

The following Bills, which will in due course be presented to Parliament for enactment, are published for general information.

THE CONSTITUTION OF MID-WESTERN NIGERIA BILL

EXPLANATORY MEMORANDUM

This Bill contains the Constitution for Mid-Western Nigeria.

ABUBAKAR TAFAWA BALEWA,
Prime Minister

ARRANGEMENT OF CLAUSES

Clause

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A BILL FOR

AN ACT TO MAKE PROVISION FOR THE CONSTITUTION OF MID-WESTERN NIGERIA ;
AND FOR PURPOSES CONNECTED THEREWITH.

[See section 3]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

5 1. Subject to the provisions of the Constitution of the Federation, the constitution set out in the Schedule to this Act shall be the constitution of Mid-Western Nigeria.

Constitution
for Mid-
Western
Region.

10 2. The Mid-Western Region (Transitional Provisions) Act, 1963, shall have effect as if the reference in paragraph (a) of subsection (1) of section one of that Act to the time there mentioned were a reference to the day appointed in pursuance of subsection (3) of section three of this Act ; and that Act is hereby repealed on that day.

Transitional
operation of
1963, No. 19.

15 3.—(1) This Act shall be deemed to have come into force on the first day of November, 1963, in so far as it makes provision (either in connection with constituencies, elections, qualifications, determination of questions, the operation of laws or otherwise howsoever) relating to members of the House of Assembly of the Region ; so however that, without prejudice to the operation of any law in force in the Region at any time before the passing of this Act, it shall, in so far as it modifies any law with respect to offences or punishment, come into force for the
20 purposes of this subsection on the date on which it is passed.

Commence-
ment of this
Act.

 (2) Section two of this Act shall come into force on the date on which this Act is passed.

 (3) Subject to the foregoing provisions of this section, this Act shall come into force on such day as the Prime Minister may by order appoint.

25 4. This Act may be cited as the Constitution of Mid-Western Nigeria Act, 1964, and shall apply throughout the Federation.

Short title
and extent.

SCHEDULE

THE CONSTITUTION OF MID-WESTERN NIGERIA

CHAPTER I

THE GOVERNOR

Establish-
ment and
tenure of
office of
Governor.

1.—(1) There shall be a Governor of the Region who shall, subject to the provisions of this section, be appointed by the President, acting in accordance with the advice of the Premier, and shall, subject as aforesaid, hold office for a term of five years. 5

(2) The office of Governor shall become vacant—

(a) on the expiration of his term of office ; 10

(b) if he dies ;

(c) if he resigns ; or

(d) if he is removed from office by the President, acting in accordance with the advice of the Premier.

(3) The Premier shall consult the Prime Minister of the Federation before tendering any advice to the President for the purposes of this section. 15

Oaths to be
taken by
Governor.

2. A person appointed to the office of Governor shall, before entering upon the duties of that office, take and subscribe, before the Chief Justice of the Region, the oath of allegiance and such oath for the due execution of the office as may be prescribed by the Legislature of the Region. 20

Discharge of
Governor's
functions
during
vacancy, etc.

3. Whenever the office of Governor is vacant or the holder of the office is absent from Nigeria or is in the opinion of the Premier for any reason unable to perform the functions conferred upon him by this Constitution, those functions shall be performed by such person as the President, acting in accordance with the advice of the Premier, may appoint or, if there is no person in the Region so appointed and able to perform those functions, by the President of the House of Chiefs : 25

Provided that nothing in this section shall preclude the Governor from performing any of those functions at any time when he is absent from Nigeria. 30

CHAPTER II

THE LEGISLATURE

Part I.—Composition of Legislature

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Establish-
ment of
Legislature.

4. There shall be a Legislature for the Region, which shall consist of the Governor, a House of Chiefs and a House of Assembly and which shall have power to make laws for the peace, order and good government of the Region.

Composition
of House of
Chiefs.

5.—(1) Without prejudice to the provisions of section 9 of this Constitution, the House of Chiefs shall consist of— 40

(a) the Oba of Benin, the Olu of Warri and the persons for the time being holding such other chieftaincies as may be prescribed by the Governor, who shall be ex-officio members of the House ;

(b) fifty-eight Chiefs having such qualifications and selected in such manner as may be prescribed by the Legislature of the Region ; and 45

(c) such Special Members, being Chiefs, as may be selected by the Governor, acting in accordance with the advice of the Premier.

5 (2) A person shall not be a member of the House of Chiefs by virtue of paragraph (a) of subsection (1) of this section during any period when he holds office as Governor ; and the number of persons who are for the time being members of that House by virtue of that paragraph or paragraph (c) of that subsection shall not in the aggregate exceed ten.

10 (3) The seat of a member of the House of Assembly shall become vacant—

(a) in the case of a member other than the Obà of Benin, the Olu of Warri or a Special Member, in such circumstances as may be prescribed by the Legislature of the Region ; and

15 (b) in the case of a Special Member, if he is removed from office as such a member by the Governor, acting in accordance with the advice of the Premier.

(4) In this section "Chief" means any person who is for the time being recognised as a Chief under any law in force in the Region.

20 6. Without prejudice to the provisions of subsection (5) of section 10 and subsection (13) of section 33 of this Constitution, the House of Assembly shall consist of sixty-eight members.

Composition of House of Assembly.

25 7.—(1) Subject to the provisions of subsection (3) of this section and section 8 of this Constitution, a person shall be qualified to be a member of the House of Assembly if he is a citizen of Nigeria who has attained the age of twenty-one years and—

Qualifications for membership of House of Assembly.

(a) who was born in the Region ; or

(b) whose father was born in the Region ; or

(c) who has resided in the Region for a continuous period of at least one year immediately before the relevant date.

30 (2) In subsection (1) of this section "the relevant date" means—

(a) in relation to an elected member, the date of his nomination for election as a member ; and

(b) in relation to a person nominated for election as Speaker from outside the House, the date of the nomination.

35 (3) A law made by the Legislature of the Region may provide that, notwithstanding that a person satisfies any of the requirements of paragraphs (a) to (c) of subsection (1) of this section, he shall not be qualified to be a member of the House of Assembly for a constituency in a special area within the meaning of subsection (4) of section 14
40 of this Constitution unless he satisfies such conditions as may be specified by that law ; and until provision to the contrary is made by such a law there shall, as respects the constituencies in each area described in paragraphs 1, 2, 3 and 4 of the first column of the First Schedule to this Constitution, be deemed to be specified by such a law which so provides
45 the condition that a person shall be a member in accordance with customary law of the ethnic group specified as respects that area in the second column of that Schedule.

50 (4) Subsection (5) of the said section 14 shall apply to a law made for the purposes of the last foregoing subsection as it applies to a law made for the purposes of subsection (4) of that section.

Disqualifi-
cations for
membership
of House of
Assembly,
etc.

8.—(1) No person shall be qualified for election to the House of Assembly—

(a) if he has voluntarily acquired citizenship of a country other than Nigeria or has, except in such cases as may be prescribed by the Legislature of the Region, made a declaration of allegiance to such a country ; 5

(b) if under any law in force in any part of Nigeria he is adjudged to be a lunatic or otherwise declared to be of unsound mind ;

(c) if he is under a sentence of death imposed on him by any court of law in Nigeria or a sentence of imprisonment (by whatever name called) exceeding six months imposed upon him by such a court or substituted by competent authority for some other sentence imposed upon him by such a court ; 10

(d) if he is an undischarged bankrupt, having been adjudged or otherwise declared to be bankrupt under any law in force in any part of Nigeria ; 15

(e) save as otherwise provided by the Legislature of the Region, if he is a member of the public service of the Region, the public service of the Federation or the public service of another Region, a member of the armed forces of the Federation or the holder of any other office of emolument under the state ; or 20

(f) if he is a member of the House of Chiefs, an ex-officio member of the Senate or a member of a legislative house of another Region.

(2) The Legislature of the Region may provide that a person shall not be qualified for membership of the House of Assembly for such period (not exceeding five years) as may be prescribed if he is convicted by any court of law in Nigeria of such offences connected with the selection or election of members of a Legislative House of the Region, a House of Parliament or a legislative house of another Region as may be prescribed. 25 30

(3) The Legislature of the Region may provide that a person disqualified under paragraph (c) of subsection (1) of this section by reason of his being under a sentence of imprisonment exceeding six months for any such offence (being an offence that appears to that Legislature to involve dishonesty) as may be prescribed or by reason of his being under sentences of imprisonment that include such a sentence for any such offence shall not be qualified for membership of the House of Assembly for such period from the date on which he ceases to be disqualified under that paragraph (not exceeding five years) as may be prescribed. 35 40

(4) The Legislature of the Region may provide that a person who is the holder of any office the functions of which involve responsibility for or in connection with the conduct of any election to the House of Assembly or the compilation of any register of voters for the purposes of such an election shall not be qualified for election to that House. 45

(5) The Legislature of the Region may, in order to permit any person who has been adjudged to be a lunatic, declared to be of unsound mind, sentenced to death or imprisonment or adjudged or declared bankrupt to appeal against the decision in accordance with any law in force in Nigeria, provide that, subject to such conditions as may be prescribed, the decision shall not have effect for the purposes of subsection (1) of this section for such time as may be prescribed. 50

(6) For the purposes of paragraph (c) of subsection (1) of this section, two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any one of those sentences exceeds that term shall be regarded as one sentence.

(7) For the purposes of paragraph (e) of subsection (1) of this section, the office of President of the House of Chiefs, Deputy President or a member of that House, the Speaker or Deputy Speaker of the House of Assembly, or a member of that House, the President, Deputy President, Speaker or Deputy Speaker or a member of a House of Parliament or a legislative house of another Region, a Minister of the Government of the Region, a Minister of the Government of the Federation, a Minister of the Government of another Region, a Parliamentary Secretary to any such Minister, a member of the Executive Council of the Region, a member of the Council of Ministers, a member of the Executive Council of another Region, a member of the Council of Chiefs of Northern Nigeria, or a member of any such body corporate as is referred to in the proviso to subsection (10) of this section shall not be regarded as an office of emolument under the state.

(8) Save as otherwise provided by the Legislature of the Region, a person shall not be regarded as disqualified for membership of the House of Assembly by reason only that he holds office as a member of a statutory corporation.

(9) If a person who holds the office of a member of a statutory corporation becomes a member of the House of Assembly, he shall, unless it is otherwise provided by the Legislature of the Region, thereupon cease to hold office as a member of that corporation.

(10) In this section "statutory corporation" means any body corporate established directly by any law in force in Nigeria :

Provided that it does not include any body corporate established by virtue of the provisions of the Western Region Local Government Law, 1952, or the Local Government Law of that Region (a), as amended, or any law replacing either of those laws, as those provisions have effect as part of the law of Mid-Western Nigeria.

9.—(1) There shall be a President of the House of Chiefs, who shall be elected by the members of that House.

President of
House of
Chiefs.

(2) No person shall be elected as President of the House of Chiefs unless he is a member of the House or a Chief qualified for selection as a member of the House.

(3) The President of the House of Chiefs shall vacate his office—

(a) if he ceases to be a member of the House otherwise than by reason of a dissolution of the Legislative Houses of the Region ;

(b) when the House first sits after any dissolution ;

(c) if he becomes a Minister of the Government of the Region, a Parliamentary Secretary to such a Minister, a Minister of the Government of the Federation or a Minister of the Government of another Region ; or

(d) if he is removed from office by a resolution of the House supported by the votes of two-thirds of all the members of the House.

(a) Law No. 1 of 1953 and Laws of Western Nigeria (1959) Chapter 68.

(4) No business shall be transacted in the House of Chiefs (other than an election to the office of President of the House) at any time when that office is vacant.

(5) Subject to subsection (3) of section 5 of this Constitution, the President of the House of Chiefs shall be a member of the House by virtue of this subsection if he is not such a member apart from this subsection.

Speaker of
House of
Assembly.

10.—(1) There shall be a Speaker of the House of Assembly, who shall be elected by the members of that House.

(2) No person shall be elected as Speaker of the House of Assembly unless he is a member of the House or a person qualified to be a member of the House.

(3) The Speaker of the House of Assembly shall vacate his office—

(a) if he ceases to be a member otherwise than by reason of a dissolution of the Legislative Houses of the Region ;

(b) when the House first sits after any dissolution ;

(c) if he becomes a Minister of the Government of the Region, a Parliamentary Secretary to such a Minister, a Minister of the Government of the Federation or a Minister of the Government of another Region ; or

(d) if he is removed from office by a resolution of the House supported by the votes of two-thirds of all the members of the House.

(4) No business shall be transacted in the House of Assembly (other than an election to the office of Speaker) at any time when that office is vacant.

(5) Subject to the provisions of section 12 of this Constitution, the Speaker shall be a member of the House of Assembly by virtue of this subsection if he is not such a member apart from this subsection.

Right of
attendance
of Ministers.

11.—(1) A Minister of the Government of the Region may attend and take part in the proceedings of either Legislative House of the Region notwithstanding that he is not a member of that House.

(2) Nothing in this section shall entitle any person who is not a Member of a Legislative House of the Region to vote in that House or any of its committees.

Tenure of
seats of
members of
House of
Assembly.

12.—(1) A member of the House of Assembly shall vacate his seat in the House—

(a) if he becomes a member of the House of Chiefs, a House of Parliament or a legislative house of another Region ;

(b) if any other circumstances arise that, if he were not a member of the House, would cause him to be disqualified for election as such under subsection (1), (2) or (3) of section 8 of this Constitution ;

(c) if he ceases to be a citizen of Nigeria ;

(d) if he becomes a Minister of the Government of the Federation or a Minister of the Government of another Region ;

(e) save as otherwise provided by the Legislature of the Region, if he becomes a member of any statutory corporation ; or

(f) if he is absent from two consecutive meetings of the House and the Speaker of the House does not, by writing under his hand, excuse his absence within one month after the end of the second meeting.

5 (2) The Legislature of the Region may, in order to permit any member of the House of Assembly who has been adjudged to be a lunatic, declared to be of unsound mind, sentenced to death or imprisonment or adjudged or declared bankrupt to appeal against the decision
10 in accordance with any law in force in Nigeria, provide that, subject to such conditions as may be prescribed, the decision shall not have effect for the purposes of this section until such time as may be prescribed.

(3) In this section the expression "statutory corporation" has the meaning assigned to it for the purposes of section 8 of this Constitution.

13.—(1) There shall be an Electoral Commission for the Region.

15 (2) The members of the Electoral Commission of the Region shall be—

Establish-
ment of
Electoral
Commis-
sion.

(a) the chairman of the Electoral Commission of the Federation, who shall be chairman ;

20 (b) the member of the Electoral Commission of the Federation representing the Region ; and

(c) two other members or such greater number of members as may be appointed by the Governor, acting in accordance with the advice of the Premier.

25 (3) A person shall not be qualified for appointment as a member of the Electoral Commission of the Region if he is a member of either Legislative House of the Region, a member of either House of Parliament or a member of a legislative house of another Region, a Minister of the Government of the Region, a Minister of the Government of the Federation, a Minister of the Government of another Region or a
30 member of the public service of the Region, the public service of the Federation or the public service of another Region.

(4) Subject to the provisions of this section, a member of the Electoral Commission of the Region appointed by the Governor shall vacate his office—

35 (a) at the expiration of five years from the date of his appointment ; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such a member.

40 (5) A member of the Electoral Commission of the Region appointed by the Governor may be removed from office by the Governor, acting in accordance with the advice of the Premier, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

45 (6) A member of the Electoral Commission of the Region appointed by the Governor shall not be removed from office except in accordance with the provisions of this section.

50 (7) In the exercise of its functions under this Constitution the Electoral Commission of the Region shall not be subject to the direction or control of any other person or authority.

Constituencies.

14.—(1) The Region shall be divided into as many constituencies as there are members of the House of Assembly by virtue of section 6 of this Constitution, and shall be so divided in such manner as the competent authority, acting with the approval of each Legislative House of the Region signified by resolution, may prescribe.

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(2) The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable :

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features and the distribution of different communities.

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(3) The competent authority shall review the division of the Region into constituencies at intervals of not less than eight and not more than ten years and may alter the constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review :

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Provided that that authority may at any time carry out such a review and alter the constituencies in accordance with the provisions of this section to such extent as it considers necessary in consequence of any alteration of the boundaries of the Region or by reason of the holding of a census of the population of the Region in pursuance of any law in force in the Region.

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(4) Notwithstanding anything in the foregoing provisions of this section, each of the special areas within the meaning of this subsection shall be divided into four constituencies in the manner mentioned in subsection (1) of this section ; but the constituencies established in pursuance of this subsection shall be included in, and shall not be additional to, the total number of constituencies established in pursuance of the said subsection (1).

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In this and the next following subsection, "special areas" mean such areas within the Region (not for the time being exceeding four) as may be specified for the purposes of this subsection by a law made by the Legislature of the Region ; and until provision to the contrary is made by such a law, the areas described in paragraphs 1, 2, 3 and 4 respectively of the first column of the First Schedule to this Constitution shall each be deemed to be specified as aforesaid.

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(5) A law made by the Legislature of the Region for the purposes of subsection (4) of this section shall not come into force as respects any existing special area unless—

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(a) a referendum upon the question whether the law should come into force has been held in that area in pursuance of provision made in that behalf by the Legislature of the Region ; and

(b) the persons entitled to vote in the referendum were those who at the date of the referendum were entitled to vote in elections of members of the House of Assembly for the constituencies in that area ; and

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(c) not less than two-thirds of all those persons voted in the referendum in favour of the law.

(6) Where the boundaries of any constituency established in pursuance of this section are altered in accordance with the provisions

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of this section, that alteration shall come into effect upon the next following dissolution of the Legislative Houses of the Region.

(7) In this section "population quota" means the number obtained by dividing the number of the inhabitants of the Region by the number of constituencies into which the Region is divided in pursuance of this section, any constituency established in pursuance of subsection (4) of this section and the inhabitants of any such constituency being left out of account.

(8) For the purposes of this section the number of inhabitants of the Region or a constituency shall be ascertained by reference to the latest census of the population of the Region held in pursuance of any law in force in the Region.

(9) In this section "the competent authority" means the Electoral Commission of the Region or such other authority consisting of persons appointed by the Governor, acting in accordance with the advice of the Premier, as may be established in that behalf by the Legislature of the Region.

15.—(1) Every constituency established in pursuance of section 14 of this Constitution shall return to the House of Assembly one member who shall be directly elected in such manner as may be prescribed by the Legislature of the Region.

Elections.

(2) The registration of voters at elections to the House of Assembly and the conduct of such elections shall be subject to the direction and supervision of the Electoral Commission of the Region.

16.—(1) The High Court of the Region shall have original jurisdiction to hear and determine any question whether—

Determination of questions of membership of Legislative Houses.

(a) any person has been validly selected or elected as a member of a legislative House of the Region; or

(b) the seat in a Legislative House of any member of that House has become vacant.

(2) The Legislature of the Region may make provision with respect to—

(a) the persons who may apply to the High Court of the Region for the determination of any question under this section;

(b) the circumstances and manner in which, and the conditions upon which, any such application may be made; and

(c) the powers, practice and procedure of the High Court in relation to any such application.

17.—(1) There shall be a Clerk to the House of Chiefs and a Clerk to the House of Assembly, and both offices may be held by the same person.

Clerks to Legislative Houses and their staffs.

(2) Subject to the provisions of any Regional law, the office of the Clerk of each Legislative House of the Region and the office of each member of his staff shall be offices in the public service of the Region.

Part II.—Procedure in Legislative Houses

18. Every member of either Legislative House of the Region shall, before taking his seat in that House, take and subscribe before the House the oath of allegiance, but a member may before taking that oath take part in the election of a President of the House of Chiefs or a Speaker of the House of Assembly, as the case may be:

Oaths to be taken by members of Legislative Houses.

Provided that if a Legislative House is not sitting a member of that House may take and subscribe the oath of allegiance before a judge of the High Court of the Region.

Presiding in
House of
Chiefs.

- 19.—(1) There shall preside at any sitting of the House of Chiefs—
- (a) the President of the House ; or
 - (b) in the absence of the President of the House, the Deputy President ; or
 - (c) in the absence of the President of the House and the Deputy President, such member of the House as the House may elect for that purpose.

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(2) The House of Chiefs may from time to time elect a member of the House to be Deputy President and any person so elected shall hold office as such until he ceases to be a member of the House or is removed from office by the House.

Presiding in
House of
Assembly.

- 20.—(1) There shall preside at any sitting of the House of Assembly—
- (a) the Speaker ; or
 - (b) in the absence of the Speaker, the Deputy Speaker ; or
 - (c) in the absence of the Speaker and the Deputy Speaker, such member of the House as the House may elect for that purpose.

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(2) The House of Assembly may from time to time elect a member of the House to be Deputy Speaker and any person so elected shall hold office as such until he ceases to be a member of the House or is removed from office by the House.

Quorum in
Legislative
Houses.

21. If objection is taken by any member of a Legislative House of the Region present that there are present in that House (besides the person presiding) fewer than one-sixth of all the members of that House and, after such interval as may be prescribed in the rules of procedure of the House, the person presiding ascertains that the number of members present is still less than one-sixth of all the members of the House, he shall thereupon adjourn the House.

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Use of
English in
Legislative
Houses.

22. The business of the Legislative Houses of the Region shall be conducted in English.

Voting in
Legislative
Houses.

- 23.—(1) Any question proposed for decision in a Legislative House of the Region shall be determined by the required majority of the members present and voting ; and the person presiding shall cast a vote whenever necessary to avoid an equality of votes but shall not vote in any other case.

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(2) Save as otherwise provided in this Constitution, the required majority for the purposes of determining any question shall be a simple majority.

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(3) The rules of procedure of a Legislative House of the Region may provide that the vote of a member upon a question in which he has a direct pecuniary interest shall be disallowed.

24. Any person who sits or votes in either Legislative House of the Region knowing or having reasonable ground for knowing that he is not entitled to do so shall be liable to a penalty not exceeding twenty pounds or such other sum as may be prescribed by the Legislature of the Region for each day on which he sits or votes in that House, which shall be recoverable by action in the High Court of the Region at the suit of the Attorney-General of the Region.

Unqualified persons sitting or voting.

- 25.—(1) The power of the Legislature of the Region to make laws shall be exercised by bills passed by both Legislative Houses of the Region (or in the cases mentioned in section 27 of this Constitution the House of Assembly) and assented to by the Governor.

Mode of exercising legislative power.

(2) A bill other than a money bill may originate in either Legislative House of the Region but a money bill may originate only in the House of Assembly.

- 15 (3) When a bill has been passed by the Legislative House of the Region in which it originated, it shall be sent to the other House; and it shall be presented to the Governor for assent—

- 20 (a) when it has been passed by the other House and agreement has been reached between the two Houses on any amendments made in it; or

(b) when it is required to be so presented under section 27 of this Constitution.

(4) When a bill is presented to the Governor for assent, he shall signify that he assents or that he withholds assent.

- 25 (5) A bill shall not become law unless it has been duly passed and assented to in accordance with this Constitution.

26.—(1) The House of Chiefs shall not—

- 30 (a) proceed upon any bill, other than a bill sent from the House of Assembly, that, in the opinion of the person presiding, makes provision for any of the following purposes—

Restrictions with regard to certain financial measures.

