in the prescribed manner during the period of suspension of a sentence, concerning any complaint or allegation that the offender has not fulfilled any condition of the suspension of his sentence, and may, if satisfied that the offender has not fulfilled any such condition which he could reasonably have fulfilled, order that he be committed to serve the unexpired portion of his sentence.

(6) An offender who during the period of suspension of his sentence ceases to be subject to this Code, shall be absolved from the sentence and from compliance with the conditions, if any, of suspension of the sentence.

COURT MAY WHERE APPLICABLE, ORDER DEDUCTIONS OR FORFEITURES OF PAY.

95. Notwithstanding anything to the contrary contained in section *ninety-two*, a court martial may, when imposing upon any person any punishment mentioned in section *ninety-one*, order such deductions from or forfeitures of the pay of such person as may be authorized by this Code.

SENTENCE MAY NOT BE ENFORCED UNLESS IT HAS BEEN CONFIRMED.

96. The sentence of a court martial shall not be enforced or executed unless and until the finding and the sentence have been confirmed in accordance with the applicable provisions of this Code.

ACQUITTAL IS NOT SUBJECT TO CONFIRMATION.

97. A finding of "not guilty" shall not be subject to confirmation and shall become effective when announced in open court.

CONVENING AUTHORITY MAY CONFIRM SENTENCES AND FINDINGS OF COURTS MARTIAL CONVENED BY HIM.

98. Subject to the provisions of section *ninety-nine*, and any limitation or prohibition which may have been imposed under section *sixty-eight* upon the powers of any convening authority, every convening authority may confirm the findings and sentences of courts martial convened by him.

CONVENING AUTHORITY WITH LIMITED OR NO POWERS OF CONFIRMATION MUST RESERVE CONFIRMATION.

99. An officer having full or limited power to confirm the finding and the sentence of a court martial, who has served on or at a court martial as a member, judge advocate, defending officer or prosecutor or has given material evidence thereat, shall not confirm the finding or the sentence and the sentence of that court martial, but shall reserve confirmation in terms of section *one hundred and two*.

OFFENDER MAY MAKE REPRESENTATIONS TO CONFIRMING AUTHORITY.

100. Any offender may within forty-eight hours of his sentence by court martial, lodge any written representations he may wish to make concerning the validity or justice of the finding or the sentence with the authority who has power to confirm the finding and the sentence, and such authority shall take cognizance of such representations in considering for confirmation the finding and the sentence.

POWERS OF CONFIRMING AUTHORITY.

101. (1) Any authority with powers of confirmation may, within the limits of his powers, in respect of a court martial—

- (a) confirm the finding or some of the findings;
- (b) refuse to confirm the finding or any of the findings;
- (c) if he confirms the finding or any of the findings, confirm the sentence;
- (d) vary the sentence, but so that such varied sentence is not either in itself or in its consequences more unfavourable to the accused than the sentence of the court martial; or
- (e) reserve confirmation of the finding and the sentence in whole or in part in terms of section *one hundred and two*.

(2) Whenever a confirming authority has, under paragraph (b) of sub-section (1), refused to confirm any finding of a court martial, the accused shall be deemed to have been acquitted of the charge to which that finding relates.

(3) A confirming authority may, if satisfied that a finding is invalid or is not supported by the evidence on record, but that the evidence on record fully supports any other finding which the court martial could have brought under section *eighty-eight*, either set aside the first-mentioned finding and sentence and refer the case back to the court martial to bring

in some other finding and impose sentence afresh if that other finding calls for a sentence or substitute such other finding and sentence, if any, for the finding and sentence of the court martial.

(4) A confirming authority may correct any patent error in any finding or sentence, but so that the result will not be more unfavourable to the accused.

(5) Where a finding or sentence of a court martial has been ambiguously expressed or seemingly incorrectly recorded, the confirming authority may refer the case back to the court martial to record an unambiguous or correctly worded finding or sentence or may himself record an unambiguous or correctly worded finding or sentence, but in doing so the confirming authority shall give the offender the benefit of any reasonable doubt arising out of the finding or sentence as recorded by the court.

(6) Where a court martial has imposed an invalid sentence, the confirming authority may, if he confirms the finding, refer the sentence back to the court martial to impose and record a valid sentence: Provided that where through death or other reason it is not reasonably possible to re-assemble the court, the confirming authority may record a valid sentence.

CONFIRMING AUTHORITY MAY RESERVE CONFIRMATION.

102. Every officer having full or limited power to confirm the finding and the sentence of a court martial, may reserve the finding and the sentence, or the finding or some of the findings and the sentence, or the sentence, for confirmation by the authority under whose warrant he convened such court martial, and such authority may thereupon confirm such finding and sentence or the unconfirmed portions thereof or reserve confirmation for the authority from whom he derives his powers to confirm findings and sentences of courts martial.

CERTAIN SENTENCES TO BE REVIEWED BY BOARD OR COUNCIL OF REVIEW BEFORE EXECUTED.

103. Notwithstanding anything to the contrary in this Code, a sentence of cashiering or of dismissal of an officer or of discharge with ignominy of a warrant officer or a non-commissioned officer holding the substantive rank of sergeant or a higher rank or of imprisonment for a period of three months or more, shall not be executed although confirmed, unless and until the proceedings of the case have been reviewed by a board of review or the council of review and any such sentence shall not be subject to review by any other reviewing authority.

SENTENCE OF DEATH MUST BE ENDORSED BY COUNCIL OF REVIEW AND APPROVED BY GOVERNOR-GENERAL.

