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DEFENCE ACT 44 OF 1957

[ASSENTED TO 10 JUNE 1957]

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(Afrikaans text signed by the Officer Administering the Government)

as amended by

Finance Act 80 of 1959
Defence Amendment Act 12 of 1961
Defence Further Amendment Act 42 of 1961
Defence Amendment Act 83 of 1962
Defence Amendment Act 77 of 1963
Defence Amendment Act 81 of 1964
Expropriation Act 55 of 1965
Civil Defence Act 39 of 1966
Defence Amendment Act 85 of 1967
Defence Amendment Act 3 of 1969
Defence Amendment Act 28 of 1970
General Law Amendment Act 80 of 1971
Defence Amendment Act 66 of 1972
Defence Amendment Act 26 of 1973
Defence Amendment Act 8 of 1974
Defence Further Amendment Act 83 of 1974
Second General Law Amendment Act 94 of 1974
General Law Amendment Act 57 of 1975
Expropriation Act 63 of 1975
Defence Amendment Act 1 of 1976
Military Pensions Act 84 of 1976
Moratorium Amendment Act 27 of 1977
Defence Amendment Act 35 of 1977
Second Defence Amendment Act 68 of 1977
Defence Amendment Act 49 of 1978
Defence Amendment Act 42 of 1979
Defence Amendment Act 77 of 1980
Manpower Training Act 56 of 1981
Defence Amendment Act 103 of 1982
Defence Amendment Act 34 of 1983

Defence Amendment Act 87 of 1984
Transfer of Powers and Duties of the State President Act 97 of 1986
Defence Amendment Act 45 of 1987
Transfer of Powers and Duties of the State President Act 51 of 1991
Post Office Amendment Act 85 of 1991
Defence Amendment Act 132 of 1992
Defence Amendment Act 32 of 1993
General Law Fourth Amendment Act 132 of 1993
Defence Second Amendment Act 134 of 1993
Defence Amendment Act 72 of 1995
State of Emergency Act 86 of 1995
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996
Defence Amendment Act 4 of 1997
Public Service Laws Amendment Act 47 of 1947
Criminal Law Amendment Act 105 of 1997

Military Discipline Supplementary Measures Act 16 of 1999

ACT

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

CHAPTER I DEFINITIONS AND LIABILITY FOR SERVICE AND TRAINING (ss 1-4A)

1 Definitions

(1) In this Act, unless the context otherwise indicates-

'call-up', when used as a noun, means a command addressed to any person or any category, class or group of persons liable under this Act to render service or to undergo training in the South African Defence Force or the Reserve, to render such service or to undergo such training and to do or comply with anything required in terms of any law to be done or complied with in regard to such service or training, and **'call up'**, when used as a verb, **'call up for service'** and, in section 92*bis* only, **'notified'** and **'authorize'** have corresponding meanings;

[Definition of 'call-up' inserted by s. 1 (a) of Act 132 of 1992 and amended by s. 1 (a) of Act 72 of 1995.]

'Chief of the Defence Force' means the Chief of the South African National Defence Force appointed in terms of section 225 of the Constitution;

[Definition of 'Chief of the Defence Force' inserted by s. 1 (b) of Act 72 of 1995.]

'citizen' means a South African citizen within the meaning of the South African Citizenship Act, 1949 (Act 44 of 1949);

'command' means the military authority and responsibility of a superior officer to issue orders and directives and give commands to subordinates, and covers every aspect of military operations and administration;

[Definition of 'command' inserted by s.1 (a) of Act 4 of 1997.]

'commando' means a commando or an air commando established under this Act;

[Definition of 'commando' substituted by s. 1 of Act 77 of 1963.]

'court', in relation to a visiting force, means any body which or person who by the Laws of the country to which such visiting force belongs, is empowered to investigate any matter or to try any person for an offence under the military laws of that country or to review the proceedings in connection with the investigation of any such matter or the trial of any person in respect of any such offence;

'Department of Defence' means the Department of Defence referred to in section 4B;

[Definition of 'Department of Defence' inserted by s. 1 (c) of Act 72 of 1995 and substituted by s. 1 (b) of Act 4 of 1997.]

'deferment'

[Definition of 'deferment' amended by s. 1 of Act 42 of 1961 and deleted by s. 1 (a) of Act 85 of 1967.]

'enrol', in relation to any person, means accept and record the enlistment of that person as a member of any portion of the South African Defence Force;

'force' means a military force;

'member' includes an officer and an other rank, and in relation to a visiting force from any country, any person subject to the military laws of that country who is a member of another force and is attached to the visiting force, or is a civilian employed in connection with the visiting force, who entered into his engagement outside the Republic and is not a South African citizen within the meaning of the South African Citizenship Act, 1949 (Act 44 of 1949);

'military' includes army, air force and naval, as well as medical service;

[Definition of 'military' substituted by s. 1 (a) of Act 87 of 1984.]

'military court' means a military court as defined in section 1 of the Military Discipline Supplementary Measures Act, 1999;

[Definition of 'military court' substituted by s. 43 (b) of Act 16 of 1999.]

'Military Discipline Code' means the Military Discipline Code as defined in section *one hundred and four*;

'Minister' means the Minister of Defence;

'officer', in relation to the South African Defence Force or the Reserve, means a person on whom a commission has been conferred under section 83 and who has been appointed to officer's rank;

[Definition of 'officer' substituted by s. 1 (b) of Act 87 of 1984.]