(i) the imposition, repeal or alteration of taxation;

(ii) the imposition of any charge upon the Consolidated Revenue Fund or any other public fund of the Region;

- 35 (iii) the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Region of any moneys not charged thereon or any alteration in the amount of such a payment, issue or withdrawal; or

(iv) the composition or remission of any debt due to the Region;

- 40 (b) proceed upon any amendment to any bill that, in the opinion of the person presiding, makes provision for any of those purposes;

(c) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes; or

- 45 (d) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

(2) Except upon the recommendation of the Governor signified by a Minister of the Government of the Region, the House of Assembly shall not—

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes— 5

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction ;

(ii) the imposition of any charge upon the Consolidated Revenue Fund or any other public fund of the Region or the alteration of any such charge otherwise than by reduction ; 10

(iii) the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Region of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal ; or 15

(iv) the composition or remission of any debt due to the Region ;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes ; or

(c) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes. 20

Limitation
of powers of
House of
Chiefs.

27.—(1) Where a money bill is passed by the House of Assembly and, having been sent to the House of Chiefs at least one month before the end of the session, is not passed by the House of Chiefs without amendment within one month after it is so sent, the bill shall, unless the House of Assembly otherwise resolves, be presented to the Governor for his assent. 25

(2) Where—

(a) a bill that is not a money bill is passed by the House of Assembly and, having been sent to the House of Chiefs at least one month before the end of the session, is not passed by the House of Chiefs before the end of the session or is passed by the House of Chiefs with amendments to which the House of Assembly does not before the end of the session agree ; and 30

(b) in the following session (whether of the same Legislative Houses or not) but not earlier than six months after it was first passed by the House of Assembly the same bill, with no other alterations than those mentioned in subsection (4) of this section, is passed again by the House of Assembly and sent to the House of Chiefs at least one month before the end of the session and is not passed by the House of Chiefs before the end of the session or is passed by the House of Chiefs with amendments to which the House of Assembly does not before the end of the session agree, 35 40

the bill shall, unless the House of Assembly otherwise resolves, be presented to the Governor for his assent with such amendments, if any, as may have been agreed to by both Houses. 45

(3) The House of Assembly may, on the passage of a bill for the purposes of paragraph (b) of subsection (2) of this section, suggest any amendments without inserting the amendments in the bill and any such suggested amendments shall be considered by the House of Chiefs and, if agreed to by the House of Chiefs, shall be treated as amendments agreed to by both Houses ; but the exercise of this power by the House of Assembly shall not affect the operation of this section if the bill is not passed by the House of Chiefs or is passed by the House of Chiefs with amendments to which the House of Assembly does not agree.

(4) The alterations referred to in subsection (2) of this section are alterations certified by the Speaker of the House of Assembly to be necessary owing to the time that has elapsed since the bill was passed in the earlier session or to represent amendments made in that session by the House of Chiefs.

(5) When a money bill is sent to the House of Chiefs from the House of Assembly it shall bear a certificate of the Speaker of the House of Assembly that it is a money bill.

(6) When a bill is presented to the Governor in pursuance of this section it shall bear a certificate of the Speaker of the House of Assembly that this section has been complied with and that certificate shall be conclusive for all purposes and shall not be questioned in any court of law.

(7) This section does not apply to any bill for the purposes of section 5 of the Constitution of the Federation.

28.—(1) Subject to the provisions of this Constitution, each Legislative House of the Region may regulate its own procedure.

Regulation
of procedure
in Legislative
Houses.

(2) Each Legislative House of the Region may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any dissolution), and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

29. Without prejudice to the generality of section 75 of this Constitution, in this Part of this Chapter "money bill" means a bill that in the opinion of the Speaker of the House of Assembly contains only provisions dealing with—

Interpreta-
tion of Part
II.

(a) the imposition, repeal, remission, alteration or regulation of taxation ;

(b) the imposition for the payment of debt or other financial purposes of charges on the Consolidated Revenue Fund or any other public fund of the Region or the variation or repeal of any such charges;

(c) the grant of money to the state or to any other person or authority or the variation or revocation of any such grant ;

(d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money ;

(e) the raising or guarantee of any loan or the repayment thereof ; or

(f) subordinate matters incidental to any of those matters :

Provided that the expressions "taxation", "public money" and "loan" do not include any taxation, money or loan raised by local authorities or bodies for public purposes.

Part III.—Summoning, prorogation and dissolution

Sessions of
Legislative
Houses.

30. Each session of the Legislative Houses of the Region shall be held at such place within the Region and shall begin at such time (not being later than twelve months from the end of the preceding session if those Houses have been prorogued or three months from the end of that session if those Houses have been dissolved) as the Governor shall appoint.

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Prorogation
and dissolution
of
Legislative
Houses.

31.—(1) The Governor may at any time prorogue or dissolve the Legislative Houses of the Region.

(2) Subject to the provisions of subsection (3) of this section, the Legislative Houses of the Region, unless sooner dissolved, shall continue for five years from the date of their first sitting after any dissolution and shall then stand dissolved.

15

(3) At any time when the Federation is at war, the Legislature of the Region may from time to time extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time :

20

Provided that the life of the Legislative Houses of the Region shall not be extended under this subsection for more than five years.

(4) In the exercise of his powers to dissolve the Legislative Houses of the Region the Governor shall act in accordance with the advice of the Premier, so however that if the Premier recommends a dissolution in a case not falling within subsection (5) of this section and the Governor considers that the government of the Region can be carried on without a dissolution and that a dissolution would not be in the interests of the Region, he may refuse to dissolve the Legislative Houses.

25

(5) The Governor shall dissolve the Legislative Houses of the Region— 30

(a) if the House of Assembly passes a resolution that it has no confidence in the Government of the Region, and within the period of three days beginning with the day on which the resolution is passed the Premier does not resign or recommend a dissolution or does recommend a dissolution ;

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(b) if the office of Premier is vacant and the Governor considers that there is no prospect of his being able, within a reasonable time, to appoint to that office a person who can command the support of the majority of the members of the House of Assembly.

40

CHAPTER III

EXECUTIVE POWERS

5 32. (1) The executive authority of the Region shall be vested in the Governor and, subject to the provisions of this Constitution, may be exercised by him either directly or through officers subordinate to him.

Exercise of executive authority of Region.

(2) Nothing in this section shall prevent the Legislature of the Region from conferring functions on persons or authorities other than the Governor.

10 33. (1) There shall be a Premier of the Region, who shall be appointed by the Governor.

Ministers of Government of Region.

15 (2) Whenever the Governor has occasion to appoint a Premier he shall appoint a member of the House of Assembly who appears to him likely to command the support of the majority of the members of the House.

20 (3) There shall be, in addition to the office of Premier, such other offices of Minister of the Government of the Region as may be established by this Constitution or by the Legislature of the Region or, subject to the provisions of any Regional law, by the Governor, acting in accordance with the advice of the Premier.

(4) Appointments to the office of Minister of the Government of the Region other than the office of Premier shall be made by the Governor, acting in accordance with the advice of the Premier :

25 Provided that at least two Ministers shall be appointed from among the members of the House of Chiefs.

(5) A person shall not hold office at the same time both as a Minister of the Government of the Region and as a Minister of the Government of the Federation or as a Minister of the Government of another Region.

30 (6) A person who holds office as a Minister of the Government of the Region for any period of four consecutive months without also being a member of a Legislative House of the Region shall cease to be a Minister at the expiration of that period or, if that period expires at a time when the Legislative Houses are dissolved and he does not in the meantime become a member of a Legislative House, at the date
35 on which the Legislative Houses first meet after that dissolution.

40 (7) A person who holds office as a Minister of the Government of the Region and who is at no time while holding that office also a member of a Legislative House of the Region shall not be qualified for re-appointment as such a Minister before the Legislative Houses are next dissolved after he ceases to hold that office, unless in the meantime he has become a member of a Legislative House.

(8) The office of the Premier shall become vacant—

45 (a) when, after any dissolution of the Legislative Houses of the Region, the Premier is informed by the Governor that the Governor is about to re-appoint him as Premier or to appoint another person as Premier ; or

(b) if he ceases to be a member of the House of Assembly otherwise than by reason of a dissolution of the Legislative Houses.

(9) The office of a Minister of the Government of the Region other than the Premier shall become vacant if the office of Premier becomes vacant.

(10) Subject to the provisions of subsection (9) of this section, the Ministers of the Government of the Region, other than the Premier, shall hold office during the Governor's pleasure; but the Governor shall not remove such a Minister from office except in accordance with the advice of the Premier.

(11) If on any occasion the office of Premier becomes vacant at a time when the Legislative Houses of the Region are dissolved, then—

(a) subsections (2) and (9) of this section and paragraph (b) of subsection (2) of section 40 of this Constitution shall not apply as respects that occasion; and

(b) the Governor shall appoint a member of the Executive Council as the Premier;

and if a dissolution of the Legislative Houses of the Region takes place at a time when the office of Premier is vacant, the Governor shall, without regard to the provisions of subsection (2) of this section, appoint as Premier a person who was a member of the Executive Council immediately before the vacancy occurred.

(12) There shall be an Attorney-General of the Region who shall be a Minister of the Government of the Region.

(13) Subject to the provisions of section 12 of this Constitution, the Attorney-General of the Region shall be a member of the House of Assembly by virtue of this subsection if he is not a member of the House of Chiefs and is not apart from this subsection a member of the House of Assembly.

(14) If the person holding the office of Attorney-General of the Region is for any reason unable to perform the functions conferred upon him by this Constitution or any other law, those functions (other than functions as a member of the House of Assembly) may be performed by such other person, whether or not that person is a Minister, as may from time to time be designated in that behalf by the Governor, acting in accordance with the advice of the Premier.

(15) A person shall not be qualified to hold or perform the functions of the office of the Attorney-General of the Region unless he is qualified for admission as an advocate in Nigeria and has been so qualified for not less than ten years.

Establish-
ment of
Executive
Council.

34.—(1) There shall be an Executive Council for the Region, whose function shall be to advise the Governor in the government of the Region and which shall consist of the Premier and such other persons, being Ministers of the Government of the Region, as the Governor, acting in accordance with the advice of the Premier, may from time to time appoint.

(2) A person appointed as a member of the Executive Council shall vacate his seat on the Council if he ceases to be a Minister of the Government of the Region or if the Governor, acting in accordance with the advice of the Premier, so directs.

5 35.—(1) The Executive Council shall be collectively responsible to the Legislative Houses of the Region for any advice given to the Governor by or under the general authority of the Council and for all things done by or under the authority of any Minister of the Government of the Region in the execution of his office.

Collective responsibility.

10 (2) The provisions of this section shall not apply in relation to—

15 (a) the appointment and removal from office of Ministers of the Government of the Region, members of the Executive Council and Parliamentary Secretaries to Ministers, the assignment of portfolios to Ministers or the authorization of another member of the Executive Council to perform the functions of the Premier in pursuance of section 37 of this Constitution ;

 (b) the dissolution of the Legislative Houses of the Region ;

 (c) the matters referred to in section 44 of this Constitution ; or

20 (d) the exercise of the powers conferred on the Attorney-General of the Region by section 47 of this Constitution.

25 36. The Governor, acting in accordance with the advice of the Premier, may assign to the Premier or any other Minister of the Government of the Region responsibility for any business of the Government of the Region, including the administration of any department of government.

Allocation of portfolios to Ministers.

30 37.—(1) Whenever the Premier is absent from Nigeria or is for any other reason unable to perform the functions conferred upon him by this Constitution, the Governor may authorize some other member of the Executive Council of the Region to perform those functions (other than the functions conferred by this section) and that member may perform those functions until his authority is revoked by the Governor.

Performance of functions of Premier during absence, etc.

 (2) The powers of the Governor under this section shall be exercised by him in accordance with the advice of the Premier :

35 Provided that if the Governor considers that it is impracticable to obtain the advice of the Premier owing to his absence or illness he may exercise those powers without that advice.

40 38.—(1) Subject to the provisions of subsection (2) of this section, in the exercise of his functions under this Constitution, the Constitution of the Federation or any other law the Governor shall act in accordance with the advice of the Executive Council or a Minister of the Government of the Region acting under the general authority of the Executive Council except in cases where by this Constitution he is required to act in accordance with the advice of any person or authority other than the Executive Council :

Exercise of Governor's powers.

Provided that the Governor shall act in accordance with his own deliberate judgment in the performance of the following functions—

(a) in the exercise of the power to refuse to dissolve the Legislative Houses of the Region conferred upon him by subsection (4) of section 31 of this Constitution ;

5

(b) in the exercise of the powers to appoint the Premier conferred upon him by subsections (2) and (11) of section 33 of this Constitution and of the power conferred upon him by subsection (8) of that section to inform the Premier of his re-appointment or replacement ;

(c) in the exercise of the powers conferred upon him by section 37 of this Constitution in the circumstances described in the proviso to subsection (2) of that section ;

10

(d) in the exercise of the power conferred upon him by section 39 of this Constitution to request the Premier to furnish him with information ; and

15

(e) in signifying his approval for the purposes of section 62 of this Constitution of an appointment to an office on his personal staff.

(2) Nothing in subsection (1) of this section shall apply to functions conferred upon the Governor by subsection (5) of section 31, subsection (2) of section 50 or subsection (3) of section 67 of this Constitution.

20

(3) Where by this Constitution the Governor is required to act in accordance with the advice of any person or authority, the question whether he has in any case received, or acted in accordance with, such advice shall not be enquired into in any court of law.

Governor to be informed concerning matters of government.

39. The Premier shall keep the Governor fully informed concerning the general conduct of the government of the Region and shall furnish the Governor with such information as he may request with respect to any particular matter relating to the government of the Region.

25

Parliamentary Secretaries.

40.—(1) The Governor, acting in accordance with the advice of the Premier, may appoint Parliamentary Secretaries from among the members of the Legislative Houses of the Region to assist Ministers of the Government of the Region in the performance of their duties.

30

(2) The office of a Parliamentary Secretary shall become vacant—

(a) if he ceases to be a member of one or other of the Legislative Houses of the Region otherwise than by reason of a dissolution of those Houses ;

35

(b) if the office of Premier becomes vacant ; or

(c) if the Governor, acting in accordance with the advice of the Premier, so directs.

Oaths to be taken by Ministers, etc.

41. A member of the Executive Council, Minister of the Government of the Region or Parliamentary Secretary to such a Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by the Legislature of the Region.

40

42. Where any Minister of the Government of the Region has been charged with responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, the department shall be under the supervision of a permanent secretary, whose office shall be an office in the public service of the Region :

Permanent secretaries.

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

43. Subject to the provisions of this Constitution and of any Regional law, the Governor may constitute offices for the Region, make appointments to any such office and terminate any such appointment.

Constitution of offices for Region, etc.

44.—(1) The Governor may—

Prerogative of mercy.

- (a) grant to any person concerned in or convicted of any offence created by or under a Regional law a pardon, either free or subject to lawful conditions ;

(b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence ;

- (c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence ; or

(d) remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence.

- (2) The powers of the Governor under subsection (1) of this section shall be exercised by him in accordance with the advice of such member of the Executive Council as may from time to time be designated in that behalf by the Governor, acting in accordance with the advice of the Premier.

- (3) The provisions of this section shall apply in relation to any offence created by or under any law in force in the Region relating to any matter not included in the Legislative Lists set out in the Schedule to the Constitution of the Federation (other than an offence created by or under an Act of Parliament or a Regional law) as they apply in relation to an offence created by or under a Regional law.

- 45.—(1) There shall be for the Region an Advisory Council on the Prerogative of Mercy, which shall consist of—

Establishment of Advisory Council on Prerogative of mercy.

(a) such member of the Executive Council as may for the time being be designated under subsection (2) of section 44 of this Constitution, who shall be chairman ;

- (b) where the chairman is a Minister other than the Attorney-General of the Region, the Attorney-General ; and

- (c) not less than five nor more than seven other members, who shall be appointed by the Governor, acting in accordance with the advice of the Premier, of whom at least one shall be a person who is a qualified medical practitioner.

(2) A person shall not be qualified for appointment by the Governor as a member of the Advisory Council if he is a member of a Legislative House of the Region, a member of either House of Parliament, a member of a legislative house of another Region, a Minister of the Government of the Region, a Minister of the Government of the Federation or a Minister of the Government of another Region. 5

(3) A member of the Advisory Council appointed by the Governor shall hold office for three years :

Provided that his seat on the Council shall become vacant—

(a) if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for appointment as such a member ; or 10

(b) if he is removed from office by the Governor, acting in accordance with the advice of the Premier, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour. 15

Functions of
Advisory
Council.

46.—(1) Where any person has been sentenced to death by any court of law in Nigeria for any offence created by or under a Regional law the member of the Executive Council of the Region designated under subsection (2) of section 44 of this Constitution shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the member may require, to be taken into consideration at a meeting of the Advisory Council ; and after obtaining the advice of the Council the member shall decide in his own deliberate judgment whether to recommend to the Governor that he should exercise any of his powers under that section in relation to that person. 20 25

(2) The member of the Executive Council designated under subsection (2) of section 44 of this Constitution may consult the Advisory Council before making any recommendation to the Governor under that subsection in any case not falling within subsection (1) of this section, but he shall not be obliged to act in accordance with the advice of the Council. 30

(3) The Advisory Council may regulate its own procedure.

Public
prosecu-
tions.

47.—(1) There shall be a Director of Public Prosecutions for the Region, whose office shall be an office in the public service of the Region and, without prejudice to the provisions of this Constitution relating to the Public Service Commission of the Region, an office in the department of government for which responsibility is assigned to the Attorney-General of the Region. 35 40

(2) The Attorney-General of the Region shall have power in any case in which he considers it desirable so to do—

(a) to institute and undertake criminal proceedings against any person before any court of law in the Region in respect of any offence created by or under any Regional law ; 45

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority ; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

5 (3) The powers of the Attorney-General of the Region under subsection (2) of this section may be exercised by him in person and through the Director of Public Prosecutions of the Region acting under and in accordance with the general or special instructions of the Attorney-General and through other officers of the department mentioned in subsection (1) of this section acting under and in
10 accordance with such instructions.

(4) The Attorney-General of the Region may confer a general or special authority upon the Attorney-General of the Federation to exercise, subject to such conditions and exceptions as he may think fit, any of the powers conferred upon him by subsection (2) of this section
15 and may vary or revoke any such authority.

(5) The powers conferred upon the Attorney-General of the Region by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority :

20 Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

25 (6) In the exercise of the powers conferred upon him by this section the Attorney-General of the Region shall not be subject to the direction or control of any other person or authority.

30 (7) For the purposes of this section any appeal from any determination in any criminal proceedings before any court of law in the Region or any case stated or question of law reserved for the purposes of any such proceedings to any other court in Nigeria shall be deemed to be part of those proceedings.

35 (8) The provisions of this section shall apply in relation to any offence created by or under any law in force in the Region relating to any matter not included in the Legislative Lists set out in the Schedule to the Constitution of the Federation (other than an offence created by or under an Act of Parliament or a Regional law) as they apply in relation to an offence created by or under a Regional law.

40 (9) Except at the instance of the Attorney-General of the Region, the question whether he has given any instructions in pursuance of this section, or what the instructions were, shall not be enquired into by any court of law.

CHAPTER IV

COURTS

45 48.—(1) There shall be a High Court for the Region.

(2) The judges of the High Court of the Region shall be—

(a) the Chief Justice of the Region ; and

(b) such number of other judges (not being less than six) as may be prescribed by the Legislature of the Region.

Establish-
ment of High
Court.

(3) The High Court of the Region shall be a superior court of record and, save as otherwise provided by any law in force in the Region, shall have all the powers of such a court.

Appointment
of judges of
High Court.

49.—(1) The Chief Justice of the Region and the other judges of the High Court of the Region shall be appointed by the Governor, acting in accordance with the advice of the Premier.

(2) A person shall not be qualified to hold the office of a judge of the High Court of the Region unless—

(a) he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; or

(b) he is qualified for admission as an advocate in Nigeria and he has been so qualified for not less than ten years.

(3) If the office of Chief Justice of the Region is vacant or if the person holding the office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding the office has resumed those functions, as the case may be, those functions shall be performed by such one of the other judges of the High Court of the Region as may from time to time be designated in that behalf by the Governor, acting in accordance with the advice of the Premier.

(4) If the office of any judge of the High Court of the Region other than the Chief Justice is vacant or if the person holding the office is acting as Chief Justice or is for any reason unable to perform the functions of his office, the Governor, acting in accordance with the advice of the Premier, may appoint a person with such qualifications as may be prescribed by the Legislature of the Region to act in the office of a judge of the High Court and any person so appointed shall continue to act for the period of his appointment or if no period is specified until his appointment is revoked by the Governor, acting in accordance with the advice of the Premier.

Tenure of
offices of
judges of
High Court.

50.—(1) Subject to the provisions of this section, a person holding or appointed to act in the office of Chief Justice of the Region or any other judge of the High Court of the Region shall vacate his office when he attains such age as may be prescribed by the Legislature of the Region :

Provided that the Governor, acting in accordance with the advice of the Premier, may permit a judge to continue in his office or appointment for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A person holding or appointed to act in the office of a judge of the High Court of the Region shall be removed from his office or appointment by the Governor if—

(a) there are presented to the Governor addresses from both Legislative Houses of the Region praying that that person be so removed for inability to discharge the functions of the office in question (whether arising from infirmity of mind or body or any other cause) or for misbehaviour; and

- 5 (b) the address from each House bears a certificate which is signed by the person who presided at the meeting of that House at which the motion for the address was passed and which states that not less than two-thirds of all the members of that House voted in favour of the motion ;

and, except on the revocation in pursuance of section 49 of this Constitution of an appointment to act as aforesaid, a person holding or appointed to act in such an office shall not be removed from his office or appointment in any other circumstances.

- 10 51.—(1) An appeal shall lie from decisions of a subordinate court to the High Court of the Region as of right or, if it is provided by any law in force in the Region that an appeal as of right shall lie from that subordinate court to another subordinate court, an appeal shall thereafter lie to the High Court as of right in the following cases—

Appeals to High Court from subordinate courts.

- 15 (a) where the matter in dispute on the appeal to the High Court is of the value of fifty pounds or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of fifty pounds or upwards, final decisions in any civil proceedings ;

- 20 (b) where the ground of appeal to the High Court involves questions of law alone, decisions in any criminal proceedings in which any person has been sentenced to imprisonment for a term exceeding three months or corporal punishment exceeding six strokes or a fine or forfeiture exceeding twenty-five pounds by the subordinate court from which the appeal lies to the High Court or that subordinate court has affirmed or substituted such a sentence ;

- 25 (c) decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution, the Constitution of the Federation or the constitution of another Region ;

- 30 (d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter III of the Constitution of the Federation has been contravened in relation to any person ;

- 35 (e) decisions in any criminal proceedings in which any person has been sentenced to death by the subordinate court from which the appeal lies to the High Court or in which that subordinate court has affirmed a sentence of death ;

- (f) decisions in any other criminal proceedings before a subordinate court sitting at first instance from which no appeal lies as of right to another subordinate court ; and

- 40 (g) such other cases as may be prescribed by any law in force in the Region :

- 45 Provided that no appeal shall lie from decisions of a subordinate court established under section 126 of the Constitution of the Federation to the High Court in any case in which an appeal lies as of right to the Supreme Court by virtue of any Act of Parliament enacted in pursuance of section 118 of that Constitution.

(2) An appeal shall lie from decisions of a subordinate court to the High Court of the Region with the leave of the High Court or, if it is provided by any law in force in the Region that an appeal shall lie from that subordinate court to another subordinate court, an appeal shall thereafter lie to the High Court with the leave of the High Court in the following cases :—

(a) decisions in any criminal proceedings from which no appeal lies as of right to the High Court ; and

(b) such other cases in which no appeal lies as of right to the High Court as may be prescribed by any law in force in the Region :

Provided that no appeal shall lie under paragraph (a) of this subsection from decisions of a subordinate court established under section 126 of the Constitution of the Federation to the High Court in any case in which an appeal lies to the Supreme Court (whether as of right or with the leave of the Supreme Court) by virtue of an Act of Parliament enacted under section 118 of that Constitution.