104. Notwithstanding anything to the contrary contained in this Code, a sentence of death, although confirmed by a confirming authority, shall not be executed unless and until the finding and the sentence have been endorsed by the council of review as being in accordance with real and substantial justice and have been approved by the Governor-General.

CUSTODY AND EXECUTION OF PERSON SENTENCED TO DEATH.

105. An offender sentenced to death shall be kept in military custody until executed, which shall be by shooting.

WHEN SENTENCE TO BE EXECUTED.

106. Subject to the provisions of sections *one hundred and three* and *one hundred and four*, any sentence shall be executed as soon as possible after it has been confirmed.

REASONS FOR JUDGMENT.

107. (1) A confirming or reviewing authority, a board of review or the council of review may direct a court martial to give written reasons for any ruling or finding of such court, which reasons shall show—

- (a) the facts the court found to be proved;
- (b) the grounds upon which the court arrived at the finding;
- (c) the reasons for any ruling of law or for the admission or rejection of any evidence,

as may be specified in the direction.

(2) Such reasons shall be furnished within such period as the direction may stipulate, not being less than four days from the date of receipt of the direction by the court martial.

(3) The reasons shall be prepared and signed by the full court martial: Provided that if all the members are not reasonably available, such member or members as are available shall prepare and sign the reasons, indicating the reason which precluded the other member or members from signing.

(4) An offender shall, if he so requests, be supplied with a copy of any reasons for judgment furnished in terms of this section.

REVIEW OF SENTENCES PASSED BY COURT MARTIAL CONVENED BY OFFICER COMMANDING COMMAND, GROUP, BRIGADE, ETC.

108. (1) Whenever an offender has been convicted by a court martial convened by order of an officer commanding a command, group, brigade or any equivalent command, the confirming authority shall as soon as possible after the expiration of a period of three days from the date of promulgation of the sentence, send the record of the proceedings for review to the appropriate chief of staff or divisional or equivalent commander, who may exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by sub-sections (1), (2) and (3) of section *one hundred and fifteen*.

(2) After exercising such powers the chief of staff or divisional or equivalent commander concerned shall forward the record of proceedings to the Adjutant-General.

REVIEW OF SENTENCES PASSED BY COURT MARTIAL CONVENED BY CHIEF OF STAFF OR DIVISIONAL OR EQUIVALENT COMMANDER.

109. Whenever an offender has been convicted by a court martial convened by order of a chief of staff or a divisional or equivalent commander, the chief of staff or divisional or equivalent commander shall as soon as possible after the expiration of a period of three days from the date of promulgation of the sentence, send the record of proceedings to the Adjutant-General, who shall as soon as possible after receipt of the proceedings, submit them with his views for review to the General Officer Commanding, South African Defence Force, who may thereupon exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by sub-sections (1), (2) and (3) of section *one hundred and fifteen*.

REVIEW BY ADJUTANT-GENERAL.

110. If the Adjutant-General considers that the proceedings in any case submitted to him in terms of sub-section (2) of section *sixty-four*, section *sixty-five* or sub-section (2) of section *one hundred and eight* are not in accordance with real and substantial justice, he shall submit the record of the proceedings together with his views on the case, to the General Officer Commanding, South African Defence Force, who may thereupon exercise in respect of those proceedings the powers conferred upon the council of review by sub-sections (1), (2) and (3) of section *one hundred and fifteen*.

OFFENDER MAY MAKE REPRESENTATIONS TO REVIEWING AUTHORITY.

111. Whenever the record of the proceedings in any case are required to be sent for review, the person convicted may not later than three days after the date of the conviction or promulgation of the sentence, as the case may be, furnish the person whose duty it is to send the case for review, with such representations in writing concerning the facts or law of the case, as he may wish to make, and such representations shall together with the record of the proceedings be submitted to and shall be duly considered by the reviewing authority.

OFFENDER MAY ASK FOR REVIEW BY COUNCIL OF REVIEW.

112. An offender may within the prescribed time and in the prescribed manner, apply for the review of the proceedings of his case by the council of review.

PROSECUTOR MAY MAKE REPRESENTATIONS TO COUNCIL OF REVIEW.

113. Whenever the record of the proceedings of a case is referred for review to the council of review on the application of an offender, the officer who prosecuted at the trial may submit written representations in the prescribed manner and time to the council of review.

COUNCIL OF REVIEW TO HEAR ARGUMENT IN CERTAIN CASES.

114. In any case in which sentence of death or a sentence of twelve months imprisonment or more or of cashiering has been imposed, or where application has been made by the offender in terms of section *one hundred and twelve* for the review of the proceedings of his case, the council of review shall, at the request of the offender, allow the offender or his counsel and the officer who prosecuted at the trial or any other person appointed for the purpose by the Adjutant-General in his stead, to appear before it and hear argument on the issues in the case.

POWERS OF COUNCIL OF REVIEW.

115. (1) The council of review may, after due consideration of the record of the proceedings of any case and of any representations submitted to it in terms of this Code—

- (a) endorse the finding or the finding and the sentence;
- (b) quash the finding and set aside the sentence;
- (c) substitute for the finding any finding which the evidence on record supports beyond a reasonable doubt and which could have been brought on the charge by the court martial under section *eighty-eight*; or
- (d) if it has endorsed the finding or substituted a finding, vary the sentence, but (subject to the provisions of sub-section (4)) so that the varied sentence is not either in itself or in its consequences more unfavourable to the offender than the sentence of the court martial.