'order' means a written order by an appropriate officer and may be a unit, formation or force order;

[Definition of 'order' inserted by s. 1 (d) of Act 72 of 1995.]

'other force' means a military force of a country or state other than the Republic;

'other rank' means a person other than an officer;

'prescribed' means-

(a) in relation to any matter affecting the salaries, pay or allowances of members of the South African Defence Force, the Reserve, the Cadet Corps or any auxiliary or nursing service established under this Act, determined by the Minister for the Public Service and Administration under section 82*bis*; and

[Para. (a) substituted by s. 1 (b) of Act 132 of 1992 and by s. 35 (1) of Act 47 of 1997.]

(b) in relation to any other matter, prescribed by regulation;

[Definition of 'prescribed' substituted by s. 1 of Act 12 of 1961 and amended by s. 20 (a) of Act 39 of 1966.]

'registered address', in relation to a person, means the address of that person as

notified from time to time to the proper authority in terms of this Act and, in respect of a pupil as contemplated in section 63, also the address of the school, college or institution attended by such pupil for the duration of such attendance;

[Definition of 'registered address' substituted by s. 1 (c) of Act 87 of 1984 and by s. 1 (a) of Act 134 of 1993.]

'regulation' means a regulation made and in force under this Act;

'senior certificate' means a school-leaving certificate issued by the South African Certification Council under section 9 of the South African Certification Council Act, 1986 (Act 85 of 1986), or a senior certificate issued by any person or authority under any law which was in force before the commencement of the said Act;

[Definition of 'senior certificate' inserted by s. 1 (b) of Act 134 of 1993.]

'Republic'

[Definition of 'Republic' deleted by s. 1 (c) of Act 132 of 1992.]

'Secretary' means the Secretary for Defence appointed under section 7B (1);

[Definition of 'Secretary' inserted by s. 1 (e) of Act 72 of 1995.]

'service in defence of the Republic' means military service and **'operations in defence of the Republic'** means military operations-

(a) in time of war; or

(b) in connection with the discharge of the obligations of the Republic arising from any agreement between the Republic and any other state; or

(c) for the prevention or suppression of any armed conflict outside the Republic which, in the opinion of the State President, is or may be a threat to the security of the Republic;

[Definition of 'service in defence of the Republic' substituted by s. 1 of Act 26 of 1973 and by s. 1 (a) of Act 8 of 1974, amended by s. 1 (a) of Act 1 of 1976 and substituted by s. 1 of Act 35 of 1977.]

'service in the merchant fleet'

[Definition of 'service in the merchant fleet' inserted by s. 1 (b) of Act 8 of 1974 and

deleted by s. 1 of Act 103 of 1982.]

'terrorism' means terroristic activities in the Republic or directed against the Republic or any authority in or inhabitants of the Republic;

[Definition of 'terrorism' inserted by s. 1 (b) of Act 1 of 1976.]

'this Act' includes any rule or regulation made thereunder;

'time of war' means any time during which an actual state of war exists or may in the opinion of the State President be anticipated;

'Treasury' includes any officer of the Department of State Expenditure who has been authorized by the Minister of Finance to perform any function assigned to the Treasury in this Act;

[Definition of 'Treasury' substituted by s. 1 (f) of Act 72 of 1995.]

'visiting force' means a military force of any country present in the Republic at any time with the consent of the Government of the Republic.

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

(3) Any reference in this Act to any liability to render service in the South African Defence Force or the Reserve shall be construed as including a reference to a liability to undergo training therein.

[Sub-s. (3) added by s. 1 (b) of Act 85 of 1967.]

2 Application of Act

(1) This Act shall not apply, in so far as it relates to any liability regarding registration under this Act or to liability for service in the Citizen Force, the commandos or the Reserve-

(a) to any citizen who is a member of Parliament or of any regional government of any state, region or province into which the Republic may be divided; or

(b) to females:

Provided that the State President may with the approval, by resolution, of Parliament, by proclamation in the *Gazette* apply any provision of this Act to females or any class of females: Provided further that nothing in this section shall be construed as preventing any female (subject in the case of a minor to the consent of her parent or guardian) from engaging voluntarily and in accordance with regulations for service in any portion of the South African Defence Force, including service contemplated in section 22, if so prescribed, in such capacity and subject to such conditions as may be prescribed.

[Sub-s. (1) amended by s. 20 of Act 39 of 1966, by s. 2 of Act 85 of 1967, by s. 1 of Act 49 of 1978 and by s. 36 of Act 132 of 1992 and substituted by s. 2 (a) of Act 134 of 1993.]

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

[Sub-s. (2) substituted by s. 2 (b) of Act 85 of 1967.]

(3) Subject to the provisions of subsection (4) the State President may by proclamation in the *Gazette* declare that any provision of this Act specified in the proclamation, other than a provision applicable in time of war only, shall to the extent so specified apply to persons who are not citizens but have been domiciled in the Republic for not less than five years, as if they were citizens.

[Sub-s. (3) added by s. 2 (c) of Act 85 of 1967 and substituted by s. 2 (b) of Act 134 of 1993.]