(3) Any right of appeal from decisions of a subordinate court to the High Court of the Region conferred by this section—

(a) shall be exercisable in the case of civil proceedings at the instance of a party thereto or, with the leave of the High Court, at the instance of any other person having an interest in the matter and in the case of criminal proceedings at the instance of the accused person or, subject to the provisions of section 47 of this Constitution, at the instance of such other persons or authorities as may be prescribed by any law in force in the Region ; and

(b) shall be exercised in accordance with any laws and rules of court for the time being in force regulating the powers, practice and procedure of the High Court.

(4) In this section—

“decision” means, in relation to a subordinate court, any determination of that court and, without prejudice to the generality of the foregoing provisions of this definition, includes a judgment, decree, order, conviction, sentence (other than a sentence fixed by law) or recommendation ;

“subordinate court” means any court of law in the Region other than the Supreme Court, the Court of Appeal of the Region, the High Court of the Region or a court-martial.

Power to
establish
Regional
Court of
Appeal.

52.—(1) The Legislature of the Region may establish a Court of Appeal for the Region to which appeals shall lie from the High Court of the Region in such circumstances as the Legislature of the Region may prescribe.

(2) The provisions of this Constitution relating to the Chief Justice of the Region and any other judge of the High Court of the Region (other than sections 2 and 18) shall apply with the necessary modifications in relation to the principal and any other judge respectively of the Court of Appeal as they apply in relation to a judge of the High Court of the Region, so however that the Legislature of the Region may provide that a person shall not hold or act in the office of a judge of the Court of Appeal unless he has such qualifications additional to those specified by the provisions aforesaid as the Legislature may prescribe.

53. A judge of the High Court of the Region shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by the Legislature of the Region.

Oaths to be taken by judges.

5

CHAPTER V

FINANCE

54.—(1) All revenues or other moneys raised or received by the Region (not being revenues or other moneys payable under this Constitution or any Regional law into some other public fund of the Region established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund.

Establishment of Consolidated Revenue Fund.

(2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Region except to meet expenditure that is charged upon the Fund by this Constitution, the Constitution of the Federation or any Regional law or where the issue of those moneys has been authorised by an appropriation law or a law made in pursuance of section 56 of this Constitution.

(3) No money shall be withdrawn from any public fund of the Region other than the Consolidated Revenue Fund unless the issue of those moneys has been authorised by a Regional law.

(4) No money shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Region except in the manner prescribed by the Legislature of the Region.

55.—(1) The Minister of the Government of the Region responsible for finance shall cause to be prepared and laid before both Legislative Houses of the Region in each financial year estimates of the revenues and expenditure of the Region for the next following financial year.

Authorization of expenditure from Consolidated Revenue Fund.

(2) The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund by this Constitution, the Constitution of the Federation or any Regional law) shall be included in a bill, to be known as an appropriation bill, providing for the issue from the Consolidated Revenue Fund of the Region of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(3) If in respect of any financial year it is found—

(a) that the amount appropriated by the appropriation law for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the law ; or

(b) that any moneys have been expended for any purpose in excess of the amount appropriated for the purpose by the appropriation law or for a purpose for which no amount has been appropriated by the law,

a supplementary estimate showing the sums required or spent shall be laid before both Legislative Houses of the Region and the heads of any such expenditure shall be included in a supplementary appropriation bill.

Authoriza-
tion of
expenditure
in advance of
appropria-
tion.

56. The Legislature of the Region may make provision under which, if the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister of the Government of the Region responsible for finance may authorize the withdrawal of moneys from the Consolidated Revenue Fund of the Region for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the appropriation law, whichever is the earlier.

Contingen-
cies Fund.

57.—(1) The Legislature of the Region may provide for the establishment of a Contingencies Fund for the Region and for authorising the Minister of the Government of the Region responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet that need.

(2) Where any advance is made in accordance with subsection (1) of this section a supplementary estimate shall be presented and a supplementary appropriation bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

Remunera-
tion of
Governor
and certain
other
officers.

58.—(1) There shall be paid to the holders of the offices mentioned in subsection (4) of this section such salary as may be prescribed by the Legislature of the Region.

(2) The salary and allowances payable to the holders of the offices so mentioned shall be a charge on the Consolidated Revenue Fund of the Region.

(3) The salary payable to the holder of any office so mentioned and his terms of office other than allowances shall not be altered to his disadvantage after his appointment.

(4) The offices aforesaid are the office of Governor, Chief Justice or other judge of the High Court of the Region, member of the Electoral Commission of the Region appointed by the Governor, member of the Public Service Commission of the Region and Director of Audit of the Region.

Audit of
public
accounts.

59.—(1) There shall be a Director of Audit for the Region, whose office shall be an office in the public service of the Region.

(2) The public accounts of the Region and of all offices, courts and authorities of the Region shall be audited and reported on by the Director of Audit of the Region, and for that purpose the Director or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.

(3) The Director of Audit of the Region shall submit his reports to the Minister of the Government of the Region responsible for finance, who shall cause them to be laid before both Legislative Houses of the Region.

(4) In the exercise of his functions under this Constitution the Director of Audit of the Region shall not be subject to the direction or control of any other person or authority.

Public debt.

60.—(1) The public debt of the Region shall be secured on the revenues and assets of the Region.

(2) In this section references to the public debt of the Region include references to the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

5

CHAPTER VI

THE PUBLIC SERVICE OF THE REGION

61.—(1) There shall be a Public Service Commission for the Region, which shall consist of a chairman and not less than two nor more than four other members.

Establishment of Public Service Commission.

10 (2) The members of the Public Service Commission of the Region shall be appointed by the Governor, acting in accordance with the advice of the Premier.

15 (3) A person shall not be qualified to hold the office of a member of the Public Service Commission of the Region if he is a member of a Legislative House of the Region, a member of a House of Parliament, a member of a legislative house of another Region, a Minister of the Government of the Region, a Minister of the Government of the Federation, a Minister of the Government of another Region or a member of the public service of the Region, the public service of the Federation or the public service of another Region.

(4) Subject to the provisions of this section, a member of the Public Service Commission of the Region shall vacate his office—

(a) at the expiration of five years from the date of his appointment; or

25 (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

30 (5) A member of the Public Service Commission of the Region may be removed from office by the Governor, acting in accordance with the advice of the Premier, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

35 (6) A member of the Public Service Commission of the Region shall not be removed from office except in accordance with the provisions of this section.

(7) A person who has been appointed to be a member of the Public Service Commission of the Region shall not thereafter be eligible for appointment to any office in the public service of the Region.

40 62.—(1) Power to appoint persons to hold or act in offices in the public service of the Region (including power to make appointments on promotion and transfer and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission of the Region :

Appointment etc. of officers in public service.

45 Provided that the Commission may, with the approval of the Premier and subject to such conditions as it may think fit, delegate any of its powers under this section to any of its members or to any officer in the public service of the Region.

(2) Subsection (1) of this section shall not apply in relation to any of the following offices—

- (a) the office of the Deputy Governor of the Region ;
- (b) the office of any judge of the High Court of the Region ;
- (c) except for the purposes of making an appointment thereto, the office of the Director of Audit of the Region ;
- (d) the office of the Agent-General of the Region in the United Kingdom ;
- (e) the office of justice of the peace.

(3) The provisions of this section shall be subject to the provisions of section 65 of this Constitution.

(4) No appointment shall be made under this section to any office on the personal staff of the Governor unless the Governor signifies his approval of the appointment.

Appoint-
ment etc.
of Deputy
Governor.

63. If at any time the office of Deputy Governor of the Region is established under section 43 of this Constitution, power to appoint persons to hold or act in that office and to remove persons so appointed from that office shall vest in the Governor, acting in accordance with the advice of the Premier.

Appoint-
ment etc.
of Agent-
General in
C.K.

64.—(1) Power to appoint persons to hold or act in the office of the Agent-General of the Region in the United Kingdom (including power to make appointments on promotion and transfer) and to remove persons so appointed from that office shall vest in the Governor, acting in accordance with the advice of the Premier.

(2) Before tendering any advice for the purposes of this section in relation to any person who holds any office in the public service of the Region other than an office to which this section applies, the Premier shall consult the Public Service Commission of the Region.

65.—(1) Power to appoint persons to hold or act in the office of permanent secretary to any department of government of the Region and to remove persons so appointed from that office shall vest in the Governor, acting in accordance with the advice of the Premier.

Appoint-
ment etc.
of permanent
secretaries.

(2) Before tendering any advice for the purposes of this section the Premier shall consult the Public Service Commission of the Region.

66. A person shall not be qualified to hold or act in the office of Director of Public Prosecutions of the Region unless he is qualified for admission as an advocate in Nigeria and has been so qualified for not less than ten years.

Qualifica-
tions of
Director of
Public
Prosecutions.

67.—(1) Before appointing any person to hold the office of Director of Audit of the Region the Public Service Commission of the Region shall consult the Premier.

Appoint-
ment and
tenure of
office of
Director of
Audit.

(2) Subject to the provisions of this section, a person holding the office of Director of Audit of the Region shall vacate that office when he attains such age as may be prescribed by the Legislature of the Region.

(3) A person holding the office of Director of Audit of the Region shall be removed from office by the Governor if a resolution is passed by each Legislative House of the Region recommending his removal

from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

- 5 (4) A person holding the office of Director of Audit of the Region shall not be removed from office except in accordance with the provisions of this section.

- 10 (5) If the office of Director of Audit of the Region is vacant or the holder of the office is for any reason unable to perform the functions of the office, the Public Service Commission of the Region, acting after consultation with the Premier, may appoint a person to act in the office and any person so appointed shall continue to act until his appointment is revoked by the Commission, acting after consultation with the Premier.

- 15 68. Before exercising any of its powers in relation to the Clerk to the House of Chiefs the Public Service Commission of the Region shall consult the President of that House, and before exercising any of its powers in relation to the Clerk to the House of Assembly the Commission shall consult the Speaker of that House.

Powers relating to Clerks of Legislative Houses.

- 20 69.—(1) Where any benefits to which this section applies can be withheld, reduced in amount or suspended by any person or authority under any Regional law, those benefits shall not be so withheld, reduced in amount or suspended without the approval of the Public Service Commission of the Region.

Powers of Commissions in relation to grant of pensions, etc.

- 25 (2) No benefits to which this section applies that have been granted to any person who holds or has held the office of judge of the High Court of the Region or for which any such person may be eligible shall be withheld, reduced or suspended on the ground that that person has been guilty of misbehaviour while holding that office unless that person has been removed from that office by reason of such misbehaviour.

- 30 (3) This section applies to any benefits payable under any Regional law providing for the grant of pensions, gratuities or compensation to persons who are or have been members of the public service of the Region in respect of their service in that public service or to the widows, children, dependants or personal representatives of such persons in respect of such service.

35 CHAPTER VII

MISCELLANEOUS

- 40 70. Power to appoint persons to hold the office of justice of the peace for the Region or any part thereof and to remove or suspend persons so appointed from that office shall vest in the Attorney-General of the Region.

Appointment of justices of the peace.

- 45 71.—(1) Any Commission established by this Constitution may, with the consent of the Premier or such other Minister of the Government of the Region as may be authorised in that behalf by the Premier, by regulation or otherwise regulate its own procedure or confer powers and impose duties on any officer or authority of the Region for the purpose of discharging its functions.

Powers and procedure of Commissions.

(2) Subject to its rules of procedure, any Commission established by this Constitution may act notwithstanding any vacancy in its membership or the absence of any member, but any decision of the Commission shall require the concurrence of a majority of all the members thereof.

Establish-
ment of pro-
vincial
administra-
tions.

72.—(1) The Governor may by order designate any area within the Region as a province and establish for it a provisional administration.

(2) A provincial administration established under this section shall consist of such persons and shall have such functions as may be prescribed by the Governor or by any law in force in the Region.

(3) The provisions of this section shall be without prejudice to the powers of the Legislature of the Region to establish a provincial administration for any area within the Region or otherwise to make provision for the administration of such an area.

Resignations.

73.—(1) Any person who is appointed or elected to or otherwise selected for any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he is appointed, elected or selected :

Provided that—

(a) in the case of the Governor of the Region, his resignation shall be addressed to the Premier ;

(b) in the case of a member of a Legislative House of the Region who holds office as President or Speaker of the House, his resignation from the House or that office shall be addressed to the House ; and

(c) in the case of any other member of a Legislative House of the Region, his resignation from the House shall be addressed to the President or Speaker of the House, as the case may be.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

(3) On the resignation of the Governor of the Region, the Premier shall forthwith give notice of the resignation to the President.

Re-appoint-
ments, etc.

74.—(1) Where any person has vacated any office constituted by this Constitution, he may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

(2) Where by this Constitution a power is conferred upon any person or authority to make any appointment to any office in the public service of the Region, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of his office ; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then for the purpose of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

75.—(1) In this Constitution, unless it is otherwise expressly provided or required by the context—

Interpretation, etc.—
general.

“Act of Parliament” means any law made by Parliament ;

5 “the Advisory Council” means the Advisory Council on the Prerogative of Mercy of the Region ;

“the Commonwealth” means Nigeria, any country to which section 14 of the Constitution of the Federation applies and any dependency of any such country ;

10 “financial year” means any period of twelve months beginning on the first day of April in any year or such other date as the Legislature of the Region may prescribe ;

“oath” includes affirmation ;

“the oath of allegiance” means such oath of allegiance as may be prescribed by Parliament ;

15 “Parliament” means the Parliament of the Federation ;

“the President” means the President of the Republic ;

“the public service of the Region” means the service of the Republic in a civil capacity in respect of the government of the Region ;

20 “Regional law” means any law made by the Legislature of the Region ;

25 “the state” means the Government of the Federation or a Region and “office under the state” and “office of emolument under the state” include office as the Governor of a Region or as a member of the Government of the Federation or a Region, so however that a person shall not be treated as holding an office of emolument under the state by reason only of his receiving a pension or other like benefit in respect of an office under the state ; and

“the Supreme Court” means the Supreme Court of Nigeria.

30 (2) In this Constitution, unless it is otherwise expressly provided or required by the context—

(a) references to persons holding offices in the public service of the Federation or the public service of a Region include references to persons acting in those offices ; and

35 (b) references to offices in the public service of the Region include references to the offices of the judges of the High Court of the Region and references to the offices of members of all other courts of law established by the Legislature of the Region, being offices the emoluments attaching to which are paid out of the Consolidated Revenue Fund or any other public fund of the Region.

40 (3) For the purposes of this Constitution, the office of the President of the House of Chiefs or the Deputy President of the House, a member of the House of Chiefs, the Speaker or the Deputy Speaker of the House of Assembly, a member of the House of Assembly, a Minister of the Government of the Region, a Parliamentary Secretary to such a
45 Minister or a member of the Executive Council, any Commission established by this Constitution or the Advisory Council or a justice of the peace for the Region shall not be regarded as an office in the public service of the Region.

(4) A provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall not be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law. 5

(5) Notwithstanding anything in section 16 or any other provision of this Constitution, no question as to the validity of the selection, appointment, approval of appointment, recognition, installation, grading, deposition or abdication of any chief shall be entertained by any court of law in the Region. 10

(6) For the avoidance of doubt it is hereby declared that any power to make laws conferred by this Constitution includes power to make laws having extra-territorial operation.

Transitional provisions.

76. The foregoing provisions of this Constitution shall have effect subject to the provisions of the Second Schedule to this Constitution (which contains transitional provisions for giving effect to and otherwise connected with the foregoing provisions of this Constitution). 15

SCHEDULES

Sections 7, 14.

FIRST SCHEDULE

Special areas etc.

(1)

1. The Akoko-Edo area, that is to say, the area comprising so much of the electoral district established by the proclamation and designated and numbered thereby as Afenmai North West, No. 177, as consists of the District Council Area of Akoko-Edo within the meaning of the proclamation.

(2)

- The Edo speaking Yoruba ethnic group.
2. The Isoko area, that is to say, the area of the electoral district established by the proclamation and designated and numbered thereby as Urhobo East, No. 233. The Isoko ethnic group.
3. The Warri area, that is to say, the area of the electoral district established by the proclamation and designated and numbered thereby as Warri, No. 235. The Itsekiri ethnic group.
4. The Western Ijaw area, that is to say, the area of the electoral district established by the proclamation and designated and numbered thereby as Western Ijaw, No. 236. The Ijaw ethnic group.

In this Schedule, "the proclamation" means the Proclamation known as the Establishment of Electoral Districts Proclamation, 1958, and published in the Gazette as Legal Notice No. 115 of 1958, as in force on the first day of November, 1963.

Section 76

SECOND SCHEDULE

Transitional provisions

The Governor

1.—(1) The first Governor of the Region shall be appointed by the President, acting in accordance with the advice of the Prime Minister of the Federation.

(2) Before tendering any advice to the President for the purposes of the foregoing sub-paragraph, the Prime Minister shall consult such organisations appearing to him to carry on political activities in the Region as he thinks fit.

(3) The oaths which the first Governor of the Region is required to take and subscribe before first entering upon the duties of his office shall be taken and subscribed before the Chief Justice of Nigeria.

The Electoral Commission, etc.

2.—(1) The Electoral Commission of the Federation shall, to the exclusion of the Electoral Commission of the Region, exercise the functions conferred by this Constitution on the last-mentioned commission until such day (not being earlier than the first day of June, 1964) as the Governor may by order appoint or until the expiration of that year, whichever first occurs; and references in this Constitution to the Electoral Commission of the Region shall be construed accordingly.

(2) As respects any period during which functions are exercisable by the Electoral Commission of the Federation in pursuance of sub-paragraph (1) of this paragraph—

(a) the reference to approval in subsection (1) of section 14 of this Constitution shall be construed as a reference to the approval of the Prime Minister of the Federation signified by order; and

(b) the reference to the census in subsection (8) of that section shall be construed as a reference to the last census of the population of the area comprised in the Region held by virtue of an enactment before the first day of January, 1962.

The High Court

3.—(1) The High Court of Lagos shall, to the exclusion of the High Court of the Region, exercise the jurisdiction conferred by this Constitution on the last-mentioned court—

(a) subject to the following provisions of this sub-paragraph, until such day as the Governor may by order appoint or the expiration of the year nineteen hundred and sixty-four, whichever first occurs; and

(b) as respects any proceedings which, by virtue of the foregoing provisions of this sub-paragraph, are pending in the High Court of Lagos immediately before the day or the expiration of the period aforesaid;

and references in this Constitution to the High Court of the Region shall be construed accordingly.

(2) The High Court of Lagos shall, as respects proceedings pending in that court immediately before the appointed day, continue to exercise to the exclusion of any other court the jurisdiction conferred on it by section six of the Transitional Provisions Act.

(3) Nothing in this Constitution shall be construed as affecting the jurisdiction of the High Court of Western Nigeria as respects such pending proceedings as are mentioned in the said section six.

Vesting of property, etc.

4.—(1) All property held by the Administrative Council of Mid-Western Nigeria immediately before the appointed day shall, by virtue of this sub-paragraph and without further assurance, vest in the Governor of the Region on that day and be held by him for the purposes of the government of the Region.

(2) The foregoing sub-paragraph shall, with the necessary modifications, apply in relation to rights, liabilities and obligations arising out of a contract or other arrangement as it applies in relation to property.

Finance

5.—(1) The assets of the Mid-Western Region Administration Fund shall be paid into, and any sums falling to be paid from that fund shall be defrayed out of, the Consolidated Revenue Fund of the Region.

(2) Any regulations having effect by virtue of subsection (3) of section eight of the Transitional Provisions Act immediately before the appointed day shall, until varied or revoked by virtue of a law made by the Legislature of the Region, continue to have effect by virtue of this sub-paragraph but as if for any reference in the regulations to the administration fund aforesaid there were substituted a reference to the Consolidated Revenue Fund of the Region.

(3) The duty imposed by subsection (1) of section 55 of this Constitution as respects estimates for the financial year beginning on the first day of April, 1964, shall be treated as duly performed if it is performed before the expiration of that financial year; and section 56 of this Constitution shall have effect, in relation to that financial year, as if for the words "four months" there were substituted the words "twelve months".

Operation of existing law

6.—(1) Any law which, immediately before the appointed day, is in force in or in any part of the Region by virtue of section two, three or four of the Transitional Provisions Act shall, until it is changed by an authority having power to do so and subject to paragraph 5 of this Schedule, continue in force in the Region or part with such modifications (whether by way of addition, alteration or omission) as may be necessary to bring it into conformity with this Constitution.

(2) Without prejudice to the provisions of the foregoing sub-paragraph, where any matter—

(a) falls to be prescribed under this Constitution by the Legislature of the Region or any other authority; and

(b) is prescribed by any law having effect by virtue of that sub-paragraph or paragraph 5 of this Schedule,

that law shall, as respects that matter, be deemed to have been made by the Legislature or other authority in question.

(3) For the avoidance of doubt it is hereby declared that the provisions repealed by section 154 of the Constitution of the Federation ceased to have effect as respects the Region on the coming into force of that Constitution, and accordingly nothing in sub-paragraph (1) of this paragraph shall be construed as continuing those provisions in force as respects the Region.

(4) For the purposes of subsection (1) of section three of the Constitution of Mid-Western Nigeria Act, 1964, but not for any other purposes, the reference in this paragraph to the appointed day shall be construed as a reference to the relevant date mentioned in that subsection.

Existing public authorities and officers

7.—(1) The Administrative Council of Mid-Western Nigeria is hereby abolished on the appointed day.

(2) Without prejudice to the provisions of paragraph 6 of this Schedule, every local authority, court or other public body which, immediately before the appointed day, is charged with functions in the Region by virtue of subsection (1) of section five of the Transitional Provisions Act shall, until other provision in that behalf is made by law, continue to be charged with those functions.

(3) Any person who, immediately before the appointed day, holds office by virtue of subsection (2) of the said section five shall be deemed to be duly appointed to that office on that day by the Public Service Commission of the Region or, as the case may be, by any other authority by whom appointments to that office fall to be made in pursuance of this Constitution.

Miscellaneous

8. In relation to a Legislative House of the Region which has never been dissolved, subsection (2) of section 31 of this Constitution shall have effect as if the words "after any dissolution" were omitted.

9. In this Schedule—

"the appointed day" means, subject to sub-paragraph (4) of paragraph 6 of this Schedule, the day appointed in pursuance of subsection (3) of section three of the Constitution of Mid-Western Nigeria Act, 1964;

"functions" includes powers and duties; and

"the Transitional Provisions Act" means the Mid-Western Region (Transitional Provisions) Act, 1963.

THE INTERPRETATION BILL

EXPLANATORY MEMORANDUM

This Bill makes fresh provision for the interpretation of Acts of Parliament and of certain instruments made in the exercise of powers conferred by Acts of Parliament.

The Bill is for the most part a re-enactment of provisions contained in the existing Interpretation Act (Chapter 89) with amendments intended primarily to take into account the constitutional and other changes which have taken place since that Act was passed.

Some provisions of the existing Act are repealed and not re-enacted by the Bill on the ground that they are spent. Other provisions of that Act are left unrepealed by the Bill on the ground that they are not interpretation provisions but are suitable for inclusion in due course in fresh legislation about the topics to which they properly relate.