(2) The council of review may correct any patent error in the finding or sentence as recorded in respect of any case referred to it, but so that the consequences will not be more unfavourable to the offender.

(3) The council of review may refer back to a court martial any finding or sentence not clearly or correctly recorded or any invalid sentence, to be clearly and correctly recorded or to impose a valid sentence, and where it is not reasonably practicable in the opinion of the council of review so to refer back to the court martial, the council of review may itself record a finding or sentence or impose a valid sentence: Provided that in so doing the council of review shall give the benefit of any reasonable doubt to the offender in regard to both the finding and the sentence.

(4) The council of review may in its discretion increase any sentence of imprisonment, detention, field punishment, fine, reprimand or of reduction in rank, when the review is held on the application of the offender.

FINDING AND SENTENCE AS CONFIRMED, SUBSTITUTED OR VARIED, DEEMED TO BE SENTENCE OF COURT MARTIAL.

116. Any finding or sentence as confirmed, substituted or varied by a confirming or reviewing authority or the council of review, shall be deemed

to be the finding or sentence of the court which passed the original sentence.

GENERAL OFFICER COMMANDING MAY REMIT, MITIGATE OR COMMUTE ANY SENTENCE.

117. The General Officer Commanding, South African Defence Force, may in his discretion mitigate, remit or commute any sentence imposed upon an offender by a military court.

WHEN SENTENCE COMMENCES.

118. (1) Save as otherwise provided or prescribed, every sentence shall commence or be deemed to commence immediately after the sentence has been announced in open court.

(2) Where a sentence is varied to one of imprisonment, detention or field punishment, such imprisonment, detention or field punishment shall be deemed to have commenced on the date of commencement of the sentence which is so varied.

WHERE SENTENCES OF IMPRISONMENT, DETENTION OR FIELD PUNISHMENT TO BE SERVED.

119. The whole or any portion of any sentence of imprisonment or field punishment may, and any sentence of detention shall, be served in a detention barracks.

GOVERNOR-GENERAL MAY ESTABLISH PRISONS AND DETENTION BARRACKS AND MAKE REGULATIONS IN REGARD THERETO.

120. (1) The Governor-General may establish one or more prisons in the Union to which offenders sentenced to imprisonment under this Code may be committed to serve such sentences, or may direct that any offender so sentenced be committed to any convict prison or gaol established under the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911).

(2) The Governor-General may establish one or more detention barracks in the Union to which offenders sentenced to detention under this Code may be committed to serve such sentences, or may direct that certain premises or portions of premises be deemed to be detention barracks to which such offenders may be so committed.

(3) The Governor-General may make regulations, not inconsistent with the Act, relating to all or any of the following matters or things in regard to any prisons or detention barracks established or premises or portions thereof deemed to be detention barracks under this section, namely—

- (a) supervision and management;
- (b) discipline of the staff, offenders and inmates;
- (c) the admission, safe custody and release of offenders and inmates;
- (d) the remission of sentences for good behaviour;
- (e) the labour or compulsory labour that may be performed by offenders;
- (f) the punishments, not including corporal punishment, which may be imposed for offences in such establishments and the persons by whom and the manner in which such punishments may be imposed or executed;
- (g) the powers of the officers in charge of such establishments;
- (h) the restraint which may be applied to offenders;
- (i) visitors;
- (j) inspections;
- (k) death of offenders and inmates;
- (l) the extent to which all or any of the regulations under the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911), may be applied to such prisons;
- (m) any matters which he considers necessary or expedient for the purposes for which such prisons or barracks are established or such premises or portions thereof are intended.

HOW SENTENCES OF IMPRISONMENT AND DETENTION IMPOSED OUTSIDE THE UNION TO BE SERVED.

121. (1) The General Officer Commanding, South African Defence Force, may authorize any officer in command of troops on service beyond the borders of the Union to establish such detention barracks as may be deemed necessary by such officer, to which offenders sentenced to detention under this Code may be committed to serve such sentences.

(2) Any offender sentenced beyond the borders of the Union to imprisonment under this Code, shall be removed to the Union to serve such sentence: Provided that if owing to distance, lack of means of conveyance or other circumstances such removal is not reasonably practicable, the offender may serve his sentence or any portion thereof in detention barracks established under sub-section (1).

(3) The Minister may direct that offenders sentenced beyond the borders of the Union to imprisonment or detention under this Code, may serve any such sentence or portion thereof in any prison, detention barracks or like place of confinement established or controlled or supervised by any country or by the commander of any force serving in co-operation with the South African Defence Force.

(4) Any person beyond the borders of the Union who is charged or to be charged with an offence under this Code, which offence would normally be tried by a general court martial, may be committed to and detained in any prison, detention barracks or like place of confinement mentioned in sub-section (3), while such offender is awaiting trial or confirmation of sentence: Provided that no officer shall be so committed or detained unless the consent of the convening authority under whose command such officer is serving has been obtained.

(5) The regulations applicable to detention barracks in the Union shall apply to detention barracks established under sub-section (1): Provided that the officer in general command of the South African Defence Force

in the area in which such detention barracks are situated may in writing authorize such amendments or additions to the regulations for such detention barracks as local or service conditions render necessary or advisable: Provided further that such amendments or additions shall not make the conditions more severe for offenders or inmates.

PERSON IN CHARGE OF PRISON, ETC., MUST RECEIVE AND DETAIN PERSON CHARGED UNDER CODE.