(4) Any proclamation issued under subsection (3)-

(a) shall provide for exemption from liability to render service under this Act of persons who have at such time and in such manner as may be specified in the proclamation, declared that they do not intend becoming citizens;

(b) may provide for exemption from or concessions in respect of any provision applied by such proclamation, to such extent as may be specified therein;

(c) may apply the provisions of section 63 with such modifications

as the State President may consider necessary in order to provide for the registration under that section of any person who has been domiciled in the Republic for five years, before the date upon which he attains the age of twenty-five years.

[Sub-s. (4) added by s. 2 (c) of Act 85 of 1967.]

(5) The State President may at any time amend or repeal a proclamation issued under subsection (3).

[Sub-s. (5) added by s. 2 (c) of Act 85 of 1967.]

3 Liability for training and service

(1) Subject to the provisions of this Act-

(a) every person domiciled in the Republic shall be liable between his twelfth and his seventeenth year, both included, to undergo training as a cadet; and

(b) every citizen between his seventeenth and his sixty-fifth year, both included, shall be liable to render service in the South African Defence Force as hereinafter prescribed.

[Para. (b) substituted by s. 3 of Act 85 of 1967.]

(2) The South African Defence Force or any portion or member thereof may-

(a) at any time be employed by the State President to be used by the executive military command of the South African Defence Force-

(i) on service in defence of the Republic;

(ii) on service in the prevention or suppression of terrorism;

(iii) on service in the prevention or suppression of internal disorder in the Republic;

(iv) on service in the preservation of life, health or property; and

[Sub-para. (iv) substituted by s. 2 (c) of Act 132 of 1992.]

(v) on service in the maintenance of essential services,

including the maintenance of law and order and the prevention of crime in co-operation with the South African Police; and

[Sub-para. (v) added by s. 2 (d) of Act 132 of 1992.]

[Para. (a) amended by s. 2 (a) of Act 132 of 1992.]

(b) while employed as contemplated in paragraph (a), be used, in the Republic and for achieving the objects of the service in question, on those police functions mentioned in section 5 of the Police Act, 1958 (Act 7 of 1958), as may be prescribed.

[Para. (b) substituted by s. 2 (e) of Act 132 of 1992.]

[Sub-s. (2) added by s. 2 of Act 77 of 1963, amended by s. 2 of Act 1 of 1976, substituted by s. 2 (a) of Act 87 of 1984 and amended by s. 2 (a) of Act 132 of 1992.]

(2A) (a) If in the opinion of the Chief of the South African Defence Force it is necessary that a portion or a member of the said Force be employed on service as contemplated in subsection (2) (a) (iv) and the matter, owing to the urgency thereof, cannot be delayed until the State President can give a decision thereon, the said Chief may so employ the said portion or member.

(b) If the said Chief has so employed a portion or a member of the said Force, he shall as soon as possible inform the Minister thereof and at the same time notify him of the reasons therefor and the results thereof.

[Sub-s. (2A) inserted by s. 2 (f) of Act 132 of 1992.]

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

[Sub-s. (3) added by s. 2 of Act 77 of 1963 and substituted by s. 1 of Act 34 of 1983.]

(4) Any member who is used on police functions referred to in subsection (2) (a) (v) or (b), shall have all the prescribed powers and duties as are by law conferred or imposed upon a member of the South African Police Force established under the

Police Act, 1958 (Act 7 of 1958), and shall in respect of acts done or omitted to be done by him be liable to the same extent as he would have been liable in like circumstances if he were a member of the said Force, and shall have the benefit of all the indemnities to which a member of that Force would in like circumstances be entitled.

[Sub-s. (4) added by s. 2 of Act 77 of 1963 and substituted by s. 2 (b) of Act 87 of 1984 and by s. 2 (g) of Act 132 of 1992.]

(5) Service in the maintenance of law and order or in the prevention of crime in co-operation with the South African Police as contemplated in subsection (2) (a) (v) shall-

(a) only be performed in such areas or at such places as the Minister may, notwithstanding the provisions of section 138 (1), order at the request of the Minister of Law and Order;

(b) be discontinued or suspended in any area or at any place by order of the Minister when the Minister of Law and Order requests the Minister to do so or when the Minister deems it expedient for any other reason;

(c) be performed in accordance with-

(i) such guidelines regarding-

(aa) co-operation between the South African Defence Force and the South African Police; and

(bb) command over and control of members of the said Force and Police while they are performing any such service in co-operation with each other,

as the Chief of the South African Defence Force and the Commissioner of the South African Police may determine; and

(ii) directions, in orders issued by the said Chief in consultation with the said Commissioner, regarding special identification marks to be worn by members of the South African Defence Force while they are performing such service.

[Sub-s. (5) added by s. 2 (h) of Act 132 of 1992.]

(6) Employment on service in the maintenance of law and order or in the prevention of crime in co-operation with the South African Police as contemplated in subsection (2) (a) (v), shall within 24 hours thereafter be notified by proclamation in the *Gazette*, and when such employment is discontinued as is contemplated in subsection (5) (b) it shall be notified by a similar proclamation.

[Sub-s. (6) added by s. 2 (h) of Act 132 of 1992.]

4 Duties of employers

(1) An employer shall afford any person in his employ all reasonable facilities to be enrolled for or to carry out, whether voluntarily or not, any service under this Act.

[Sub-s. (1) substituted by s. 4 (a) of Act 85 of 1967 and by s. 1 of Act 42 of 1979.]