T. O. ELIAS,
*Attorney-General of the Federation
and Minister of Justice*

ARRANGEMENT OF CLAUSES

Clause

Preliminary

1. Application of this Act.

Operation of enactments

2. Passing and commencement.
3. Punctuation, headings and descriptive words
4. Amended and substituted enactments.
5. Construction of references to portions of enactments.
6. Effect of repeals, expiration, etc.
7. Forfeiture.
8. Civil remedy not excluded by other sanction.
9. Enactments binding the state.

Construction of statutory powers and duties

10. Statutory powers and duties—general.
11. Appointments.
12. Additional provisions as to powers to make subsidiary instruments, etc.
13. Payment to precede the performance of certain duties.

Interpretation of enactments

14. Gender and number.
15. Time.
16. Distance.
17. Penalties.
18. Interpretation of particular expressions, etc.
19. Additional provisions as to interpretation of subsidiary instruments.

Miscellaneous

20. Citation of Acts.
21. Printing of enactments with textual amendments.
22. Deviations in forms.
23. Execution of instruments made by the President.
24. Offences under more than one law.
25. Service by post.
26. Special provisions as to certain statutory bodies.

Supplementary

27. Interpretation of this Act, etc.
28. Repeals and savings, etc.
29. Short title and extent.

SCHEDULE—Enactments repealed.

A BILL

FOR

AN ACT TO PROVIDE FOR THE CONSTRUCTION AND INTERPRETATION OF ACTS OF PARLIAMENT AND CERTAIN OTHER INSTRUMENTS; AND FOR PURPOSES CONNECTED THEREWITH.

[]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

Preliminary

- 5 1. This Act shall apply to the provisions of any enactment except in so far as the contrary intention appears in this Act or the enactment in question.

Application
of this Act.

Operation of enactments

- 10 2.—(1) An Act is passed when the President assents to the Bill for the Act, whether or not the Act then comes into force.

Passing and
commence-
ment.

(2) Where no other provision is made as to the time when a particular enactment is to come into force, it shall, subject to the following subsection, come into force—

- 15 (a) in the case of an enactment contained in an Act of Parliament, on the day when the Act is passed ;

(b) in any other case, on the day when the enactment is made.

(3) Where an enactment is expressed to come into force on a particular day, it shall be construed as coming into force immediately on the expiration of the previous day.

- 20 3.—(1) Punctuation forms part of an enactment, and regard shall be had to it accordingly in construing the enactment.

Punctuation,
headings and
descriptive
words.

(2) A heading or marginal note to an enactment does not form part of the enactment and is intended for convenience of reference only.

- 25 (3) Words in an enactment descriptive of another enactment shall not be used as an aid to the construction of the other enactment and are intended for convenience of reference only.

4.—(1) A reference in an enactment to another enactment shall, if the other enactment has been amended, be construed as a reference to the other enactment as amended.

Amended
and substi-
tuted
enactments.

(2) Where an enactment is repealed and another enactment is substituted for it, then—

(a) the repealed enactment shall remain in force until the substituted enactment comes into force ;

(b) any reference to the repealed enactment shall, after the substituted enactment comes into force, be construed as a reference to the substituted enactment ;

(c) any subsidiary instrument in force by virtue of the repealed enactment shall, so far as the instrument is not inconsistent with the substituted enactment, continue in force as if made in pursuance of the substituted enactment.

Construc-
tion of
references to
portions of
enactments.

5.—(1) Where an enactment describes a portion of another enactment in terms of a word occurring in the other enactment, that word is included in the portion described.

(2) Where an enactment describes a consecutive series of provisions of another enactment by reference to the first or last provision of the series, that provision is included in the series described.

Effect of
repeals,
expiration,
etc.

6.—(1) The repeal of an enactment shall not—

(a) revive anything not in force or existing at the time when the repeal takes effect ;

(b) affect the previous operation of the enactment or anything duly done or suffered under the enactment ;

(c) affect any right, privilege, obligation or liability accrued or incurred under the enactment ;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment ;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.

(2) When an enactment expires, lapses or otherwise ceases to have effect, the foregoing subsection shall apply as if the enactment had then been repealed.

Forfeiture.

7. Where an enactment provides that any property shall be forfeited, the enactment shall be construed as providing that the property, or where the property is duly sold the proceeds of sale, shall vest in the Minister of the government of the Federation responsible for finance and be held by him for the purposes of the government of the Federation.

Civil remedy
not excluded
by other
sanction.

8. An enactment shall not be construed as preventing the recovery of damages in respect of injury attributable to any act by reason only of the fact that the enactment provides for a penalty, forfeiture or punishment in respect of the act.

- 9.—(1) An enactment shall not prejudicially affect—
(a) the executive authority of the Federation ; or
(b) any property in so far as it is held for the purposes of the government of the Federation.
- 5 (2) The foregoing subsection shall not apply to an enactment—
(a) if the enactment is expressed to bind the state ; or
(b) in so far as an enactment so provides by other express words or by necessary implication ;
and the provisions of this section shall have effect notwithstanding
10 anything in section one of this Act.

Enactments
binding the
state.

Construction of powers and duties

- 10.—(1) Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.
- 15 (2) An enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it.
- (3) Where an Act is not to come into force immediately on the passing of the Act and confers power to make a subsidiary instrument, to give notices, to prescribe forms, to make an appointment or to do
20 any other thing for the purposes of the Act, the power may be exercised at any time after the Act is passed so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of its commencement, so however that no subsidiary instrument made
25 by virtue of this subsection shall come into force before the commencement of the Act conferring power to make the instrument except in so far as may be necessary for bringing that Act into force.

Statutory
powers and
duties—
general.

- 11.—(1) Where an enactment confers a power to appoint a person either to an office or to exercise any functions, whether for a specified
30 period or not, the power includes—
(a) power to appoint a person by name or to appoint the holder from time to time of a particular office ;
(b) power to remove or suspend him ;
(c) power, exercisable in the manner and subject to the limitations
35 and conditions (if any) applicable to the power to appoint,—
(i) to reappoint or reinstate him ;
(ii) to appoint a person to act in his place, either generally or in regard to specified functions, during such time as is considered expedient by the authority in whom the power of appointment in
40 question is vested.

Appoint-
ments.

- (2) A reference in an enactment to the holder of an office shall be construed as including a reference to a person for the time being appointed to act in his place, either as respects the functions of the office generally or the functions in regard to which he is appointed, as
45 the case may be.

Additional provisions as to powers to make subsidiary instruments, etc.

- 12.—(1) Where an Act confers a power to make a subsidiary instrument, proclamation or notification, the power shall include—
- (a) power to make different provision for different circumstances ;
 - (b) power, exercisable in the like manner and subject to the like consent and conditions (if any), to vary and revoke the instrument, proclamation or notification ;
 - (c) in the case of a subsidiary instrument, power to prescribe punishments for contraventions of provisions of the instrument, not exceeding as respects a particular contravention—
 - (i) in the case of rules of court, imprisonment for a term of three months or a fine of twenty-five pounds or both ;
 - (ii) in any other case, imprisonment for a term of six months or a fine of fifty pounds or both.
- (2) A contravention of a provision of a subsidiary instrument may be prosecuted in a summary manner.

Payment to precede the performance of certain duties.

13. Where a sum of money is payable in respect of the performance of a duty imposed by an enactment on any person, that person may abstain from performing the duty until the sum is paid or, where the sum cannot be finally ascertained before the performance of the duty, until such an amount is paid as that person may reasonably estimate (without prejudice to its subsequent adjustment) to be the relevant sum.

Interpretation of enactments

Gender and number.

14. In an enactment—
- (a) words importing the masculine gender include females ;
 - (b) words in the singular include the plural and words in the plural include the singular.

Time.

- 15.—(1) A reference in an enactment to the time of day is a reference to the time which is one hour in advance of Greenwich mean time.
- (2) A reference in an enactment to a period of days shall be construed—
- (a) where the period is reckoned from a particular event, as excluding the day on which the event occurs ;
 - (b) where apart from this paragraph the last day of the period is a holiday, as continuing until the end of the next following day which is not a holiday.
- (3) Where by an enactment any act is authorised or required to be done on a particular day and that day is a holiday, it shall be deemed to be duly done if it is done on the next following day which is not a holiday.
- (4) Where by an enactment any act is authorised or required to be done within a particular period which does not exceed six days, holidays shall be left out of account in computing the period.
- (5) In this section "holiday" means a day which is a Sunday or a public holiday.

Distance.

16. In determining a distance for the purposes of an enactment, the distance shall be measured in a straight line on a horizontal plane.

17.—(1) Where a punishment in respect of an offence is provided by an enactment, the enactment shall be construed as providing that an offender shall be liable in pursuance of the enactment to a punishment not exceeding the punishment so provided.

Penalties.

5 (2) Where imprisonment in respect of an offence is provided by an enactment, the enactment shall be construed as providing that any imprisonment imposed in pursuance of the enactment in respect of the offence shall be—

10 (a) with or without hard labour as the court imposing the imprisonment may in its discretion direct ;

(b) with hard labour if no such direction is given.

15 (3) Where a punishment is set out at the foot of an enactment, the enactment shall be construed as providing that a contravention of the enactment shall be an offence for which an offender shall be liable, subject to subsection (1) of this section, to the punishment so set out.

18.—(1) In an enactment the following expressions have the meanings hereby assigned to them respectively, that is to say—

Interpretation of particular expressions, etc.

20 “act” includes an omission, and references to the doing of an act shall be construed accordingly ;

“chief” means a person who, in accordance with the law in force in any part of Nigeria, is accorded the dignity of a chief by reference to that part or to a community established in that part ;

25 “commencement”, in relation to an enactment, means the time at which the enactment comes into force ;

“consular officer” includes consul-general, consul, vice-consul, consular agent and any person for the time being authorised to discharge the duties of a consul-general, consul or vice-consul ;

30 “contravention”, in relation to an enactment, includes a failure to comply with the enactment ;

“crew”, in relation to a ship or other vessel, includes masters, mates, pilots, engineers, stokers, deck-hands and all persons engaged in the navigation of the ship or other vessel ;

35 “Crown Agents” means the body established in the United Kingdom and commonly known as the Crown Agents for Oversea Governments and Administrations ;

40 “daily penalty”, “weekly penalty” and “monthly penalty”, in relation to an offence, means a penalty for each day, week or month, as the case may be, during which the offence is continued after conviction for the offence ;

“financial year” means the period of twelve months ending with the thirty-first day of March in any year ;

“immovable property” means land ;

45 “inland waters” includes all rivers, creeks and lagoons inside the river bars of Nigeria ;

“Lagos” means the Federal territory within the meaning of the Constitution of the Federation ;

50 “land” includes any building and any other thing attached to the earth or permanently fastened to any thing so attached, but does not include minerals ;

1962,
No. 33.

"Law" means any law enacted or having effect as if enacted by the legislature of a Region and includes any instrument having the force of law which is made under a Law;

"legal practitioner" has the meaning assigned to it by the Legal Practitioners Act, 1962;

"local authority" means the local authority of a township;

"master", in relation to a ship, means any person other than a pilot or harbour master having for the time being control or charge of the ship;

"military forces" means the armed forces of the Federation and includes any person who is not a member of the last-mentioned forces but who accompanies, or is employed in the service of, a body of those forces;

"Minister", where no particular Minister is specified in the context, means the Minister of the government of the Federation charged in pursuance of the Constitution of the Federation with responsibility for the matter to which the context relates;

"monogamous marriage" means a marriage which is recognised by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage;

"month" means a calendar month reckoned according to the Gregorian calendar;

"oath" and "affidavit", in relation to a person authorised by law to make an affirmation or declaration instead of an oath, includes an affirmation or declaration made in accordance with the relevant law, and "swear" shall be construed accordingly;

"person" includes any body of persons corporate or unincorporate;

"police officer" means any member of a police force and "superior police officer" means a police officer of or above the rank of assistant superintendent;

"prescribed" means prescribed by or under the enactment in which the expression occurs;

Cap. 166.

"public holiday" means a day which is a public holiday—
(a) as respects Lagos, by virtue of the Public Holidays Act;

(b) as respects any other part of Nigeria, by virtue of any corresponding enactment in force in that part;

"public officer" means a member of the public service of the Federation within the meaning of the Constitution of the Federation or of the public service of a Region within the meaning of the constitution of the Region;

1963, No. 9.

"qualified medical practitioner" means a person who is a fully registered medical practitioner within the meaning of the Medical and Dental Practitioners Act, 1963, so however that until the provisions of that Act relating to the registration of medical practitioners come into force, the expression means a person registered in Nigeria as a medical practitioner under the law for the time being relating to the registration of medical practitioners;

"regulations", in an enactment passed or made before the passing of this Act, includes rules and byelaws;

"to sell" includes to exchange and to barter and to offer or expose for sale;

"seaman" includes every person (other than a master, pilot or indentured apprentice) who is employed or engaged in any capacity on board a ship ;

5 "ship" includes every description of vessel used in navigation and not exclusively propelled by oars or paddles ;

"to sign", in relation to a person who is unable to write his name, means to make his mark ;

10 "territorial waters" means any part of the open sea within three nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters ;

"township" means a township established under the Townships Act ;

1948 Edn.
Cap. 216.

"urban district" means an urban district established under the Townships Act ;

15 "vessel" includes floating craft of every description ;

"will" includes a codicil ;

"writing" and expressions referring to writing include printing, lithography, photography, typewriting and other modes of representing or reproducing words or figures in a visible form ; and

20 "year" means a period of twelve months.

(2) Where by the foregoing subsection or any other enactment a meaning is assigned to a word, parts of speech related to the word have corresponding meanings.

25 (3) The word "or" and the word "other" shall, in any enactment, be construed disjunctively and not as implying similarity.

(4) A reference in an enactment, in relation to any functions, to an official described by a designation which under the system of government in force in a particular part of Nigeria is no longer appropriate in relation to those functions shall be construed, in relation to those
30 functions and that part, as a reference to the person on whom the functions have devolved under the system of government for the time being in force in that part.

19.—(1) An expression used in a subsidiary instrument has the same meaning as in the Act conferring power to make the instrument.

35 (2) In a subsidiary instrument, the expression "the Act" means the Act conferring power to make the instrument.

Additional
provisions
as to inter-
pretation of
subsidiary
instruments.

Miscellaneous

20. An Act may be cited—

40 (a) in the case of an Act included in a revised edition of Acts of Parliament which is in force by virtue of an enactment, by its chapter number in that edition ;

(b) in the case of any other Act, by the number of the year in which it was passed and its number among the Acts passed in that year ;
45 and the mode of citation authorised by this section shall be in addition to any other mode of citation authorised by any other enactment.

Citation of
Acts.

Printing of
enactments
with textual
amendments.

21.—(1) Where an enactment is amended by the insertion or omission of words or by the substitution of words for other words, then on printing the enactment at any time after the amendment takes effect the person authorised to print the enactment shall, if so directed by the Attorney-General of the Federation, print the enactment as so amended.

5

(2) A direction under the foregoing subsection in respect of any amendment shall include provision requiring the printer to indicate, in such a manner as may be specified by the direction, the extent of the amendment and the enactment by which it was made.

Deviations
in forms.

22. Where a form is prescribed by an enactment, a form which differs from the prescribed form shall not be invalid for the purposes of the enactment by reason only of the difference if the difference is not in a material particular and is not calculated to mislead.

10

Execution of
instruments
made by the
President.

23. Where a power to make an instrument which is conferred on the President by an enactment is exercisable in accordance with the advice of the Council of Ministers or a Minister of the government of the Federation, then, without prejudice to the exercise of the power by the President in person, any instrument made in exercise of that power may be executed under the hand of the Secretary to the Prime Minister or the Deputy Secretary to the Council of Ministers.

15

20

Offences
under more
than one law.

24. Where an act constitutes an offence under two or more enactments or under an enactment and at common law, the alleged offender shall be liable to be prosecuted and on conviction punished under any one of the enactments or, as the case may be, either under the enactment or at common law, but shall not be liable to be punished twice for the same offence.

25

Service by
post.

25. Where an enactment authorises or requires a document to be served by post, whether the word "serve" or some other word is used, then—

(a) the document may be served by posting an envelope—

30

(i) which contains the document; and

(ii) on which the postage (where any is payable) has been pre-paid; and

(iii) which is addressed to the person on whom it is to be served at his last known address; and

35

(b) where the provisions of paragraph (a) of this section have been satisfied as respects the document, it shall be deemed to have been served at the time at which the envelope would have been delivered in the ordinary course of post unless it is proved that the envelope was not delivered at that time.

40

Special
provisions
as to certain
statutory
bodies.

26. Where a body established by an enactment comprises three or more persons, then—

(a) any act which the body is authorised or required to do may be done in the name of the body by a majority of those persons or of a quorum of them; and

45

(b) in any vote taken at a meeting of the body the person presiding when the vote is ordered shall have a casting vote, whether or not he also has a deliberative vote.

27.—(1) Without prejudice to the provisions of section eighteen of this Act, in this Act the following expressions have the meanings hereby assigned to them respectively, that is to say—

Interpretation of this Act, etc.

5 “Act” means an Act of Parliament, whether passed before or after the commencement of this Act, and includes this Act and an instrument made before the first day of October, 1960, in so far as the instrument has effect as an Act ;

“enactment” means any provision of an Act or subsidiary instrument ;

10 “subsidiary instrument” means any order, rules, regulations, rules of court or byelaws made either before or after the commencement of this Act in exercise of powers conferred by an Act.

(2) Nothing in this Act shall be construed as purporting to prejudice the provisions of the Constitution of the Federation.

1963, No. 20.

15 (3) This Act binds the state.

28.—(1) Subject to subsections (3) and (4) of this section, the enactments specified in the first and second columns of the Schedule to this Act are hereby repealed to the extent shown in the third column of that Schedule.

Repeals and savings, etc.

20 (2) Subject to subsection (3) of this section, so much of the Interpretation Act as is not repealed by this section may be cited as the Law (Miscellaneous Provisions) Act, and accordingly for section one of that Act there shall be substituted the following section :—

Cap. 89.

25 “1. This Act may be cited as the Law (Miscellaneous Provisions) Act”.

30 (3) Nothing in the foregoing provisions of this section shall be construed as affecting the operation of the Interpretation Act to the extent (if any) to which that Act has effect as part of, or in relation to, the law of a Region within the meaning of section one hundred and fifty-four of the Constitution of the Federation.

(4) Nothing in subsection (1) of this section shall be construed as affecting the provisions of the Interpretation (Amendment) Act, 1958.

No. 42 of 1958.

29. This Act may be cited as the Interpretation Act, 1964, and shall apply throughout the Federation.

Short title and extent.

Section 28

SCHEDULE

Enactments repealed

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal</i>
Cap. 89.	The Interpretation Act.	Sections two to four, sections six to fourteen, sections seventeen to twenty-eight, sections thirty to forty-three, sections forty-six to fifty-seven, section fifty-nine, section sixty, sections sixty-two to sixty-six, subsection (2) of section sixty-eight, section sixty-nine, section seventy, in section seventy-two the words "and the Southern Cameroons", and in section seventy-three the words "Northern or Southern" in both places where they occur.
L.N. 258 of 1959.	The Transfer of Functions (Federation) Order, 1959.	So much of the Second Schedule as relates to the Interpretation Act.
No. 55 of 1960.	The Interpretation (Amendment) Act, 1960.	The whole Act.
L.N. 22 of 1960.	The Adaptation of Laws (Miscellaneous Provisions) Order, 1960.	So much of the Schedule as relates to the Interpretation Act.
L.N. 155 of 1960.	The Adaptation of Laws (Federal Provisions) Order, 1960.	So much of the Schedule as relates to the Interpretation Act.
L.N. 156 of 1960.	The Adaptation of Laws (Cameroons Provisions) Order, 1960.	So much of the Schedule as relates to section three of the Interpretation Act.
1961, No. 50.	The Acts Authentication Act, 1961.	In section three, in subsection (1), the words from "and unless" onwards.
1962, No. 33.	The Legal Practitioners Act, 1962.	In section twenty, in subsection (3), the words from "and the enactment" onwards. In the Third Schedule, Part II.
1963, No. 9.	The Medical and Dental Practitioners Act, 1963.	Subsection (7) of section seventeen.

THE CONSTITUTION (INTERPRETATION) BILL

EXPLANATORY MEMORANDUM

This Bill makes the constitutional amendments necessary to secure that the new Interpretation Bill will apply to the Constitution of the Federation in the place of the existing Interpretation Act.

T. O. ELIAS,
*Attorney-General of the Federation,
and Minister of Justice*

A BILL

FOR

AN ACT TO PROVIDE FOR THE APPLICATION OF THE INTERPRETATION ACT, 1964, TO THE CONSTITUTION OF THE FEDERATION ; AND FOR PURPOSES CONNECTED THEREWITH.

[See section 2 (2)]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

- 1.—(1) The Interpretation Act, 1964, shall—
5 (a) apply and be deemed always to have applied to the Constitution as it applies to other Acts of Parliament ; and

Application
to Constitu-
tion of 1964,
No.

(b) be deemed in its application to the Constitution to have come into force on the thirtieth day of September, 1963.

- 10 (2) The provisions mentioned in subsection (1) of section one hundred and fifty-four of the Constitution (which repeals superseded constitutional provisions) shall be deemed for the purposes of the Interpretation Act, 1964, in its application to the Constitution to be enactments within the meaning of that Act.

- 15 (3) Accordingly the references to the Interpretation Act in subsection (3) of section one hundred and fifty-five and subsection (4) of section one hundred and sixty-five of the Constitution shall be deemed always to have been references to the Interpretation Act, 1964.

(4) In this section "the Constitution" means the Constitution of the Federation.

- 20 2.—(1) This Act may be cited as the Constitution (Interpretation) Act, 1964, and shall apply throughout the Federation.

Short title,
extent and
commence-
ment.

(2) This Act shall come into force on such date as the President may by order appoint.

(887)

THE JUSTICES OF THE SUPREME COURT BILL

EXPLANATORY MEMORANDUM

The purpose of this Bill is to increase from five to eight the number of the Justices of the Supreme Court.

T. O. ELIAS,
*Attorney-General of the Federation
and Minister of Justice*

A BILL

FOR

AN ACT TO INCREASE THE NUMBER OF THE JUSTICES OF THE SUPREME COURT.

[]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

- | | | |
|----|--|--|
| 5 | 1. The number of the Justices of the Supreme Court shall be increased by three ; and accordingly, in subsection (1) of section three of the Federal Supreme Court Act, 1960 (which provides that the number of those Justices shall be five), for the word "five" there shall be substituted the word "eight". | Increase in number of justices.
No. 12 of 1960. |
| 10 | 2. This Act may be cited as the Justices of the Supreme Court Act, 1964, and shall apply throughout the Federation. | Short title and extent |

THE NATIONAL HONOURS BILL

EXPLANATORY MEMORANDUM

This Bill is intended to implement the provisions of section seventy-five of the Constitution of the Federation which requires an Act of Parliament to govern the award of national titles of honour, decorations and other dignities (except the dignity of a chief).

No person who is a Nigerian citizen or who (being a non-Nigerian) is a member of the Federal or a Regional public service or of the armed forces of the Federation may accept a foreign title of honour, decoration or other dignity (other than a distinction conferred by an educational, professional or scientific body) without the prior consent of the President of the Republic.

It will be a criminal offence for any person unlawfully to use a designation or abbreviation or to wear any insignia of, or to represent himself as being entitled to, an honour or rank grantable under a warrant made under the Bill.

T. O. ELIAS,
*Attorney-General of the Federation,
and Minister of Justice*

A BILL

FOR

AN ACT TO MAKE PROVISION WITH RESPECT TO TITLES OF HONOUR, DECORATIONS AND OTHER DIGNITIES.