122. Every superintendent or other person in charge of any prison, gaol, police cell or lock-up in the Union shall receive, admit, keep in custody or release from custody any person charged with an offence under this Code, or committed or sentenced thereunder, in accordance with the regulations in force in respect of such prison, gaol, cell or lock-up and in compliance with the warrant of committal or release given to him by the commanding officer of the person charged or sentenced or by any other prescribed officer.

UN SOUNDNESS OF MIND AT TIME OF COMMISSION OF OFFENCE.

123. Whenever a military court trying an accused for an offence under this Code is satisfied from evidence (including medical evidence) given before it that at the time of the commission of the offence the accused was mentally disordered or defective so as not to be responsible according to law for the act or omission constituting the offence, it shall find the accused not guilty.

UN SOUNDNESS OF MIND WHILE UNDER ARREST OR IN CUSTODY.

124. (1) If any person while under arrest or in custody in the Union on a charge under this Code, is committed by a magistrate to an institution under the provisions of the Mental Disorders Act, 1916 (Act No. 38 of 1916), the charge may in the discretion of the Adjutant-General be withdrawn or be proceeded with when such person is fit to stand his trial.

(2) (a) If any person under arrest or in custody beyond the borders of the Union on a charge under this Code is, in the opinion of two registered medical practitioners appointed by the senior military medical authority in the area concerned, mentally disordered or defective as defined in the Mental Disorders Act, 1916 (Act No. 38 of 1916), he shall be committed by his commanding officer to such hospital, prison, detention barracks or other place as the circumstances may permit and shall be detained therein in safe custody until his removal to the Union can reasonably be effected or until he is fit to stand his trial, whichever is the earlier.

(b) With the concurrence of the Adjutant-General or his authorized representative, the charge against such person may be withdrawn by the commanding officer on such committal or it may be proceeded with when such person is fit to stand his trial.

UN SOUNDNESS OF MIND UPON ARRAIGNMENT OR DURING TRIAL IN UNION

125. (1) If upon arraignment before a military court in the Union on a charge for an offence under this Code, or at any time during the trial and before the finding, an accused appears to be incapable of understanding the proceedings at the trial, the court shall report the condition of the accused to the magistrate of the district and order that the accused be detained in proper custody until the decision of the magistrate is made known.

(2) If such accused is not committed by the magistrate to an institution under the provisions of the Mental Disorders Act, 1916 (Act No. 38 of 1916), he may be charged before the same or some other court.

(3) If the accused is committed by the magistrate to an institution under the provisions of that Act, the charge against him may, in the discretion of the Adjutant-General be withdrawn or may, when the accused is fit to stand his trial, be proceeded with before the same court or be commenced *de novo* before another court.

UN SOUNDNESS OF MIND UPON ARRAIGNMENT OR DURING TRIAL OUTSIDE THE UNION.

126. (1) If when an accused is arraigned before a military court beyond the borders of the Union on a charge for an offence under this Code, or at any time during the trial and before the finding, it appears to the court that the accused is not capable of understanding the proceedings at the trial, the court shall hear evidence, including medical evidence, to determine whether the accused is capable of understanding the proceedings at the trial so as to make a proper defence.

(2) If the court finds that the accused is so capable the trial shall proceed.

(3) If the court finds that the accused is not so capable, it shall order—

(a) that the accused be removed to the Union and there detained in detention barracks or some other prescribed place pending the signification of the Governor-General's decision; and

(b) that pending his removal to the Union, he be detained in a hospital, prison, detention barracks or other place as circumstances may permit.

(4) If an accused so found incapable of understanding the proceedings becomes fit to stand his trial, whether before removal to the Union or thereafter, he may be charged and tried for the offence.

ONLY AUTHORIZED DEDUCTIONS MAY BE MADE FROM PAY.

127. (1) The pay of any member of the South African Defence Force shall be paid without any deductions other than—

- (a) such deductions as are authorized by the Act or this Code or as may be required to be made by virtue of any provision of the Exchequer and Audit Act, 1956 (Act No. 23 of 1956);
- (b) deductions in settlement of a debt due to the Government; or
- (c) deductions in pursuance of a garnishee order issued in terms of any law in force in the Union.

(2) Any deductions from the pay of a member of the South African Defence Force made in terms of sub-section (1), at the date of death, termination of appointment, retirement or discharge of the member concerned, shall be made in the order in which the paragraphs under which those deductions are made, appear in that sub-section.

FORFEITURES OF PAY.

128. (1) Every person subject to this Code shall forfeit his full pay for every period during which—

- (a) he has been absent from duty, whether on desertion or without leave, in respect of which he has been convicted by a competent court;
- (b) he has been detained in arrest for an offence in respect of which—
 - (i) he has been sentenced to imprisonment; or
 - (ii) a sentence referred to in paragraph (d) has been imposed upon him;
- (c) he has been imprisoned in pursuance of a sentence of a competent court;
- (d) he has been under detention or field punishment in pursuance of a sentence of a competent court with which there has been combined a sentence of cashiering or discharge, whether with ignominy or otherwise;
- (e) he is in hospital in consequence of an offence under paragraph (b) of section *eighteen* of which he has been convicted by a competent court;
- (f) he has been detained in the custody of the South African Police for an offence in respect of which he has been convicted by a competent court;
- (g) he is absent from duty as a prisoner of war due to his own wilful act or omission;
- (h) he voluntarily serves the enemy;
- (i) he has been on bail or released on his own recognizance by a civil court but failed to return to duty; or
- (j) he is not on duty owing to his having been ordered by the Adjutant-General not to return to duty during any period subsequent to his release from arrest pending trial, whether on bail or on his own recognizance or otherwise, in respect of an offence of which he has thereafter been convicted.

