

CHAPTER 220

MALTA ARMED FORCES ACT

To make provisions for the raising and maintenance of armed forces in Malta and to provide for matters connected therewith or ancillary thereto.

22nd September, 1970

1st February, 1982

ACT XXVII of 1970, as amended by: Acts XXXV and LVIII of 1974, XIII of 1975; Legal Notice 148 of 1975; Acts XVIII and XXII of 1976, XI of 1977, [XX of 1980](#), [XIII of 1983](#), [VIII of 1990](#), [XV of 1990](#), [XXIV of 1995](#), and [X](#) and [XII of 2000](#); Legal Notice [411 of 2007](#); and Acts [XIII](#), [XXVI of 2014](#), [IV](#) and [XLIII of 2015](#)^{}, and [XLI](#) and [XLVI of 2016](#), [XXI of 2020](#) and [XXXV of 2023](#)*

ARRANGEMENT OF ACT

	Articles
Part I. Preliminary	1-2
Part II. Maintenance and Government of Armed Forces	3-36
Title I. General Provisions	3-4
Power to raise, maintain and regulate armed force	3-4
Title II. The Regular Force	5-18
Enlistment	5-6
Appointment to corps and transfer from one corps to another	7
Terms, conditions and extension of service	8-10
Discharge and transfer to reserve	11-15
Miscellaneous and supplementary provisions	16-18
Title III. The Territorial Force	19-30
Enlistment and discharge	19-24
Training	25
Mobilisation	26-30
Title IV. The Reserve Force	31-36
The reserve force	31
Call out of reserves	32-35
Training	36
Part III. Military Offences	37-75
Treachery, cowardice and offences arising out of military service	37-43
Mutiny and insubordination	44-49
Desertion, absence without leave, etc.	50-54
Malingering and drunkenness	55-56
Offences relating to property	57-59
Offences relating to, and by, persons in custody	60-63
Offences in relation to courts-martial	64-65
Miscellaneous offences	66-74

^{*}see also transitory provision in article 20 of Act [IV of 2015](#).

	Articles
	Civil offences 75
Part IV.	Trial and Punishment of Military Offences 76-142
	Punishments 76-79
	Arrest 80-81
	Investigation of, and summary dealing with, charges 82-89
	Courts-martial: General provisions 90-97
	Courts-martial: Provisions relating to trial 98-106
	Offences: Procedure 107
	Confirmation, revision and review of proceedings of courts-martial 108-115
	Appeals from courts-martial 116-120
	Review of summary findings and awards 121
	Findings of insanity 122
	Functions of Attorney General in relation to courts-martial 123
	Commencement, suspension and duration of sentences 124-126
	Execution of sentences of death, imprisonment and detention 127-129
	Trial of persons ceasing to be subject to military law and time limits for trials 130-131
	Relation between military law and civil courts and finality of trials 132-133
	Inquiries 134-136
	Miscellaneous provisions 137-142
Part V.	Forfeitures and Deductions and Enforcement of Maintenance Liabilities 143-151
Part VI.	Ranges, Training and Trespass 152-159
	Use of land and sea areas for ranges 152-153
	Use of land for training of the force 154-158
	Trespass upon land held by the force 159
Part VII.	General Provisions 160-177
	Redress of complaints 160-161
	Provisions relating to deserters and absentees without leave 162-165
	Offences relating to military matters punishable by civil courts 166- 171
	Provisions as to evidence 172-174
	Miscellaneous provisions 175-177
Part VIII.	Application of Act and Supplemental Provisions 178-185
	Persons subject to military law 178-180
	Supplemental provisions 181-183
	Savings 184

PART I

PRELIMINARY

1. The short title of this Act is the Malta Armed Forces Act. Short title.
2. (1) In this Act, unless the context otherwise requires or it is otherwise expressly provided - Interpretation.
Amended by:
LVIII. 1974.68.
- "acting rank" means rank of any description (however called) such that under such provisions as may be prescribed a commanding officer has the power to order the holder to revert from that rank, and "acting warrant officer" and "acting non-commissioned officer" shall be construed accordingly;
- "active service" shall be construed in accordance with article 183;
- "aircraft" means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;
- "aircraft material" includes -
- (a) parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not;
 - (b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft;
 - (c) any other gear, apparatus or instruments in, or for use in, aircraft;
 - (d) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft; and
 - (e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;
- "air signal" means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;
- "appropriate superior authority" has the same meaning assigned to it by article 83(1) and article 88(2);
- "arrest" includes open arrest;
- "before the enemy", in relation to a person, means that he is in action against the enemy or about to go into action against the enemy, or is under attack or threat of imminent attack by the enemy;
- "civil court" means a court of ordinary criminal jurisdiction in Malta;
- "civil offence" means an act or omission punishable by the law of Malta or which, if committed in Malta, would be punishable by that law;
- "commanding officer" means the officer commanding the unit to which the man belongs or is attached, but in relation to a person charged with an offence it has the meaning assigned to it by article

88;

"Commonwealth country" means a country to which article 28 of the [Constitution of Malta](#) applies;

"corps" means any such body of the force as may from time to time be declared by order of the President of Malta to be a corps for the purposes of this Act;

"court-martial" means court-martial under this Act;

"damage" includes destruction, and references to damaging shall be construed accordingly;

"desertion" shall be construed in accordance with article 50(2);

"enemy" includes all persons engaged in armed operations against any Maltese armed force and any force cooperating therewith and also includes all armed mutineers, armed rebels, armed rioters and pirates;

"field officer" means an officer not being a general officer, of every rank above the rank of captain;

"the force" means the regular and the territorial force and includes the reserve force;

"the Gazette" means the Malta Government Gazette;

"Government" means the Government of Malta;

"House" means the House of Representatives of Malta;

"Malta" has the same meaning as is assigned to it by article 124 of the [Constitution of Malta](#);

"man" in relation to the force includes a warrant officer, a non-commissioned officer and a soldier;

"Minister" means the Minister responsible for defence and includes any person or authority authorised by the said Minister in that behalf or as may be prescribed;

"oath" includes an affirmation, and references to swearing shall be construed accordingly;

"persons subject to military law" shall be construed in accordance with article 178;

"prescribed" except in Parts III and IV of this Act, means prescribed or provision in respect thereof made by or under regulations or orders under article 4;

"provost officer" means a provost marshal or officer appointed to exercise the functions conferred by or under this Act on provost officers;

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

"recruiting officer" has the meaning assigned to it by article 5;

"the regular force" means any armed force raised under this Act other than the reserve force and the territorial force;

"the reserve force" means the bodies mentioned in article 31(2), and "reserve" shall be construed accordingly;

"Rules of Procedure" means the Rules of Procedure made under article 107;

"service" means service in the force and, when used adjectivally in the English text and the words "tas-servizz" in the Maltese text, mean belonging to or connected with the force or any part thereof;

"ship" includes any description of vessel;

"steals" has the same meaning as guilty of theft has for the purposes of the [Criminal Code](#);

Cap. 9.

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

"summary conviction" means conviction by the competent civil court;

"the territorial force" means the territorial armed force raised, or deemed to be raised, under this Act other than the reserve of that force.

(2) In Part II of this Act -

"competent military authority" means the Commander or any prescribed officer;

"date of attestation" in relation to any person means the date on which he signs the declaration mentioned in article 17(1) and takes such an oath as may be prescribed;

"appropriate minimum age" has the meaning assigned to it by article 6.

(3) In Parts III and IV of this Act -

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

"convening officer" in relation to a court-martial means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor's functions;

"military establishment" means a military prison or any other establishment under the control of the Minister where persons may be required to serve military sentences of imprisonment or detention;

references to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial;

references to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer;

"prescribed" means prescribed or provision in respect thereof made by or under the Rules of Procedure or under regulations made under article 141.

(4) References in Parts III and IV of this Act to warrant officers do not include references to acting warrant officers, but references in the said Parts of this Act to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

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

(6) Any power conferred by this Act to make regulations, rules or orders or to issue notices shall include power, exercisable in like manner and subject to the like provision, to vary or revoke any such regulation, rule, order or notice, without prejudice to the making of a new regulation, rule or order or the issuing of a new notice.

Extension of applicability to exclusive economic zone area or environment protection area.
Added by:
XXXV.2023.27.
Cap. 362.
Cap. 625.
S.L. 220.06.

2A. The provisions of this Act and of any subsidiary legislation made thereunder shall also apply, in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea as ratified by the [Law of the Sea \(Ratification\) Act](#), to an exclusive economic zone area or an environment protection area as defined in the [Exclusive Economic Zone Act](#), and subject to the provisions of the [Assignment of Powers to Armed Forces of Malta Order](#), a member of the Armed Forces of Malta shall, in relation to any artificial island, installation, structure, equipment or device therein, have all the powers, protection and privileges which he has in Malta.

PART II

MAINTENANCE AND GOVERNMENT OF ARMED FORCE

TITLE I - GENERAL PROVISIONS

Power to raise, maintain and regulate armed force

Power to raise and maintain armed force.
Amended by:
LVIII. 1974.68.

3. (1) It shall be lawful for the President of Malta to raise by voluntary enlistment and maintain an armed force, consisting of a regular and of a territorial force or of either of such forces (including the reserve of such forces), and consisting of such units of any arm and subject to such designation of title as may be prescribed or as the President of Malta may direct.

(2) The expenditure required for the raising and maintenance of the force shall be defrayed out of sums provided for the purpose in the annual estimates of revenue and expenditure for Malta as approved by the House.

4. (1) It shall be lawful for the President of Malta to make regulations or orders with respect to the establishment, government, and discipline of the force, or any part or unit thereof, the pay, allowances, pensions and gratuities payable to and the enlistment, the terms, conditions and extensions of service and the discharge and training of, members of the force or of any part or unit thereof, and with respect to all other matters and things relating to the force, including any matter by this Act authorised to be prescribed or expressed to be subject to regulations or orders; and may make different regulations or orders or make different provision with respect to the regular force and to the territorial force.

Power to make regulations or orders.

Amended by:
LVIII. 1974.68;
XX. 1980.2;
XII. 2000.2;
XXVI. 2014.4;
XLI. 2016.31;
XLVI. 2016.2;
XXXV.2023.28.

(2) Without prejudice to the generality of the powers conferred by this article, regulations or orders made under this article may-

- (a) make provision as to the persons in whom command over the force, or any part or member thereof, is to be vested and as to the circumstances in which such command as aforesaid is to be exercised;
- (b) provide for the formation of officers and men of the force into units and for appointing, transferring, posting, attaching or otherwise dealing with such officers and men;
- (c) regulate the granting of commissions in the force;
- (d) regulate the appointment, rank, duties and numbers of the officers and men of the force;
- (e) provide for the establishment and government of a reserve of the regular and of the territorial force;

and, in regard to the territorial force -

- (f) provide for the constitution of a permanent staff;
- (g) modify or dispense with any of the provisions of this Act relating to the training of the territorial force so far as regards their application to the reserve of that force.

(3) It shall be lawful for the President of Malta by order to empower any member of the force to exercise, in addition to any functions, powers and duties he may have as a member of the force, all or any one or more of the functions, powers and duties as are by law vested in a member of the Malta Police Force and in an officer of the Customs.

(3A) Without prejudice to any provision of this Act granting the President of Malta the power to make regulations, the President of Malta may, subject to the provisions of the [Exclusive Economic Zone Act](#), from time to time, make, amend, substitute or repeal regulations for the purpose of regulating, prescribing or otherwise providing for any matters regulated by or under this Act or by or under any subsidiary legislation made thereunder, in respect of an exclusive economic zone area, safety zone or an environment protection area as defined in the [Exclusive Economic Zone Act](#) or any activities therein including, but not limited, to the applicability or otherwise of this Act and, or of any subsidiary legislation made thereunder.

Cap. 625.

- (4) Notwithstanding the foregoing provisions of this article -
- (a) regulations or orders made under this article shall not affect or extend the term for which, and the area within which, a man of the territorial force is liable to serve or, except as otherwise provided by or under this Act, authorise a man of the territorial force when belonging to one corps to be transferred, without his consent, to another corps;
 - (b) where a man of the territorial force was enlisted before the date of any regulation or order made under this article, nothing in that regulation or order shall render him liable without his consent to be appointed, transferred or attached to any corps to which he could not without his consent have been appointed, transferred or attached if the said regulation or order had not been made; and
 - (c) for the purposes of any regulation made under this article in connection with pensions and gratuities payable to members of the force, where the service of any member of the Air Traffic Control Corps or of the Airport Company is terminated with the approval of the Commander to take up full time employment with Malta International Airport p.l.c., the employment of such member of the Force with the said Malta International Airport p.l.c., shall be deemed to be service in the force, and such member shall be entitled to a pension or gratuity, as the case may be, under such regulations upon the termination of his service with the said Malta International Airport p.l.c., as if such service were service with the force:

Provided that, where such termination of such service with Malta International Airport p.l.c., is due to the winding up of the said company, whether voluntary or otherwise, such termination shall be considered as if it were due to abolition of office:

Provided further that the provisions of this paragraph shall not apply unless an Order is made by the Prime Minister indicating that Malta International Airport p.l.c. shall have bound itself with the Government to contribute towards the Government the difference between the cost of the pension or gratuity payable at the time of retirement from Malta International Airport p.l.c., and the cost of the pension or gratuity, as the case may be, computed at the time of the termination of service with the Government for the aforesaid reason of full time employment with Malta

International Airport p.l.c.;

- (d) For the purposes of paragraph (c) hereof the pensionable emoluments of such persons of the force on retirement shall be deemed to be the pensionable emoluments payable to a member of the force in a grade and at an incremental level corresponding to the post and incremental level at which such person retires from Malta International Airport p.l.c.;
- (e) For the purposes of paragraph (d) hereof posts and salary grades with Malta International Airport p.l.c. shall be classified in the most nearly corresponding grades and incremental levels in the Armed Forces of Malta by reference to job description, skills, responsibilities and other analogous factors;
- (f) The classification referred to in paragraph (e) hereof shall be carried out by a board composed of a chairman appointed by the Minister from time to time responsible for the Department of Social Security and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public services and one appointed by Malta International Airport p.l.c. The classification shall be subject to the final approval of the Minister from time to time responsible for the Department of Social Security;
- (g) Such classification shall take place within three months of any adjustment of salaries of members of the force and, or, of employees of Malta International Airport p.l.c.;
- (h) No post shall be classified in a grade higher than that of Grade 3 in the service of the Government or such other grade that the Minister from time to time responsible for the Department of Social Security may from time to time by notice in the Gazette determine;
- (i) Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said regulations less favourable than those to which he would have been entitled prior to such classification.

(5) Notwithstanding the foregoing provisions of this article, in so far as the granting of pensions is concerned:

- (a) any regulations made under this article may have retrospective effect in order to confer a benefit upon, or remove a disability attaching to any person or class of persons;
- (b) no regulation made under this article shall have effect unless it has received the prior approval of the House of Representatives signified by resolution; and
- (c) any pension granted under this Act shall be computed in accordance with the provisions in force at the actual

date of the officer's retirement.

TITLE II - THE REGULAR FORCE

Enlistment

Recruiting officers.

5. Recruits in the regular force shall be enlisted by such persons (to be known, and in this Act referred to, as recruiting officers) and in such manner and subject to such regulations as may be prescribed.

Enlistment.
Amended by:
XIII. 2014.2.

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

(2) The procedure for enlisting a person in the regular force shall be such as may be prescribed.

(3) A recruiting officer shall not recruit a person under the appropriate minimum age.