[1st October, 1963]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

- 5 1.—(1) Subject to the provisions of subsections (4) and (6) of this section, the President may by warrant make provision for the award of titles of honour, decorations and dignities (hereafter in this Act collectively referred to as "honours").

Power to
provide by
warrant for
award of
honours.

- 10 (2) Without prejudice to the generality of the powers conferred by the foregoing subsection, a warrant under this section may contain provision—

(a) establishing the honours which may be awarded in pursuance of the warrant and specifying different ranks within each honour ;

(b) providing for the precedence to be accorded to different honours and different ranks of honours ;

(c) limiting the number of persons who may from time to time be admitted to a particular honour or rank of an honour ;

(d) specifying the designation which a recipient of an honour or rank of an honour shall be entitled to use and the abbreviations by which references may be made to such a designation ;

(e) prescribing the insignia by which an honour or rank of an honour is to be distinguished ;

(f) providing for the deprivation of an honour in a case where a recipient conducts himself in a manner which the President considers to be inconsistent with the honour.

(3) A warrant under this section may make different provision for different circumstances, and may be revoked or varied by a subsequent warrant.

(4) The power to make awards in pursuance of a warrant under this section shall be exercisable by the President in accordance with the provisions of subsection (2) of section seventy-five of the Constitution of the Federation (which provide for awards to be made on the advice of the Premier of a Region in respect of services to the Region and on the advice of the Prime Minister in other cases).

(5) A warrant under this section may provide that the warrant shall have effect as if it had been made on such date (not being earlier than the day when this Act is deemed to have come into force) as may be specified by the warrant ; and an honour for which provision is made by a warrant and which was awarded in accordance with subsection (4) of this section before the making of the warrant but on or after the date so specified shall be deemed to have been awarded in pursuance of the warrant.

(6) Nothing in this section shall be construed as authorising provision to be made by warrant with respect to the dignity of a chief.

Offences.

2. If a person who is not entitled in pursuance of a warrant under this Act to a particular honour or rank of an honour for which provision is made by the warrant—

(a) uses a designation or abbreviation specified by the warrant in respect of the honour or rank or a description so nearly resembling such a designation or abbreviation as to be likely to deceive ; or

(b) wears or otherwise uses any insignia so specified or an emblem so nearly resembling any such insignia as to be likely to deceive ; or

(c) by any other means represents himself to be a person who is or was entitled to the honour or rank,

he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine of an amount not exceeding fifty pounds or both.

3.—(1) This Act may be cited as the National Honours Act, 1964, and shall apply throughout the Federation.

(2) This Act shall be deemed to have come into force on the first day of October, 1963.

Short title,
extent and
commence-
ment.

THE ELECTORAL BILL

EXPLANATORY MEMORANDUM

This Bill makes five relatively minor changes in the Electoral Act, 1962 (No. 31).

Clause 1 provides for the records of the November, 1963, census to be used in compiling the preliminary list of electors under the Act.

Clause 2 abolishes the deposit of ten pounds payable under the Act before an objection may be made to the inclusion of a name in a preliminary list.

Clause 3 increases a candidate's deposit from twenty-five to one hundred pounds.

Clause 4 authorises a candidate to withdraw from an election.

Clause 5 provides that the corrupt practice of treating may be committed at any time, and not only during the period when an election is imminent.

SHEHU SHANGARI,
Minister of Internal Affairs

A BILL

FOR

AN ACT TO AMEND THE ELECTORAL ACT, 1962.

[]

Commence-
ment.

BE IT ENACTED by the legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

- 5 1. In subsection (1) of section six of the principal Act (which provides that the first register of electors under that Act shall be compiled from a preliminary list prepared from the records of the census taken on the thirteenth day of May, nineteen hundred and sixty-two) for the words "the thirteenth day of May, nineteen hundred and sixty-two" there shall be substituted the words "the fifth day of November, nine-
10 teen hundred and sixty-three"; and accordingly, in subsection (5) of that section (which requires the compilation of a new register after each census held after the year nineteen hundred and sixty-two), for the words "sixty-two" there shall be substituted the words "sixty-three".

Alteration
of reference
to date of
census, etc.

- 15 2. No deposit shall be payable in pursuance of section eight of the principal Act in connection with an objection to the inclusion of a name in a preliminary list; and accordingly, in subsection (2) of that section, the words from "Every notice" onwards and, in the First Schedule to that Act, paragraph 3 of Form 3 are hereby repealed.

Abolition of
deposit
payable on
lodging of
objection.

Increase of
deposit
payable
before
nomination.

3. The amount of the deposit payable in pursuance of section twenty of the principal Act (which requires a candidate to pay twenty-five pounds before his nomination paper is delivered to the electoral officer) shall be increased to one hundred pounds; and accordingly, in subsection (1) of that section, for the words "twenty-five" there shall be substituted the words "one hundred".

5

Withdrawal
of
candidates.

4.—(1) A person nominated as a candidate at an election in accordance with Part II of the principal Act may, at any time before the beginning of the period of seven days ending with the date of the election, withdraw his candidature by delivering to the electoral officer a notice signed by the candidate stating that he withdraws his candidature.

10

(2) An electoral officer to whom a notice is delivered in pursuance of the foregoing subsection shall forthwith cause a copy of the notice to be displayed, until the date of the election, at each place at which nomination papers may be delivered in connection with the election.

15

(3) The deposit paid by a candidate in pursuance of section twenty of the principal Act shall be returned to him or his personal representatives if his candidature is withdrawn in accordance with the provisions of subsection (1) of this section.

(4) Subsection (4) of section twenty-one of the principal Act (which prohibits the withdrawal of a candidate after his nomination paper is delivered to the electoral officer) is hereby repealed; and subsection (5) of that section (which relates to election petitions) shall apply to the withdrawal of a candidature in pursuance of this section as it applies to the acceptance of a nomination paper.

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25

Removal of
limitation
on period
when treat-
ing is
prohibited.

5. The period during which the corrupt practice of treating may be committed under section eighty of the principal Act shall not be limited to the time between the dissolution of Parliament and the return of the writs or, as the case may be, between the issue and return of the writ; and accordingly, in that section, the words from "between" to "other election" and the words "during any such period" are hereby repealed.

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Short title,
and extent,
etc.
1962, No. 31.

6.—(1) This Act may be cited as the Electoral Act, 1964, and shall apply throughout the Federation.

(2) In this Act "the principal Act" means the Electoral Act, 1962; and this Act shall be construed as one with the principal Act.

35

THE PENSIONS BILL

EXPLANATORY MEMORANDUM

The object of this Bill is to make provision for the payment of retiring benefits, in respect of their services with the Federal Government, to those officers who transfer from the Federal Public Service to another service which is recognised as "approved service."

The Bill also allows the increases in retiring benefits authorised by the Pensions (Special Provisions) Act, 1961, to be paid, on final retirement and in respect of his government service, to any officer who transferred to another public service or approved service prior to 1st September, 1959.

J. C. O'BANDE,
Minister of Establishments

A BILL

FOR

AN ACT TO PROVIDE FOR THE GRANT OF RETIREMENT BENEFITS ON THE TERMINATION OF APPROVED EMPLOYMENT AND FOR THE INCREASE OF CERTAIN PENSIONS BASED ON SUPERSEDED SCALES OF EMOLUMENTS; AND FOR PURPOSES CONNECTED WITH THE MATTERS AFORESAID.

[]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

- 1.—(1) Section four of the Pensions (Statutory Corporations Service) Act (which provides for the grant of public service retirement benefits where the employment of an officer transferred to any of the corporations mentioned in that Act is terminated within three years of the establishment of the corporation) shall with the necessary modifications apply in relation to employment in approved service within the meaning of the Pensions Act as it applies in relation to such employment as aforesaid, but as if the reference to the establishment of a corporation were a reference to the commencement of the approved service in question.

Power to
grant
pensions,
etc., on
termination
of approved
employ-
ment.
Cap. 148.
Cap. 147.

- (2) Where a person in respect of whom a pension is payable by virtue of the foregoing subsection in consequence of the termination of any approved service is subsequently employed in any capacity by a person appearing to the Minister to be the same as, or the successor to, the pensioner's former employer for the purposes of the approved service in question, the Minister may direct that payment of the pension shall not be made in respect of the period of the subsequent employment.

(3) This section shall be deemed to have come into force on the twenty-eighth day of December, 1961.

Increase of
pensions
based on
superseded
scales of
emoluments.
1961,
No. 15.

2. A pension granted after the thirty-first day of August, 1959,
which—

(a) is calculated by reference to a scale of emoluments in force
on or before that date; and

(b) was not increased by virtue of section three of the Pensions 5
(Special Provisions) Act, 1961, but would have fallen to be so increased
by a particular amount if it had been in payment on that date;

shall be increased by that amount with effect from the date on which
the pension was granted.

Short title
and extent.

3. This Act may be cited as the Pensions Act, 1964, and shall 10
apply throughout the Federation.

(877)

THE EXPLOSIVES BILL

EXPLANATORY MEMORANDUM

This Bill provides for a centralised system for the control of explosives to meet the requirements of public safety.

MAITAMA SULE,
Minister of Mines and Power

A BILL

FOR

AN ACT TO MAKE FURTHER PROVISION FOR THE CONTROL OF EXPLOSIVES FOR THE PURPOSE OF MAINTAINING AND SECURING PUBLIC SAFETY ; AND FOR PURPOSES CONNECTED THEREWITH.

[See section 2 (3)]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :

1.—(1) The Minister of the government of the Federation responsible for explosives may by regulations make such provision with respect to explosives as he considers expedient for the purpose of maintaining and securing public safety.

Power to
make regu-
lations with
respect to
explosives.

(2) Without prejudice to the generality of the powers conferred by the foregoing subsection, regulations made by virtue of that subsection may in particular include provision with respect to all or any of the following matters, that is to say—

- (a) the importation of explosives into Nigeria ;
- (b) the manufacture, storage, transport or use of explosives ;
- (c) the ownership or possession of explosives (including changes of ownership or possession) ;
- (d) fees in respect of licences or other instruments issued in pursuance of the regulations ;
- (e) penalties for offences against the regulations, not exceeding in the case of any particular offence imprisonment for a term of two years or a fine of five hundred pounds or both ;
- (f) the seizure of explosives in respect of which such an offence is alleged to have been or has been committed and the forfeiture of explosives in respect of which such offence has been committed.

2.—(1) This Act may be cited as the Explosives Act, 1964, and shall apply throughout the Federation.

Short title,
extent, repeal
and com-
mencement.

(2) The Explosives Act and any regulations in force by virtue of that Act are hereby repealed.

Cap.64.

(3) This Act shall come into force on such date as the said Minister may by order appoint.

THE LAGOS TOWN PLANNING (COMPENSATION) BILL

EXPLANATORY MEMORANDUM

The purpose of this Bill is to secure that the result of creating interests in land in Lagos is not to enhance unjustifiably the amount of compensation payable from public funds in consequence of the compulsory acquisition of the land.

MUSA YAR'ADUA,
Minister of Lagos Affairs

A BILL

FOR

AN ACT TO PROVIDE FOR THE WITHHOLDING OF COMPENSATION PAYABLE UNDER THE LAGOS TOWN PLANNING ACT IN RESPECT OF CERTAIN ESTATES AND INTERESTS IN LAND ; AND FOR PURPOSES CONNECTED WITH THE MATTER AFORESAID.

[See section 2(2)]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :

1.—(1) Where—

5 (a) any land vests in the Lagos Executive Development Board by virtue of section forty-five of the Lagos Town Planning Act in pursuance of provisions in that behalf contained in a scheme (within the meaning of that Act) either as originally made or as subsequently amended ; and

10 (b) apart from this subsection an estate or interest in the land created on or after the date when the scheme or, as the case may be, the amending scheme was made would fall to be taken into account in determining the compensation payable in respect of the acquisition of the land by the Board,

15 then, unless the President otherwise directs in writing, no account shall be taken of that estate or interest in determining the amount of, and the persons entitled to receive, any such compensation as aforesaid.

Withholding
of compen-
sation in
certain cases.
Cap. 95.

(2) The foregoing subsection shall be deemed to have come into operation on the first day of January, nineteen hundred and fifty-one; but where the Board has, before the first day of January, nineteen hundred and sixty-four, paid any sum by way of the whole or part of the compensation payable by the Board apart from the foregoing subsection in respect of any land, nothing in that subsection shall— 5

(a) entitle the Board to recover that sum; or

(b) entitle any person to claim any payment from the Board or any other person in respect of that land.

(3) In relation to a scheme in respect of which a notice is published after the passing of this Act in pursuance of subsection (3) of section twenty-one of the Lagos Town Planning Act (which provides that upon the framing of a scheme particulars of it shall be published in the Gazette) paragraph (b) of subsection (1) of this section shall have effect as if for the reference to the date of the making of the scheme or amending scheme there were substituted a reference to the date of the beginning of the period of twelve months ending with the date of first publication of the notice aforesaid. 10 15

(4) The foregoing provisions of this section shall have effect notwithstanding anything in section thirty-one of the Constitution of the Federation (which relates to the compulsory acquisition of property). 20

Short title,
extent and
commence-
ment.

2.—(1) This Act may be cited as the Lagos Town Planning (Compensation) Act, 1964, and shall apply to the Federal territory only.

(2) This Act shall come into force on such date as the President may by order appoint. 25

THE AIR FORCE BILL
EXPLANATORY MEMORANDUM

This Bill seeks to provide for the establishment, maintenance and discipline of an air force in Nigeria which shall not form part of the Public Service of the Federation. Parts I and II provide accordingly, and for the operational use of the air force to be under the overall direction of the Council of Ministers. There will be a commander of the air force and an air council with functions similar to those exercised by the army and navy.

Parts III, IV and V provide for administration, government and discipline with appeals in the last resort to the Supreme Court.

Provisions is also made for an air force reserve and this should ensure a trained and efficient body of men available for service in the national interest if required.

MUHAMMADU RIBADU,
Minister of Defence

ARRANGEMENT OF CLAUSES

PART I—ESTABLISHMENT OF AIR
FORCE*Clauses*

1. Establishment, etc., of air force.
2. Establishment of air force reserve.

PART II—ESTABLISHMENT OF AIR
COUNCIL

3. Establishment of air council.
4. Membership of air council.
5. Powers of air council.

PART III—ADMINISTRATION AND
GOVERNMENT*Command*

6. Command of air force.
7. Powers of command of members of co-operating army or navy units.
8. Attachment of members of the air force to the army or navy.
9. Attachment of personnel and powers of command.
10. Regulations as to command.

Officers

11. Appointment of officers.
12. Promotion of officers, etc.
13. Regulations as to officers.

*Enlistment and Terms and Conditions
of Service*

14. Recruiting officers.
15. Enlistment.
16. Terms of enlistment.
17. Re-engagement and continuance in service.
18. Prolongation of service.

Discharge and Transfer to the Reserve

19. Discharge.
20. Transfer to the reserve.
21. Postponement of discharge or transfer pending proceedings for offences, etc.
22. Right of warrant officer to discharge on reduction to ranks.
23. Power to discharge.
24. Right of airman to purchase discharge.

Miscellaneous and Supplementary

25. Rules for reckoning service.
26. Validity of attestation and enlistment.
27. Pensions provisions.
28. Provisions as to death or injury.
29. Liability for service outside Nigeria.
30. Interpretation of, and power to make certain regulations for this Part.

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

31. Application.

*Treachery, Cowardice and offences
arising out of air force service*

32. Aiding the enemy.
33. Communication with the enemy.
34. Cowardly behaviour.
35. Offences against morale.
36. Wilful neglect, and failure to rejoin forces, etc.
37. Offences by or in relation to sentries, etc.
38. Looting.

Mutiny and Insubordination

39. Mutiny.
40. Failure to suppress mutiny.
41. Insubordinate behaviour.
42. Disobedience of particular orders.
43. Obstruction of provost officers.
44. Disobedience of standing orders.

Desertion and Absence without Leave

45. Desertion.
46. Absence without leave.
47. Assisting or concealing desertion or absence without leave.
48. Failure to perform air force duties.

Malingering and Drunkenness

49. Malingering.
50. Drunkenness.

Offences relating to Property

51. Offences in relation to public and service property.
52. Offences in relation to property of members of forces.
53. Miscellaneous offences relating to property.

ARRANGEMENT OF CLAUSES—*continued**Flying, etc., Offences*

- 54. Dangerous flying, etc.
- 55. Inaccurate certification of aircraft, etc.
- 56. Low flying.
- 57. Annoyance by flying.

Offences relating to and by Persons in Custody

- 58. Irregular arrest and confinement.
- 59. Permitting escape, and unlawful release of prisoners.
- 60. Resistance to arrest.
- 61. Escape from confinement.

Offences in Relation to Courts Martial and Civil Authorities

- 62. Offences in relation to courts martial.
- 63. False evidence.
- 64. Obstruction of police officer arresting officer or airman.

Miscellaneous Offences

- 65. Injurious disclosures.
- 66. Making false statement on enlistment.
- 67. Making false documents.
- 68. Scandalous conduct of officer.
- 69. Ill-treatment of officers or airmen of inferior rank.
- 70. Disgraceful conduct.
- 71. False accusation.
- 72. Attempts to commit air force offences.
- 73. Conduct to prejudice of air force discipline.

Civil Offences

- 74. Civil offences.

Punishments

- 75. Punishment of officers.
- 76. Punishment of warrant officers, non-commissioned officers and airmen.
- 77. Field punishment.

Arrest

- 78. Power to arrest offenders.
- 79. Provisions for avoiding delay after arrest.

Investigation of and Summary Dealing with Charges

- 80. Investigation of charge by commanding officers.
- 81. Charges to be dealt with summarily or by court martial.
- 82. Further proceedings on charges against non-commissioned officers and airmen.
- 83. Further proceedings on charges against officers and warrant officers.

- 84. Dismissal of charges referred to higher authority.
- 85. Officers who are to act as appropriate superior authorities and to whom commanding officers may delegate powers.

*Courts Martial**(a) General Provisions*

- 86. Powers of courts martial.
- 87. Officers having power to convene courts martial.
- 88. Constitution of courts martial.
- 89. Supplementary provisions as to constitution of courts martial.
- 90. Place for sitting of courts martial and adjournment to other places.

(b) Provisions relating to Trial

- 91. Challenges by accused.
- 92. Administration of oaths.
- 93. Courts martial to sit in open court.
- 94. Dissolution of courts martial.
- 95. Decisions of courts martial.
- 96. Finding and sentence.
- 97. Power to convict of offence other than that charged.
- 98. Rules of evidence.
- 99. Privilege of witnesses and others at courts martial.
- 100. Offences by civilians in relation to courts martial.

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

- 101. Confirmation of proceedings of courts martial.
- 102. Petitions against finding or sentence.
- 103. Revision of findings of court martial.
- 104. Powers of confirming authority.
- 105. Confirming authorities.
- 106. Sentence of death to be approved by the President.
- 107. Review of findings and sentences of court martial.
- 108. Reconsideration of sentences of imprisonment.

Review of Summary Findings and Awards

- 109. Review of summary findings and awards.

Findings of Insanity, etc.

- 110. Provisions where accused found insane.

ARRANGEMENT OF CLAUSES—*continued**Commencement, Suspension and Duration of Sentences*

- 111. Commencement of sentences.
- 112. Duration of sentences of imprisonment.
- 113. Air force prisoners in civil prisons.
- 114. Special provisions as to carrying out or serving of sentence outside Nigeria.
- 115. Country in which sentence of imprisonment to be served.
- 116. Duties of person in charge of prisons and others to receive prisoners.

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

- 117. Trial, etc., of offences although person no longer subject to Act.
- 118. Limitation of time for trial of offences under this Act.

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

- 119. Powers of civil courts.
- 120. Offences already disposed of not to be retried.

Inquiries

- 121. Boards of inquiry.
- 122. Inquiries into absence.

Miscellaneous Provisions

- 123. Restitution or compensation for theft, etc.
- 124. Appointment of judge advocates.
- 125. Promulgation.
- 126. Custody of proceeding of courts martial and right of accused to a copy thereof.
- 127. Indemnity of prison officers, etc.

Redress of Complaints

- 128. Complaints by officers.
- 129. Complaints by airmen.

Rules of Procedure, etc.

- 130. Rules of procedure and other rules.

Interpretation of this Part

- 131. Interpretation of Part IV

PART V—APPEALS FROM COURTS MARTIAL

- 132. Right of appeal.
- 133. Procedure for applying for leave to appeal or lodging appeal.
- 134. Determination of appeals in ordinary cases.

- 135. Powers of the Supreme Court in special cases.

- 136. Appeals to be final.

- 137. Supplementary powers of the Supreme Court.

- 138. Proceedings to be heard in absence of appellants.

- 139. Defence of appeals.

- 140. Right of appellant to present his case in writing.

- 141. Suspension of death sentences.

- 142. Persons not to be tried again where conviction quashed.

- 143. Removal of prisoners for purposes of proceedings.

- 144. Furnishing, on appeal, of documents relating to trial.

- 145. Duties of registrar of the Supreme Court in respect of appeals, etc.

- 146. Rules of court.

- 147. Saving of reviewing authorities' powers.

- 148. Composition of court.

- 149. Exercise of certain powers of the Supreme Court by a Justice.

- 150. General provisions as to procedure.

PART VI—PAY, FORFEITURES AND DEDUCTIONS

- 151. Regulations as to pay.

- 152. Forfeitures and deductions: general provisions.

- 153. Forfeiture of pay for absence from duty.

- 154. Deductions for payment of civil penalties.

- 155. Compensation for loss occasioned by wrongful act or negligence.

- 156. Deductions for barrack damage.

- 157. Remission of forfeitures and deductions.

PART VII—GENERAL PROVISIONS

Exemptions for Members of Air Force

- 158. Exemption from tolls, etc.

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

- 160. Exemptions as to arms and explosives.

Deserters and Absentees Without Leave

- 161. Arrest of deserters and absentees without leave.

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

- 163. Deserters and absentees without leave surrendering to police.

- 164. Certificates of arrest or surrender.

- 165. Duties of superintendents of prison and other to receive deserters and absentees.

ARRANGEMENT OF CLAUSES—*continued**Offences relating to Air Force
Matters Punishable by Civil Courts*

166. Punishment for pretending to be deserter.
167. Punishment for procuring and assisting desertion.
168. Punishment for obstructing members of the air force in execution of duty.
169. Punishment for aiding malinger-ing.
170. Unlawful purchase, etc., of air force stores.
171. Illegal dealings in documents relating to pay, pensions, mobilisation, etc.
172. Unauthorised use of, and dealing in, decorations, etc.

Evidence

173. Special provisions as to evidence.
174. Proof of outcome of civil trial.
175. Evidence of proceedings of court martial.

Reductions in Rank

176. Restriction on reduction in rank of warrant officers and non-commissioned officers.

Miscellaneous

177. Temporary reception into civil custody of persons under escort.
178. Avoidance of assignment of, or charge on, air force pay, pensions, etc.
179. Power of certain officers to take statutory declarations.

PART VIII—AIR FORCE RESERVE

180. Reservists.
181. Annual training.
182. Calling out of the reserve to aid the civil power.
183. Calling out of the reserve on permanent service.
184. Punishment for non-attendance.
185. Record of illegal absence.
186. Discharge during service.
187. Regulations as to the reserve.

PART IX—APPLICATION OF THE ACT
AND SUPPLEMENTARY PROVISIONS*Application*

188. Application of the Act.
189. Application of the Act to women.
190. Application of the Act to civilians.
191. Application of the Act to passengers.