(2) Any person subject to this Code shall in respect of any period of detention in arrest for an offence in respect of which a sentence other than imprisonment or a sentence referred to in paragraph (d) of sub-section (1), has been imposed upon him, or any period of detention or field punishment served by him in pursuance of a sentence of a competent court other than a sentence referred to in paragraph (d) of sub-section (1), forfeit—

- (a) if he is married, one-half of his pay, which in the application of this paragraph shall not include any cost of living allowance to which he may be entitled; or
- (b) if he is unmarried, any cost of living allowance to which he may be entitled, and four-fifths of that portion of his pay remaining after deduction of such allowance.

(3) For the purpose of this section the full pay of any person subject to the Code or such portion thereof as the General Officer Commanding, S.A. Defence Force, or an officer authorised by him may determine shall be withheld as from the date upon which such person has been absent without leave, taken into custody or prisoner of war or admitted to hospital or released from arrest whether on bail, his own recognizance or otherwise, for the period during which he is so absent, in custody, a prisoner, in hospital or released from arrest, until such time as it has been established whether he shall forfeit his pay in terms of sub-section (1) or (2).

(4) The full amount withheld under sub-section (3) shall be paid to the person from whom it was withheld if he is exonerated by any court of competent jurisdiction or if he is not charged before any such court within a reasonable time.

DEDUCTIONS FROM PAY.

129. (1) Whenever a military court convicts any person subject to this Code of an offence, and any act or omission constituting such offence has caused any loss of or damage to public property, the court shall order that the accused be placed under deductions of pay to the amount of the loss, damage or injury: Provided that where the court is satisfied that the offence was not committed wilfully it may order that the accused be placed under deductions of pay to such lesser amount as it may in its discretion determine.

(2) Where more than one person has been so convicted, the court shall for the purpose of making an order under sub-section (1), order that all the offenders be placed under deductions of pay in such a manner as to ensure that the amount in question will be recovered from them jointly and severally.

(3) Whenever a military court convicts a person subject to this Code of having negligently lost his kit, equipment or arms or any property on issue to him at public expense, or of having in contravention of section *twenty-four* negligently damaged or destroyed property on issue to him at public expense, it shall, notwithstanding anything to the contrary contained in sub-section (1), order the offender to satisfy his commanding officer, within a period specified in the order, that he has replaced the

articles of kit, equipment, arms or property in respect of which he was convicted.

(4) Any person who fails to comply with an order made against him under sub-section (3), shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

FINE MAY BE DEDUCTED FROM PAY.

130. Whenever a military court sentences any person subject to this Code to pay a fine, it may order that such person be placed under deductions of pay in the amount of the fine, and such amount may thereupon be deducted from such person's pay in such monthly instalments as may be determined by the Chief Paymaster of the South African Defence Force.

MAINTENANCE ORDERS.

131. (1) If the General Officer Commanding, South African Defence Force, is satisfied—

- (a) that a magistrate's court or a superior court has made an order against a member of the Permanent Force or against any member of the South African Defence Force performing service in defence of the Union, for the regular payment of a specified amount towards the maintenance of such member's wife or child, he may order that the member concerned be placed under deductions of pay for the amount of the order of court;
- (b) that any member of the Permanent Force or any other member of the South African Defence Force performing service in defence of the Union, is not maintaining or adequately maintaining his wife or child, he may order that the member concerned be placed under deductions of pay for such amount as, in all the circumstances of the case, he considers to be reasonable.

(2) Any amount deducted from a member's pay in pursuance of an order made under sub-section (1), shall be paid to the wife of the member concerned or to the legal guardian of the child concerned or to the magistrate of the district in which such wife or guardian resides for distribution to or on behalf of such wife or child as such magistrate may determine.

GARNISHEE ORDERS.

132. (1) Notwithstanding anything to the contrary in any other law contained no garnishee order shall be issued in terms of any law in force in the Union in respect of the pay of any member of the South African Defence Force while he is on service beyond the borders of the Union or before the expiration of a period of three months after his return to the Union.

(2) The provisions of paragraph (c) of sub-section (1) of section *one hundred and twenty-seven* shall not apply to the pay of any such member while he is on such service or during the said period in respect of any garnishee order issued while such member was not on such service.

GENERAL OFFICER COMMANDING MAY REMIT DEDUCTIONS OR FORFEITURES.

133. Whenever the General Officer Commanding, South African Defence Force, is satisfied that any forfeiture of the pay of a member of the South African Defence Force, made under section *one hundred and twenty-eight*, will, having regard to the member's pay and the nature of the offence, if any, create or result in undue hardship, he may remit the whole or any portion of such forfeiture.

REDRESS OF WRONGS.

134. (1) Any person subject to this Code (hereinafter in this section referred to as "the complainant") who is aggrieved by any act or omission of any other person subject to this Code, may complain in writing to his commanding officer, and if such complaint is against the commanding officer or such commanding officer is unable to redress the wrong or otherwise to satisfy the complainant within a reasonable time, such commanding officer shall refer the complaint to the officer under whose command he is serving who holds a warrant to convene courts martial.

(2) Such latter officer shall, if he is unable to redress the wrong or otherwise to satisfy the complainant, without unreasonable delay transmit the complaint to the appropriate chief of staff for decision, and such chief of staff shall, if he is unable to redress the wrong or to satisfy the complainant, without delay transmit the complaint to the General Officer Commanding, South African Defence Force.