(2) Any employer who-

(a) fails to afford facilities as aforesaid; or

(b) by dismissing an employee or reducing his salary or wages or altering his position to his disadvantage or in any other manner penalizes such employee on account of his having being enrolled for or being engaged in any such service; or

[Para. (b) substituted by s. 4 (b) of Act 85 of 1967.]

(c) by words, conduct or otherwise directly or indirectly compels, induces or prevails upon, or attempts to compel, induce or prevail upon any person or seeking to enter his employment to evade or refrain from being enrolled for or carrying out service under this Act,

[Para. (c) substituted by s. 4 (b) of Act 85 of 1967.]

shall, subject to the provisions of sub-section (2)*bis* and (2)*ter*, be guilty of an offence.

[Sub-s. (2) amended by s. 3 (a) of Act 77 of 1963.]

(2)*bis* (a) Nothing in this section shall be construed as requiring any employer to pay any person in his employ any salary or wages in respect of any period during which he is absent from his work for the purpose of carrying out any service under this Act.

(b) Notwithstanding the provisions of sub-sections (1) and (2) and of any other law, no employee who is rendering service under this Act and who is by law or in terms of any

condition of his employment entitled to increased remuneration, paid sick leave or other paid leave of absence, or, subject to the provisions of sub-paragraph (ii), any similar benefit upon completion of a fixed period or successive fixed periods of employment shall-

(i) have the right to reckon in respect of any one unbroken period of such service more than four months of the absence from his employment occasioned by such service as employment in the determination of such increased remuneration, paid sick leave, or other paid leave of absence or similar benefit as may accrue to him in respect of such employment: Provided that this sub-paragraph shall not be construed as limiting any longer period which may be determined or fixed by or under any law relating to his employment;

(ii) be entitled to the grant to him by his employer of paid sick leave in respect of a period falling within the limits of any period of such service, during which he is incapacitated as a result of any injury or illness;

(iii) claim any such paid sick leave or other paid leave of absence or any other benefit before he has, pursuant to the provisions of this Act, been permitted to resume his employment and has so resumed such employment.

[Sub-s. (2)*bis* inserted by s. 3 (b) of Act 77 of 1963 and substituted by s. 4 (c) of Act 85 of 1967.]

(2)*ter*

[Sub-s. (2)*ter* inserted by s. 3 (b) of Act 77 of 1963, substituted by s. 4 (c) of Act 85 of 1967 and by s. 2 of Act 49 of 1978 and deleted by s. 58 (1) of Act 56 of 1981.]

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

[Sub-s. (3) substituted by s. 4 (c) of Act 85 of 1967.]

4A Prohibition or refusal to employ on ground of liability to serve in Citizen Force or Commando

(1) Any person who-

(a) refuses an application for employment in his service or in the service of any other person, made by a person who is liable in terms of section 21 or 35 to serve in the Citizen Force or a commando, on the ground of such person's liability to serve as aforesaid; or

(b) in any notice or advertisement inviting applications for employment in his service or in the service of any other person, declares or otherwise indicates that he or such other person is not prepared to employ any person who is liable as aforesaid,

shall be guilty of an offence.

(2) If in any prosecution under subsection (1) (a) it is proved that the accused refused an application made by a person who is liable in terms of section 21 or 35 to serve in the Citizen Force or a commando, and that he knew at the time of the refusal that such person was so liable, it shall be presumed, until the contrary is proved, that he refused the application solely on the ground of such person's liability to serve as aforesaid.

[S. 4A inserted by s. 1 of Act 83 of 1974.]

4B Composition of Department of Defence

The Department of Defence shall consist of-

(a) the Defence Secretariat; and

(b) the South African National Defence Force.

[S. 4B inserted by s. 3 of Act 4 of 1997.]

CHAPTER II COMPOSITION AND ORGANISATION OF THE DEPARTMENT OF DEFENCE (ss 5-8)

[Heading substituted by s. 2 of Act 4 of 1997]

5 Composition of the South African Defence Force

The South African Defence Force shall consist of-

- (a) the Permanent Force;
- (b) the Citizen Force; and
- (c) Commandos.

6 Composition of Reserve

The Reserve shall consist of-

- (a) the Controlled Reserve; and
- (b) the National Reserve.

[S. 6 substituted by s. 5 of Act 85 of 1967, by s. 2 of Act 103 of 1982 and by s. 3 of Act 134 of 1993.]

7 Organization of South African Defence Force and Reserve

The South African Defence Force and the Reserve shall be organized in such headquarters, arms of the service, formations, units and personnel musters as the Minister may determine or as may be prescribed, and any such headquarters, arm of the service, formation, unit or personnel muster may consist of members of any one or more of the forces or reserves mentioned in section 5 or 6.

[S. 7 substituted by s. 2 of Act 34 of 1983.]

7A Establishment of Defence Secretariat

(1) (a) There is hereby established in the Department of Defence a Defence Secretariat.

(b) The officers and employees within the meaning of the Public Service Act, 1994 (Proclamation 103, 1994), which are necessary for the performance of the work connected to the functions of the Secretary shall be appointed to posts in the Defence Secretariat in consultation with the Minister.

(2) Notwithstanding the provisions of subsection (1), members of the South African National Defence Force may with their consent be placed at the disposal of the Secretary to serve in posts in the Defence Secretariat.