(4) In this Part of this Act the expression "appropriate minimum age" means the age of eighteen years.

Appointment to corps and transfer from one corps to another

Enlistment for
general or corps
service and transfer
between corps.
Amended by:
XLIII. 2015.2;
XXI of 2020.

7. (1) Recruits may, in pursuance of regulations made under article 4, be enlisted for service in particular corps, but save as may be provided by such regulations recruits shall be enlisted for general service.

(2) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a corps, to that corps, and if enlisted for general service, to such corps as the competent military authority may think fit.

(3) A man of the regular force may at any time be transferred by order of the competent military authority from one corps to another:

Provided that except while a state of war exists between Malta and any foreign power, or men of the reserve are called out on permanent service, an order under this article shall not be made otherwise than with the approval of the Commander unless the person to whom the order relates consents to the transfer.

(4) Where in pursuance of the last foregoing sub-article a man of the regular force is transferred to a corps of the service different from that in which he was previously serving, the competent

military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the corps to which he is transferred.

Terms, conditions and extension of service

8. (1) The term and conditions of service for which a person enlisting in the regular force may be enlisted shall be such a term and such conditions of service as may be prescribed, and shall be subject to such conversions, changes and extensions as may be prescribed.

Terms and conditions of service.

(2) A man of the regular force shall be liable to universal service.

9. (1) Where at a time at which apart from this article a man of the regular force would be entitled to be discharged or would fall to be transferred to the reserve, a state of war exists between Malta and any foreign power, or men of the reserve are called out on permanent service, or he is serving outside Malta, he may be retained in service for such period as is hereinafter mentioned, and his service may be prolonged accordingly.

Postponement in certain cases of discharge or transfer to reserve.

(2) No person shall be retained in service by virtue of this article later than the expiration of twelve months after the date on which apart from this article he would be entitled to be discharged.

(3) Subject to the provisions of the last foregoing sub-article, a person who apart from this article would be entitled to be discharged may be retained in service for such period as the Minister may order.

(4) Subject as aforesaid, a person who apart from this article would fall to be transferred to the reserve may be retained in service for such period, ending not later than twelve months from the date on which apart from this article he would fall to be transferred to the reserve, as the Minister may order or for any period or further period during which men of the reserve continue called out on permanent service.

(5) If while a man is being retained in service by virtue of this article it appears to the competent military authority that his services can be dispensed with, he shall be entitled to be discharged or transferred to the reserve as the case may require.

(6) Where, at any time at which under the foregoing provisions of this article a man is entitled to be discharged or transferred to the reserve, a state of war exists between Malta and any foreign power, he may, by declaration made in the prescribed form before his commanding officer agree to continue in service while such state of war exists; and if the competent military authority approves he may continue accordingly as if the period for which his term of service could be prolonged under the foregoing provisions of this article were a period continuing so long as a state of war exists:

Provided that if it is so specified in the declaration he shall be entitled to be discharged or transferred to the reserve, as the case may require, at the expiration of three months' notice given by him

to his commanding officer.

(7) In relation to men of the regular force serving outside Malta references in this article to being entitled to be transferred to the reserve shall be construed as references to being entitled to be sent to Malta with all convenient speed for the purpose of being transferred to the reserve.

Continuation of
service in
imminent national
danger.
Amended by:
LVIII. 1974.68.

10. (1) If it appears to the President of Malta that national danger is imminent or that a great emergency has arisen, he may by order signified under the hand of the Minister, provide that men who would otherwise fall to be transferred to the reserve shall continue in service; and thereupon the last foregoing article shall apply to such men as it applies while men of the reserve are called out on permanent service.

(2) Where an order has been made under sub-article (1), the occasion thereof shall forthwith be communicated to the House.

(3) An order in force under sub-article (1) may be revoked by order of the President of Malta signified as therein mentioned.

Discharge and transfer to reserve

Discharge.
Amended by:
LVIII. 1974. 68.

11. (1) Save as hereinafter provided every man of the regular force, upon becoming entitled to be discharged, shall be discharged with all convenient speed but until discharged shall remain subject to military law.

(2) Where a man of the regular force is, when entitled to be discharged, serving out of Malta, then -

- (a) if he requires to be discharged in Malta, he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to the discharge being delayed, within six months from his arrival; but
- (b) if at his request he is discharged at the place where he is serving he shall have no claim to be sent to Malta or elsewhere.

(3) Except in pursuance of the sentence of a court-martial, a man of the regular force shall not be discharged unless his discharge has been authorised by the competent military authority or by authority direct from the President of Malta and in any case the discharge of a man of the regular force shall be carried out in such manner as may be prescribed.

(4) Every man of the regular force shall on his discharge be given a certificate of discharge containing such particulars as may be prescribed.

Transfer to the
reserve.

12. (1) Every man of the regular force upon falling to be transferred to the reserve shall be transferred to the reserve but until so transferred shall remain subject to military law.

(2) Where a man of the regular force, when falling to be transferred to the reserve, is serving out of Malta he shall be sent to Malta free of cost with all convenient speed and shall be transferred

to the reserve on his arrival there or, if he consents to his transfer being delayed, within six months from his arrival:

Provided that if he so requires he may be transferred to the reserve without being required to return to Malta.

13. (1) Notwithstanding anything in this Part of this Act, a man of the regular force shall not be entitled to be discharged or transferred to the reserve at a time when he has become liable, as a person subject to military law, to be proceeded against for an offence against any of the provisions of this Act:

Postponement of discharge or transfer pending proceedings for offences.

Provided that if it is determined that the offence shall not be tried by court-martial this sub-article shall cease to apply.

(2) Notwithstanding anything in this Part of this Act, a man of the regular force who is outside Malta and serving a sentence of imprisonment or detention awarded by a court-martial under this Act, shall not be entitled to be discharged or transferred to the reserve during the currency of the sentence.

14. (1) A recruit shall be entitled to claim his discharge before the expiration of the period of three months beginning with the date of his attestation, and if he makes such a claim he shall on payment of the sum of forty-six euro and fifty-nine cents (46.59) or such less sum as may be prescribed be discharged with all convenient speed:

Right of recruit to purchase discharge.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

Provided that -

- (a) if regulations made under article 4 so provide, the right conferred by this sub-article shall not be exercisable by a recruit before the expiration of such period (not exceeding two months) beginning with the said date as may be prescribed; and
- (b) if a claim is made under this sub-article by a recruit at a time when men of the regular force are required by an order under article 10 to continue in service, he shall not be entitled to be discharged so long as they are so required to continue in service.

(2) In this article the expression "recruit" means a person enlisted in the regular force in accordance with provisions of this Part of this Act who has not been previously so enlisted.

15. A warrant officer of the regular force who is reduced to the ranks may thereupon claim to be discharged unless a state of war exists between Malta and any foreign power or men of the reserve are called out on permanent service.

Rights of warrant officer to discharge on reduction to ranks.

Miscellaneous and supplementary provisions

16. (1) Where a man of the regular force is convicted of desertion by court-martial, the period of his service as respects which he is convicted of having been a deserter shall be forfeited.

Forfeiture of service for desertion and restoration of forfeited service.
Amended by:
XLIII. 2015.3.

(2) Where any of a man's service is forfeited the provisions of this Part of this Act (excepting those relating to discharge by purchase) shall apply to him, and he shall be liable to serve, in like manner as if the appropriate date were the date of his attestation

and he had, on the appropriate date, been duly enlisted to serve for the like term (both as respects duration and as respects liability to service and liability to serve in the reserve) as that for which he was in fact serving at the time of his conviction.

(3) In the last foregoing sub-article the expression "the appropriate date" -

- (a) if in consequence of sub-article (1) and an award of the court-martial under Part III of this Act the whole of his previous service is forfeited, means the date of his conviction;
- (b) if in consequence of the said sub-article (1) or that sub-article and an award of the court-martial part only of his previous service is forfeited, means a date earlier than the date of his conviction by the length of service not forfeited.

(4) Where a right is conferred on a man of the regular force to determine his full-time service at any such time as may be prescribed or to be transferred at any such time to the reserve, that right shall not be exercisable, in consequence of a forfeiture of service, at a time earlier than that at which it would have been exercisable apart from the forfeiture.

(5) Any service forfeited under this article may be restored in consideration of good service or on other grounds justifying the restoration of service forfeited as may be prescribed and in such manner and subject to such conditions and exceptions as may be prescribed.

Validity of
attestation and
enlistment.
Amended by:
XLIII. 2015.4.

17. (1) Where a person has signed the declaration set out in the attestation paper as to the truth of the answers given to the questions set out in the attestation paper, and has thereafter received pay as a man of the regular force-

- (a) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;
- (b) if within three months from the date on which he signed the said declaration he claims that his enlistment is invalid by reason of any non-compliance with the requirements of this Act or of any regulations made thereunder as to enlistment or attestation, or any other ground whatsoever (not being an error or omission in his attestation paper) on which apart from this sub-article the validity of his enlistment could have been called in question, the claim shall be submitted as soon as may be to the Commander, and if the claim is well founded the Commander shall cause him to be discharged with all convenient speed;
- (c) subject to the provisions of the last foregoing paragraph, he shall be deemed as from the expiration of the said three months to have been validly enlisted notwithstanding any such non-compliance or other

grounds as aforesaid;

- (d) notwithstanding any such non-compliance or other grounds as aforesaid, or the making of a claim in pursuance of paragraph (b), he shall be deemed to be a man of the regular force until his discharge.

(2) Where a person has received pay as a man of the regular force without having previously signed the declaration referred to in sub-article (1), then -

- (a) he shall be deemed to be a man of the regular force until discharged;
- (b) he may claim his discharge at any time, and if he does so the claim shall be submitted as soon as may be to the Commander, who shall cause him to be discharged with all convenient speed.

(3) Nothing in the foregoing provisions of this article shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge

18. (1) If a person appearing before a recruiting officer for the purpose of being attested knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine (*multa*) not exceeding forty-six euro and fifty-nine cents (46.59).

False answers in
attestation paper.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

(2) A person may be proceeded against under this article notwithstanding that he has since become subject to military law.

TITLE III - THE TERRITORIAL FORCE

Enlistment and discharge

19. The provisions of articles 5, 6, 17 and 18 shall apply to the territorial force subject to the following modifications, that is to say:

Enlistment and
attestation.

- (a) for references to the regular force there shall be substituted references to the territorial force;
- (b) for references to a man of the regular force there shall be substituted references to a man of the territorial force; and
- (c) the references in article 17 to the receipt of pay shall be omitted.

20. (1) Every person enlisted in the territorial force shall be enlisted to serve for a term, beginning with the date of his attestation, not exceeding four years as is agreed on attestation, and may, within the period of twelve months expiring with the end of his current term of service, be re-engaged for a term, beginning with the end of the previous term, not exceeding four years, as is agreed on re-engagement, and so from time to time.

Term and
conditions of
service.

(2) Every man of the territorial force shall be enlisted for service and posted in such corps as he may select.

(3) Save as provided in the foregoing provisions of this article, the conditions of service of a man of the territorial force shall be such as may be prescribed.

Area of service

21. Officers and men of the territorial force shall be liable to serve in any part of Malta, but shall not be liable to serve outside Malta.

Subjection to Act until discharge.

22. A man of the territorial force shall, until duly discharged in the prescribed manner, remain subject to the provisions of this Act applicable to him as a man of the territorial force.

Discharge.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

23. (1) A man of the territorial force shall, save as hereinafter provided, be entitled to be discharged before the end of his current term of service on complying with the following conditions:

- (a) giving to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged; and
- (b) paying to his commanding officer the sum of eleven euro and sixty-five cents (11.65) or such less sum as may be prescribed; and
- (c) delivering up in good order, fair wear and tear excepted, all arms, clothing and equipment issued to him, or, in cases where for any good and sufficient cause the delivery of the property aforesaid is impossible, paying the value thereof:

Provided that it shall be lawful for the competent military authority, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient weight, to dispense either wholly or in part with all or any of the above conditions.

(2) A man of the territorial force may be discharged by his commanding officer for disobedience to orders by him while doing any military duty, or for neglect of such duty, or for misconduct by him as a man of the territorial force, or for other sufficient cause, the existence and sufficiency of such cause to be judged by the commanding officer:

Provided that a man so discharged shall be entitled to appeal to the Commander who may give such directions in any such case as he may think just and proper.

Postponement of discharge during embodiment or special service.

24. Where the time at which a man of the territorial force would otherwise be entitled to be discharged occurs during any period while an order is in force ordering the territorial force or any part thereof to be called out on permanent service or during the period that he is called out for special service, he may be required to prolong his service for such further term, not exceeding twelve months, as the Minister may order; and a man of the territorial force shall not during any such period be entitled to be discharged under article 23(1).

Training

25. (1) Subject to the provisions of this article, every man of the territorial force shall, by way of annual training, be trained for not less than eight nor more than fifteen days in every year at such times and at such places in Malta as may be ordered by the competent military authority, and may for that purpose be called out once or oftener in every year.

Training.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

(2) Subject to the provisions of this article, every man of the territorial force shall attend such number of drills and fulfil such other conditions relating to training as may be prescribed.

(3) The requirements of sub-articles (1) and (2) may be dispensed with, in whole or in part -

- (a) as respects the territorial force or part of that force, by the Commander;
- (b) as respects an individual man of the territorial force by his commanding officer subject to any general directions of the Commander.

(4) The Minister may by order direct that the period of annual training in any year of all or any part of the territorial force or of any man thereof be extended to such period not exceeding thirty days as may be specified in the order.

(5) Nothing in this Act shall be construed as preventing a man, with his own consent, being called up for the purpose of duty, instruction or training, whether in Malta or overseas, as part of or in addition to any other training, in accordance with regulations or orders under this Act.

(6) Where a man of the force, without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for training, or fails to attend the number of drills or to fulfil the other conditions relating to training which may be prescribed, he shall be liable on summary conviction to a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65).

Mobilisation

26. (1) If it appears to the President of Malta that national danger is imminent or that a great emergency has arisen or that an invasion or attack is apprehended, he may, by order signified under the hand of the Minister, order that the territorial force be called out on permanent service, and immediately upon and by virtue of the issue of such order the Commander shall give, and when given revoke or vary, such directions as he may deem necessary or proper for embodying the territorial force or any part thereof.

Embodiment.
Amended by:
LVIII. 1974.68.

(2) Where directions under this article for the time being direct the embodiment of any part of the territorial force, every officer and man belonging to that part shall attend at the time and place fixed by those directions and after that time they shall be deemed to be embodied; and such officers and men are in this Act referred to as embodied or as the embodied part or parts of the territorial force.

(3) On embodiment, the territorial force or the embodied part

or parts thereof shall, until disembodiment, be governed by the provisions of this Act and of any regulation or order made thereunder governing the regular force insofar as they may be applicable thereto.

(4) Where an order has been made under sub-article (1), the occasion thereof shall forthwith be communicated to the House.

Disembodying.
Amended by:
LVIII. 1974.68.

27. (1) The President of Malta may by order signified under the hand of the Minister, order the territorial force to be disembodied; and thereupon the Commander shall give such directions as he may deem necessary or proper for carrying the order into effect.

(2) Until an order under sub-article (1) has been issued, the Commander may from time to time as he may think expedient give such directions as he may deem necessary or proper for disembodiment of any embodied part of the territorial force and for embodying any part of the territorial force not embodied, whether that part was previously embodied or not.