Wills and Distribution of Property

192. Airman on enlistment to register the name of person entitled on his intestacy, etc.
193. Special provision relating to airman's wills.
194. Distribution in case of deceased airman's intestacy.
195. Payment of debts of deceased airman.
196. Property of deceased airman distributed subject to rights of creditors.
197. Deceased airman's money undisposed of applied to prescribed fund.
198. Uniforms and decorations of deceased airman.
199. Application of money, etc., in case of desertion.

Miscellaneous

200. Power to make regulations generally.
201. Powers exercisable in subsidiary legislation.
202. Provisions as to active service.
203. Execution of orders, instruments, etc.
204. Nigerian Air Force Benefit Fund.
205. Rights of officers.
206. Application of other Acts.
207. Consequential amendments.
208. Interpretation.
209. Short title, commencement and application.

SCHEDULES.

FIRST SCHEDULE.—Alternative offences of which accused may be convicted by court martial.

SECOND SCHEDULE.—Consequential amendments.

A BILL

FOR

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT, GOVERNMENT AND DISCIPLINE OF THE NIGERIAN AIR FORCE AND OF AN AIR FORCE RESERVE AND TO PROVIDE FOR OTHER MATTERS CONNECTED THEREWITH OR ANCILLARY THERETO.

[]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

PART I.—ESTABLISHMENT OF AIR FORCE

5 1.—(1) There shall be established and maintained in and for the Federal Republic an air force to be known as the Nigerian Air Force (in this Act referred to as “the air force”) which shall consist of such establishments as the President may from time to time think fit, and such
10 air council as constituted under this Act may from time to time prescribe.

Establish-
ment, etc., of
air force.

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

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

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

25 2.—(1) There shall be established and maintained an air force reserve consisting of such numbers of officers, warrant officers, non-commissioned officers and men who are transferred to it on completion of their period of service in the air force and of such others as may be prescribed.

Establish-
ment of air
force reserve.

PART II.—ESTABLISHMENT OF AIR COUNCIL

Establish-
ment of air
council.

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

(2) Notwithstanding the provisions of the foregoing subsection, the air council shall have no responsibility for the operational use of the air force, and any such use shall, subject to overall direction by the Council of Ministers, be vested in the commander of the air force appointed under this Act.

(3) If the Prime Minister thinks it is necessary for the purpose of maintaining and securing public safety and public order he may, in any such case, and notwithstanding that directions of the Council of Ministers have not been given or obtained, give to the commander directions with respect to the operational use of the air force in Nigeria; and the commander shall comply with the directions accordingly.

Membership
of air
council.

4.—(1) Membership of the air council shall consist of—

- (a) The Minister, who shall be the chairman of the air council;
- (b) the Minister of State responsible for the air force;
- (c) the commander;
- (d) the permanent secretary of the Ministry responsible for defence, who shall also be the secretary of the air council; and
- (e) such other persons as the Prime Minister may appoint.

(2) The chairman may from time to time nominate any member of the air council to perform the duties of the chairman at any meeting of the council at which the chairman is absent and such nomination may be either general or in respect of a particular occasion.

Powers of
air council.

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

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

PART III—ADMINISTRATION AND GOVERNMENT

*Command*Command
of the air
force.

6.—(1) The President on the advice of the Prime Minister may appoint such officer (in this Act referred to as "the commander") as he thinks fit, in whom the command of the air force and the air force reserve shall be vested; and, subject to the terms of his appointment and to any directions as to the operational use of the air force or of the air force reserve given under section *three* of this Act, the commander shall have the command, direction and general superintendence of the air force and of the air force reserve.

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

- 5 7.—(1) Insofar as powers of command depend on rank, if a member of any army or navy unit (either with or without his unit or any part of it) is acting together with any of the air force units, he shall have the like powers of a member of the air force of corresponding rank; and for the purposes of sections *forty-one* and *seventy-eight* of this
10 Act (which relate to insubordinate behaviour and certain powers of arrest) any such member of an army or navy unit shall be treated as if he were a member of the air force of corresponding rank.

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

8.—(1) Any member of the air force may be attached temporarily to the Army or the Navy.

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

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

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

(a) in relation to attachment to the Army, the Nigerian Army Council and the air council; and

- 25 (b) in relation to attachment to the Navy, the Nigerian Navy Board and the air council.

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

- 30 9.—(1) The Minister may by order direct that this section shall apply to any military, naval, or air force of a country (other than Nigeria) and where the Minister so directs the application of this section, the air council—

Attachment of personnel and powers of command.

(a) may attach temporarily to the air force any member of the foreign country to which the other force belongs; or

- 35 (b) subject to anything to the contrary in the conditions applicable to his service, may place any member of the air force of Nigeria at the disposal of the service authorities of a foreign country for the purpose of being attached temporarily by those authorities to the foreign force or force of that country.

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

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

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

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

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

Regulations
as to
command.

10. The air council, with the approval of the Minister, may make regulations as to the persons in whom command over the establishments and units or any member thereof is vested and as to circumstances in which such command as aforesaid is to be exercised and, without prejudice to the generality of the foregoing, may in such regulations provide for the duties, functions, and powers of the commander, its air force staff and officers, warrant officers, non-commissioned officers and airmen.

Officers

Appointment
of officers.

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

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

(3) Every officer on appointment shall be issued with a commission in the form prescribed by regulations made under section *thirteen* of this Act and signed by the President.

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

Promotion of
officers, etc.

12. All promotions of officers and any retirement or resignation of an officer shall be notified in the Gazette.

Regulations
as to
officers.

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

Enlistment and Terms and Conditions of Service

Recruiting
officers.

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

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

Enlistment.

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

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

Terms of enlistment.

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

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

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

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

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

Re-engagement and continuance in service.

Provided that—

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

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

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

Provided that—

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

(b) it shall be lawful for his commanding officer to give him three months notice of intention to discharge him. 5

(3) Any airman who has completed a period of thirty years of regular service may, if he so desires and with approval of the competent air force authority, continue to serve in all respects as if his regular service was still unexpired. 10

Prolongation
of service.

18.—(1) Any airman whose term of regular service expires during a state of war, insurrection, hostilities or public emergency may be retained in the air force and his service prolonged for such further period as the competent air force authority, with the approval of the Minister, may direct. 15

Discharge and Transfer to the Reserve

Discharge.

19.—(1) Unless otherwise prescribed by this Act, if an airman becomes entitled to be discharged, he shall be discharged with all convenient speed ; but until discharged he shall remain subject to air force law under this Act. 20

(2) If an airman entitled to be discharged is serving out of Nigeria and his term of service is prolonged under this Act, he shall be returned to Nigeria free of cost with all convenient speed, and be discharged on his arrival in Nigeria, or if he consents to his discharge being delayed, he shall be discharged not later than six months from the date of his arrival in Nigeria. 25

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

(4) Every airman shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed : 30

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

(5) An airman who is discharged in Nigeria shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed with no greater cost. 35

Transfer to
the reserve.

20.—(1) Subject to the provisions of this Act, every airman whose term of service requires his transfer to the air force reserve shall, when so due, be transferred to that reserve ; but until he is so transferred, he shall remain subject to air force law under this Act. 40

(2) When an airman due for transfer to the air force reserve is serving outside Nigeria he shall be returned to Nigeria free of cost with all convenient speed and be transferred to such reserve on his arrival in Nigeria ; or, if he consents to his transfer being delayed, he shall be so transferred not later than six months from the date of his arrival in Nigeria. 45

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

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

21.—(1) Notwithstanding anything in this Part of this Act—

(a) an airman shall not be entitled to be discharged or transferred to the air force reserve at a time when he has become liable, as a person subject to service law, to be proceeded against for an offence against any of the provisions of service law:

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

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

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

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

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

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

Miscellaneous and Supplementary

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

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

(i) imprisonment;

(ii) desertion;

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

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

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

Right of warrant officer to discharge on reduction to ranks.

Power to discharge.

Right of airman to purchase discharge.

Rules for reckoning service.

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

Validity of
attestation
and enlist-
ment.

26.—(1) Where a person has upon attestation made the prescribed declaration and thereafter receives pay as an airman— 5

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

(b) after the expiration of a period of three months from the date on which he made the said declaration he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any regulations made as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper) ; 10

and accordingly he shall be an airman until discharged under this Act. 15

(2) Where a person has received pay as an airman without having previously made the prescribed declaration for enlisting he may claim his discharge at any time ; and if he makes such claim, the claim shall be submitted as soon as may be to the competent air force authority, who shall cause him to be discharged with all convenient speed. Until he is discharged, he shall be deemed to be an airman. 20

(3) Nothing in the foregoing provisions of this section shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge. 25

Pensions
provisions.
Cap. 119.

27. For the purpose of the Military Pensions Act, service with the air force shall be deemed to be service in the Nigerian Army ; and accordingly the provisions of that Act shall apply in respect of members of the air force as they apply to members of the Army, but subject to such modifications as may be prescribed by the Council of Ministers. 30

Provisions
as to death
or injury.
Cap. 119.

28.—(1) Every officer or airman of the air force to whom the Military Pensions Act applies who in the actual discharge of his duty and without his own default has received wounds or injuries or suffered illness shall, subject to provisions of section *twenty-seven* of this Act, be entitled to the like benefits under the Military Pensions Act as are accorded to members of corresponding rank in the Army. 35

(2) The family of any officer or airman of the air force who has been killed or has died of wounds received on active service, or who has died through illness directly attributable to fatigue or exposure incidental to such service, shall be entitled to such benefits under the Military Pensions Act as may be prescribed. 40

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

Liability for
service out-
side Nigeria.

29. The President may by order direct that any officer or airman of the air force shall proceed to any place outside Nigeria for the purpose of undergoing instruction or training or for duty or employment. 45

30.—(1) In this Part of this Act—

“competent air force authority” means any officer designated as such by the air council for the purposes of this Part of this Act.

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

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

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

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

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

Application.

Treachery, Cowardice and Offences arising out of Air Force Service

32.—(1) Any person, who with intent to assist the enemy—

Aiding the enemy.

(a) abandons or delivers up any place or post which it is his duty to defend, or induces any other person to abandon or deliver up any place or post which it is the duty of that other person to defend, or

(b) does any act calculated to imperil the success of operations of the armed forces of Nigeria, of any allied forces co-operating therewith or of any part of any of those forces, or

(c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage, or

(d) furnishes the enemy with arms or ammunition or with supplies of any description, or

(e) harbours or protects an enemy not being a prisoner of war, or

(f) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal, or

(g) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air, fails to use his utmost exertions to carry such orders into effect, or

(h) causes the capture or destruction by the enemy of aircraft belonging to the air force or any allied forces co-operating therewith, shall, on conviction by court martial, be liable to suffer death or any other punishment provided by this Act.

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

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

Communi-
cation with
the enemy.

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

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

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

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

(b) any operations or projected operations of any such forces, ships or aircraft as aforesaid ;

(c) any code, cipher, call sign, password or countersign ;

(d) any measures for the defence or fortification of any place on behalf of the government of the Federal Republic of Nigeria ;

(e) the number, description or location of any prisoners of war ;

(f) munitions of war.

Cowardly
behaviour.

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

(a) leaves the post, position or other place where it is his duty to be ;
or

(b) throws away his arms, ammunition or tools, in such a manner as to show cowardice,

shall be guilty of an offence against this section.

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

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

Offences
against
morale.

35. Any person who—

(a) spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of any of the armed forces of Nigeria, of any forces co-operating therewith, or of any part of any of those forces, being reports calculated to create despondency or unnecessary alarm ; or

(b) when before the enemy, uses words calculated to create despondency or unnecessary alarm,
shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

5 36.—(1) Any person who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section.

Wilful neglect and failure to rejoin forces, etc.

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

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

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

(a) sleeps at his post ; or

20 (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 section.

Offences by or in relation to sentries, etc.

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

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

35 (4) Any person guilty of an offence against this section shall on conviction by court martial, if the offence was not committed on active service, be liable to imprisonment for a term of not more than two years, but otherwise shall be liable to such term of imprisonment or any less punishment provided by this Act.

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

(a) is posted or ordered to patrol or has adopted the position of sentry at a post or has undertaken the patrol ; or

(b) is a member of a guard or other party mounted or ordered to patrol, for the purposes of protecting any persons, premises or place.

45 (6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol or who have adopted the position of sentries at a post or have undertaken the patrol, and to members of a party mounted or ordered to patrol, for the purpose of preventing or

controlling access to or egress from any premises or place, or of regulating traffic by air, road, or rail, or on any inland navigation, as they apply to persons on guard duty.

Looting.

38. Any person who—

(a) steals from, or with intent to steal searches, the person of anyone 5
killed or wounded in the course of warlike operations ; or

(b) steals any property which has been left exposed or unprotected
in consequence of warlike operations ; or

(c) takes otherwise than for the service of the public any vehicle,
equipment or stores abandoned by the enemy, 10

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

Mutiny and Insubordination

Mutiny.

39.—(1) Any person who—

(a) takes part in a mutiny involving the use of violence or the threat 15
of the use of violence, or having as its object or one of its objects
the refusal or avoidance of any duty or service against, or in connection
with operations against the enemy or the impeding of the performance
of any such duty or service ; or

(b) incites any person subject to service law to take part in such a 20
mutiny, whether actual or intended,

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

(2) Any person who, in a case not falling within subsection (1)
of this section, takes part in a mutiny, or incites any person subject to 25
service law to take part in a mutiny, whether actual or intended, shall,
on conviction by court martial, be liable to imprisonment or any less
punishment provided by this Act.

Failure to
suppress
mutiny.

40.—(1) Any person who, knowing that a mutiny is taking place or 30
is intended—

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

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

shall on conviction by court martial—

(i) if his offence was committed with intent to assist the enemy, 35
be liable to suffer death or any other punishment provided by this
Act ; or

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

Insub-
ordinate
behaviour.

41.—(1) Any person who— 40

(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 45
any less punishment provided by this Act :

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

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

42. Any person who—

- (1) in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act ; and
15

(2) 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 :

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

43. Any person who—

(a) obstructs ; or

(b) when called on, refuses to assist,

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

- 30 44.—(1) Any person who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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

Desertion and Absence without Leave

45.—(1) any person who—

- 40 (a) deserts ; or

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

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

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

Disobedience of particular orders.

Obstruction of provost officers.

Disobedience of standing orders.

Desertion.

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

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

Absence
without
leave.

46. Any person who—

(a) absents himself without leave ; or

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

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

Assisting
and con-
cealing
desertion and
absence
without
leave.

47. Any person who—

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

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

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

Failure to
perform air
force duties.

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

Malingering and Drunkenness

Malingering.

49. Any person who—

(a) falsely pretends to be suffering from sickness or disability ; or

(b) injures himself with intent thereby to render himself unfit or temporarily unfit for service, or causes himself to be injured by any other person with that intent ; or

(c) injures any other person subject to service law, at the instance of that other person, with intent thereby to render that other person unfit or temporarily unfit for service ; or

(d) with intent to render or keep himself unfit or temporarily unfit for service does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, 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.

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

Drunken-
ness.

5 Provided that where the offence is committed by an airman not on active service or on duty, the sentence imposed shall not exceed imprisonment for a period of six months.

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

Offences relating to Property

15 51. Any person who—

(a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at the stealing or fraudulent misapplication of any public or service property ; or

Offences in
relation to
public and
service
property.

20 (b) receives or retains any public or service property knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied ; or

(c) wilfully damages, or is concerned in the wilful damage of, any public or service property ; or

25 (d) by wilful neglect causes damage to any public or service property, shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act.

52. Any person who—

30 (a) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property ; or

Offences in
relation to
property of
members of
forces.

(b) receives or retains any such property knowing or having reason to believe the same to have been stolen or to have been fraudulently misapplied ; or

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

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

53. Any person who—

40 (a) loses any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care ; or

Miscella-
neous
offences
relating to
property.

45 (b) by negligence damages any public or service property of which he has the charge or which has been entrusted to his care or which forms part of the property of which he has the charge or which has been entrusted to his care ; or

(c) by negligence causes damage to any public or service property ; or
 (d) fails to take proper care of any animal or bird used in the public service which is in his charge ; or

(e) makes away (by pawning or in any other way) with any air force decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for air force purposes, shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment under this Act : 5

Provided that it shall be a defence for any person charged under paragraph (a) of this section with losing any property that he took reasonable steps for the care and preservation thereof. 10

Flying, etc., Offences

Dangerous flying, etc.

54. Any person who is guilty of any act or neglect in flying or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall, on conviction by court martial, be liable to imprisonment or any less punishment provided by this Act : 15

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

Inaccurate certification of aircraft, etc.

55. Any person who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. 20

Low flying.

56. Any officer, airman or other person in the air force who being the pilot of a Nigerian service aircraft, flies it at a height less than the height from time to time prescribed by regulations made by the air council under this Act except while taking-off or alighting, or in such other situation as may be so prescribed shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act. 25 30

Annoyance by flying.

57. Any officer, airman or other person in the air force who, being the pilot of a Nigerian service aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court martial, be liable to imprisonment for a term not exceeding tow years or any less punishment provided by this Act. 35

Offences relating to and by Persons in Custody

Irregular arrest and confinement.

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

(a) unnecessarily delays the investigation of allegations against that officer, airman or other person or, as the case may be, his trial by court martial ; or 40

(b) fails to release, or effect the release of, that officer airman or other person when it is his duty to do so, shall be guilty of an offence against this section. 45

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

(a) at the time of the committal, or

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

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

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

(b) (if he has received it) the report required by subsection (2) of this section, he shall be guilty of an offence against this section.

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

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

Permitting escape, and unlawful release, of prisoners.

(2) Any person who—

(a) without proper authority releases any person who is committed to his charge; or

(b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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

Resistance to arrest.

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

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

Escape from
confinement.

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

Offences in relation to Courts Martial and Civil Authorities

Offences in
relation to
courts mar-
tial.

62.—(1) Any person who—

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

(b) refuses to swear an oath or make an affirmation when duly required by a court martial to do so ; or

(c) refuses to produce any document in his custody or under his control which a court martial has lawfully required him to produce ; or

(d) when a witness, refuses to answer any question which a court martial has lawfully required him to answer ; or

(e) wilfully insults any person, being a member of a court martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court ; or

(f) wilfully interrupts the proceedings of a court martial, or otherwise misbehaves before the court,

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

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

False
evidence.

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

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

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

Obstruction of police officer arresting officer or airman.

5 (a) the execution by a police officer of a warrant for the arrest of a person subject to service law who has committed or is suspected of having committed an offence punishable on conviction by a civil court ; or

(b) the arrest of a person subject to service law by a police officer acting in the exercise of his powers of arrest without warrant, shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Miscellaneous Offences

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

Injurious disclosures.

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

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

30 (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid ; or

(c) any code, cipher, call sign, password or countersign ; or

(d) any measures for the defence or fortification of any place on behalf of Nigeria ; or

(e) the number, description or location of any prisoners of war ; or

35 (f) munitions of war.

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

Making of false statements on enlistment.

67. Any person who—

45 (a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular ; or

Making false documents.

(b) alters any service report, return, pay list or certificate or other service document, or alters any entry in such a document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce; or

(c) with intent to defraud, fails to make an entry in any such document; or

(d) aids, abets, commands, counsels, procures or connives at the commission by another person subject to service law of an offence against this section or the corresponding section of the appropriate service law, as the case may be (whether or not he knows the nature of the document in relation to which that offence will be committed), shall, on conviction by court martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Scandalous
conduct of
officer.

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

Ill-treatment
of officers or
airmen of
inferior rank.

69. If—

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

(b) any warrant officer or non-commissioned officer subject to air force law strikes or otherwise ill-treats any person subject to service law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or an airman,

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

Disgraceful
conduct.

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

False accusa-
tion.

71. Any person who—

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

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

Attempts to
commit air
force offence.

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

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

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

Conduct to prejudice of air force discipline.

5

Civil Offences

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

Civil offences.

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

15 (3) Subject to the next succeeding subsection, a person convicted by court martial of an offence against this section shall—

(a) if the corresponding civil offence is treason or murder be liable to suffer death, and

20 (b) in any other case, be liable to suffer the punishment which a civil court might award for the corresponding civil offence, if committed anywhere in Nigeria being a punishment provided by this Act or such lesser punishment which a civil court could so award, as is so provided.

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

30 (5) Nothing in this section shall be construed to authorise the charging of a person with an offence against this section committed in Nigeria if the corresponding civil offence is treason, murder, manslaughter, treasonable felony or rape; and for the purposes of this subsection where the corresponding civil offence is murder or manslaughter an offence against this section shall be deemed to have been committed at the place of the commission of the act or occurrence of the negligence
35 which caused the death, irrespective of the place of the death.

Punishments

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

Punishment of officers.

(2) The said scale is—

45 (a) death;

(b) imprisonment;

(c) cashiering;

(d) dismissal from the armed forces of Nigeria;

- (e) a fine of a sum not exceeding the equivalent of ninety days' pay
- (f) severe reprimand or reprimand ;
- (g) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part of this Act, a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale. 5

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court martial for one offence. 10

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

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

(7) Where an officer is sentenced by a court martial to imprisonment, he shall also be sentenced to be cashiered : 15

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

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

76.—(1) The punishments which may be awarded to a warrant officer, non-commissioned officer or airman by sentence of a court martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts martial, those set out in the following scale; and in relation to a warrant officer, non-commissioned officer or airman references in this Act to punishments provided by this Act are references to those punishments. 20 25

(2) The said scale is—

- (a) death ;
- (b) imprisonment ;
- (c) discharge with ignominy from the armed forces of Nigeria ; 30
- (d) in the case of a warrant officer, dismissal from the armed forces of Nigeria ;
- (e) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank ;
- (f) a fine of a sum not exceeding the equivalent of ninety days' pay ; 35
- (g) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand ;
- (h) where the offence is desertion, forfeiture of service ;
- (i) where the offence has occasioned any expense, loss or damage, stoppages. 40

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

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court martial for one offence. 45

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

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

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

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

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

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

Field
punishment.

- 20 “(dd) field punishment for a period not exceeding ninety days ;” and subsection (6) of the said section *seventy-six* shall apply to field punishment as it applies to imprisonment.

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

Arrest

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

Power to
arrest
offenders.

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

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

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

(5) The power of arrest given to any person by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Provisions
for avoiding
delay after
arrest.

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

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

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

(3) For the purposes of subsection (1) of section *fifty-eight* of this Act, (which relates to irregular arrest and confinement) the question whether there has been unnecessary delay in the investigation of allegations against a person under arrest, shall be determined without regard to the provisions of subsection (2) of this section.

Investigation of and Summary Dealing with Charges

Investigation
of charges by
commanding
officer.

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

Charges to be
dealt with
summarily
or by court
martial.