(3) The persons serving in the Defence Secretariat at the commencement of the Defence Amendment Act, 1995, shall, as from the date on which they so commenced serving, be deemed to have been duly appointed to posts in or seconded or transferred

to the Defence Secretariat or placed at the disposal of the Secretary, as the case may be.

(4) The Minister shall be accountable to the President and to Parliament for the Defence Secretariat.

[S. 7A inserted by s. 2 of Act 72 of 1995.]

7B Secretary for Defence

(1) The Minister may, subject to the laws governing the public service, appoint a person to the post of Secretary for Defence in the fixed establishment of the Department of Defence who, as an officer within the meaning of the Public Service Act, 1994 (Proclamation 103, 1994), shall serve in that post for the period and in accordance with the terms and conditions of service otherwise applicable to heads of department referred to in that Act, and shall be entitled to receive the salary, benefits and privileges to which such head may be entitled.

(2) The Secretary shall be a citizen of the Republic and may not be a member of the South African National Defence Force.

(3) The person serving as Secretary at the commencement of the Defence Amendment Act, 1995, shall be deemed to have been duly appointed under this section from 1 April 1995.

[S. 7B inserted by s. 2 of Act 72 of 1995 and substituted by s. 4 of Act 4 of 1997.]

7C Powers, duties and functions of Secretary

The Secretary shall-

(a) (i) be head of department and accounting officer of the Department of Defence; and

(ii) be the head of the Defence Secretariat and as such be responsible for the management of and administrative control over the staff of the Defence Secretariat;

(b) be the principal departmental adviser to the Minister with regard to defence policy matters;

(c) advise the Minister on any particular matter referred by the Minister to the Secretary;

(d) perform such duties and functions as may from time to time be assigned or referred to him or her by the Minister, in particular any function or duty necessary or expedient to enhance Parliamentary oversight and Ministerial control over the South African National Defence Force;

(e) provide the Chief of the Defence Force with comprehensive instructions for the issuing by that Chief of orders and directives and the giving of commands with regard to the functioning of the Secretary as head and accounting officer of the Department of Defence;

(f) monitor compliance with directions issued by the Minister under the Constitution, to the Chief of the Defence Force and report thereon to the Minister; and

(g) perform all functions of a head of department regarding the effective management and administration of the Department of Defence.

[S. 7C inserted by s. 2 of Act 72 of 1995 and substituted by s. 5 of Act 4 of 1997.]

7D

[S. 7D inserted by s. 2 of Act 72 of 1995 and repealed by s. 6 of Act 4 of 1997.]

8 Powers, duties and functions of Chief of the Defence Force

(1) The Chief of the Defence Force-

(a) may exercise the powers and shall perform the duties and functions necessary to execute his or her command of the South African National Defence Force;

(b) shall execute his or her command by issuing directives, force orders and general instructions and by giving commands.

[Sub-s.(1) substituted by s. 7 (a) of Act 4 of 1997.]

(2) The Chief of the Defence Force shall be the principal adviser to the Minister on any military, operational and administrative matter within the competence of the Chief of the Defence Force.

(3) Without derogating from the generality of subsection (1) (a) or from any power, duty or function vested in or assigned to the head of department and accounting officer of the Department of Defence by or under any law, the Chief of the Defence Force shall have the powers and be charged with the duties and functions and be responsible to the Minister for-

(a) compliance with any directions by Minister under the authority of the President as provided for in the Constitution;

(b) the efficient management and administration of the South African National Defence Force, including the effective utilisation and training of all members of that Force;

(c) the formulation of military policy and doctrines in accordance with directions referred to in paragraph (a);

(d) the execution of approved programmes of the budget for the South African National Defence Force for which that Chief is responsible;

(e) the issuing of orders and directives and the giving of commands in accordance with any instruction by the Secretary referred to in section 7C (e), and for ensuring that such orders, directives and commands are complied with;

(f) the supplying of all information and inputs with regard to the South African National Defence Force to the Secretary to enable him or her to perform his or her functions properly;

(g) the performance of all staff functions required for the effective command and control of the South African National Defence Force;

(h) the use of the South African National Defence Force or any part or member thereof which or who has been employed for any service or for the conduct of military operations;

(i) the training to the required level of all members of the South African National Defence Force in law, including international law;

(j) the maintenance of an adequate military response capability with respect to likely military threats as authorised by the Minister; and

(k) the maintenance of military discipline within the South African

National Defence Force.

[Sub-s. (3) substituted by s. 7 (b) of Act 4 of 1997.]

[S. 8 substituted by s. 4 of Act 134 of 1993 and by s. 3 of Act 72 of 1995.]

CHAPTER III THE PERMANENT FORCE (ss 9-15)

9 Composition and organization of Permanent Force

) The Permanent Force shall consist of persons enrolled therein, whether in permanent or temporary capacity, and shall be organized in such manner as may be prescribed: Provided that until such time as it is otherwise prescribed under this Act, the said Force shall be organized in accordance with the provisions which under the laws repealed by section *one hundred and fifty-two*, were immediately prior to the commencement of this Act applicable in respect of the South African Permanent Force referred to in section *one* of the South Africa Defence Act Amendment Act, 1922 (Act 1 of 1922).

Sub-s. (1) amended by s. 6 (a) of Act 85 of 1967 and by s. 3 (a) of Act 87 of 1984.]