(3) After the date fixed by the directions for the disembodiment of any part of the territorial force, the officers and men belonging to that part shall be in the position of officers and men of the territorial force when not embodied unless and until they are again embodied.

Calling out for
special service.

28. (1) Every officer and man of the territorial force who has in writing on the prescribed form agreed that this article shall apply to him or that he shall be liable to be called out for special service shall be liable to be called out for special service notwithstanding that the territorial force, or the part thereof to which he belongs, has not been embodied.

(2) It shall be lawful for the Minister, at any time when it appears to him that the occasion so requires, to give, and when given to revoke or vary, such directions as he may think fit for calling out for special service in accordance with the provisions of sub-article (1) any officer or man of the territorial force who by virtue of those provisions is liable to be called out; and every officer or man called out by the directions shall attend at the place and time appointed by the directions, and shall be deemed to be called out for special service at and after that time.

(3) Where the Minister has given any directions under the last foregoing sub-article he may at any time thereafter give such directions as he may think fit for terminating the service under sub-article (1) of any officer or man called out by the directions given under sub-article (2), but without prejudice to the power of the Minister, by further directions given under sub-article (2), to call out for further service any officer or man whose service has been terminated by directions given under this sub-article.

(4) If, while an officer or man of the territorial force called out by directions given under sub-article (2) is serving under sub-article (1), directions are given under this Act for the embodiment of the territorial force or the part thereof in which he is serving,

such officer or man shall thereupon be deemed to be embodied and his service under sub-article (1) shall cease.

29. In the exercise of the powers conferred on them by articles 26, 27 and 28, the Minister or the Commander, as the case may be, may act through their officials or subordinates; and any direction, notice or order given under the authority of the Minister or of the Commander, as the case may be, shall have the same force and effect as a direction, notice or order given by the Minister or by the Commander, as the case may require.

Minister or Commander may act through officials or subordinates.

30. (1) A man of the territorial force may, by order of the competent military authority, at any time while the part of the territorial force to which he belongs is embodied or while he is serving under article 28(1), be transferred or posted without his consent to any corps.

Additional powers of transfer and posting during embodiment or special service.

(2) Where a man of the territorial force who has been transferred or posted by virtue of this article continues in service, then, if he so desires, there shall, as soon as may be convenient after the end of the period of embodiment or, as the case may be, of the period of his service under article 28(1), be taken all such steps as are necessary to enable him to serve again in the corps in which he was serving at the time when he was first so transferred or posted.

(3) The last foregoing sub-article shall apply to a man who by virtue of article 28(4) is deemed to be embodied as if the words "or, as the case may be, of the period of his service under article 28(1)" were omitted.

TITLE IV - THE RESERVE FORCE

The reserve force

31. (1) The reserve force shall consist of the reserve of the regular force body.

The reserve force.
Amended by:
XLIII. 2015.5.

(2) The reserve force shall be governed by such provisions as may be prescribed and by the following provisions of this Part of this Act; and different provisions may be prescribed for different bodies of the reserve force.

Call out of reserves

32. (1) If it appears to the President of Malta that national danger is imminent or that a great emergency has arisen, he may subject to the following provisions of this article, by order signified under the hand of the Minister, authorise the calling out of any reserve force on permanent service.

Call out of reserves in case of national danger, etc.
Amended by:
LVIII. 1974.68.

(2) Where an order is made under sub-article (1) the occasion thereof shall forthwith be communicated to the House.

(3) An order in force under sub-article (1) may be revoked by an order of the President of Malta signified as therein mentioned; but the revocation shall not affect the liability for service of any person called into service by virtue of the order at the time of its

revocation.

Call-out notices.

33. (1) In any case where an order is in force under article 32(1) authorising the calling out of a reserve force, any member of that force (hereafter in this article referred to as a "reservist") may be called into service by the Minister by notice in writing.

(2) A notice under sub-article (1) (hereafter in this Act referred to as a "call-out notice") shall specify the time and place at which the reservist is to present himself; and a call-out notice shall be deemed to be served on the reservist if it is delivered to him personally or sent by registered post to him at his latest address known to the appropriate military authorities.

(3) A call-out notice may be revoked or varied by the Minister by a subsequent notice in writing, and the last foregoing sub-article shall apply to the service of such a notice as it applies to the service of a call-out notice.

(4) Where a reservist who is liable to be called into service by a call-out notice -

- (a) attends in person at such place as may be prescribed; and
- (b) presents himself for service to such authority as may be prescribed; and
- (c) is informed by that authority that by virtue of this sub-article he is accepted for service,

he shall be deemed to have been served with a call-out notice specifying as the time and place mentioned in sub-article (2) the time at which he is informed and the place at which he attends as aforesaid; and any call-out notice previously issued for him shall cease to have effect, without prejudice to any liability arising from his failure to comply with the notice before he attends as aforesaid.

Duration of service of reservists called out on permanent service.

34. Save as may be otherwise prescribed, a member of the reserve force who is called out on permanent service shall be liable to serve until his services are no longer required or until the expiration of his term of service in that reserve whichever first occurs.

End of service under call-out notices.

35. In any case where -

- (a) the services of a person called into service by a call-out notice are no longer required; or
- (b) the person is in service in pursuance of a call-out notice at the expiration of the period of his liability for service,

he shall be entitled to be released from whole-time service in the prescribed manner with all convenient speed.

Call Out Notice to the Volunteer Reserve Force.
Added by:
XLIII. 2015.6.

35A. (1) The Commander may, for the purpose of national missions or any other task, authorise Commanding Officers or any other officer under their instruction to call out any reservist from the Volunteer Reserve Force in order to participate and assist the regular force in any said national mission or other task.

(2) Commanding Officers or any other officer under their instruction shall set with the reservist's consent, the date, time, duration and place at which the reservist is to be present and a call out notice shall be deemed to be served on the reservist if it is communicated to him personally by any means.

(3) A call out notice may be revoked or varied by the Commander by a subsequent communication.

Training

36. (1) A member of a reserve force may, in accordance with such provisions as may be prescribed, be called out in any year for minimum training consisting of two hundred and forty hours of training per year, with each training session being of not less than four consecutive hours but not in excess of eight continuous days:

Training of reserve force.

Amended by:

XIII. 1983.5;

L.N. 411 of 2007;

XLIII. 2015.7.

Provided that during the first year of engagement, training periods shall consist mainly of basic soldiering skills. During the second and subsequent years, training shall be made up of specialised skills training which may also include on the job training with any body of the force.

(2) Where a member of a reserve force, without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for training, he shall be liable on summary conviction to a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65).

PART III

MILITARY OFFENCES

Treachery, cowardice and offences arising out of military service

37. (1) Any person subject to military law who with intent to assist the enemy -

Aiding the enemy.

Amended by:

X.2000.2.

- (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; or
- (b) does any act calculated to imperil the success of operations of the force, or of any forces cooperating therewith or of any part of any of those forces; or
- (c) having been made a prisoner of war serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or
- (d) furnishes the enemy with arms or ammunition or with supplies of any description or with any other thing likely to assist him (whether similar to any of the

things aforesaid or not); or

- (e) harbours or protects an enemy not being a prisoner of war; or
- (f) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal; or
- (g) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air fails to use his utmost exertions to carry such orders into effect; or
- (h) causes the capture or destruction by the enemy of any of the force's aircraft or the aircraft of any force cooperating with the force,

shall, on conviction by court-martial, be liable to imprisonment for life or any other punishment provided by this Act.

(2) Any person subject to military law who knowingly and without lawful excuse does any of the acts specified in paragraphs (a) to (e) of the last foregoing sub-article shall, where it is not proved that he acted with intent to assist the enemy, be liable on conviction by court-martial to imprisonment or other less punishment provided by this Act.

(3) Any person subject to military law who negligently causes the capture or destruction by the enemy of any of the force's aircraft or the aircraft of any force cooperating with the force shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Communication
with the enemy and
injurious
disclosures.
Amended by:
X.2000.2.

38. (1) Any person subject to military law who with intent to assist the enemy communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to imprisonment for life or any other punishment provided by this Act.

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

(3) Any person subject to military law who without authority discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to an enemy shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(4) In this article the expressions "intelligence" and "information useful to an enemy" mean information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to the enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this sub-article) as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to

say -

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

39. (1) Any person subject to military law who when before the enemy -

Cowardly
behaviour.

- (a) leaves the post, position or other place where it is his duty to be; or
- (b) throws away his arms, ammunition or tools; or
- (c) does any of the acts specified in article 37(1)(f) to (h),

in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence against this article.

(2) Any person subject to military law who when before the enemy induces other persons subject to military law and before the enemy to commit an offence under the last foregoing sub-article shall be guilty of an offence against this article.

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

40. Any person subject to military law who -

Offences against
morale.

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

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

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

Becoming prisoner
of war through
disobedience or
wilful neglect; and
failure to rejoin
force.

(2) Any person subject to military law who, having been captured by the enemy, fails to take, or prevents or discourages any

other such person captured by the enemy from taking, any reasonable steps to rejoin the force which are available to him or, as the case may be, to that other person shall be guilty of an offence against this article.

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

Offences by or in relation to sentries, etc.

42. (1) Any person subject to military law who while on guard duty -

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

shall be guilty of an offence against this article.

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

(3) Any person subject to military law who strikes or otherwise uses force against any person on guard duty, being a member of the force or of any forces cooperating therewith, or by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence against this article.

(4) Any person guilty of an offence against this article shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

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

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

- (a) is posted or ordered to patrol, or
- (b) is a member of a guard or other party mounted or ordered, to patrol,

for the purpose of protecting any persons, premises or place.

(6) The foregoing provisions of this article shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises or place, or of regulating traffic by road, by rail or any inland navigation, as they apply to persons on guard duty.

Looting.

43. Any person subject to military law who -

- (a) steals from, or with intent to steal searches, the person

of anyone killed or wounded in the course of warlike operations; or

- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or
- (c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

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

Mutiny and insubordination

44. (1) Any person subject to military law who -

Mutiny.
Amended by:
X.2000.2.

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

shall, on conviction by court-martial, be liable to imprisonment for life or any other punishment provided by this Act.

(2) Any person subject to military law who, in a case not falling within the last foregoing sub-article, takes part in a mutiny, or incites any person subject to military law to take part in a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this Act the expression "mutiny" means a combination between two or more persons subject to military law, or between persons two at least of whom are subject to military law -

- (a) to overthrow or resist lawful authority in the force or any forces cooperating therewith or in any part of any of the said forces; or
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or
- (c) to impede the performance of any duty or service in the force or in any forces cooperating therewith or in any part of any of the said forces.

45. Any person subject to military law who, knowing that a mutiny is taking place or is intended -

Failure to suppress
mutiny.
Amended by:
X.2000.2.

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

shall on conviction by court-martial -

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

Insubordinate
behaviour.

- 46.** (1) Any person subject to military law who -
- (a) strikes or otherwise uses violence to, or offers violence to, his superior officer; or
 - (b) uses threatening or insubordinate language to his superior officer,

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

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such.

(2) In the foregoing provisions of this article the expression "superior officer", in relation to any person, means an officer, warrant officer or non-commissioned officer of the regular force, or any such officer of the territorial force while he is subject to military law, who is of superior rank and includes an officer, warrant officer or non-commissioned officer as aforesaid of equal rank but greater seniority while exercising authority as the said person's superior.

Disobedience to
particular orders.

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

(2) Any person subject to military law who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

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

Obstruction of
provost officers.

- 48.** Any person subject to military law who -
- (a) obstructs; or
 - (b) when called on, refuses to assist,

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

49. (1) Any person subject to military law who contravenes or fails to comply with any provision of orders to which this article applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Disobedience to standing orders.

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

Desertion, absence without leave, etc.

50. (1) Any person subject to military law who -

Desertion.

- (a) deserts; or
- (b) persuades or procures any person subject to military law to desert,

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

Provided that a person shall not be liable to be imprisoned for more than two years unless -

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

(2) For the purposes of this Act a person deserts who -

- (a) leaves the service of the force or, when it is his duty to do so, fails to join or rejoin that service, with (in either case) the intention, subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty; or
- (b) being an officer enlists in or enters any part of the force without having resigned his commission, or being a man of the force enlists in or enters any part of the force without having been discharged from his previous enlistment; or
- (c) absents himself without leave with intent to avoid serving at any place overseas, when he is liable so to serve, or to avoid service or any particular service when before the enemy; or
- (d) being an officer or man of the territorial force, fails to appear at the time and place appointed for assembling on embodiment or at the time and place appointed on his being called out for special service, as the case may be, in accordance with directions given under article 26 or article 28, with the intention, subsisting at the

time of failure or formed thereafter, of remaining permanently absent from duty,

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

(3) In addition to or in lieu of any punishment authorised by sub-article (1), the court-martial by whom a man of the regular force is convicted of desertion may direct that the whole or any part of his service previous to the period as respects which he is convicted of having been a deserter shall be forfeited.

Absence without leave.

51. (1) Any person subject to military law who -

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

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

(2) For the purposes of this Act, failure by an officer or man of the territorial force to appear at the time and place appointed for assembling on embodiment or at the time and place appointed on his being called out for special service, as the case may be, in accordance with directions given under article 26 or article 28, shall, if such failure is without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, be deemed to be absence without leave within the meaning of sub-article (1), and this Act shall apply to, or in relation to, such person accordingly.

Assisting and concealing desertion and absence without leave.

52. Any person subject to military law who -

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

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

Falsely obtaining or prolonging leave.

53. Any person subject to military law who for the purpose of obtaining leave or prolonging his leave knowingly makes any false statement to any military authority, to a member of the Police force or to any person authorised by or under instructions of the Commander to act for the purpose of obtaining prolongation of leave shall, on conviction by court-martial be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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

Failure to perform military duty.

Malingering and drunkenness

55. (1) Any person subject to military law who -

Malingering.

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

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

(2) In this article the expression "unfit" includes temporarily unfit.

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

Drunkenness.

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

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

Offences relating to property

57. (1) Any person subject to military law who -

Offences in relation to public and service property.

- (a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at the stealing or fraudulent misapplication of any public or service property; or
- (b) receives, or undertakes or assists in the retention,

removal, disposal or realisation by or for the benefit of another person of, any stolen goods or of goods fraudulently misapplied knowing the same to have been stolen or to have been fraudulently misapplied, where such goods were public or service property; or

- (c) wilfully damages, or is concerned in the wilful damage of, any public or service property, including aircraft or aircraft material; or
- (d) by wilful neglect causes damage by fire to any public or service property; or
- (e) by wilful neglect causes damage to, or the loss of any public or service property consisting of aircraft or aircraft material; or
- (f) without lawful authority disposes of any public or service property consisting of aircraft or aircraft material,

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

(2) Any person subject to military law who, during a state of war, wilfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of the force's aircraft shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if he has not acted wilfully or with wilful neglect he shall not be liable to imprisonment for a term exceeding two years.

Offences in
relation to property
of members of
force.

58. Any person subject to military law who -

- (a) steals or fraudulently misapplies any property belonging to a person subject to military law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
- (b) receives, or undertakes or assists in the retention, removal, disposal or realisation by or for the benefit of another person of, any stolen goods or of goods fraudulently misapplied knowing the same to have been stolen or to have been fraudulently misapplied, where such goods belonged to a person subject to military law; or
- (c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to military law,

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

Miscellaneous
offences relating to
property.