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

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

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

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

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

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

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

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

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

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

- (i) reduction to the ranks in the case of a leading aircraftman ;
(ii) a fine of a sum not exceeding the equivalent of twenty-eight days' pay ;
15 (iii) severe reprimand or reprimand ;
(iv) admonition ;
(v) where the offence has occasioned any expense, loss or damage, stoppages ;
20 (b) if the accused is an airman other than a non-commissioned officer or a boy—

- (i) imprisonment for a period not exceeding twenty-eight days or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days ;
25 (ii) a fine of a sum not exceeding the equivalent of twenty-eight days' pay ;
(iii) confinement to barracks for a period beginning with the day of the sentence and not exceeding twenty-eight days ;
(iv) extra guards or piquets not exceeding seven in number ;
(v) admonition ;
30 (vi) where the offence has occasioned any expense, loss or damage, stoppages ;
(c) if the accused is a boy—

- (i) a fine of a sum not exceeding the equivalent of twenty-eight days' pay ;
35 (ii) confinement to barracks for a period beginning with the day of the sentence and not exceeding seven days ;
(iii) extra guards or piquets not exceeding seven in number ;
(iv) admonition ;
(v) where the offence has occasioned any expense, loss or damage, stoppages.
40

(4) Where a commanding officer, in dealing summarily with a charge, considers it appropriate that a punishment of reduction in rank or to the ranks, in the case of a non-commissioned officer (other than a leading aircraftman), or of dismissal from the service, in the

case of an airman or a boy, should be awarded (either alone or in addition to any other punishment) he shall refer the case in the prescribed manner to the commander ; and the commander shall, as he thinks fit, either—

(a) award one or more of— 5

(i) the punishment of reduction in rank or to the ranks or dismissal, as the case may be ; and

(ii) the punishment which the commanding officer could have awarded ; or

(b) quash the finding of guilty. 10

(5) Where the commanding officer has arranged for the charge to be tried by court martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily ; and on any such reference subsection (3) of this section shall have effect as if the commanding officer were satisfied 15 that the charge should be dealt with summarily.

Further
proceedings
on charges
against
officers and
warrant
officers.

83.—(1) Where the commanding officer has investigated a charge against an officer or warrant officer he shall, unless he dismisses the charge, refer the case to higher authority and if the charge is so referred, the higher authority shall prescribe the procedure to be followed by court martial or otherwise, and if he thinks it a case for court martial, he shall refer the case to the appropriate superior authority as a case for court martial. That authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge, and accordingly may record a finding of guilty, or dismiss the charge, or refer the case back for trial by court martial. If the case is referred back for trial by court martial, the appropriate authority shall do all things necessary to convene a court. 20 25

(2) If the higher authority or the appropriate superior authority as the case may be, records a finding of guilty, that authority may award one or more of the following punishments, that is to say— 30

(a) a fine of a sum not exceeding the equivalent of twenty-eight days pay ;

(b) severe reprimand or reprimand ;

(c) where the offence has occasioned any expense loss or damage stoppages of pay. 35

(3) Notwithstanding anything in subsection (2) of this section, where the higher authority or an appropriate superior authority, as the case may be, is satisfied as to the guilt of the person charged and would, if the case were dealt with summarily award a fine or stoppages of pay, that authority shall not record a finding until the person charged elects whether or not to be tried by court martial ; and if the accused elects to be so tried, that authority shall do all things necessary to constitute a court martial and shall not record his finding. 40

Dismissal
of charges
referred to
higher
authority.

84.—(1) Notwithstanding anything in sections *eighty-two* and *eighty-three* of this Act, where a charge— 45

(a) has been referred to higher authority with a view to its being tried by court martial ; or

(b) has been submitted to higher authority for determination how it is to be proceeded with,

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

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

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

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

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

Courts Martial

(a) General Provisions

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

Powers of courts martial.

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

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

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

87. A court martial may be convened by the commander or by any air officer, air commodore or group captain or officer of corresponding rank commanding a body of air force personnel or any officer for the time being acting in place of the commander or such air officer, air commodore or group captain or officer of corresponding rank.

Officers having power to convene courts martial.

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

Constitution of courts martial.

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

(3) The president of a court martial shall be appointed by order of the convening officer and shall not be under the rank of squadron leader or corresponding rank unless in the opinion of the convening officer a squadron leader or officer of corresponding rank having suitable qualifications is not, with due regard to the public service, available; and in any event the president of a court martial shall not be under the rank of flight lieutenant or corresponding rank. 5

(4) The members of a court martial, other than the president, shall be appointed by order of the convening officer or in such other manner as may be prescribed. 10

Supplementary provision as to constitution of courts martial.

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

(2) An officer who, at anytime between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under service law has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of a court martial or act as judge advocate at such a court martial. 15 20

(3) When the officer convening a court martial appoints a flight lieutenant or officer of corresponding rank to be president, being of opinion that a squadron leader or officer of corresponding rank having suitable qualifications is not with due regard to the public service available, the order convening the court martial shall contain a statement of such opinion; and the statement shall be accepted as conclusive for the purposes of the court martial. 25

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

90.—(1) Subject to the provisions of this section, a court martial shall sit at such place as may be specified in the order convening the court; and the convening officer may convene it to sit at a place outside the limits of his command. 30

(2) A court martial sitting at any place shall, if the convening officer so directs, sit at some other place; and without any such direction if it appears to the court to be in the interests of justice to sit at some other place, may adjourn for the purpose of sitting at that other place. 35

(b) Provisions relating to Trial

Challenges by accused.

91.—(1) An accused about to be tried by a court martial shall be entitled to object, on any reasonable ground, to any member of the court, whether appointed originally or in lieu of another officer. 40

(2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1) of this section the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those officers. 45

(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 (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.

- 10 92.—(1) An oath shall be administered to every member of a court martial and to any person in attendance on a court martial as judge advocate, officer under instruction, shorthand writer or interpreter.

Administration of oaths.

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

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

- 25 (3) An oath required to be administered under this section shall be in the form prescribed by the Oaths Act, 1963, or if no form is so prescribed, as near thereto as may be in any particular case, and shall be administered accordingly.

1963, No. 23.

- 30 93.—(1) Subject to the provisions of this section, a court martial shall sit in open court and in the presence of the accused.

Courts martial to sit in open court.

- 35 (2) Nothing in subsection (1) of this section shall affect the power of a court martial to sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power a court martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

- 40 (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.

- 45 (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.

- 50 94.—(1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court martial should be dissolved, the convening officer may by order dissolve the court martial.

Dissolution of courts martial.

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

(a) a court martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

(b) it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

(3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then if the senior member of the court is of the rank of flight lieutenant or corresponding rank or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but if the senior member is not of any such rank, the court shall be dissolved.

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

Decisions of
courts
martial.

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

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

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

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

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

Finding and
sentence.

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

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

Power to
convict of
offence
other than
that charged.

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

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

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

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

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

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

First
Schedule.

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

Rules of
evidence.

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

(a) if such declaration is tendered on behalf of the prosecution, unless a copy of such declaration has not less than seven days before the commencement of the trial been served on the accused; or

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

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

(d) in any case, if the court martial is of opinion that it is desirable in the interests of justice for oral evidence to be given.

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

Privilege of witnesses and others at courts martial.

Offences by civilians in relation to courts martial.

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

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

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

(b) refuses to swear on oath or make an affirmation when duly required by a court martial to do so ; or

(c) refuses to produce any document in his custody or under his control which a court martial has lawfully required him to produce ; or

(d) when a witness refuses to answer any questions which a court martial may lawfully require him to answer ; or

(e) wilfully insults any person, being a member of a court martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court ; or

(f) wilfully interrupts the proceedings of a court martial or otherwise misbehaves before the court ; or

(g) does any other thing which would, if the court martial had been a court of law having power to commit for contempt, have been contempt of that court,

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

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

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

Confirmation of proceeding of courts martial.

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

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

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

Petitions
against
finding or
sentence.

- 5 103.—(1) A confirming authority may direct that a court martial shall revise any finding of guilty come to by the court in any case where it appears to him—

Revision of
findings of
courts
martial.

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

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

- 15 (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.

- 20 (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 :

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

- 30 (6) The confirming authority shall not have power to direct the revision of any substituted finding of the court on a previous direction of a confirming authority, or the revision of the original finding if adhered to by the court on such a previous direction ; but save as aforesaid this Act shall apply to the proceedings of the court on any such
35 revision (other than the requirement of announcement in open court) as it applies to their deliberation on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court.

- 40 104.—(1) Subject to the provisions of section *one hundred and three* of this Act (which provides for revision of findings) and to the following provisions of this section, a confirming authority shall deal with the finding or sentence of a court martial—

Powers of
confirming
authority.

- 45 (a) by withholding confirmation, if of the opinion that the finding of the court martial is unreasonable or cannot be supported, having regard to the evidence or to the fact that it involves a wrong decision on a question of law or that on any other grounds there was a miscarriage of justice ; or

(b) by confirming the finding or sentence ; or

- 50 (c) by referring the finding or sentence, or both, for confirmation to a higher confirming authority.

(2) Where a confirming authority is of opinion that the facts of the case as considered by the court martial would have justified a finding of guilty by that court on other grounds, the confirming authority may, instead of withholding confirmation of the finding, substitute a finding of guilty on those other grounds and direct whether the punishment should be remitted in whole or in part or be commuted under the provisions of subsection (4) of this section. 5

(3) Where it appears to a confirming authority that a sentence of a court martial is invalid, the confirming authority may, instead of withholding confirmation of the sentence, substitute therefor a proper sentence of any punishment which might have been awarded by the court, not exceeding or, in the opinion of the confirming authority, more severe than that awarded by the court martial. 10

(4) If the confirming authority confirms the sentence of a court martial the confirming authority may— 15

(a) remit in whole or in part any punishment awarded by the court martial, or

(b) commute any punishment so awarded for such other and lesser punishment or punishments as may be prescribed by this Act.

(5) A finding or sentence substituted by the confirming authority, or any sentence having effect after the confirming authority has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed. 20

(6) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid, the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation. 25

(7) Where the confirming authority withholds confirmation under this section, notice thereof shall be promulgated, and it shall have effect as from the date of such promulgation. 30

Confirming
authorities.

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

(a) the officer who convened the court martial or any officer superior in command to that officer; or 35

(b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer; or

(c) any officer appointed by the air council to act as confirming authority in default of any officer under paragraphs (a) and (b) of this subsection whether for the particular case or for a specified number of cases. 40

(2) The following persons shall not have power to confirm the finding or sentence of a court martial, that is to say— 45

(a) any officer who was a member of the court martial; or

(b) any officer who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused; or

(c) any officer who, as appropriate superior authority, investigated the allegations against the accused.

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

Sentence of death to be approved by the President.

5 107.—(1) The finding or sentence of a court martial as duly confirmed by a confirming authority may be reviewed,—

Review of findings and sentences of courts martial.

(a) by a reviewing authority consisting of—

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

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

15 (b) in proper case on appeal to or after leave to appeal has been granted by a court of competent jurisdiction ;
and where a case is taken on appeal, the powers of a reviewing authority under paragraph (a) of this subsection, shall cease.

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

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

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

30 (b) in any case, exercise the like powers of substituting findings, or valid sentences for invalid sentences, or of remitting or commuting punishment as are conferred on a confirming authority under this Act,
and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a sentence of the court martial duly confirmed.

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

35 108.—(1) Sentences of imprisonment passed by courts martial may be reconsidered by the commander or by such officers (not below the rank of group captain or corresponding rank) as may be from time to time appointed by the President ; and if on any such reconsideration it appears that the conduct of the offender since his conviction has been
40 such as to justify remission of the sentence, whether in part or in whole, it may be remitted accordingly.

Reconsideration of sentences of imprisonment.

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

Review of Summary Findings and Awards

Review of
summary
findings and
awards.

109.—(1) Where a charge has been dealt with summarily and the charge is not dismissed, the air council or any officer superior in command to the officer who dealt summarily with the charge, shall be the authority to review the finding or award at any time. 5

(2) Where by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings the reviewing authority is satisfied there has been a substantial injustice to the accused, that authority may quash the finding and any award on the finding. 10

(3) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award. 15 20

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

(a) remit in whole or in part any punishment awarded by the court martial, or

(b) commute any punishment so awarded for such other and lesser punishment or punishments as may be prescribed by this Act. 25

(5) A finding or sentence substituted by the confirming authority, or any sentence having effect after the confirming authority has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence duly confirmed. 30

(6) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation. 35

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

Findings of Insanity, etc.

Provisions
where
accused
found
insane.

110.—(1) Where, on the trial of a person by court martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under rules made under this Part of this Act until the directions of the President are known or until any earlier time at which the accused is fit to stand his trial. 40 45

(2) Where, on the trial of a person by court martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts of omissions constituting that offence the accused was by reason of mental disease or natural mental infirmity not criminally responsible for the act or omission alleged as constituting the offence, the court shall find that the accused committed the act or omission but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under rules made under this Part of this Act until the directions of the President are known.

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

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

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

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

Commencement, Suspension and Duration of Sentences

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

Commence-
ment of
sentences.

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

Duration of
sentences of
imprison-
ment.

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

(a) in the custody of a civil authority ; or

(b) if and in so far as Imprisonment Rules so provide, in the custody of any air force authority of any country or territory outside Nigeria as respects which arrangements have been made under section *one hundred and fourteen* of this Act,

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

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

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

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

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

Air force
prisoners
in civil
prisons.

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

Special
provisions
as to carry-
ing out or
serving of
sentences
outside
Nigeria.

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

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

Country in which sentence of imprisonment to be served.

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

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

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

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

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

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

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

(2) Where a person is in air force custody in pursuance of a sentence of imprisonment, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such superintendent or other person as aforesaid, or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

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

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

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

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

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

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

(b) if he no longer holds air force rank, as if he was of the rank he had when last actually subject to air force law under this Act :

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

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

Limitation of
time for
trial of
offences
under this
Act.

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

Provided that—

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

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

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

10 (3) A person shall not be triable by virtue of subsection (1) of section *one hundred and seventeen* of this Act (which relates to offences by persons deemed to continue to be subject to air force law) unless his trial is begun within three months after he ceases to be subject to air force law under this Act, or the trial is for a civil offence committed outside Nigeria and the Attorney-General of the Federation consents to the trial; but nothing in this subsection shall apply to offences of mutiny, failure to suppress mutiny or desertion.

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

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

20 119.—(1) Subject to the provisions of this Act restricting further trial of an offence, where conviction for an offence is duly quashed under air force law, nothing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to air force law under this Act, for any offence.

Powers of civil courts.

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

30 120.—(1) Where a person subject to air force law under this Act—

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

35 (b) has been charged with an offence under service law, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or an appropriate superior authority; or

(c) has had an offence condoned by his commanding officer, he shall not be liable in respect of that offence to be tried by court martial or to have the case dealt with summarily by his commanding officer or an appropriate superior authority.

Offences already disposed of not to be retried.

(2) For the purposes of this section—

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

45 (b) a case shall be deemed to have been dealt with summarily by a commanding officer or an appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied on the review thereof;

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

5

(d) a person ordered under subsection (2) of section *sixty-two* of this Act, or the corresponding provisions of any service law, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court martial for the offence.

10

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

15

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

Inquiries

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Boards of
inquiry.

121.—(1) Subject to and in accordance with the provisions of rules made under this Part of this Act (hereinafter referred to as "Boards of Inquiry Rules"), the air council or any air force officer commanding a body of air force personnel may convene a board of inquiry to investigate and report on the facts relating to any matter which may be referred to such board by the air council or any such officer as aforesaid ; and a board of inquiry shall, if directed so to do express their opinion on any question arising out of any matters referred to the board.

25

(2) A board of inquiry shall consist of such number of persons as may be provided for by the Boards of Inquiry Rules, who shall be persons subject to service law ; and the president of a board of inquiry shall be an officer not below the rank of flying officer or corresponding rank.

30

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

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

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Inquiries
into absence.

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

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

Miscellaneous Provisions

- 10 123.—(1) The following provisions of this section shall have effect where a person has been convicted by court martial of unlawfully obtaining any property, whether by stealing it, receiving it or retaining it knowing or having reason to believe it to have been stolen, fraudulently misapplying it or otherwise.

Restitution
or compensa-
tion for theft,
etc.

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

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

- 20 (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
25 caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

- (5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it
30 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
35 be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

- (6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have
40 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.

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

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

(9) The operation of any order under this section shall be suspended—

(a) in any case, until the expiration of the period prescribed under Part V of this Act as the period within which an application for leave to appeal to the Supreme Court against the conviction must be lodged ; and 5

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

and where the operation of such an order as aforesaid is suspended under this section— 10

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

(ii) the Supreme 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 when the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court made under the said Part V. 15

(10) Notwithstanding anything in subsection (9) of this section, an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court or authority making the order directs to the contrary in any case in which, in the opinion of the court or authority, the title to the property is not in dispute. 20 25

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

Appointment
of judge
advocates.

124. Without prejudice to the powers conferred by the President on the Judge Advocate General, the appointment of a judge advocate to act at any court martial may, failing the making thereof by or on behalf of the Judge Advocate General, be made by the convening officer. 30

Promulga-
tion.

125. Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or as the confirming or reviewing authority, as the case may be, may direct. 35

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

126.—(1) The record of the proceedings of a court martial shall be kept in the custody of the commander for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) of this section shall be capable of being exercised. 40

(2) Subject to the provisions of this section, any person tried by a court martial shall be entitled to obtain from the commander on demand at any time within the relevant period and on payment therefor at such rate as may be prescribed a copy of the record of the proceedings of the court. 45

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

(4) If, on an application in pursuance of either subsection (2) or subsection (3) of this section for a copy of the record of any proceedings, the Minister certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

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

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

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

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

Indemnity
for prison
officers, etc.

Redress of Complaints

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

Complaints
by officers

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

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

Complaints
by airmen.

(2) If an airman thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) of this section or for any other reason, he may make a complaint with respect thereto to any military, naval or air force officer under whom the complainant is for the time being serving, being an officer not below the rank of air commodore or corresponding rank. 5

(3) It shall be the duty of a commanding officer or other officer to have any complaint received by him under this section investigated and to take steps for redressing the matter complained of which appear to him to be necessary. 10

Rules of Procedure, etc.

Rules of
procedure
and other
rules.

130.—(1) The President may make rules of procedure generally for the purposes of this Part of this Act, and without prejudice to the generality of the foregoing, rules may be made— 15

(a) for the convening, constitution and conduct of courts martial ;

(b) with respect to the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death ; 20

(c) for the execution of sentences of imprisonment including the prisons, civil or otherwise, in which they are to be served, the classification, treatment, employment, discipline, control, removal and temporary release on compassionate grounds of persons serving such sentences and the appointment, powers and duties of inspectors, visitors, governors and other members of the staff and officers in charge of persons serving sentences of imprisonment ; 25

(d) with respect to field punishment ;

(e) for the convening, constitution and procedure of boards of inquiry, the rules of evidence to be observed and the taking of evidence by such boards, including the administration of oaths and affirmations to witnesses and the making of reports by such boards ; 30

(f) in respect of matters for which rules may be made under the foregoing provisions of this Part of this Act ;

(g) for such incidental and supplementary matters as appear requisite for the purpose of the foregoing. 35

(2) Until such time as rules of procedure are made under this section, the rules of procedure prescribed for or used by the military forces of Nigeria may be used for the purposes of this Act with such adaptations, modifications and exceptions as may be necessary to give effect thereto. 40

Interpretation of this Part

Interpreta-
tion of Part
IV.

131.—(1) In this Part—

“air force prison” means separate premises designated by the commander for persons serving air force sentences of imprisonment ; 45

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

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

"prescribed" means prescribed by Rules of Procedure ;

5 "prison" includes a civil prison and any military, naval or air force prison.

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

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

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

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

20 PART V—APPEALS FROM COURTS MARTIAL

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

Right of appeal.

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

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

Procedure for applying for leave to appeal or lodging appeal.

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

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

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

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

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

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Determina-
tion of
appeals in
ordinary
cases.

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

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

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

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

20

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

30

Powers of
the Supreme
Court in
special
cases.

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

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(2) Where an appellant has been convicted of an offence and the court martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Supreme Court that the court martial must have been satisfied of facts which proved him

guilty of that other offence, the Supreme Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court martial, such sentence as it thinks proper, being a sentence, which, under section *seventy-five* or section *seventy-six* of this Act could lawfully have been passed for that other offence but not being a sentence of greater severity.

(3) Where—

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

(b) an appellant has been convicted of an offence and it appears to the Supreme Court that the court martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations,

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

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

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

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

Appeals to be final.

137. For the purposes of this Part of this Act the Supreme Court may, if it thinks it necessary or expedient in the interests of justice, appoint any person with special expert knowledge to act as assessor in any case where it appears to the Supreme Court that such special knowledge is required for the proper determination by it of the case.

Supplementary powers of the Supreme Court.

Proceedings
to be heard
in absence of
appellants.

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

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Defence of
appeals.

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

Right of
appellant
to present
his case in
writing.

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

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Suspension
of death
sentences.

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

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Persons not
to be tried
again where
conviction
quashed.

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

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Removal of
prisoners for
purposes of
proceedings.

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

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Furnishing,
on appeal,
of documents
relating to
trial.

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

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

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

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

- 146.—(1) The Chief Justice of Nigeria may make rules of court for regulating the procedure and practice to be followed in the Supreme Court for the purposes of this Part of this Act.

Rules of court.

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

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

147. Nothing in this Part of this Act shall—

- (a) affect the exercise by reviewing authorities of the powers conferred upon them by section *one hundred and seven* of this Act in respect of a decision of a court martial so far as regards the exercise by them of those powers at any time before the lodging with the registrar of the Supreme Court of an appeal or on application for leave to appeal, as the case may be, against the decision; or
- (b) affect the exercise by the President of the prerogative of mercy under the Constitution of the Federation.

Saving of reviewing authorities' powers.

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

Composition of court.

149. Notwithstanding the provisions of section *one hundred and forty-eight* of this Act, any Justice of the Supreme Court may—

- (a) give leave to appeal, or
- (b) extend the time limit within which an application for leave to appeal otherwise than in the case of sentence of death may properly be lodged under section *one hundred and thirty-three* of this Act; or
- (c) allow an appellant to be present at any proceedings under this Part of this Act,

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

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

150. Subject to the provisions of this Part of this Act and to any rules of court made thereunder, the provisions of the Federal Supreme Court Act, 1960, relating to the hearing of appeals from subordinate courts shall apply to the hearing and determination of an appeal under this Part of this Act.

General provisions as to procedure. No. 26 of 1960.

PART VI—PAY, FORFEITURES AND DEDUCTIONS

Regulations
as to pay.

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

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Forfeitures
and deduc-
tions :
general
provisions.

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

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(2) Pay regulations shall not authorize the making of any penal deduction, that is to say, a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.

(3) The foregoing provisions of this section shall not prevent the making of pay regulations providing for the imposition of any forfeiture authorized by this Act or the making of any deduction so authorized, or for the time at which and manner in which sums may be deducted from pay to give effect to authorized deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

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(4) Notwithstanding any deduction from the pay of an officer or airman he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed in pay regulations.

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

30

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

35

Forfeiture
of pay for
absence from
duty.

153.—(1) The pay of an officer or airman may be forfeited—

(a) for any day of absence in such circumstances as to constitute offences of desertion or absence without leave (where such offences are triable by courts martial) or, if the commander so directs, of other absence without leave ;

40

(b) for any day of imprisonment, detention or field punishment awarded under service law by a court martial or commanding officer, or of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court ;

45

(c) where he is found guilty (whether by court martial, an appropriate superior authority or his commanding officer) of an offence under service law, for any 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.

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

(a) that he was made a prisoner of war through disobedience of orders or wilful neglect of his duty ; or

- 10 (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the service, or any of the armed forces of Nigeria ;

- 15 (c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorized by international usage,

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

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

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

Deductions
for payment
of civil
penalties.

- 30 155.—(1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by pay regulations, it appears to the air council, the commander or an officer authorized in pay regulations that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or airman (hereinafter referred to as "the person responsible").

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

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

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

- 45 (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,

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

Deductions
for barrack
damage.