) (a) Subject to the provisions of the Public Service Act, 1994 (promulgated under proclamation 103 of 1994), the procedure for enrolment, appointment and promotion in the Permanent Force and, subject to the provisions of any law relating to the grant of pensions or any other benefit under such law to members of the Permanent Force, the conditions of such enrolment, appointment and promotion as well as other conditions of service, shall be as may be prescribed or as may, subject to the above provisions, be authorized by the Minister.

[Para. (a) substituted by s. 5 of Act 134 of 1993 and by s. 35 (1) of Act 47 of 1997.]

) The said conditions may provide for the payment of gratuities upon discharge, to specified categories or kinds of persons enrolled in a temporary capacity.

Sub-s. (2) amended by s. 6 (b) of Act 85 of 1967 and substituted by s. 3 (b) of Act 87 of 1984.]

) Different conditions may be prescribed under sub-section (2) for different categories or kinds of members of the Permanent Force.

[Sub-s. (3) substituted by s. 6 (c) of Act 85 of 1967.]

(4) Any person enrolled in the Permanent Force shall serve therein until he has been officially discharged therefrom.

[Sub-s. (4) substituted by s. 3 (c) of Act 87 of 1984.]

10 Qualifications of members of Permanent Force

No person shall be enrolled in the Permanent Force unless he is a citizen and, except where the Minister or any person acting under his authority otherwise directs, has passed in both official languages of the Republic in the examination which he is in terms of the conditions prescribed under section 9 (2) required to pass as a condition precedent to enrolment in terms of that section: Provided that the Minister or any person acting under his authority may authorize the enrolment in such Force of any person in a temporary capacity, but not for a period exceeding three years at any one time in the case of a person who is not a citizen.

[S. 10 substituted by s. 7 of Act 85 of 1967 and amended by s. 4 of Act 87 of 1984.]

11 Appointment of officers

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

12 Discharge of Officers and other ranks from Permanent Force

(1) Subject to the provisions of subsection (2) of this section, and sections 86 and 96, a member of the Permanent Force shall be discharged from that Force-

- (a) in the case of an officer, upon receipt of written notice of his resignation, in accordance with the provisions of this Act;
- (b) in the case of an other rank, by purchase on such conditions as may be prescribed;
- (c) on attaining the prescribed age;
- (d) if he applied to serve in that Force for a determined period of time, on the expiration of the period of enrolment;
- (e) by virtue of a sentence imposed under the Military Discipline Code; or
- (f) on such other grounds as may be prescribed.

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

[S. 12 substituted by s. 5 of Act 87 of 1984.]

13

[S. 13 repealed by s. 4 of Act 77 of 1963.]

14 Member of Permanent Force not eligible for certain offices

No member of the Permanent Force shall be eligible for nomination or election as a member of Parliament or any prescribed public body.

[S. 14 substituted by s. 3 of Act 132 of 1992.]

15 Transfer from Permanent Force to Controlled Reserve

Any person who has served in the Permanent Force shall, on termination of his service therein, be transferred to the Controlled Reserve for service subject to the conditions provided in Chapter VI.

[S. 15 substituted by s. 3 of Act 103 of 1982, by s. 6 of Act 87 of 1984 and by s. 6 of Act 134 of 1993.]

CHAPTER IV THE CITIZEN FORCE (ss 16-31)

16 Composition and organization of Citizen Force

(1) The Citizen Force shall consist of-

- (a) persons allotted thereto in terms of Chapter VIII;
- (b) persons who have applied to serve in that Force and who have been enrolled therein; and
- (c) persons who have been called out to render service in terms of Chapter X and have been posted to that Force.

[Para. (c) substituted by s. 7 (a) of Act 134 of 1993.]

[Sub-s. (1) substituted by s. 7 of Act 87 of 1984.]

(2) Subject to the provisions of subsection (3), the Citizen Force shall as far as may be expedient be organized in such headquarters, arms of the service, formations, units and personnel mustering as may be determined by the Minister or as may be prescribed, but nothing in this or any other section in this Act shall be deemed to preclude the training of any member of that Force in any military or other training institution which is not a unit of that Force or the attachment of any such member to any other portion of the South African Defence Force for training or service.

[Sub-s. (2) substituted by s. 1 of Act 66 of 1972, by s. 3 of Act 34 of 1983 and by s. 7 (b) of Act 134 of 1993.]

(3) Until such time as it is otherwise determined by the Minister or prescribed under this Act, the Citizen Force shall be organized in accordance with the provisions which under the laws repealed by section *one hundred and fifty-two*, were immediately prior to the commencement of this Act applicable in respect of the Active Citizen Force referred to in section *sixteen* of the South Africa Defence Act, 1912 (Act 13 of 1912).

17 Officer appointments

(1) Officers of the Citizen Force shall as far as practicable be appointed from the ranks of that Force, but save as provided in subsection (4), no member of that Force shall be appointed to officer's rank unless-

(a) he has satisfied the prescribed authority as to his capacity for leadership, military knowledge and experience and educational qualifications; and

(b) he has undergone and qualified in such courses of instruction as may be prescribed and has thereafter satisfied the prescribed authority as to his qualifications and fitness to exercise command.

[Sub-s. (1) amended by s. 8 (a) of Act 87 of 1984.]

(2) Any person who holds a permanent appointment with officer's rank in the Citizen Force shall serve as an officer in that Force for a period expiring not before the expiration of any period he is in terms of section 21 required to serve in that Force, unless he has otherwise been released from service.