59. Any person subject to military law who -

- (a) loses or by negligence damages any public or service

property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care; or

- (b) by negligence loses or damages any public or service property consisting of aircraft or aircraft materials; or
- (c) is guilty of any act or neglect likely to cause damage to, or the loss of, any public or service property consisting of aircraft or aircraft material; or
- (d) by negligence causes damage by fire to any public or service property; or
- (e) loses or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or
- (f) fails to take proper care of any animal or bird used in the public service which is in his charge; or
- (g) makes away (whether by pawning, selling, destruction or in any other way) with any military decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

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

Provided that it shall be a defence for any person charged under this article with losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

Offences relating to, and by, persons in custody

60. (1) Any person subject to military law who, when another person subject thereto is under arrest -

Irregular arrest and confinement.

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

shall be guilty of an offence against this article.

(2) Any person subject to military law who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer or other officer, or any warrant officer or non-commissioned officer, fails without reasonable cause to deliver -

- (a) at the time of the committal, or

- (b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, shall be guilty of an offence against this article.

(3) Where any person (hereinafter referred to as "the prisoner") is committed to the charge of a person subject to military law who is in command of a guard, then if without reasonable cause that person does not as soon as he is relieved from his guard and any further duty, or, if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is his duty to report -

- (a) a written statement containing, so far as known to him, the prisoner's name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence, and
- (b) if he has received it, the report required by the last foregoing sub-article,

he shall be guilty of an offence against this article.

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

Permitting escape,
and unlawful
release of
prisoners.

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

(2) Any person subject to military law who -

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

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

Resistance to
arrest.

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

(2) Any person subject to military law who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to military law or not, whose duty it is to apprehend him or in whose custody he is, shall be guilty of an offence against this

article.

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

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

Escape from
confinement.

Offences in relation to courts-martial

- 64.** (1) Any person subject to military law who -
- (a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or
 - (b) refuses to swear on oath when duly required by a court-martial to do so; or
 - (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
 - (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or
 - (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or
 - (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

Offences in
relation to courts-
martial.

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

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

65. (1) Any person subject to military law who, having been lawfully sworn as a witness or as an interpreter in proceedings

False evidence.

before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) A person shall not be liable to be convicted of an offence against this article solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Miscellaneous offences

Making of false statements on enlistment.

66. Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part II of this Act, has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall if he has since become and remains subject to military law be liable, on conviction by court-martial, to the like imprisonment as on summary conviction of an offence against article 18 or to any less punishment provided by this Act.

Making of false documents.

67. Any person subject to military law who -

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

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

Offences against civilian population.

68. Any person subject to military law who, in any country or territory outside Malta, commits any offence against the person or property of any member of the civil population shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Scandalous conduct of officer.

69. Every officer subject to military law who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered.

70. If -

Ill-treatment of
officers or men of
inferior rank.

- (a) any officer subject to military law strikes or otherwise ill-treats any officer subject thereto of inferior rank or less seniority or any man of the force subject to military law; or
- (b) any warrant officer or non-commissioned officer subject to military law strikes or otherwise ill-treats any person subject to military law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or any other man of the force,

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

71. A person subject to military law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a period not exceeding two years or any less punishment provided by this Act.

Disgraceful
conduct.

72. Any person subject to military law who -

False accusation,
etc.

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

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

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

Attempts to
commit military
offences.
*Amended by:
X.2000.3.*

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

Conduct to
prejudice of
military discipline.

Civil offences

75. (1) Any person subject to military law who commits a civil offence outside Malta shall be guilty of an offence against this article.

Civil offences.

(2) In this Act the expression "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this article.

(3) A person convicted by court-martial of an offence against this article shall be liable to suffer any punishment or punishments

which a civil court could award for the corresponding civil offence, if committed in Malta, being a punishment or punishments provided by this Act, or such punishment, less than the maximum which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer, or detention in the case of a man of the force, as is so provided.

PART IV

TRIAL AND PUNISHMENT OF MILITARY OFFENCES

Punishments

Punishment of
officers.
Amended by:
X.2000.4.

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

(2) The said scale is:

- (a) imprisonment for life;
- (b) imprisonment for a term not exceeding twenty-five years;
- (c) cashiering;
- (d) dismissal from the service;
- (e) forfeiture in the prescribed manner of seniority of rank;
- (f) fine;
- (g) severe reprimand or reprimand;
- (h) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of Part III and of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale.

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

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

(6) A severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or fine.

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

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

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

Punishment of
other ranks.
Amended by:
X.2000.4.

(2) The said scale is:

- (a) imprisonment for life;
- (b) imprisonment for a term not exceeding twenty-five years;
- (c) dismissal with disgrace from the service;
- (d) dismissal from the service;
- (e) detention for a term not exceeding two years;
- (f) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding ninety days;
- (g) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;
- (h) in the case of a warrant officer or non-commissioned officer, forfeiture in the prescribed manner of seniority or rank;
- (i) where the offence is desertion, forfeiture of service;
- (j) where the offender is on active service on the day of the sentence, forfeiture of pay for a period beginning with the day of the sentence and not exceeding ninety days;
- (k) fine;
- (l) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (m) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purpose of Part III and of this Part of this Act a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale:

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

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

(5) A man of the force sentenced by a court-martial to

imprisonment may in addition thereto be sentenced to dismissal with disgrace from the service or to dismissal from the service.

(6) A man of the force sentenced by a court-martial to dismissal from the service may in addition be sentenced to detention.

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

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

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

(9) Where an offender is on active service when sentence of a court-martial is announced, forfeiture of pay may be awarded in addition to field punishment and, in a case where he is a warrant officer or non-commissioned officer, severe reprimand or reprimand may be awarded in addition to forfeiture of pay.

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

(11) Where an offender has been sentenced by a court-martial under this Act to detention, then if he is subsequently sentenced by a court-martial under this Act to imprisonment any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this sub-article.

(12) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

Field punishment.

78. (1) Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under rules to be made by the Minister or, in the absence of such rules, as may be directed by the commanding officer or the officer appointed to supervise the carrying out of field punishment, and may include confinement in such place and manner as may be provided or directed as aforesaid and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

(2) Rules under this article may contain such incidental and supplementary provisions as appear to the Minister to be requisite for the purposes of the rules.

Fines.

79. (1) The amount of a fine that may be awarded by a court-martial under this Act by way of punishment for an offence -

- (a) except in the case of an offence against article 75, shall not exceed the amount of the offender's pay for twenty-eight days; and

- (b) in the said excepted case, where the civil offence constituting the offence against that article is punishable by a civil court in Malta by a fine, shall not exceed the maximum of that fine.

(2) The amount of a fine that may be awarded by way of punishment for an offence where, under this Act, a charge is dealt with summarily -

- (a) except in the case of an offence against the said article 75, shall not exceed the amount of the offender's pay for fourteen days; and
- (b) in the said excepted case -
 - (i) in any case, shall not exceed the amount mentioned in the foregoing paragraph;
 - (ii) where the civil offence constituting the offence against that article is punishable by a civil court in Malta by a fine of a maximum amount less than the amount so mentioned, shall not exceed that maximum.

(3) For the purposes of this article a day's pay shall, as regards a person found guilty of an offence, be deemed to be the gross pay that is, or would (apart from any forfeiture) be, issuable to that person in respect of the day on which punishment is awarded in respect of the offence.

(4) Nothing in the foregoing provisions of this article shall be taken as affecting the amount of the fine that may be awarded by virtue of article 179(3)(a) or (b) to a person to whom Part III and this Part of this Act apply by virtue of that article.

Arrest

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

Power to arrest offenders.

(2) An officer may be arrested by an officer of the regular force of superior rank, or, if engaged in a quarrel or a disorder, by such an officer of any rank.

(3) A man of the force may be arrested by any officer, warrant officer or non-commissioned officer of the regular force:

Provided that a person shall not be arrested by virtue of this sub-article except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer, non-commissioned officer or other military personnel legally exercising authority under a provost officer or on his behalf, may arrest any officer or man of the force:

Provided that an officer shall not be arrested by virtue of this sub-article except on the order of another officer.

(5) The power of arrest given to any person by this article may

(subject to the provisions of regulations or orders made under article 4) be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Provision for
avoiding delay
after arrest.
Amended by:
LVIII. 1974.68.

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

(2) Wherever any person subject to military law, having been taken into military custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made in the prescribed manner by his commanding officer to the officer who would be responsible for convening the court-martial for the trial of the person under arrest and to the Attorney General, and a similar report shall be made to the like authorities and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this sub-article shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.

(3) For the purposes of article 60(1), the question whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to the provisions of the last foregoing sub-article.

Investigation of, and summary dealing with, charges

Investigation of
charges by
commanding
officer.

82. Before an allegation against a person subject to military law (hereinafter referred to as "the accused") that he had committed an offence against any provision of Part III of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

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

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

(2) After investigation, a charge against a man of the force other than a warrant officer may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions of this Part of this Act.

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

(4) Notwithstanding anything in the foregoing provisions of this article, where -

- (a) the commanding officer has investigated a charge against an officer or warrant officer, or
- (b) the commanding officer has investigated a charge against a man of the force other than a warrant officer which is not a charge which can be dealt with summarily,

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

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

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

Further
proceedings on
charges against
N.C.Os. and
soldiers.
*Amended by:
XIII.1975.2.*

(2) If -

- (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it; or
- (b) the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with,

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

(3) Otherwise the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty he may award one or more of the following punishments, that is to say:

- (a) if the accused is a soldier, detention for a period not exceeding twenty-eight days or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days;
- (b) if the accused is a soldier who is on active service on the day of the sentence, forfeiture of pay for a period beginning with the day of the sentence and not exceeding twenty-eight days;
- (c) fine;
- (d) if the accused is a non-commissioned officer, severe reprimand or reprimand;
- (e) where the offence has occasioned any expense, loss or damage, stoppages;
- (f) any of the following minor punishments, that is to say:

- (i) admonition;
- (ii) extra guards not exceeding three in number;
- (iii) confinement to barracks outside normal working hours up to a maximum of five hours in any one day for a period not exceeding fourteen days; or
- (iv) such other minor punishment for the time being prescribed:

Provided that no forfeiture of pay, fine or minor punishment shall be awarded for an offence for which detention is awarded, and that no fine shall be awarded for an offence for which field punishment or forfeiture of pay is awarded.

(4) Where the accused is a lance-corporal or lance-bombardier, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to be reduced to the ranks.

(5) Where an accused is an acting warrant officer or non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank or to assume an acting rank lower than that held by him but higher than his permanent rank or, where his permanent rank is that of lance-corporal or lance-bombardier, to forfeit his acting rank and be reduced to the ranks.

(6) Notwithstanding anything in sub-article (3), where the commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award a punishment other than fine or stoppages not exceeding seven days' pay, severe reprimand, reprimand or a minor punishment, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay exceeding seven days, the commanding officer shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(7) Where the charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference the four last foregoing sub-articles shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

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

85. (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, or the case is one where he has power, and proposes, to direct trial by field general court-martial submit it in the prescribed manner to higher authority; and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with the two next following sub-articles.

Further proceedings on charges against officer and warrant officers.
Amended by:
XIII. 1975.3.

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

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

(4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty:

Provided that if in the course of investigating the charge the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.

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

- (a) forfeiture in the prescribed manner of seniority of rank;
- (b) fine;
- (c) severe reprimand or reprimand;
- (d) where the offence has occasioned any expense, loss or damages, stoppages,

except that he may not award both forfeiture of seniority of rank and fine.

(6) Notwithstanding anything in sub-article (4), where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award forfeiture of seniority, fine or stoppages exceeding seven days' pay, or where a finding of guilty will involve a forfeiture of pay exceeding seven days, the authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

86. (1) Notwithstanding anything in the two last foregoing articles, where a charge -

Dismissal of charges referred to higher authority.

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

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

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

Confession of
desertion by man
of the force.

87. (1) Where in such manner as may be prescribed or as the Commander may approve a man of the regular force signs a written confession that he has been guilty of desertion, his commanding officer may, notwithstanding anything in the foregoing provisions of this Part of this Act, submit the confession for the consideration of the Commander or such officer not below the rank of colonel as may be prescribed.

(2) After considering any such confession the Commander or such officer as aforesaid may direct that the offence shall not be tried by court-martial or dealt with summarily by the appropriate superior authority or commanding officer, and if such a direction is given the period of his service as respects which he confesses to have been a deserter shall be forfeited.

(3) A direction under the last foregoing sub-article may further provide that the whole or any part of the offender's service previous to that as respects which he confesses as aforesaid shall also be forfeited.

(4) Article 16(2) to (5) shall apply in relation to the forfeiture of service by virtue of this article subject to the following modifications:

- (a) for references to an award of forfeiture of service by the court-martial there shall be substituted references to the direction;
- (b) for references to the date on which the offender was convicted there shall be substituted references to the date on which the direction was given.

Officers who are to
act as commanding
officers and
appropriate
superior
authorities.

88. (1) In this Act the expression "commanding officer", in relation to a person charged with an offence, means such officer having powers of command over that person as may be prescribed.

(2) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say:

- (a) the Commander;
- (b) in the absence of the Commander, the deputy Commander;
- (c) such other officer as may be prescribed.

(3) Power conferred by this Act to prescribe in respect of matters referred to in this article shall include power to confer on officers, or any class of officers, authorised to exercise the

functions of commanding officer power to delegate those functions, in such cases and to such extent as may be prescribed, to officers of a class as may be prescribed.

89. (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may be prescribed.

Limitation of powers of summary dealing with charges.

(2) In such cases as may be prescribed, the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be prescribed.

Courts-martial: General provisions

90. (1) Subject to the provisions of this article, a charge which is to be tried by court-martial shall be tried either by general court-martial or by district court-martial.

Trial to be by general or district court-martial, or in certain cases by field general court-martial.

(2) Where the officer commanding a body of the force on active service -

- (a) being an officer to whom under article 85(1) a charge has been submitted for determination how it is to be dealt with; or
- (b) being the accused's commanding officer who has investigated a charge which cannot be dealt with summarily or which in his opinion ought not to be so dealt with; or
- (c) being the accused's commanding officer or the appropriate superior authority who has investigated a charge on which the accused has elected to be tried by court-martial,

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

91. (1) A general court-martial shall have power to try any person subject to military law for any offence which under this Act is triable by court-martial, and to award for any such offence any punishment authorised by this Act for that offence.

Powers of different descriptions of court-martial.
Amended by:
X.2000.6.

(2) A district court-martial shall have the powers of a general court-martial except that it shall not try an officer or sentence a warrant officer to imprisonment, dismissal with disgrace, dismissal or detention, and shall not award the punishment of imprisonment for a term exceeding two years.

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

Officers having
power to convene
courts-martial.
Amended by:
LVIII. 1974.68.

92. (1) A general court-martial may be convened by any officer authorised by the President of Malta by warrant under his hand to convene general courts-martial or that court-martial, or by any officer under the command of an officer authorised as aforesaid to whom the last-mentioned officer has, in the exercise of a power conferred by the warrant issued to him, delegated his power to convene general courts-martial.

(2) A district court-martial may be convened by an officer authorised to convene general courts-martial or by any person under the command of such an officer whom that officer has authorised to convene district courts-martial.

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

(4) Any warrant under this article, or any authorisation under this article to convene courts-martial -

- (a) may be made subject to restrictions, reservations, exceptions or conditions;
- (b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and successors;
- (c) may be varied or may be revoked, either wholly or in part, by a subsequent warrant of the President of Malta or, as the case may be, by the officer by whom it was given or his successor in office.

Constitution of
general courts-
martial.