(3) If the General Officer Commanding, South African Defence Force, is unable to redress the wrong or otherwise to satisfy the complainant, he shall, if requested by the complainant to do so, transmit the complaint to the Governor-General, whose decision shall be final.

(4) If an officer who has received a complaint transmits such complaint to higher authority in terms of this section, he shall notify the complainant of such transmission at the time thereof.

(5) Any person who has lodged a complaint with his commanding officer and whose wrong is not redressed or who is not otherwise satisfied within a reasonable time, or who has not been advised within a reasonable

time that his complaint has been sent to higher authority, may complain directly to such higher authority and ultimately to the General Officer Commanding, South African Defence Force: Provided that such complainant shall send a copy of such further complaint to his commanding officer at the same time as he complains to higher authority or the General Officer Commanding, South African Defence Force.

BOARD OF INQUIRY IN RELATION TO ABSENCE WITHOUT LEAVE.

135. (1) When any person has been absent without leave for more than thirty days, a board of inquiry may be convened to inquire into such absence and into any deficiencies there may be in his kit, arms and equipment or any articles of public property whatsoever on issue to him

(2) Such board of inquiry shall be convened and shall conduct its inquiry in the prescribed manner and take evidence on oath, for which purpose the president may administer the prescribed oath to witnesses.

(3) If the board of inquiry finds that such person has been so absent for more than thirty days and is still so absent, it shall record such finding, including the date of the commencement of the absence without leave, as also its finding on any deficiencies of his kit, arms and equipment and any articles of public property on issue to him and the estimated value thereof.

(4) If such person is not thereafter arrested, or until he is arrested, the finding of the board of inquiry shall have the force and effect of a finding of guilty by a court martial on a charge of desertion, and if there is any finding by the board of inquiry of any deficiencies, such finding shall have the force and effect of a finding of guilty on a charge of an offence under paragraph (a) of section *twenty-four*.

(5) A copy of any finding of a board of inquiry under this section, if duly certified to be a true copy of the original by the commanding officer of the person or the appropriate chief of staff or the officer in charge of the records of the said chief of staff, shall be admissible in evidence against such person on a charge of desertion or absence without leave or on a charge under paragraph (a) of section *twenty-four*, as proof of his absence without leave and of any deficiencies and the value thereof: Provided that such proof shall be rebuttable by such person.

BOARDS OF INQUIRY.

136. (1) The General Officer Commanding, South African Defence Force, or any prescribed officer may at any time or place convene a board of inquiry to inquire into any matter concerning the South African Defence Force, any member thereof or any public property or the property or affairs of any mess, wardroom or institute or any regimental or sports funds of the said Force, and to report thereon or to make a recommendation as may be directed.

(2) The president of any such board of inquiry is hereby empowered to administer the prescribed oath to witnesses at such inquiry.

ATTENDANCE OF WITNESSES AT AND COMPOSITION OF BOARD OF INQUIRY.

137. (1) The president of any board of inquiry convened under section *one hundred and thirty-five* or *one hundred and thirty-six*, may summon any person in the Union, whether or not otherwise subject to this Code, to attend such board of inquiry and to give evidence thereat: Provided that no person shall be required to answer any question at such inquiry which he could not in a civil court be compelled to answer.

(2) The composition of boards of inquiry, the method of convening such boards and the procedure to be followed by such boards shall be as prescribed.

ATTENDANCE OF WITNESSES AT MILITARY COURTS, PRELIMINARY INVESTIGATIONS OR BOARDS OF INQUIRY.

138. (1) Any person not subject to this Code who is required to give evidence or to produce any document or thing at any military court, a preliminary investigation or board of inquiry in the Union, may be summoned in the prescribed manner to attend such court, preliminary investigation or board and to give such evidence or produce such document or thing.

(2) Any person not subject to this Code who has been summoned in the prescribed manner to attend any military court, preliminary investigation or board of inquiry to give evidence or to produce any document or thing, and who fails to attend or refuses to be sworn or to answer any question which in similar proceedings in a civil court he could be compelled to answer, or fails or refuses to produce any document or thing which in similar proceedings in a civil court he could be compelled to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding one month.

COMPETENT BUT NOT COMPELLABLE WITNESS GIVING EVIDENCE OUTSIDE THE UNION.

139. If at any trial by a military court beyond the borders of the Union a competent but not compellable witness gives evidence but refuses to answer any question put to him by the court, or by the defence if he has been called by the prosecution, or by the prosecutor if he has been called by the defence, to which question he would be bound in law to reply

if he were a witness at such a trial in the Union, the court shall, if satisfied that the answer to the question is material, order the witness to stand down and strike the whole of his evidence from the record of the proceedings.

EVIDENCE.

140. (1) Whenever a person subject to this Code is required to produce at the trial before a civil or a military court of any person for an offence under this Code, any document made or intended for official use, such person may in lieu of the original document produce a copy certified by him to be a true copy of the original and such copy shall be as admissible in evidence as proof of its existence and of its contents as if it were the original: Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of such document shall be produced.

(2) A photographic reproduction of a document, if certified by the officer having the custody of the original to be a photographic reproduction of the original, shall be admissible in evidence before a military or civil court trying an offence under this Code, as if it were the original: Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of the document shall be produced.

(3) Any entry in the records of the South African Defence Force concerning the pay or any allowances of any person subject to this Code may, unless objection is made by any interested party, be proved in a civil or military court trying an offence under this Code by the production of a copy or a photographic reproduction of such entry if such a copy or reproduction purports to be certified by the officer having charge of the original record to be a true copy or reproduction, as the case may be, of such entry.