[Sub-s. (2) substituted by s. 8 (a) of Act 85 of 1967 and by s. 8 (b) of Act 87 of 1984.]

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

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

[Sub-s. (4) substituted by s. 8 (b) of Act 85 of 1967.]

18 Promotion of officers

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

19 Voluntary service in Citizen Force

(1) Any citizen referred to in section 3 (1) (b), other than a citizen in respect of whom section 21 (1) applies, or any person (other than a citizen) domiciled in the Republic, may apply to serve in the Citizen Force and may be enrolled on such conditions and in such manner as may be prescribed.

(2) A citizen or person referred to in subsection (1), shall render the prescribed service until he has been officially discharged.

[S. 19 amended by s. 9 of Act 85 of 1967 and substituted by s. 9 of Act 87 of 1984.]

20 Voluntary temporary whole-time service

(1) Any officer or other citizen referred to in section 3 (1) (b), may apply to be enrolled for temporary whole-time service in the Citizen Force and may be so enrolled on such conditions as may be prescribed.

(2) Any person referred to in subsection (1), shall not, except in time of war, be so enrolled for a period in excess of two years, but may, on the expiry of any period for which he has been so enrolled, be re-enrolled for further periods not exceeding two years at a time.

(3) Officers or citizens enrolled in terms of this section-

(a) shall undergo the same training, be entitled to the same service benefits and be employed in the same manner as members of the Permanent Force; and

(b) shall be subject to the Military Discipline Code as if they were members of the Permanent Force.

(4) Subject to the provisions of subsection (9) of section 22, enrolment in terms of this section shall not relieve a person of the liability to serve in terms of section 21 or 35.

[S. 20 amended by s. 10 of Act 85 of 1967 and substituted by s. 10 of Act 87 of 1984.]

21 Liability to serve in Citizen Force

(1) Every-

(a) person allotted to the Citizen Force in terms of Chapter VIII;

(b) person who has on account of his application in terms of section 65 been unconditionally accepted for enrolment and who, after having been called up and having reported for such service, is enrolled in the Citizen Force;

(c) female who has, in terms of section 2 (1), engaged for service referred to in section 22 (1);

(d) person who fails to render service in the South African Police or the Permanent Force for at least two years after having been enrolled in such Force in lieu of service in the Citizen Force on account of his name having been selected by ballot for that purpose in terms of section 66B; and

(e) person who was or is a member of that Force on or after a date eight years and nine months prior to the commencement of section 8 of the Defence Second Amendment Act, 1993 (other than a member referred to in section 19),

shall, subject to the provisions of this Act, be liable to serve in that Force over a period of nine years reckoned from the date upon which he commenced or commences service or training in that Force for the first time: Provided that any such person who, due to any act or omission whatever on his part, has not rendered any service to which he is liable in terms of section 22, shall, irrespective of whether or not the said period of nine years has elapsed and notwithstanding the provisions of section 22, remain liable to render such service over such period and in such period or periods of service as the Minister or any person acting under his authority may determine, and shall render such service as he may be called up to do.

(2) Service rendered or training undergone which in terms of section 22 (9) is regarded as service by the person concerned in the Citizen Force shall be deemed to have been so rendered by him as from the commencement of the period of nine years referred to in subsection (1).

(3) Unless the Minister directs otherwise, members of the Citizen Force shall during the period of service contemplated in section 22 (3) (a), only-

(a) undergo training;

(b) be used for service referred to in section 3 (2) (a) (iv) or for service in the maintenance of essential services (other than the maintenance of law and order and the prevention of crime in co-operation with the South African Police) referred to in section 3 (2) (a) (v); or

(c) render service of a professional nature as may be determined by the Chief of the South African Defence Force, in the South African Defence Force.

[S. 21 amended by s. 2 of Act 12 of 1961, substituted by s. 2 of Act 42 of 1961, amended by s. 1 of Act 81 of 1964, substituted by s. 11 of Act 85 of 1967, amended by s. 2 of Act 8 of 1974, by s. 2 of Act 83 of 1974, by s. 4 of Act 103 of 1982 and by s. 11 of Act 87 of 1984 and substituted by s. 4 of Act 132 of 1992 and by s. 8 of Act 134 of 1993.]

22 Service in Citizen Force

(1) (a) Any person referred to in section 21 shall, subject to the provisions of this Act, be liable to render such service as the Minister or any person acting under his authority may, within the limits laid down in this section, determine and as he may be called up to render.

(b) A determination and call-up in terms of paragraph (a) may be made in respect of a particular person or a category, class or group of persons.

[Sub-s. (1) substituted by s. 5 (a) of Act 103 of 1982, by s. 12 (a) of Act 87 of 1984 and by s. 5 (a) of Act 132 of 1992.]

(2) No person liable to serve in the Citizen Force in terms of section 21 shall be liable to render service in that Force before he is in his eighteenth year.

(3) A person liable to serve in the Citizen Force in terms of section 21 shall subject to

section 146 (3) render service which shall be completed in-

(a) a first period of service not exceeding 12 months;

(b) subsequent periods of service during eight years being the remainder of the period of nine years referred to in section 21 (1) which shall not exceed in the aggregate 30 days per year.

[Sub-s. (3) substituted by s. 3 (1) (a) of Act 8 of 1974, by s. 2 (a) of Act 35 of 1977, by s. 1 (a) of Act 68 of 1977 and by s. 5 (b) of Act 103 of 1982, amended by s. 12 (b) of Act 87 of 1984 and substituted by s. 9 (a) of Act 134 of 1993.]