93. (1) A general court-martial shall consist of the president and not less than four other officers.

(2) An officer shall not be appointed a member of a general court-martial unless he belongs to the force, is subject to military law and has held a commission in the force or in any of the forces of a Commonwealth country for a period of not less than three years or for periods amounting in the aggregate to not less than three years.

(3) Not less than four of the members of a general court-martial shall be of a rank not below that of captain.

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

(5) The members of a general court-martial, other than the president, shall be appointed by order of the convening officer or in

such other manner as may be prescribed.

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

94. (1) A district court-martial shall consist of the president and not less than two other officers.

Constitution of district courts-martial.

(2) An officer shall not be appointed to be a member of a district court-martial unless he belongs to the force, is subject to military law and has held a commission in the force or in any of the forces of a Commonwealth country for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3) The president of a district court-martial shall be appointed by order of the convening officer and shall not be under the rank of field officer wherever it is practicable to appoint such an officer or unless in the opinion of the convening officer a field officer having suitable qualifications is not, with due regard to the public service, available; and in any event the president of a district court-martial shall not be under the rank of captain.

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

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

Constitution of field general courts-martial.

(2) The members of a field general court-martial shall be persons belonging to the force and subject to military law.

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

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

96. (1) The officer who convened a court-martial shall not be a member of that court-martial:

Supplementary provisions as to constitution of courts-martial.

Provided that if in the case of a field general court-martial it is not practicable in the opinion of the convening officer to appoint another officer as president, he may himself be president of the court-martial.

(2) An officer who at any time between the date on which the accused was charged with the offence and the date of the trial has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of a general or

district court-martial or act as judge advocate at such a court-martial.

(3) Where -

- (a) the officer convening a general or district court-martial appoints a captain to be president, either because it is not practicable to appoint a field officer or because he is of opinion that a field officer having suitable qualifications is not, with due regard to the public service, available; or
- (b) an officer directs that an offender shall be tried by a field general court-martial, being of opinion that it is not possible without serious detriment to the public service that the offender should be tried by a general or district court-martial, or the officer convening a field general court-martial appoints two officers only to be members of the court, being of opinion that three officers having suitable qualifications are not, without serious detriment to the public service, available, or appoints himself to be president, being of opinion that it is not practicable to appoint another officer as president,

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

Place for sitting of courts martial.

97. (1) Subject to the provisions of this article, a court-martial shall sit at such place (whether within or outside Malta) as may be specified in the order convening the court; and the convening officer may convene it to sit at a place outside the limits of his command.

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

Courts-martial: Provisions relating to trial

Challenges by accused.

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

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

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

(4) If objection is made to the president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.

(5) If objection is made to a member of the court other than the

president and not less than one-half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

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

Administration of oaths.

(2) Every witness before a court-martial shall be examined on oath:

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

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

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

Courts-martial to sit in open court.

(2) Nothing in the last foregoing sub-article shall affect the power of a court-martial to sit *in camera* on the ground that it is necessary or expedient in the interest of the administration of justice to do so; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.

(4) A court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.

101. (1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve

Dissolution of courts-martial.

the court-martial.

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

(3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then -

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

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

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

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

Decisions of
courts-martial.
Amended by:
X.2000.7.

102. (1) Subject to the provisions of this article, every question to be determined on a trial by court-martial shall be determined by a majority of the votes of the members of the court.

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

(3) A finding of guilty where the only punishment which the court can award is imprisonment for life shall not have effect unless it is reached with the concurrence of all the members of the court; and where on such a finding being come to by a majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.

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

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

Finding and
sentence.

103. (1) Without prejudice to the provisions of article 100, the finding of a court-martial on each charge shall be announced in open court.

(2) A finding of guilty shall be, and be announced as being, subject to confirmation.

(3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court, and a sentence of a court-martial shall be, and be announced as being,

subject to confirmation.

104. (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.

Power to convict of offence other than that charged.

(2) An accused charged before a court-martial with any offence under this Act may be found guilty of attempting to commit that offence or the corresponding civil offence; and if an accused is charged with attempting to commit an offence under this Act he may be convicted on that charge notwithstanding that it is proved that he actually committed the offence or the corresponding civil offence.

(3) Where in relation to an offence under this Act it is prescribed that an accused charged before a court-martial with such offence may be found guilty of another offence which is prescribed in relation thereto, an accused charged as aforesaid may be found guilty of another offence prescribed as aforesaid in relation to an offence with which he is charged.

105. (1) The rules relating to evidence to be observed in proceedings before courts-martial shall, saving any provision of this Act and of any rules made thereunder, be the same as those observed in civil courts in Malta, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in Malta.

Rules of evidence.

(2) For the purposes of this article an investigation carried out under this Act in respect of a charge shall be treated as an inquiry into a criminal offence held in accordance with the [Criminal Code](#).

Cap. 9.

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

106. Where in Malta any person not subject to military law -

Offences by civilians in relation to courts-martial.
Amended by:
VIII. 1990.3.

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

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

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

the president of the court-martial may certify the offence of that person under his hand to the Court of Magistrates, and that court shall thereupon cause a charge to be issued against the person named in the certificate and deal with such person in respect of the alleged offence in like manner as if the offence were that of contempt of the said court.

Offences: Procedure

Rules of
Procedure.

107. (1) Subject to the provisions of this article, the Minister may make rules (hereinafter referred to as Rules of Procedure) with respect to the procedure to be observed in, and any other matter relating to, the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities and the confirmation and revision of, and the appeals from, finding and sentences of courts-martial, as well as with respect to any matter which by Part III or by this Part of this Act is required or authorised to be prescribed:

Provided that where the rules provide for the power to amend charges the rules shall secure that the accused shall not be thereby prejudiced in his defence and the power aforesaid shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

(2) Rules of Procedure may further make provision as to the exercise by a judge advocate of his functions at a trial by court-martial and, without prejudice to the generality of the foregoing provisions of this sub-article, may make provision -

- (a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law (which expression in this sub-article includes questions as to the joinder of charges and as to the trial of persons jointly or separately);
- (b) for requiring or authorising the president of a court-martial, in such cases as may be specified in the rules, to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the

provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the rules.

(3) Rules of Procedure may determine the cases in which and the extent to which courts-martial may, in sentencing the accused for any offence for which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him, and empower the court, in such cases, to direct the making of such deductions from the offender's pay as the court would have had the power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

(4) The provisions of article 4(4) and (5) shall apply to rules made under this article as they apply to regulations or orders made under that article with the substitution of references to Rules of Procedure for references to regulations or orders made under the said article.

Confirmation, revision and review of proceedings of courts-martial

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

Confirmation of proceedings of courts-martial.

(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this sub-article shall not affect the keeping of the accused in custody pending confirmation or the operation of the two next following articles or the provisions of this Act as to confirmation or approval.

109. At any time after a court-martial has sentenced the accused, or has found the accused to be unfit to stand his trial or to be not guilty by reason of insanity, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both.

Petitions against finding or sentence.

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

Revision of findings of courts-martial.

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

(2) Any such direction shall be accompanied by the necessary directions for the re-assembly of the court, and shall contain a statement of the reasons for the direction.

(3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which

the court could originally have come at the trial in lieu of the finding under revision.

(4) On any such revision the court shall not have power to receive further evidence.

(5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

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

(6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

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

Powers of
confirming
officers.

111. (1) Subject to the provisions of the last foregoing article and to the following provisions of this article, a confirming officer shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is under all the circumstances of the case unsafe or unsatisfactory or involves a wrong decision on a question of law or that there was material irregularity in the course of the trial, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming authority:

Provided that the confirming officer may, notwithstanding that he is of opinion that he would apart from this proviso withhold confirmation of the finding, confirm the finding if he considers that no miscarriage of justice has actually occurred.

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

- (a) some other finding of guilty could have been validly made by the court-martial on the charge before it, and
- (b) he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,

substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by sub-article (4) should be exercised, or a confirming officer may, if he is of opinion that the case is not one where there should have been a finding of

not guilty, but that there should have been a finding that the accused was unfit to stand his trial, substitute a finding that the accused was unfit to stand his trial.

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

(4) In confirming the sentence of a court-martial, a confirming officer may -

- (a) remit in whole or in part any punishment awarded by the court; or
- (b) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.

(5) In confirming any sentence, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this sub-article.

(6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

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

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

112. (1) Subject to the provisions of this article, the following shall have power to confirm the finding and sentence of any court-martial, that is to say:

Confirming officers.

- (a) the officer who convened the court-martial or any officer superior in command to that officer;
- (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer;
- (c) failing any such officer as aforesaid, any person appointed by the Minister to act as confirming officer, whether for a particular case or for a specified class of cases.

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

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

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

(3) A warrant or authorisation empowering the convening of a general or district court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the warrant or authorisation, and the powers conferred by sub-article (1) shall be exercisable subject to any such reservation.

Recommendation by court-martial on passing of sentence of imprisonment for life.

Amended by:
LVIII. 1974.68.
Substituted by:
X.2000.8.
Amended by:
XXI of 2020.

113. After sentencing any person to imprisonment for life, the court-martial may recommend in writing to the Commander within twenty-four hours the minimum period which in its view should lapse before the prisoner is released from prison. Such recommendation shall be made available to the person sentenced.

Review of findings and sentences of courts-martial.

Amended by:
LVIII. 1974.68;
L.N. 148 of 1975.

114. (1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under article 109 against the finding or sentence then, subject to the provisions of this article, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

(2) The reviewing authorities for the purposes of this Act are the following:

- (a) the President of Malta;
- (b) a judge designated for the purpose by the President of Malta.

(3) If an appeal is lodged to the Court of Criminal Appeal, so much of sub-article (1) as requires the review of a finding or sentence against which the appeal has been made shall thereupon cease to apply to the finding to which the appeal relates and the sentence passed in consequence of that finding.

- (4) On a review under this article the reviewing authority may -
 - (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence;

- (b) in so far as the review is of a sentence, quash the sentence;
- (c) in any case exercise the like powers of substituting findings, substituting valid for invalid sentences, and remitting or commuting punishment as are conferred on a confirming officer by article 111(2) to (4),

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

(5) Where a reviewing authority exercises any of the powers conferred by the last foregoing sub-article, the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

(6) The provisions of article 508 of the [Criminal Code](#) shall apply in relation to a review by a reviewing authority under this article as they apply in relation to an appeal to the Court of Criminal Appeal, with such modifications and adaptations as are referred to in article 116.

Cap. 9.

115. Sentences of imprisonment and detention may be reconsidered by the Commander at any time after confirmation; and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it shall be remitted accordingly.

Reconsideration of sentences of imprisonment and detention.

Appeals from courts-martial

116. (1) The Court of Criminal Appeal (hereinafter referred to as "the Appeal Court") constituted as provided in article 498(2) of the [Criminal Code](#) shall, in addition to the jurisdiction conferred on it by the Code, have jurisdiction to hear and determine appeals from courts-martial.

Court of Criminal Appeal to be appeal court.
Amended by:
L.N. 148 of 1975.
Cap. 9.

(2) Subject to the provisions of this Act, the provisions of the said Code relating to the Appeal Court and to appeals made to that court under Title V of Part I of Book Second of that Code shall apply to the Appeal Court in the exercise of its jurisdiction under this Act and to appeals made under this Act, and the provisions relating to a re-trial ordered by the said court shall, in so far as they refer to the Criminal Court, apply to a court-martial upon such a re-trial, but shall so apply with such modifications and adaptations as are necessary to give effect to the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, with the substitution of references to court-martial for references to jury or to Criminal Court, of references to charge for references to indictment, and of references to finding for references to verdict.

117. (1) Subject to the provisions of this Act, a person convicted by court-martial may appeal to the Appeal Court against his conviction or, except where the sentence is one fixed by law, against the sentence passed on his conviction.

Right of appeal.

(2) Subject as aforesaid, the person's right of appeal shall not be exercisable -

(a) unless such person has

- (i) within forty days next following the day on which the finding of the court-martial was promulgated, if the court-martial was held in Malta; or
- (ii) in any other case, within sixty days next following the day on which the finding of the court was promulgated,

presented a petition against finding or sentence or both in accordance with article 109; and

(b) until either the period of thirty days (beginning with the day on which the petition is presented) expires or he is notified by the Commander that the petition has not been granted, whichever event first occurs.

(3) If a person presents a petition for the purposes of sub-article (2)(a), but fails to do so within the period therein specified, and subsequently applies to the Appeal Court for leave to appeal, the Appeal Court may direct that he be treated as not having thereby lost his right of appeal if it is of the opinion that there is a reasonable explanation of the failure and that it is in the interests of justice that he should be so treated.

Manner and time
of lodging appeal.
Amended by:
LVIII. 1974.68.

118. (1) Subject to the provisions of this article, an appeal under this Part of this Act shall be brought before the Appeal Court by an application to be filed within thirty days next following the day on which either the period specified in article 117(2)(b) has expired or the person convicted is notified as provided in the said paragraph, whichever event first occurs.

(2) The Appeal Court may extend the period within which an appeal to it may be lodged, whether the period has expired or not.

(3) A copy of the application shall be served on the Attorney General at least ten days before the day appointed for the hearing of the appeal, unless the Appeal Court shall in any case of urgency direct service with a shorter notice.

Proceedings of the
court-martial.
Amended by:
LVIII. 1974.68;
XXIV.1995.362.

119. (1) On an appeal being lodged under this Part of this Act, the Registrar of Courts (hereinafter referred to as "the registrar") shall request the Attorney General to furnish to him the proceedings of the court-martial and any petition presented by the appellant under article 109.

(2) After an appeal is finally determined or is abandoned, the registrar shall, subject to any order which the Appeal Court may make, return the proceedings of the court-martial and any petition to the Attorney General.

(3) At any time after an appeal is lodged as aforesaid the appellant may, subject to sub-article (5), obtain from the registrar copies of any document in his possession for the purposes of the appeal.

(4) Such copies shall be supplied by the registrar to the appellant on payment therefor of such reasonable charges as the registrar may fix, or, if the appellant has been allowed free legal aid, free of charge; provided that nothing in this article shall require the registrar to supply free of charge any copy of a document which he considers unnecessary for the purposes of the appeal.

(5) If the Minister certifies that for reasons of security the whole or part of the court-martial proceedings or other document, or of any exhibit or other thing, ought not to be disclosed otherwise than to the Appeal Court, or ought to be disclosed only subject to such conditions as he may specify, the registrar shall permit inspection or supply a copy thereof only in pursuance of an order of the Appeal Court and subject to such conditions, if any, as that court may direct.

120. (1) A person who has been tried by court-martial for an offence and been found not guilty by reason of insanity may appeal to the Appeal Court against that finding; and the provisions of the four last foregoing articles shall apply to any such appeal.

Appeal from finding of insanity and unfitness to stand trial.

(2) A person found by a court-martial to be unfit to stand trial may appeal to the Appeal Court against the finding and, subject to the next following sub-articles, the provisions of the four last foregoing articles shall apply to any such appeal.

(3) Where the question whether the accused was unfit to stand his trial was determined by the court-martial at a time later than on arraignment, the appeal may be allowed (notwithstanding that the finding was properly arrived to) if the Appeal Court is of the opinion that the case is one in which the court-martial should have before that time have come to a finding of not guilty.

(4) If the Appeal Court is of that opinion, it shall substitute a finding of not guilty (but not a finding of not guilty by reason of insanity) and the appellant shall then not be liable to be tried by a court-martial or by any other court for the offence with which he was charged.