156.—(1) Where damage occurs to any premises in which one or more units or parts of such units are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, and it appears on investigation in accordance with the provisions of pay regulations that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of such premises, but that the said persons cannot be identified, any person belonging to any of such units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with pay regulations be determined to be just, and the amount may be deducted from his pay. 5 10

(2) The provisions of subsection (1) of this section shall extend to ships, trains, motor vehicles and aircraft in which units or parts of units are being transported and reference to premises, quartering and occupation shall be construed accordingly. 15

Remission
of forfeitures
and deduc-
tions.

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

PART VII—GENERAL PROVISIONS

Exemptions for Members of Air Force

Exemptions
from tolls,
etc.

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

(a) members of the air force on duty ;

(b) vehicles in air force service, being vehicles belonging to the Federation or any Region thereof or other vehicles driven by persons (whether a member of the air force or not) in the public service of the Federation or of any Region thereof ; 25

(c) goods carried in such vehicles ;

(d) horses or other animals in air force service. 30

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

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

159. No judgment, decree or order given or made against a member of the air force by any court in Nigeria shall be enforced by the levying of execution on any property of the member against whom it is given or made, being public property, used by him for air force purposes. 35

Exemptions
as to arms
and
explosives.

160. The officers and airmen who are subject to this Act shall, for purposes of the air force, be exempt from the provisions of any enactment relating to the storage, possession or transmission of firearms, explosives, gunpowder or munitions of war to the same extent as members of any other of the armed forces of Nigeria are so exempt. 40

Deserters and Absentees without Leave

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

Arrest of deserters and absentees without leave.

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

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

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

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

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

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

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

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

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

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

Deserters
and
absentees
without
leave
surrendering
to police.

163.—(1) Where a person elsewhere than at a police station surrenders himself to a police officer as being illegally absent from the air force, the police officer shall forthwith bring him to a police station. The police officer in charge of any such police station shall thereupon enquire into the case, and if it appears that such person is illegally absent from the air force, he may in his discretion, cause such person to be delivered into air force custody without bringing him before a magistrate's court, or may bring him before such court. 5 10

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

Certificates
of arrest or
surrender.

164.—(1) Where a magistrate's court under this Part of this Act deals with a person as illegally absent and that person is delivered into air force custody, there shall at the time of such delivery be handed over a certificate in the prescribed form signed by a magistrate, containing particulars as to the arrest or surrender, as the case may be, and of the proceedings before the court. 15 20

(2) Where after surrender a person is delivered into air force custody without being brought before a court under the provisions of this or any other Act, there shall be handed over a certificate in the prescribed form signed by the police officer causing the delivery into air force custody, and such certificate shall contain particulars relating to the surrender. 25

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

(a) a document purporting to be a certificate under the relative subsection of this section, or under the corresponding provisions of any other Act relating to service law, and to be signed as therein prescribed, shall be evidence of the matters stated in the document; 30

(b) where the proceedings are against a person who has been taken into air force custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or any corresponding officer of a force raised under the law of any other country, or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate. 35 40

Duties of
superinten-
dents of
prisons and
others to
receive
deserters and
absentees.

165.—(1) It shall be the duty of the superintendent or other person in charge of the civil prison to receive any person duly committed to that prison by a magistrate's court as illegally absent from the air force and to detain him until in accordance with the directions of the court he is delivered into air force custody. 45

(2) Subsection (1) of this section shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody as it applies to the superintendent of a prison.

Offences relating to Air Force Matters Punishable by Civil Courts

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

Punishment for pretending to be a deserter.

167. Any person who—

Punishment for procuring and assisting desertion.

(a) procures or persuades any officer or airman of the air force to desert or to absent himself without leave ; or

10 (b) knowing that any such officer or airman is about to desert or absent himself without leave, assists him in so doing, or

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

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

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

Punishment for obstructing members of the air force in execution of duty.

169. Any person who—

Punishment for aiding malingering.

(a) produces in an officer or airman of the air force any sickness or disability ; or

25 (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,

30 with a view to enabling him to avoid air force service, whether permanently or temporarily, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding one year, or to both.

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

Unlawful purchase, etc., of air force stores.

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

40 (b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of the President or some person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent ; or

45 (c) that those chattels had become the property of an officer who had retired or ceased to be an officer, or of an airman who had been discharged, or of the personal representatives of a person who had died, and shall be liable on conviction to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years, or to both.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

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

(4) In this section—

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

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

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

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

171.—(1) Any person who—

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

(b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person, receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's air force service shall be guilty of an offence against this section.

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

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

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

172.—(1) Any person who—

(a) without authority uses or wears any air force decoration or any badge, wound stripe or emblem supplied or authorised by the President or the air council; or

5 (b) uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any air force decoration, or any such badge, stripe or emblem as aforesaid, as to be calculated to deceive; or

10 (c) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem as is mentioned in paragraph (a) of this subsection,

shall be guilty of an offence against this section :

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

15 (2) Any person who purchases or takes in pawn any air force decoration awarded to any member of the armed forces of Nigeria, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence against this section unless he proves that at the time of the
20 alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of those forces.

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

25

Evidence

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

30 (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.

35 (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—

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

45 (b) held or did not hold at any specified time any specified rank or appointment in any of those forces, or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or

Unauthorised use of and dealing in decorations, etc.

Special provisions as to evidence.

(c) was or was not at any specified time authorised to use or wear any decoration badge, wound stripe or emblem, shall, if purporting to be issued by or on behalf of the commander, be evidence of the matters stated in the document.

(5) A record made in any service book or other document prescribed by regulations under this Act for the purposes of this subsection, being a record made in pursuance of service law or regulation or otherwise in pursuance of air force duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein and a copy of a record (including the signature thereto) in one of the said service books and a copy of such document, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or the original document, as the case may be, shall be evidence of the record. 5 10

(6) A document purporting to be issued by the order of the air council or the commander and to contain instructions or orders given or made by the air council or the commander shall be evidence of the giving of the instructions, or making of the orders and of their contents. 15

(7) A certificate purporting to be issued by or on behalf of the air council or the commander and stating— 20

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

(b) that the badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the President or the air council. 25

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorized by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for— 30

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

(b) any area, garrison or place ; or

(c) any ship, train or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate. 35

Proof of
outcome of
civil trial.

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

(a) that the said person has been tried before the court for an offence specified in the certificate ; 40

(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 ; 45

shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by a judge or a magistrate shall, unless the contrary is shown, be deemed to be such a certificate.

- 5 175.—(1) The original proceedings of a court martial under service law purporting to be signed by the president of the court and being in the custody of the commander or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

Evidence of proceedings of court martial.

- 10 (2) A document purporting to be a copy of the original proceedings of a court martial under service law or any part thereof and to be certified by the commander or any person authorized 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.

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

Reductions in Rank

- 20 176.—(1) A warrant officer shall not be reduced in rank except by sentence of a court martial under service law or by order of the commander.

Restrictions on reductions in rank of warrant officers and non-commissioned officers.

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

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

(c) in the case of a leading aircraftman, by award or order of his commanding officer.

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

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

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

Miscellaneous

Temporary
reception
into civil
custody of
persons
under
escort.

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

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(2) In this section "civil prison" has the meaning ascribed to it in section one hundred and thirty-one of this Act.

Avoidance of
assignment
of, or charge
on, air force
pay, pen-
sions, etc.

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

15

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

20

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

Power of
certain
officers to
take
statutory
declarations.

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

25

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

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PART VIII.—AIR FORCE RESERVE

Reservists.

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

40

Annual
training.

181.—(1) Every reservist shall be liable to be called out for training at such place and for such periods not exceeding twenty-eight days in any one year as may be prescribed by regulations made under this Part of this Act.

(2) Every reservist may, during any training for which he may be called out, be attached to and trained with any unit.

45

182.—(1) The President, as and when occasion may so require, may call out the air force reserve, or as many reservists as he thinks necessary, to aid the civil power in the preservation of the public peace.

Calling out
of the reserve
to aid the
civil power.

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

183.—(1) Where there is a state of war or any insurrection, hostilities or public emergency, it shall be lawful for the President by proclamation, to call out the air force reserve on permanent service.

Calling out
of the reserve
on
permanent
service.

(2) The President may by the same or any other proclamation, give or authorise the Minister to give such directions as may seem necessary or proper for calling out the air force reserve or any reservist.

(3) Every reservist so called out shall comply with the directions given as if they were orders of a superior officer and shall attend at the place and time prescribed; and any such reservist shall thereupon be deemed to be called out on permanent service.

(4) Every reservist called out on permanent service shall be liable to serve as an airman of the air force until his services are no longer required, so, however, he shall not be required to serve for a period exceeding in the whole the remaining unexpired term of service in the reserve and any further period not exceeding twelve months as an airman may, under this Act, be retained on permanent service in the air force after the time at which he would otherwise be entitled to be discharged.

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

Punishment
for non-
attendance.

(a) if called out on permanent service, be guilty, according to the circumstances, of desertion or of absenting himself without leave; or

(b) if called out to aid the civil power or for annual training, be guilty of absenting himself without leave.

(2) Any reservist who commits any offence under this section may be tried—

(a) by court martial, and on conviction, shall be liable to imprisonment for a term not exceeding two years or such less punishment as is provided by this Act; or

(b) by a magistrate's court and, on conviction, shall be liable to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding two years.

(3) The provisions of section *seventy-eight* and of sections *one hundred and sixty-one* to *one hundred and sixty-five* of this Act (which relate to offences by air force personnel) shall apply to reservists who commit or are alleged to have committed or are reasonably suspected of having committed an offence against this section as they apply to persons otherwise subject to air force law under this Act.

185. Where a reservist fails to appear at the time and place appointed for annual training or when called out to aid the civil power or on permanent service, and his absence continues for not less than

Record of
illegal
absence.

twenty-one clear days, an entry of such absence shall be made by an officer in the service books prescribed for use under this Part of this Act, and where an entry is so made it shall be *prima facie* evidence of the fact of such absence.

Discharge
during
service.

186. A reservist may be discharged by a competent air force authority at any time during the currency of any term of service in the air force reserve. 5

Regulations
as to the
reserve.

187. The President may make regulations under this Part of this Act with respect to the government and discipline of the air force reserve, and, without prejudice to the generality of the foregoing, regulations may provide— 10

(a) for the calling out for training of reservists ;

(b) for the calling out of the air force reserve to aid the civil power and on permanent service ;

(c) for providing for the pay of reservists, whether on the reserve or called out under this Part of this Act ; 15

(d) for requiring reservists to report themselves from time to time, and to obtain the permission of a competent air force authority before leaving Nigeria ; and

(e) for any other matter or thing which is required by this Part of this Act to be prescribed. 20

PART IX.—APPLICATION OF THE ACT AND SUPPLEMENTARY PROVISIONS

Application

Application
of the Act.

188.—(1) The following persons shall be subject to air force law under this Act— 25

(a) officers and airmen of the air force ;

(b) officers of the reserve when called out on service ; and

(c) reservists called out for training, to aid the civil power or on permanent service.

(2) This Act shall apply to the persons subject thereto under the provisions of this section, and in relation to the units raised in Nigeria or elsewhere as part of the air force. 30

Application
of the Act
to women.

189.—(1) The provisions of this or any other Act in so far as they contain or refer to the word "airman" or other word importing reference to persons of the male sex only as, or as having been, members of the air force and accordingly subject to air force law under this Act, shall have effect as if for any such word there had been substituted therein words having a like meaning in other respects but importing a reference to persons of either sex. 35

(2) In relation to women members of the air force, this Act shall have effect subject to the following modifications— 40

(a) so much of Parts I, II, III and VIII as relate to service in, and transfer to, the air force reserve shall not apply ;

(b) so much of Part IV as provides for field punishment shall not apply ; 45

(c) References in sections *one hundred and ninety-four* and *one hundred and ninety-six* of this Act to a widow shall, for the avoidance of doubt, be construed as references to a widower, and the Interpretation Act shall have effect accordingly.

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5 190.—(1) Subject to the modifications in the next succeeding subsection, where any unit is on active service and a person is employed in the service of that unit or any part thereof or accompanies such unit or part thereof and is not otherwise subject to service law, the person so employed or accompanying the unit shall be subject to
10 air force law under this Act, and Part IV of this Act shall apply to any such person as it applies to members of the air force.

Application of the Act to civilians.

(2) The said modifications are the following—

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

(b) where a charge is dealt with summarily, the punishment awarded shall in no case exceed ten pounds in respect of any one offence;

20 (c) subsections (2) to (4) of section *seventy-eight* of this Act (which relates to the power to arrest certain offenders) shall not apply, and the person so employed may be arrested by a provost officer, or by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any such officer;

25 (d) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided apply to persons so employed as they apply to airmen;

(e) for the purposes of this Act in its application to the investigation of offences, the commanding officer shall be such officer as may be appointed by an officer authorised to convene a court martial;

30 (f) references in sections *one hundred and seventeen* and *one hundred and eighteen* of this Act to being, continuing, or ceasing to be subject to air force law shall be omitted, and there shall be substituted references to being, continuing to be, or ceasing to be so subject in such circumstances that Part IV of this Act applies (other than in the reference in
35 section *one hundred and seventeen* to the holding or air force rank in any trial and punishment of offences).

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

40 191.—(1) The provisions of Part IV of this Act with all necessary modifications and subject to the provisions of this section, shall apply to passengers on board any aircraft of the air force.

Application of the Act to passengers.

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

Wills and Distribution of Property

Airman on
enlistment
to register
the name of
person
entitled on
his intes-
tacy, etc.

192.—(1) Every airman on enlistment shall—

(a) declare the name of the person or persons to whom, in the event of his dying without having made a valid will, any money or personal property due or belonging to him should be paid or delivered or 5

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

and the name of such person or customary court shall be recorded on his attestation paper. The record shall be verified periodically, and it shall be the duty of the airman to report any alteration in the record which he wishes made. 10

(2) Any officer of the air force, the Accountant-General or any public department, having in his or its charge or control any pay, accumulations of pay, gratuity or other allowance, or any personal property or money belonging to any airman dying intestate who has complied with the above conditions, may pay or deliver the same to the person whose name has been recorded, or to a customary court of the place named, by the airman in the manner prescribed. 15

Special
provisions
relating to
airmen's
wills.

193.—(1) Any will made by an airman shall be valid for disposing of any money or personal property which is due or belonging to him at his decease if it is in writing and signed or acknowledged by him in the presence of, and in his presence attested by one witness, being an officer of the air force or any government medical officer. The will shall be deemed well made for the purpose of being admitted to probate, and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to the money or personal property thereby bequeathed. 20 25

(2) Any officer of the air force, the Accountant-General, or any public department, having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance, or any personal property or money belonging to such testator, not exceeding in the aggregate the value of one hundred pounds, may pay or deliver the same to any person entitled thereto under the will, or to the person entitled to procure probate of or administration under such will, although probate or administration may not have been taken out. 30 35

(3) If the value of the money and personal property exceeds one hundred pounds, the paymaster or other officer, or public department having charge or control thereof shall require probate, or administration to be taken out and thereupon pay or deliver the said money and effects to the legal representative of the deceased. 40

Distribution
in case of
deceased air-
man's
intestacy.

194.—(1) If any airman dies without having complied with the requirements of this Part of this Act as to the disclosure of next of kin, or has not made a will valid under this or any other enactment relating to wills and for the time being in force, any officer of the air force or the Accountant-General or any public department having in his or its charge or control money or personal property of the deceased may, with the concurrence of the commander or any officer acting on behalf of the commander, pay or deliver such money or personal property to 45

any claimant who proves to the satisfaction of the commander or such officer, relationship as the widow of the deceased or the child or other near relative of the deceased, as the case may be, according to the rules of succession of the tribe to which the deceased belonged. If there are
5 more of such claimants than one, payment or delivery may be made in such shares and proportions as the claimants would be entitled to receive under the rules of succession prevailing among such tribe, or as nearly as may be.

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

15 195.—(1) Where probate of the will or administration with or without the will annexed of the estate of a deceased airman is not taken out, and an officer of the air force, the Accountant-General or officer of any public department before disposing of the money and personal property of the deceased has notice of any debt due by the deceased, he
20 shall, anything to the contrary in this Part of this Act notwithstanding, apply such money and property as may remain in his authority or control, or so much thereof as may be requisite in or towards the payment of such debt, if he is satisfied—

Payment of
debts of
deceased
airman.

(a) that the claimant has proved the debt to the satisfaction of the
25 commander or of the officer acting on behalf of the commander ; and

(b) that demands for payment of the debt is made within one year after such death ; and

(c) that the debt was incurred within three years before the death of the airman.

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

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

Property of
deceased air-
man
distributed
subject to
rights of
creditors.

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

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

5

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

10

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

15

Uniforms
and
decorations
of deceased
airman.

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

20

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

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

25

Miscellaneous

30

Power to
make
regulations
generally.

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

Powers
exercisable
in subsidiary
legislation.

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

35

(2) Any such regulations, rules, orders, or other instruments may impose conditions, require acts or things to be performed or done to the satisfaction of any person named therein whether or not such persons are members of the air force or of other of the armed forces of Nigeria, empower such persons to issue orders either orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or done, or such conditions shall be fulfilled, and provide for appeal against any such order, requirement or direction.

40

45

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

Provisions
as to active
service.

5 (2) Where it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the service of the public that a unit should be deemed to be or continue to be on active service he may declare that for such period, not exceeding three months, beginning with the coming into
10 force of the declaration as may be specified therein, that unit shall be deemed to be on active service.

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

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

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

Execution
of orders,
instruments,
etc

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

Nigerian Air
Force
Benefit
Fund.

(2) The Minister, after consultation with the air council may make regulations for the formation of such benefit fund, and any disbursements may be made out of such fund in accordance with the regulations.
40

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

Rights of
officers.

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

Application
of other
Acts.

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

5

Consequen-
tial amend-
ments

207.—(1) The Air Force Act, 1955, of the United Kingdom and its amendments and any transitional provisions affecting or relating to any expired Air Force Act of the United Kingdom, to the extent to which they or any of them may apply or may have applied to Nigeria shall, on the coming into operation of this Act, cease to have effect in Nigeria.

10

Second
Schedule.

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

Interpreta-
tion.

208.—(1) In this Act, unless the context otherwise requires— 15

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

"the air council" means the air council established under this Act ;

"the air force" means the Nigerian Air Force ;

"air signal" means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft ; 20

"airman" does not include an officer but, with the modifications contained in this Act in relations to warrant officers and non-commissioned officers, includes a warrant officer and a non-commissioned officer and every person subject to air force law under this Act during the time that he is so subject ; 25

"acting rank" means rank of any description in the air force and however called so that a commanding officer may with or without preferring a charge under this Act order the holder to revert to a lower rank or to his substantive rank as the case may be, and references to "acting warrant officer" and "acting non-commissioned officer" shall be construed accordingly ; 30

"aircraft material" includes—

(a) parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not ; 35

(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 aircrafts ; and 40

(e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material ;

"allied forces" means any military, naval or force of a country allied or associated with Nigeria and includes any Commonwealth force ; 45

"arrest" includes open arrest ;

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

"civil court" means a court of competent criminal jurisdiction but does not include any customary court by whatever name called ; 50

"the commander" means the officer appointed by the President to command the air force and the air force reserve under this Act ;

"commanding officer" in relation to any person means the officer commanding the unit to which the person belongs or is attached ;

5 "corresponding rank" in relation to any rank of an allied force means such rank in that force as may be declared under this Act to correspond with a rank under this Act ;

"court martial" save where expressed to be under service law, means a court martial under this Act ;

10 "customary court" includes an Alkalis' court, and any other court at any time before or after the coming into operation of this Act, known as a native court ;

"damage" and cognate expressions include destruction ;

15 "date of attestation" in relation to any person means the date on which he is attested as having enlisted in the air force ;

"decoration" includes any medal, medal ribbon, clasp and good conduct badge ;

20 "enemy" means persons engaged in armed operation against Nigeria, and includes armed mutineers, armed rebels, armed rioters and pirates ;

"imprisonment rules" means rules regulating imprisonment made by the President under this Act ;

"Minister" means the Minister charged with the responsibility for matters relating to defence ;

25 "mutiny" means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—

30 (a) to overthrow or resist lawful authority in any of the armed forces of Nigeria or any forces co-operating therewith or in any part of any of the said forces, or

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against the enemy, or

35 (c) to impede the performance of any duty or service in any of the armed forces of Nigeria or in any forces co-operating therewith or in any part of any of those forces ;

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

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

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

"ship" includes any description of vessel ;

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

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

5

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

(2) Any person who—

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

10

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

15

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

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

20

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

25

Short title,
commence-
ment and
application.

209.—(1) This Act may be cited as the Air Force Act, 1964, and shall come into operation on a date to be appointed by the Minister by order in the Gazette.

(2) This Act shall have effect throughout the Federation.

SCHEDULES

FIRST SCHEDULE

Section 97

*Alternative offences of which accused may be convicted
by court martial*

*Offence charged**Alternative offences*

- | | |
|--|---|
| 1. Any offence against subsection (1) of section 32. | 1. Any offence against subsection (2) of section 32. |
| 2. Any offence against subsection (1) of section 33. | 2. Any offence against subsection (2) of section 33. |
| 3. Communicating with or giving intelligence to the enemy either with intent to assist the enemy or without authority. | 3. Disclosing information without authority. |
| 4. Any offence against subsection (1) of section 39. | 4. Any offence against subsection (2) of section 39. |
| 5. Striking his superior officer. | 5. (a) Using violence to his superior officer otherwise than by striking him.
(b) Offering violence to his superior officer. |
| 6. Using violence to his superior officer otherwise than by striking him. | 6. Offering violence to his superior officer. |
| 7. Using threatening language to his superior officer. | 7. Using insubordinate language to his superior officer. |
| 8. Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally. | 8. Disobeying a lawful command. |
| 9. Desertion. | 9. Absence without leave. |
| 10. Attempting to desert. | 10. Absence without leave. |
| 11. Stealing any property. | 11. Fraudulently misapplying the property. |
| 12. Any offence against any section involving wilfulness. | 12. The corresponding offence involving negligence. |
| 13. Any offence against subsection (1) of section 59. | 13. Any offence against subsection (2) of section 59. |
| 14. Any offence against section 60 involving striking. | 14. (a) The corresponding offence involving the use of violence other than striking.
(b) The corresponding offence involving the offering of violence. |
| 15. Any offence against section 60 involving the use of violence other than striking. | 15. The corresponding offence involving the offering of violence. |

SECOND SCHEDULE

Section 207

Consequential Amendments

<i>Number</i>	<i>Short Title</i>	<i>Extent of Amendment</i>
No. 26 of 1960	The Royal Nigerian Army Act 1960	<p>In section two in subsection (1) by repealing in the definition of "service law" the figures "1955" and substituting the figures "1964".</p> <p>In section one hundred and fifty-nine in subsection (1) by deleting the word "military".</p>
1960 No. 9	The Royal Nigerian Navy Act 1960	<p>In section thirty-nine in subsection (1) by substituting the word "armed" for the word "military"; and in subsection (2) by substituting the word "armed" for the word "military" where it first occurs.</p> <p>In section forty in subsection (1) by repealing the words "under the Royal Nigerian Army Act 1960" (as substituted by the Act of that title) and substituting the words "or to air force law".</p> <p>In section forty-two in subsection (1) by repealing the words "the military" and substituting the words "any other of the armed".</p> <p>In the First Schedule in Part II in paragraph (2) by repealing in sub-paragraph (viii) the words "Royal Nigerian Army" (as substituted by the Royal Nigerian Army Act 1960) and substituting the words "army and air force of Nigeria".</p>

(Bills 860)