(4) Any attestation or enrolment paper purporting to have been signed by any person, shall be evidence of such person having given the answers to questions which he is therein represented as having given, and the contents of such attestation paper may, unless objection is made by any interested party be proved in evidence before a civil court or military court by the production of a copy or a photographic reproduction thereof, if certified to be a true copy or reproduction of the original by the officer having charge of the original.

(5) A certificate purporting to be signed by an officer having charge of the records of any person charged with an offence against this Code, stating—

- (a) the rank or appointment held by such person at any time during his service;
- (b) the date of his enrolment or discharge;
- (c) the decorations, medals, clasps, good conduct or long service badges or wound stripes or other emblems of merit to which such person is or is not entitled; or
- (d) the rate of pay or any allowances to which such person is or was at any time entitled,

shall upon its production be admissible as evidence of the contents thereof at the trial of such person for an offence against this Code by a civil or military court: Provided that the accused shall have the right to require such officer to be called to give oral evidence.

HOW PERSONS ARRESTED FOR DESERTION OR ABSENCE WITHOUT LEAVE TO BE DEALT WITH.

141. (1) (a) Whenever a person surrenders himself to or is arrested by the chief disciplinary officer, an assistant disciplinary officer, a military policeman, a superior officer or a member of the South African Police on a charge under this Code of desertion or absence without leave, the person to whom he surrenders himself or who arrests him shall prepare and sign a certificate stating the fact of such surrender or arrest and the time, date and place thereof.

(b) A certificate prepared and signed in terms of paragraph (a) of this sub-section shall at the trial of such person on such charge by a civil or military court on its mere production be admissible in evidence as proof of the surrender or arrest, as the case may be, and of the time, date and place thereof as stated in the certificate.

(2) (a) Where a person is arrested by, or surrenders himself to, a member of the South African Police on a charge of desertion or absence without leave, and such person cannot be delivered over within forty-eight hours to his commanding officer or the chief disciplinary officer or an assistant disciplinary officer, he shall without delay be brought before a magistrate of the district in which he then is and such magistrate, if satisfied after due enquiry that such person is a deserter or an illegal absentee or that there are reasonable grounds for suspecting that such person is a deserter or an illegal absentee, may order that he be delivered over to his commanding officer or to the chief disciplinary officer or an assistant disciplinary officer and that he be committed to custody in a prison, police cell or lock-up or other place of confinement until such delivery over can be effected: Provided that if such person is not so delivered over within fourteen days of his committal to custody by the magistrate, he shall again be brought before a magistrate who may order his committal for a further period not exceeding fourteen days.

(b) If there is not sufficient evidence available to the magistrate when such person is brought before him to enable the magistrate

to determine whether such person is a deserter or an illegal absentee or whether there are reasonable grounds for so suspecting him, the magistrate may remand him in custody from time to time not exceeding seven days at a time.

- (c) Where such person on being brought before a magistrate voluntarily confesses to being a deserter or an illegal absentee, the magistrate shall record such confession and obtain the signature of such person thereto, if he is willing to sign it, and shall thereafter himself sign such record and cause a true copy thereof to be made and certified by himself or the clerk of the court, and such certified copy shall be admissible in evidence on its mere production at the trial of such person by a civil or military court on a charge of desertion or absence without leave as proof of such confession.

ORDERS BY GENERAL OFFICER COMMANDING MAY BE SIGNIFIED BY ORDER, INSTRUCTION OR LETTER.

142. (1) Where any order is authorized by this Code to be made by the General Officer Commanding, South African Defence Force, or any other commanding officer, such order may be signified by an order, instruction or letter under the hand of any officer authorized to issue such orders on behalf of the General Officer Commanding, South African Defence Force, or other commanding officer, and an order, instruction or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

(2) An order deviating from any form that may be prescribed for it shall not be rendered invalid merely because of such deviation.

REGISTRAR OR CLERK OF A CIVIL COURT MUST FURNISH PARTICULARS OF TRIAL BY CIVIL COURT OF PERSONS SUBJECT TO CODE.

143. Whenever any person subject to this Code has been tried by a civil court, the registrar or clerk of such court shall, if required by the commanding officer of such person or by any other officer, transmit to him a certificate setting forth the offence for which such person was tried, the judgment and the sentence and any order of the court or, if he was acquitted, a statement to that effect, and such certificate shall for all purposes be proof of the conviction and the sentence, or of the order of the court or of the acquittal of such person.

MEMBERS OF SOUTH AFRICAN DEFENCE FORCE DEEMED TO HAVE BEEN PROPERLY ATTESTED OR ENROLLED IN CERTAIN CIRCUMSTANCES.

144. (1) Every person who has served as a member of the South African Defence Force for a period of not less than one month, or who has accepted pay as a member of the said Force, shall be deemed to have been properly attested or enrolled and shall have no right to claim his discharge or release on the ground of any error, illegality or misunderstanding in his attestation or enrolment.

(2) If a person claims his discharge or release within one month of engagement for service on the ground of any error, illegality or misunderstanding in his attestation or enrolment, and obtains his discharge as a result of such claim, he shall nevertheless be deemed to have been properly attested or enrolled to the date of his claim.

COUNCIL OF REVIEW.

145. (1) The Minister shall establish a council of review consisting of a chairman who shall be a judge or a retired judge of the Supreme Court of South Africa, or a magistrate or retired magistrate who has held office as a magistrate for a continuous period of not less than ten years, one officer of the Permanent Force, and one person who has had experience in the South African Defence Force in the field on service.