(5) Where the appeal is allowed and the Appeal Court does not substitute a finding of not guilty, the appellant may be tried accordingly for the said offence; and if he is for the time being detained for reasons of mental health the court may make such order as appears to it to be necessary or expedient pending any such trial in respect of his detention.

Review of summary findings and awards

121. (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, any officer superior in command to the officer who dealt summarily with the charge may at any time review the finding or award.

Review of summary findings and awards.

(2) When on a review under this article it appears to the reviewing officer expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of

the reviewing officer involved substantial injustice, the said officer may quash the finding.

(3) If a finding in any proceedings is quashed under the last foregoing sub-article and the award made in those proceedings relates only to the finding quashed the reviewing officer shall also quash the award; and if the award relates also to any other finding and it appears to the said officer that the award was not warranted by this Act in respect of that other finding, he may vary the award by substituting such punishment or punishments as he may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the reviewing officer more severe than the punishment or punishments included in the original award.

(4) Where on a review under this article it appears to the reviewing officer that a punishment awarded was invalid, or too severe, or, where the award included two or more punishments, that those punishments or some of them could not validly have been awarded in combination, or are, taken together, too severe, he may vary the award by substituting such punishment or punishments as he may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the reviewing officer more severe than the punishment or punishments included in the original award.

Findings of insanity

Provisions where
accused found
insane.
Amended by:
XVIII. 1976.52;
X.2000.9.

Cap. 525.

122. (1) Where, on the trial of a person by court-martial, it appears to the court that the accused is unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this article the accused shall be kept in custody in Mount Carmel Hospital there to remain in custody and detained according to the provisions of the [Mental Health Act](#), or any other provision of law or enactment applicable to the case, and those provisions shall apply to the accused accordingly. For the purposes of this sub-article "unfit to stand trial" means unfit to stand trial by reason of insanity.

(2) Where, on trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was not guilty of that offence by reason of insanity, and thereupon the accused shall be kept in custody in Mount Carmel Hospital there to remain in custody and detained according to the provisions of the [Mental Health Act](#), or any other provision of law or enactment applicable to the case, and those provisions shall apply to the accused accordingly.

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

(4) Where, on the trial of a person by court-martial, the

question arises (at the instance of the defence or otherwise) whether the accused is unfit to stand his trial, the following provisions shall have effect:

- (a) the court, if having regard to the nature of the supposed disability the court is of opinion that it is expedient to do so and in the interests of the accused, may postpone consideration of the question until any time up to the opening of the case for the defence and if before the question falls to be determined by it, the court finds the accused not guilty of the charge or each of the charges on which he is being tried, the question shall not be determined;
- (b) subject to paragraph (a) above, the question shall be determined as soon as it arises;
- (c) where the accused is found unfit to stand his trial, the trial shall not proceed or further proceed, but if the question is determined at a time later than on arraignment the confirming officer or reviewing authority may substitute a finding of not guilty (other than finding of not guilty by reason of insanity), if of opinion that the court should before that time have come to such a finding.

(5) The provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court-martial in question) apply in relation to such findings as are provided for by sub-article (2) as those provisions apply in relation to findings of guilty.

(6) Where the confirming officer or reviewing authority substitutes for a finding of not guilty by reason of insanity a finding of guilty of an offence, the confirming officer or reviewing authority shall have the like power of sentencing the accused and other powers as the court-martial would have had on the like finding of guilty, and any sentence imposed shall be promulgated and have effect as would a sentence duly substituted by the confirming officer or the reviewing authority for a sentence of the court-martial.

(7) Where in pursuance of a finding of not guilty by reason of insanity a person is detained for reasons of mental health, and the reviewing authority quashes the finding (without substituting another finding) then, if the reviewing authority is of opinion -

- (a) that the person in question is suffering from mental disorder of a nature or degree which warrants his detention in a hospital under observation (with or without other medical treatment) for at least a limited period; and
- (b) that he ought to be so detained in the interest of his own health or safety or with a view to the protection of other persons,

the reviewing authority shall make an order for his continued

detention; and the order shall be sufficient authority for him to be detained, and he shall be so detained according to the foregoing provisions of this article as if the findings had not been quashed.

Functions of Attorney General in relation to courts-martial

Functions of
Attorney General
in relation to
courts-martial.
Amended by:
LVIII. 1974.68.

123. Regulations and rules made in pursuance of this Act and regulations made by the Minister by virtue of this article may confer on the Attorney General such functions of considering and reporting on the proceedings of courts-martial and such other functions in relation to such courts as the authority making the regulations or rules may deem proper; and nothing in the foregoing provisions of this Part of this Act shall prejudice the exercise of any such functions.

Commencement, suspension and duration of sentences

Commencement of
sentences.

124. (1) A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to the provisions of this article, begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender, or, as the case may be, was originally awarded by his commanding officer.

(2) A sentence of imprisonment or detention passed by a court-martial on a man of the force which is suspended in pursuance of article 126 before he has been committed to prison or other establishment shall not begin to run until the beginning of the day on which the suspension is determined:

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

Duration of
sentence of
imprisonment and
detention.

125. (1) Where a man of the force has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of the next following article after he has been committed to prison or other establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with the provisions of the next following article until the beginning of the day on which the suspension is determined.

(2) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into military custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that any time, during the last mentioned period, during which he proves to have been in the custody of a civil authority or of such other authority as respects which arrangements have been made under article 129, shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

(3) Without prejudice to sub-article (2), where a person serving a military sentence of imprisonment or detention has lawfully been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(4) A person who for any period is released as mentioned in the last foregoing sub-article or who is otherwise lawfully allowed out of any military or other establishment or otherwise out of custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of sub-article (2) as being unlawfully at large.

126. (1) Without prejudice to the provisions of sub-article (5) of article 111, in confirming a sentence of imprisonment or detention passed by a court-martial on a man of the force, the confirming officer may order that the sentence shall be suspended; and any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the authority reviewing or reconsidering the sentence.

Suspension of sentences.

(2) The suspension of any such sentence may (without prejudice to its being again suspended) be determined on the review or reconsideration of the sentence by an order of the said authority committing the person sentenced to imprisonment or detention, as the case may be.

(3) Where while any such sentence is suspended, the person sentenced is sentenced by a court-martial to imprisonment or detention from a fresh offence then (unless the balance of the earlier sentence is remitted by virtue of article 77(11)) -

- (a) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively;
- (b) if the court does not exercise the powers conferred by the last foregoing paragraph, the confirming officer may exercise those powers on the confirmation of the later sentence;
- (c) if neither the court nor the confirming officer exercises the said powers, a reviewing authority may exercise those powers on the review of the later sentence;

- (d) where the said powers are exercised (whether by the court, the confirming officer or a reviewing authority) any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

Provided that this sub-article has effect subject to the provisions of article 77 (12).

(4) Without prejudice to the further suspension of the earlier sentence, an order under the last foregoing sub-article directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.

(5) Where the sentence of a person in custody is suspended, he shall thereupon be released.

Execution of sentences of imprisonment and detention

Execution of sentences of death.
Amended by:
XI. 1977.2.

127. Repealed by Act [X.2000.10](#).

Imprisonment and detention rules.

128. (1) The Minister may make rules (in this Act referred to as Imprisonment and Detention Rules) with respect to all or any of the following matters:

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

members of the staff, of military establishments.

(2) Until Imprisonment and Detention Rules are made a sentence of imprisonment under this Act shall be served in the Civil Prisons, and a sentence of detention under this Act shall be served in a detention barrack or in military custody but not in a prison.

(3) Subject to any provision contained in Imprisonment and Detention Rules, a military prisoner shall, while in a civil prison, be confined and otherwise dealt with in the same manner as a civil prisoner under a like sentence of imprisonment.

(4) The provisions of article 4(5) and (6) shall apply to Imprisonment and Detention Rules as they apply to regulations and orders made under that article.

129. (1) The Minister may from time to time make arrangements with the authorities of any country or territory outside Malta whereby military sentences of imprisonment or detention may in accordance with Imprisonment and Detention Rules or in accordance with any such arrangements be served wholly or partly in establishments under the control of those authorities.

Arrangements for serving of sentences outside Malta.

(2) The powers conferred on the Minister by article 128 shall extend to the making of such provision as appears to him necessary or expedient for giving effect to any arrangements made under the last foregoing sub-article.

Trial of persons ceasing to be subject to military law and time limits for trials

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

Trial and punishment of offences under military law notwithstanding offender ceasing to be subject to military law.

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

(3) Where by virtue of either of the two last foregoing sub-articles a person is treated as being at any time subject to military law for the purposes of any provision of this Act, that provision

shall apply to him -

- (a) if he holds any military rank, as to a person having that rank;
- (b) otherwise as to a person having the rank which he had when last actually subject to military law:

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

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

Limitation of time
for trial of offences
under military law.
Amended by:
LVIII. 1974.68.

131. (1) No person shall be tried by court-martial for any offence, other than one against article 44 or 45 or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent:

Provided that -

- (a) in the case of an offence against article 75 where proceedings for the corresponding civil offence must, by virtue of any enactment, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said article 75 in substitution for the foregoing provisions of this sub-article;
- (b) subject to any such limit of time as is mentioned in the last foregoing paragraph, a person may be tried by court-martial for a civil offence notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney General consents to the trial.

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

(3) A person shall not be triable by virtue of sub-article (1) of the last foregoing article unless his trial is begun within three months after he ceases to be subject to military law or the trial is for a civil offence and the Attorney General consents to the trial:

Provided that this sub-article shall not apply to an offence against article 44 or 45 or desertion.

(4) A person shall not be arrested or kept in custody by virtue of sub-article (1) of the last foregoing article for an offence at any time after he has ceased to be triable for the offence.

Relations between military law and civil courts and finality of

*trials***132.** (1) Where a person subject to military law -

Jurisdiction of civil courts.

- (a) has been tried for an offence by a court-martial or has had an offence committed by him taken into consideration by a court-martial in sentencing him; or
- (b) has been charged with an offence under this Act and has had the charge dealt with summarily by his commanding officer or the appropriate superior authority,

a civil court shall be debarred from trying him subsequently for an offence substantially the same as that offence; but except as aforesaid nothing in this Act shall be construed as restricting the jurisdiction of any civil court to try a person subject to this Act for an offence.

(2) For the purposes of this article -

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence, or of a finding by the court-martial that he is not guilty of the offence by reason of insanity;
- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence is withheld or the sentence is quashed;
- (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof.

133. (1) Where a person subject to military law -

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

- (a) has been tried for an offence by a competent civil court, wherever situated, or a court-martial; or
- (b) has had an offence committed by him taken into consideration when being sentenced by a court-martial or by any such civil court as aforesaid; or
- (c) has been charged with an offence under this Act and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority; or
- (d) has had an offence condoned by his commanding officer,

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

(2) For the purposes of this article -

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence or of a finding by the court-martial that he is not guilty of the offence by reason of insanity;
- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed;
- (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;
- (d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;
- (e) a person ordered under article 64(2) to be imprisoned or to undergo detention for an offence against that article shall be deemed to have been tried by court-martial for the offence.

(3) Where confirmation of a finding of guilty of an offence or of a finding of not guilty of an offence by reason of insanity is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the latter court is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

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

Inquiries

Boards of Inquiry.
Amended by:
L.N. 148 of 1975.

134. (1) Subject to and in accordance with the provisions of rules made under this article (hereinafter referred to as "Board of Inquiry Rules"), the Commander or any officer of the force empowered by or under such rules so to do may convene a board of inquiry to investigate and report on the facts relating to -

- (a) the absence of any person subject to military law;
- (b) the capture of any such person by the enemy;
- (c) the death of any person in a military establishment where an inquiry into the death is not required to be held by any civil authority;
- (d) any other matter of a class specified in such rules or

referred to such a board by the Commander or any such officer as aforesaid,

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matter referred to the board.

(2) A board of inquiry shall consist of a president, who shall be an officer not below the rank of captain and be subject to military law and not less than two other members each of whom shall either be a person so subject or be a person not so subject who is in the service of the Government of Malta.

(3) Subject to the provisions of this article, board of inquiry rules may make provision with respect to the convening, constitution and procedure of boards of inquiry and, without prejudice to the generality of the foregoing, may make provision with respect to all or any of the following matters:

- (a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with;
- (b) without prejudice to the provisions of the next following article, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the rules;
- (c) such incidental and supplementary matters as appear requisite for the purpose of the rules.

(4) Board of Inquiry Rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the rules.

(5) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against article 65 or for an offence against article 75 where the corresponding civil offence is perjury.

(6) The power to make Board of Inquiry Rules shall be exercised by the Minister; and the provisions of article 4(5) and (6) shall apply to such rules as they apply to regulations and orders made under that article.

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

Inquiries into
absence.

(2) A record entered in pursuance of the last foregoing sub-article shall, unless the absentee subsequently surrenders, or is arrested, or the report of the board of inquiry is annulled by the Commander or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

Regimental
inquiries. *Amended*
by:
L.N. 148 of 1975.

136. (1) An officer of the force authorised in that behalf by or under regulations made by the Minister under this article may cause an inquiry to be held in such manner and by such person or persons as may be specified by or determined under such regulations (being a person or persons each of which is either subject to military law or, not being so subject, is in the service of the Government of Malta), into any matter so specified or determined:

Provided that an inquiry shall not be held in pursuance of this article into:

- (a) the absence of a person subject to military law; or
- (b) the capture of any such person by the enemy.

(2) Regulations under this article may make provision as to the rules of evidence to be observed at inquiries held in pursuance of this article and the taking of evidence at such inquiries, and may authorise the taking of evidence on oath or affirmation, and the administration of oaths, in such cases as may be specified by or under the regulations.

(3) Article 134(4) and (5) shall apply in relation to inquiries held in pursuance of this article with the substitution of references to regulations under this article for references to Board of Inquiry Rules and of references to an inquiry held in pursuance of this article for references to a board of inquiry; and of article 4(5) and (6) shall apply to regulations made under this article as they apply to regulations made under that article.

Miscellaneous provisions

Appointment of
judge advocates.
Amended by:
LVIII. 1974.68.

137. The appointment of a person to act as judge advocate at any court-martial shall be made by the Attorney General or on his behalf and, in cases where it is not practicable for him to do so, may be made by the convening officer.

Promulgation.

138. Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be prescribed or as the confirming officer or reviewing authority, as the case may be, may direct.

Custody of
proceedings of
courts-martial and
right of accused to
a copy thereof.
Amended by:
LVIII. 1974.68.

139. (1) The record of the proceedings of a court-martial shall be kept in the custody of the Attorney General for not less than six years, being a period sufficient to ensure that the rights conferred by the two next following sub-articles shall be capable of being exercised.

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

record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his heirs, or any person who in the opinion of the Attorney General ought to be treated for the purposes of this sub-article as his heirs, shall, subject to the provisions of this article, be entitled to obtain from the Attorney General on demand at any time within the period of twelve months from the death and on payment therefor at the prescribed rate a copy of the record of the proceedings of the court.

(4) If, on an application in pursuance of either of the two last foregoing sub-articles for a copy of the record of any proceedings, the Minister certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

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

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

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

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

Indemnity for
prison officers,
etc.

141. (1) Where any matter authorised or required by Part III or by this Part of this Act to be prescribed may not appropriately or conveniently be prescribed by the Rules of Procedure, any such matter may be prescribed by regulations under this article.

Additional
regulations.

(2) Regulations under this article may be made by the Minister, and the provisions of article 4(5) and (6) shall apply to such regulations as they apply to regulations made under that article.

142. (1) The following provisions shall have effect where a person has been convicted by court-martial of an offence against articles 43, 57(1) or 58, or of a corresponding civil offence under article 75, or of otherwise unlawfully obtaining any property.

Restitution or
compensation for
theft, etc.

(2) If any property unlawfully obtained as aforesaid has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.

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

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

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

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

(7) An order under this article may be made by the court-martial by whom the offender is convicted, by the confirming officer, or by a reviewing authority; and in this article the expression "appearing" means appearing to the court, officer or authority making the order.

(8) An order under this article made by a court-martial shall not have effect until confirmed by the confirming officer; and the provisions of this Part of this Act as to confirmation and review of the proceedings of courts-martial shall apply to an order under this article as they apply to a sentence.

(9) The operation of an order under this article shall be suspended -

- (a) in any case, until the expiration of the period within which an appeal may be made under this Part of this Act to the Court of Criminal Appeal;
- (b) if such an appeal is duly lodged, until the appeal is

determined or abandoned,

and where the operation of such an order as aforesaid is suspended under this article -

- (i) it shall not take effect if the conviction is quashed on appeal;
- (ii) the appeal court may by order annul or vary the order although the conviction is not quashed;
- (iii) such steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be prescribed or as the appeal court may direct.

(10) Notwithstanding anything in the last foregoing sub-article, an order under this article shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, officer or authority making the order directs to the contrary in any case in which, in the opinion of the court, officer or authority, the title to the property is not in dispute.

(11) An order under this article shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

PART V

FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF MAINTENANCE LIABILITIES

143. (1) No forfeiture of the pay of an officer or man of the regular force shall be imposed unless authorised by or under this Act or any other enactment.

General provisions.

(2) Notwithstanding any deduction from the pay of an officer or man of the regular force, he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed by order of the Minister.

(3) Notwithstanding that forfeiture of a person's pay for any period has been ordered in pursuance of this Act, he may remain in receipt of pay at such minimum rate as aforesaid; but the amount received for the period may be recovered from him by deduction from pay.

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

Forfeiture of pay
for absence from
duty.

144. (1) The pay of an officer or man of the regular force may be forfeited -

- (a) for any day of absence in such circumstances as to constitute an offence under article 50 or 51 or, if the Commander or an officer authorised by him so directs, of other absence without leave;
- (b) for any day of imprisonment, detention or field punishment awarded under this Act by a court-martial or commanding officer, or of imprisonment or detention to which he is liable in consequence of a sentence of a civil court;
- (c) where he is found guilty (whether by court-martial, the appropriate superior authority or his commanding officer) of an offence under this Act, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer or man of the regular force may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Commander or an officer authorised by him is satisfied -

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

and nothing in paragraph (a) of the last foregoing sub-article shall apply to absence by reason of having been made a prisoner of war.

(3) For the purposes of the foregoing provisions of this article the number of days that a person is absent or is in hospital shall be computed as follows:

- (a) the number of days shall be reckoned from the time when the absence or, as the case may be, the time spent in hospital commences;
- (b) each period of twenty-four hours shall be reckoned as one day and, save as hereinafter provided, a part of a day shall be reckoned as one day;
- (c) when the total period of the absence or time spent in hospital is less than six hours, no account shall be taken thereof unless the person was, by reason of his being absent or in hospital, prevented from performing a military duty which was thereby thrown on some other person.

145. Where a person sentenced or ordered by a civil court (whether in or outside Malta) to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes a member of the regular force, then if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay.

Deductions for payment of civil penalties.

146. (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, where, after such investigation as may be prescribed it appears to the Commander or an officer authorised by him that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or man of the regular force (hereinafter referred to as "the person responsible"), the Commander or authorised officer may, subject to sub-article (2), order the person responsible (whether or not he is a member of the regular force at the time when the order is made) to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

Compensation for loss occasioned by wrongful act or negligence.

(2) No order shall be made under the last foregoing sub-article if, in proceedings before a court-martial, the appropriate superior authority or the commanding officer of the person responsible, that person -

- (a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or
- (b) has been awarded stoppages in respect of the same loss or damage,

but save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under the last foregoing sub-article.

147. (1) Where damage occurs to any premises in which one or more units of the regular force or parts of such units are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears on such investigation as may be prescribed that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof, but that the said persons cannot be identified, any person belonging to the said units or parts of units may be required to constitute towards compensation for the damage or loss such amount as may in manner prescribed be determined to be just, and the amount may be deducted from his pay.

Deductions for barrack damage.

(2) The last foregoing sub-article shall extend to ships, trains and aircraft in which units or parts of units of the regular force are being transported, and references to premises, quartering and occupation shall be construed accordingly.

Remission of forfeitures and deductions.

148. Any forfeiture or deduction imposed under the four last foregoing articles may be remitted by the Commander or in such manner and by such authority as may be prescribed.

Enforcement of maintenance and affiliation orders by deduction from pay.

149. (1) Where by virtue of a judgement, decree or order which is enforceable in Malta an order has been made against any person (hereinafter referred to as "the defendant") for the payment of any periodical or other sum specified therein for or in respect of -

- (a) the maintenance of his wife, child or ascendant; or
- (b) any costs incurred in any proceedings relating to any such order by or on behalf of the person in whose favour the order has been made,

and the defendant is an officer or man of the regular force, then (whether or not he was a member of that force when the said order was made) the Commander or any officer authorised by him may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the Commander or officer thinks fit.

Cap. 12.

(2) Where to the knowledge of the court making an order in pursuance of article 381(3) of the [Code of Organization and Civil Procedure](#), or varying or revoking any such order, the defendant is an officer or man of the regular force the court shall cause the registrar of the court to send a copy of the order to the Commander or an officer authorised by him.

(3) The Commander or an officer authorised by him may by order vary or revoke any order previously made under this article, and may treat any order made under this article as being in suspense at any time while the person against whom the order was made is absent as mentioned in article 144(1)(a).

Deductions from pay for maintenance of wife or child.

150. (1) Where the Commander or an officer authorised by him is satisfied that an officer or man of the regular force is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of eighteen years the Commander or officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the Commander or officer thinks fit.

(2) On an application made to the Commander or an officer authorised by him for an order under the last foregoing sub-article the Commander or officer, if satisfied that a *prima facie* case has been made out for the making of such an order, may make an interim order for such deduction and appropriation as is mentioned in the last foregoing sub-article to take effect pending the further examination of the case.

(3) Where an order is in force under sub-article (1) of the last foregoing article for the making of deductions in favour of any person from the pay of an officer or man of the regular force, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this article.

(4) The Commander or officer authorised by him may by order

vary or revoke any order previously made under this article, and may treat any order made under this article as being in suspense at any time while the person against whom the order was made is absent as mentioned in article 144(1)(a).

151. (1) The sums deducted under the two last foregoing articles shall not together exceed -

Limit of deductions under foregoing articles and effect on forfeiture.

- (a) in the case of an officer, three-sevenths of his pay;
- (b) in the case of a warrant officer or non-commissioned officer not below the rank of sergeant, two-thirds of his pay;
- (c) in the case of any other man of the force, three-fourths of his pay.

(2) Where any deductions have been ordered under either of the two last foregoing articles from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of the appropriate superior authority or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

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

PART VI

RANGES, TRAINING AND TRESPASS

Use of land and sea areas for ranges

152. (1) Where any land belonging to or administered by the Government (whether held by the Government or not) or held by the Government under any title whatsoever, or where any area of the sea within the territorial or internal waters of Malta, other than the Grand Harbour, Marsamxett Harbour and Marsaxlokk Bay, or where both such land or such area of sea, is appropriated for a weapon firing range or for training or practice in the use of any weapons of war or for experiments connected with any weapons of war, the Minister may make regulations for the use of such land or sea for the purposes for which it is appropriated and for securing the public against danger arising from such use.

Regulations as to use of land and sea areas for ranges and like purposes.
Amended by:
XIII. 1983.4;
L.N. 411 of 2007.

(2) Regulations made under this article may prohibit all intrusion on the said lands or sea and all obstruction of the said use

thereof; but no restriction of the use of the sea under this article shall be imposed further or otherwise than is necessary for the purpose to which an area of the sea is appropriated or in such way as to interfere unreasonably with any public right.

(3) Where by or under any regulation made under this article the public is allowed to use any of the said lands, regulations under this article may also provide for the government of such lands and the regulation of their use when so used by the public, for the preservation of order and the prevention of nuisances, obstructions, encampments, and encroachments thereon, and for the prevention of any injury to the same.

(4) Nothing in any regulation made under this article shall restrict the free exercise by any person of his rights of ownership or of user over any immovable property, or of other rights annexed thereto.

(5) In this article the expression "public right" means any right of navigation, anchoring, grounding, fishing, bathing, crossing, walking or recreation.

(6) Any person who contravenes any provision of regulations made under this article shall be liable on conviction to a fine (*ammenda*) not exceeding twenty-three euro and twenty-nine cents (23.29).

(7) Article 4(5) and (6) shall apply to regulations made under this article as they apply to regulations made under that article.

Right of
compensation.

153. Where in consequence of any regulation made under the last foregoing article the private rights of any person are injuriously affected or obstructed, fair compensation shall be payable by the Government, and such compensation shall, in case of difference, be determined by the competent court.

Use of land for training of the force

Notice of training.

154. (1) The Minister may from time to time by notice in the Gazette declare that training or combined training of the force or part of the force will take place in Malta.

(2) Any such notice shall be so published at least six clear days before the training is due to take place and shall contain the following particulars:

- (a) the police district or districts and the parish or parishes (hereinafter referred to as "the training area") in which the training will take place;
- (b) the period of time in which the training will take place;
- (c) the names of any villages situate within the training area;
- (d) any place or area within the training area which shall be out of bounds for the members of the force engaged in the training;
- (e) such other particulars as to the seashore, highways or footpaths to be used in the course of training as may

seem to the Minister necessary for the purpose of giving to persons who may suffer damage or injury by reason, or in the course of, or in consequence of such training reasonable certainty as to the training area.

155. (1) Subject to the provisions of this Act and of any regulations made under article 158 thereof, in and about the course of any training of which notice has been given in accordance with the last foregoing article, members of the force may freely land from the sea on, enter and pass and repass over and dig trenches in and erect defences or other works on land in any training area specified in the said notice; but they shall not enter, pass or repass over, dig trenches in or erect any defences or other works on -

Right of members of force to use land.

- (a) any dwelling house, place of worship, school, shop, workshop, stores or other premises used in any trade or business (other than agriculture), farmyard, garden, orchard, nursery, burial-ground or ground forming part of the enclosure of any place of worship or school;
- (b) any place or property declared by the notice aforesaid to be out of bounds.

(2) No firing with live shells or cartridges shall take place during any such training.

156. (1) Subject to the provisions of this Act and of any regulations made under article 158 thereof, there shall be paid by the Government fair compensation in respect of any damage or injury caused in the course, or by reason, or in consequence of any training carried out in pursuance of the two last foregoing articles.

Compensation for, and making good, damage.

(2) Without prejudice to the provisions of the last foregoing sub-article, at the conclusion of any training the members of the force shall fill in any trenches dug by them in the course of such training and remove all defences and other works erected in the course of the same, and restore the land used for such trenches, defences and works so far as possible to the state in which it was before such use.

(3) Save as aforesaid, no action for trespass, damage or injury shall lie in respect of anything done or omitted to be done by reason, or in the course, or in consequence of any training of which notice has been given in accordance with article 154.

157. No person shall obstruct or interfere with any member of the force in the course of any training as aforesaid; and any person who contravenes the provision of this article shall be liable to the punishments established for contraventions.

Prohibition of obstruction.

158. (1) The Minister may make regulations to give effect to any of the provisions of the four last foregoing articles and, without prejudice to the generality of the foregoing, may by such regulations -

Regulations in respect of training of force.

- (a) require payment of compensation under article 156 to be made against claims duly submitted;
- (b) regulate the manner in which and the time within

which claims for compensation shall be submitted, and the evidence and other information to be supplied by the claimant;

- (c) regulate the manner in which and the authorities by whom claims for compensation shall be dealt with and, in case of difference, settled;
- (d) require or authorise the requiring of members of the Police force to accompany members of the force during the training, and prescribe the duties and functions of any such Police officers;
- (e) modify any of the provisions of the four last foregoing articles in so far as they are extended to visiting forces under the Visiting Forces Act, 1966,* and make different provisions in regulations made under this article in respect of any such visiting forces;
- (f) provide for such incidental and supplementary matters as appear requisite for the purpose of the regulations.

(2) Article 4(5) and (6) shall apply to regulations made under this article as they apply to regulations made under that article.

Trespass upon land held by the force

Trespass to
constitute
contravention.

159. (1) If any person, without authority, enters or is found in or upon any place, which is held by any authority of the force for the purposes of the force, or the access to which by the public has been for the time being prohibited by the Minister by notice in the Gazette, such person shall be guilty of a contravention and may, without any warrant or other authority, be apprehended and detained by any Police officer.

(2) In the absence of a Police officer it shall be lawful for an officer of the force or of a man of the force of a rank not inferior to that of a lance-corporal or lance-bombardier, wearing the uniform of his rank, to apprehend and detain such person, if he finds it necessary to do so for the identification of that person by the Police, and no longer than it may be necessary for such purpose.

PART VII

GENERAL PROVISIONS

Redress of complaints

Complaints by
officers.
Amended by:
LVIII. 1974.68.

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

(2) On receiving any such complaint it shall be the duty of the

*Repealed by Act [IX of 1982](#).

Commander to investigate the complaint and to grant any redress which appears to him to be necessary or, if the complainant so requires, the Commander shall through the Minister make his report on the complaint to the President of Malta in order to receive the directions of the President of Malta thereon.

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

Complaints by men of the force.

(2) If a man of the force thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under the last foregoing sub-article or for any other reason, he may make a complaint with respect thereto to the Commander.

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

Provisions relating to deserters and absentees without leave

162. (1) A Police officer may arrest any person to whom he has reasonable cause to suspect of being an officer or man of the regular force who has deserted or is absent without leave.

Arrest of deserters and absentees without leave.
Amended by:
VIII. 1990.3.

(2) Where no Police officer is available, any officer or man of the regular force, or any other person, may arrest any person whom he has reasonable cause to suspect as aforesaid.

(3) Any Magistrate, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or man of the regular force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(4) Any person in custody in pursuance of this article shall be brought before the Court Magistrates within forty-eight hours after his arrest.

163. (1) Where a person who is brought before the Court of Magistrates is alleged to be an officer or man of the regular force who has deserted or is absent without leave, the following provisions shall have effect.

Proceedings before civil court where persons suspected of illegal absence.
Amended by:
VIII. 1990.3.

(2) If he admits that he is illegally absent from the regular force and the court is satisfied of the truth of the admission, then -

- (a) unless he is in custody for some other cause the court shall, and
- (b) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some

prison, Police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into military custody) or until sooner delivered into such custody:

Provided that any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

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

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this sub-article.

Deserters or
absentees without
leave surrendering
to Police.
Amended by:
VIII. 1990.3.

164. (1) Where a person surrenders himself to a Police officer as being illegally absent from the regular force, the Police officer shall (unless he surrenders himself at a Police station) bring him to a Police station.

(2) The Police officer in charge of a Police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid he may cause him to be delivered into military custody without bringing him before the Court of Magistrates or may bring him before such court.