(2) The members of the council of review may be employed on a part-time basis and may in the case of members who are not in the full-time employment of the Government be remunerated at such rates as may be determined by the Minister in consultation with the Treasury.

BOARDS OF REVIEW.

146. (1) The General Officer Commanding, South African Defence Force, may in time of war establish so many boards of review in the field as he may deem necessary.

(2) A board of review shall consist of not less than three members, one of whom shall be appointed as chairman.

(3) The duties, powers, qualifications and status of members of a board of review shall be as prescribed.

APPOINTMENT AND POWERS OF CHIEF DISCIPLINARY OFFICER AND ASSISTANTS.

147. (1) The General Officer Commanding, South African Defence Force, may appoint an officer as chief disciplinary officer of the South African Defence Force and so many assistant disciplinary officers as he may deem necessary.

(2) The chief disciplinary officer or any assistant disciplinary officer may at any time or place arrest any person for an offence under this Code and detain such person as prescribed.

(3) The chief disciplinary officer or any assistant disciplinary officer may under warrant take such steps as may be prescribed for the execution of any sentence of death, imprisonment, detention or field punishment imposed by a military court.

(4) The powers, duties and functions of the corps known as the South African Corps of Military Police shall be as prescribed.

RESTITUTION OR CONFISCATION OF PROPERTY.

148. (1) When any person is convicted by a military court of theft or any other offence whereby he has unlawfully obtained any property, and such property or any portion thereof is found in the possession or under the control of such person, the court may order that such property or such portion thereof be restored to the lawful owner.

(2) A military court convicting any person of an offence which was committed by means of any weapon, instrument or other article produced to the court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the state.

FIELD PUNISHMENT.

149. (1) An offender undergoing field punishment may be required to perform any or all of his normal military duties.

(2) Field punishment may be carried out regimentally when the unit to which the offender belongs is on the move or about to move or when the chief disciplinary officer or an assistant disciplinary officer is not reasonably available, and to prevent the escape of the offender he may be handcuffed or otherwise secured.

(3) When a unit is not on the move or about to move, and the chief disciplinary officer or an assistant disciplinary officer is available to the unit, an offender sentenced to field punishment shall be handed over to such disciplinary officer to undergo the sentence.

EXERCISE OF POWERS VESTED IN HOLDERS OF MILITARY OFFICE.

150. Any power or jurisdiction given to and any act or thing to be done by, to, or before any person holding any office in the South African Defence Force, may be exercised or done by or before any other person for the time being authorized in that behalf according to the customs of the service or as may be prescribed.

CONTEMPT OF MILITARY COURT BY PERSON NOT SUBJECT TO THE CODE.

151. (1) Any person not subject to this Code who in the Union wilfully causes any disturbance or interruption at any military court or wilfully commits any act calculated or likely to bring such court into contempt, ridicule or disrepute, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment for a period not exceeding two months.

(2) Any person who, within the precincts of a military court, commits any act or causes any disturbance or interruption mentioned in sub-section (1), may be ordered by the court to be removed from the precincts of the court and to be taken into custody and handed over to the South African Police.

CORPORAL PUNISHMENT MAY NOT BE IMPOSED.

152. Notwithstanding anything to the contrary contained in any other law, no civil or military court may in respect of any offence under this Code sentence an offender to any form of corporal punishment.

DEFENDING OFFICER AS A WITNESS.

153. No defending officer appointed in terms of this Code to defend an accused person shall be competent to give evidence against such person at his trial without the consent of such person, concerning any fact, matter or thing which came to his knowledge after and by reason of his appointment and duties as the defending officer of such person.

TRIALS COMMENCED PRIOR TO COMMENCEMENT OF CODE.

154. (1) The trial of any person subject to this Code which was commenced prior to the date of the coming into operation of this Code shall be proceeded with and concluded in all respects as if this Code had not been in operation.

(2) In respect of any trial referred to in sub-section (1), the finding and the sentence shall be confirmed, the sentence or any order shall be executed and the proceedings shall be reviewed as if this Code had not been in operation.

(3) Any proceedings which may be instituted in any civil court arising out of or based on any proceedings under sub-section (1) or (2) shall likewise in all respects be dealt with as if this Code had not been in operation.

(4) For the purposes of this section, a trial shall be deemed to have commenced if the accused has pleaded or has been required to plead to the charge or charges against him or if any evidence has been recorded at a summary of evidence in respect of any charge or charges against him.

Second Schedule.

No. and Year of Act.	Title.	Extent of Repeal.
13 of 1912	South Africa Defence Act, 1912 ..	The whole.
22 of 1922	South Africa Defence Act Amendment Act, 1922.	The whole.
32 of 1932	Defence Act (Amendment) and Dominion Forces Act, 1932.	The whole.
33 of 1943	Pension Laws Amendment Act, 1943 ..	Section <i>one</i> .
58 of 1946	War Pension Laws Amendment Act, 1946.	Section <i>five</i> by <i>six</i> .
39 of 1947	Defence Amendment Act, 1947 ..	The whole.
48 of 1947	Finance Act, 1947	Section <i>sixteen</i> .
43 of 1949	Defence Amendment Act, 1949 ..	The whole.
44 of 1951	Defence Amendment Act, 1951 ..	The whole.
62 of 1952	Defence Amendment Act, 1952 ..	The whole.
43 of 1954	Defence Amendment Act, 1954 ..	Section <i>three</i> .