Certificates of
arrest or surrender
of deserters and
absentees.
Amended by:
VIII. 1990.3.

165. (1) Where the Court of Magistrates in pursuance of article 163 deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate signed by the presiding magistrate containing the particulars as to his arrest or surrender and the proceedings before the court.

(2) Where under the last foregoing article a person is delivered into military custody without being brought before a court, there shall be handed over with him a certificate signed by the Police officer who causes him to be delivered into military custody containing the particulars relating to his surrender.

(3) In any proceedings for an offence under article 50 or 51 -

(a) a document purporting to be a certificate under either of the two last foregoing sub-articles and to be signed thereby as required, shall be evidence of the matters stated in the document;

- (b) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate purporting to be signed by a provost officer or by any officer in charge of a guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

Offences relating to military matters punishable by civil courts

166. Any person who falsely represents himself to any military or civil authority to be a deserter from the regular force shall be liable on summary conviction to a fine (*multa*) not exceeding one hundred and sixteen euro and forty-seven cents (116.47) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Punishment for pretending to be a deserter.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

167. Any person who whether in or outside Malta -

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

Punishment for procuring and assisting desertion.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

shall be liable on summary conviction to a fine (*multa*) not exceeding one hundred and sixteen euro and forty-seven cents (116.47) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

168. Any person who wilfully obstructs or interferes with any officer or man of the regular force acting in the execution of his duty shall be liable on summary conviction to a fine (*multa*) not exceeding one hundred and sixteen euro and forty-seven cents (116.47) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Punishment for obstructing members of regular force in execution of duty.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

169. Any person who, whether in or outside Malta -

- (a) produces in an officer or man of the regular force any sickness or disability; or
- (b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

Punishment for aiding malingering.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be liable on summary conviction to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Wrongful sale, etc.
of public property.
Amended by:
XIII. 1983.5;
VIII. 1990.3;
L.N. 411 of 2007.

170. Any person who designedly makes away with, sells, pawns, or otherwise disposes of, or wrongfully destroys or damages, or negligently loses, anything issued to him as an officer or man of the territorial force, or wrongfully refuses or neglects to deliver up on demand anything issued to him as an officer or man of the territorial force, shall be liable, on summary conviction, to a fine not exceeding forty-six euro and fifty-nine cents (46.59); and the Court of Magistrates shall, at the request of the Commissioner of Police, order the person convicted as aforesaid to pay the value of any such thing in respect of which he is convicted -

- (a) if he is serving in the force at the time he is convicted, to his commanding officer; or
- (b) if he is not serving in the force at the time aforesaid, to the officer who is for the time being commanding the unit with which he was last serving,

and any order as aforesaid shall have the same effect as a judgement of that court in its civil jurisdiction.

Unlawful
purchase, etc., of
military stores.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

171. (1) Any person who, whether in or outside Malta, acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall be guilty of an offence against this article unless he proves either -

- (a) that he did not know, and could not reasonably be expected to know, that the things in question were military stores, or
- (b) that those things had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of the Commander or some person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent, or
- (c) that those things had become the property of an officer who had retired or ceased to be an officer, or of a man of the force who had been discharged, or of the heirs or legatees of a person who had died.

(2) A person guilty of an offence against this article shall be liable on summary conviction to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

(3) In this article -

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

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

"military stores" means any thing of any description belonging to the Government which has been issued for use for military

purposes or is held in store for the purpose of being so issued when required, and includes any thing which had belonged, and had been issued or held, as aforesaid at some past time.

Provisions as to evidence

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

General provisions
as to evidence.

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

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

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

- (a) was or was not serving at any specified time or during any specified period in any part of the force or was discharged from any part of the force at or before any specified time; or
- (b) held or did not hold at any specified time any specified rank or appointment in any part of the force, or had at or before any specified time been, attached, posted or transferred to any part of the force, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place,

shall, if purporting to be issued by or on behalf of the Commander, or by a person authorised by him be evidence of the matters stated in the document.

(5) A record made in any service book or other document, being a record made in pursuance of this Act or of any regulations, rules or orders made thereunder, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document as aforesaid, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

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

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

- (a) any formation or unit or body of troops or any area

garrison or place, or

(b) any ship, train or aircraft,

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

Proof of outcome
of civil trial.
Amended by:
XXIV.1995.360.

173. (1) Where a person subject to military law has been tried by a civil court (whether at the time of the trial he was subject to military law or not), a certificate signed by the registrar of the court and stating all or any of the following matters -

- (a) that the said person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) what judgment or order was given or made by the court;
- (d) that other offences specified in the certificate were taken into consideration at the trial,

shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) The registrar of the court shall, if required by the commanding officer of the person in question or any other officer, furnish a certificate under this article.

(3) A document purporting to be a certificate under this article and to be signed by the registrar of the court shall, unless the contrary is shown, be deemed to be such a certificate.

(4) Reference in this article to the registrar of the court include reference to any of the officers mentioned in article 57(2)(a) of the [Code of Organization and Civil Procedure](#).

Cap.12.

Evidence of
proceedings of
court-martial.
Amended by:
LVIII. 1974.68;
XXIV.1995.360.

174. (1) The original proceedings of a court-martial purporting to be signed by the president of the court and being in the custody of the Attorney General or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

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

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

Miscellaneous provisions

Restrictions on
reduction in rank
of warrant officers
and N.C.Os.

175. (1) A warrant officer or non-commissioned officer of the regular force (other than a lance-corporal or lance-bombardier) shall not be reduced in rank except by sentence of a court-martial under this Act or by order of the Commander.

(2) For the purposes of this article reduction in rank does not

include reversion from acting rank.

176. Where a person is in military custody when charged with, or with a view to being charged with an offence against Part III of this Act, it shall be the duty of the Director of Civil Prisons or the person in charge of a Police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding seven days.

Temporary reception in civil custody of persons under escort.

177. (1) An officer of the regular forces of a rank not below that of major (hereinafter referred to as an "authorised officer") may, at any place outside Malta, take affidavits and declarations from any person subject to military law and from any such other person as the Minister may by order specify.

Power of certain officers to take affidavits and declarations.

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

PART VIII

APPLICATION OF ACT AND SUPPLEMENTAL PROVISIONS

Persons subject to military law

178. (1) The following persons are subject to military law:

Persons subject to military law: general provision.

- (a) every officer holding a commission (other than a commission in the territorial force) and for the time being employed, or recalled for employment, in the service in any capacity in which he can be required to be employed as the holder of his commission;
- (b) every officer as aforesaid who for the time being is not employed, or not employed as mentioned in paragraph (a), but is liable (otherwise than in specified circumstances only) to be recalled to military service;
- (c) every officer, not subject to military law under the foregoing provisions of this article, who being the holder of a commission as aforesaid is employed in government service in employment of which it is an express condition that while employed therein he is to be subject to military law;

- (d) every officer, not subject to military law under the foregoing provisions of this article, who, with the approval of the Minister given subject to an express condition that while in that employment he is to be subject to military law, is employed otherwise than in government service;
- (e) every officer holding a commission in the territorial force who is on the active list (as defined by the regulations for or applicable to the territorial force) or on the permanent staff of the territorial force, or who is not on the said list but is called out on permanent service or is otherwise serving (whether in pursuance of an obligation or not) with a body of troops for the time being subject to military law;
- (f) every man of the regular force;
- (g) every man of the reserve when called out on permanent service or when undergoing annual or other training (whether in pursuance of an obligation or not), or when otherwise employed in government service as mentioned in paragraph (c);
- (h) every man of the territorial force when embodied or called out on special service, when undergoing training or attending drills or parades (whether in pursuance of an obligation or not), or when serving on the permanent staff of the territorial force;
- (i) every person in receipt of a pension in respect of service in the regular force, or of such service and other service, who is employed in government service as mentioned in paragraph (c).

(2) For the purposes of paragraph (d) of the last foregoing sub-article a certificate of the Minister that approval to a person's employment was given subject to the condition mentioned in that paragraph shall be conclusive evidence of the facts stated in the certificate.

(3) References in this article to an officer holding a commission include references to a person entitled to have a commission issued to him.

Application of Act
to civilians.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

179. (1) Subject to the modifications hereinafter specified, where any body of the regular forces is on active service, Parts III and IV of this Act shall apply to any person who is employed in the service of that body of the force or any part or member thereof, or accompanies the said body or any part thereof, and is not subject to military law apart from this article, as the said Parts III and IV apply to persons subject to military law.

(2) Subject to the modifications hereinafter specified, Parts III and IV of this Act shall at all times apply to a person of such description as may be prescribed by order made under article 4 who is within the limits of the command of any officer commanding a body of the regular force outside Malta, and is not subject to military law apart from this article, as the said Parts III and IV

apply to persons subject to military law:

Provided that none of the provisions contained in articles 37 to 74 shall apply to a person by virtue only of this sub-article except article 42(3), articles 48 and 49, articles 62 to 65, and article 73 so far as it relates to that sub-article and those articles.

(3) The said modifications are the following:

- (a) the punishments that may be awarded by a court-martial shall not include any punishment less than imprisonment except a fine;
- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding fifty-eight euro and twenty-three cents (58.23), but no other punishment;
- (c) the following provision shall have effect in substitution for article 80(2) to (4), that is to say that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular force;
- (d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by the Rules of Procedure;
- (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided, apply as they apply to officers and warrant officers;
- (f) for references in articles 130 and 131 to being, continuing, or ceasing to be subject to military law there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that the said Parts III and IV apply, and article 130(3) shall not apply.

(4) Any fine awarded by virtue of this article, whether by a court-martial or the appropriate superior authority, shall be recoverable in Malta as a civil debt due to the Government.

180. (1) Subject to the provisions of this article, references in Parts III to VII of this Act to the regular force shall include references to the following persons, that is to say:

- (a) officers of any reserve of officers while subject to military law, and officers who have retired but are for the time being subject to military law, and
- (b) officers holding commissions in the territorial force while the part of the territorial force to which they

Application of certain parts of Act to reserve and territorial force.

belong is embodied or while they are called out for special service or are undergoing training, and

- (c) men of the reserve and of the territorial force while subject to military law,

and references to officers, warrant officers, non-commissioned officers or soldiers, or to men, or to members or a body, of the regular force or to illegal absence from that force shall be construed accordingly.

(2) Article 16(1) and (5) shall apply to men of the reserve and of the territorial force as they apply to men of the regular force.

(3) The power conferred by article 50(3) and article 87(3) to direct the forfeiture of an offender's previous service shall not be exercisable in relation to men of the reserve or of the territorial force.

(4) Article 50(2)(b), articles 149 to 151, and except in so far as they may be applied by regulations made under this Act, the provisions of Parts III and IV of this Act relating to the award of stoppages and the provisions of articles 143 to 148, shall not apply -

- (a) to officers of any reserve of officers who are not in actual service;
- (b) to men of the army reserve except when called out on permanent service;
- (c) to officers and men of the territorial force except when the part of the territorial force to which they belong is embodied or they are called out for special service.

(5) In the last foregoing sub-article the expression "actual service", in relation to an officer of a reserve of officers, means that he is serving (otherwise than when he is undergoing training) with a body of the regular force, or of the army reserve when called out on permanent service, or with members of the territorial forces in pursuance of any regulations made under article 4.

(6) In the case of a non-commissioned officer or soldier of the territorial force found guilty of an offence by a court-martial or his commanding officer, Parts III and IV of this Act shall apply as if in the scale set out in article 77(2) immediately before paragraph (g) thereof there were inserted the following paragraph:

"(ff) dismissal from the territorial force",

and as if the punishments specified in article 84(3) included dismissal from the territorial force:

Provided that if the commanding officer awards such dismissal he shall not award any other punishment.

Supplemental Provisions

Jurisdiction.

181. (1) Offences under Part III of this Act shall be triable by court-martial or otherwise dealt with as provided by this Act whether they are committed in Malta or outside Malta, and the

jurisdiction and powers conferred by this Act to courts-martial, officers and authorities (other than civil courts) in respect of such offences shall be exercisable both in Malta and outside Malta.

(2) In Malta a civil court having jurisdiction in the place where the offender is for the time being shall have jurisdiction to try him of an offence under this Act triable by a civil court notwithstanding that the offence was committed outside the jurisdiction of the court or the offender does not reside within its jurisdiction.

182. Save as expressly provided by any regulations, rules or orders under this Act, any order or determination required or authorised to be made under this Act by any military officer or authority may be signified under the hand of any officer authorised in that behalf; and any instrument signifying such order or determination and purporting to be signed by an officer stated therein to be so authorised shall unless the contrary is proved be deemed to be signed by an officer so authorised.

Execution of
orders,
instruments, etc.

183. (1) In this Act the expression "on active service" in relation to the force or part of the force means that it is engaged in operations against an enemy or is engaged elsewhere than in Malta in operations for the protection of life or property or (subject to the provisions of this article) is in military occupation of a foreign country or territory, and in relation to a person means that he is serving in or with the force or part of the force which is on active service.

Provisions as to
active service.

(2) Where any part of the force is serving outside Malta and it appears to the Commander that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that the said part of the force should be deemed to be on active service, he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein, that part of the force shall be deemed to be on active service.

(3) Where it appears to the Commander that it is necessary for the public service that the period specified in a declaration under the last foregoing sub-article should be prolonged or, if previously prolonged under this sub-article, should be further prolonged, he may declare that the said period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this sub-article.

(4) If at any time while any part of the force -

- (a) is on active service by reason only of being in military occupation of a foreign country or territory; or
- (b) is deemed to be on active service by virtue of the foregoing provisions of this article,

it appears to the Commander that there is no necessity for the said part of the force to continue to be treated as being on active service, he may declare that as from the coming into operation of the declaration the force shall cease to be, or be deemed to be, on active service.

(5) Before any declaration is made under this article, the Commander shall obtain the consent of the Minister to the declaration.

(6) A declaration under this article shall have effect not only as respects the members of the force to which it relates but also as respects other persons the application to whom of any provisions of this Act depends on whether that force is on active service.

(7) Any declaration or direction under this article shall come into operation on being published in general orders.

Trade union membership.
Added by:
IV. 2015.13.

184. (1) A member of the Force shall be entitled to be a member of a registered trade union of his choice.

(2) A trade union representing members of the Force:

(a) shall not be entitled to limit its membership to any particular rank or sector in the Force;

(b) shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of the members of the Force which it represents but it shall not be entitled to take any other action in the Force in contemplation or furtherance of a dispute or to participate in proceedings relating to charges of military offences issued under this Act.

Prohibition of industrial action.
Added by:
IV. 2015.13.

185. Any member of the Force who takes industrial action or who participates in any industrial action taken in the Force in contemplation or furtherance of a dispute shall be guilty of a military offence against good order and military discipline:

Provided that nothing in this article shall prejudice the right of a trade union which represents members of the Force from performing those acts which are permissible in accordance with the provisions of paragraph (b) of sub-article (2) of article 184 or the right of a member of the Force to participate in the procedures mentioned in the said paragraph.

Savings

Savings.
Amended by:
XXII. 1976.4.

***186.** All regulations and Government Notices made under the Gun, Rifle and Ranges Ordinance[†] or under the Trespass (Naval, Military or Air Force Lands) Ordinance[†] and in force on the date of the coming into force of this article shall continue to have effect and shall be deemed to be regulations made or notices issued under this Act for the purposes of any amendment or revocation thereof.

*This article originally consisted of three sub-articles. Part of the article as originally enacted has been omitted under the [Statute Law Revision Act](#), 1980.

[†]Repealed by this Act.