(4) Service performed in terms of section 92*ter* (2) shall, notwithstanding the provisions of subsection (3), for the purpose of this section be regarded as service.

[Sub-s. (4) substituted by s. 1 (b) of Act 68 of 1977 and by s. 5 (c) of Act 103 of 1982.]

(5)

[Sub-s. (5) deleted by s. 5 (d) of Act 103 of 1982.]

(6) For the purpose of reckoning service in terms of this section-

(a) a period of service lasting eight hours; or

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

(c) three periods of service each lasting three hours; or

(d) six periods of service each lasting one hour and a half, shall be deemed to be equivalent to one day's service.

[Sub-s. (6) amended by s. 5 (e) of Act 103 of 1982.]

(6A)

[Sub-s. (6A) inserted by s. 3 (1) (b) of Act 8 of 1974 and deleted by s. 1 (c) of Act 68 of 1977.]

(7)

[Sub-s. (7) substituted by s. 2 of Act 66 of 1972 and by s. 3 of Act 83 of 1974 and deleted by s. 1 (c) of Act 68 of 1977.]

(8) The time occupied in travelling to or from any place where service is to be rendered, shall not, for the purpose of this section, be reckoned as part of any period of service.

(9) Service rendered or training undergone by any person in the Permanent Force, the commandos, the South African Police, the South African Railways Police Force before the commencement of the Transfer of the South African Railways Police Force to the South African Police Act, 1986 (Act 83 of 1986), the former Prisons Service, the Department of Correctional Services or the Citizen Force before the commencement of the Defence Second Amendment Act, 1993, or any other service or training which the Minister may deem suitable, shall be regarded as service in the Citizen Force for the purpose of this section to such extent as the Minister or any person acting under his authority may determine in respect of the first-mentioned person or in respect of the category or class of persons to which he belongs.

[Sub-s. (9) substituted by s. 3 (1) (c) of Act 8 of 1974, by s. 2 (b) of Act 35 of 1977, by s. 1 (d) of Act 68 of 1977, by s. 5 (f) of Act 103 of 1982, by s. 5 (b) of Act 132 of 1992 and by s. 9 (b) of Act 134 of 1993.]

(10)

[Sub-s. (10) deleted by s. 5 (g) of Act 103 of 1982.]

[S. 22 substituted by s. 3 of Act 42 of 1961, amended by s. 2 (b) of Act 81 of 1964 and substituted by s. 12 of Act 85 of 1967.]

23

[S. 23 substituted by s. 4 of Act 42 of 1961, amended by s. 3 of Act 81 of 1964 and repealed by s. 13 of Act 85 of 1967.]

24 Training in terms of special contracts

(1) Any member of the Citizen Force who desires to undergo any prescribed specialized training which cannot be provided during any period of service referred to in section 22 may, under special contract, be allowed to undergo such specialized training in the South African Defence Force as a member of the Citizen Force.

[Sub-s. (1) substituted by s. 1 of Act 28 of 1970 and by s. 10 (a) of Act 134 of 1993.]

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

(a) the duration and extent of the training;

(b)

[Para. (b) deleted by s. 6 (a) of Act 103 of 1982.]

(c) the re-imburement by the member of the whole or any part of the cost of the training in the event of his failure for reasons within his own control to carry out the terms of the contract.

[Para. (c) substituted by s. 10 (b) of Act 134 of 1993.]

(3)

[Sub-s. (3) deleted by s. 6 (b) of Act 103 of 1982.]

24bis Voluntary additional service

Any member of the Citizen Force may voluntarily render service in addition to service to which he may be liable, under such conditions as may be prescribed.

[S. 24bis inserted by s. 5 of Act 42 of 1961 and substituted by s. 14 of Act 85 of 1967.]

25

[S. 25 repealed by s. 15 of Act 85 of 1967.]

26 Conditions of service

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

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

27 Uniforms, arms and accoutrements

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

(2) Distinctive marks or badges for the various corps and units of the Citizen Force, together with the necessary arms and accoutrements, shall be issued to members

thereof at the public expense, and thereafter shall be maintained by them in good order and in accordance with prescribed conditions.

28

[S. 28 repealed by s. 4 of Act 77 of 1963.]

29 Change of address

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

(2) In any proceedings against any such member for a contravention of subsection (1), that member shall be presumed not to have notified the prescribed officer of his address or of any change thereof unless he-

(a) produces an acknowledgment by the prescribed officer of the receipt of his notification of his address or of a change thereof, as the case may be; or

(b) supplies proof that he has posted by registered post a notification of his change of address to the prescribed officer; or

(c) supplies other proof to the satisfaction of the court that he has in fact notified the prescribed officer of his address or of a change thereof.

[Sub-s. (2) substituted by s. 7 of Act 103 of 1982 and by s. 4 of Act 34 of 1983.]

30 Discharge of members of Citizen Force

(1) Subject to sections 86 and 96, a member of the Citizen Force shall be discharged from that Force on the expiration of the period of service for which he is liable, or, in the case of a member referred to in section 19, on attaining the prescribed age or on earlier resignation in accordance with the regulations.

(2) Subject to subsection (1), members of the Citizen Force shall be discharged therefrom on such other grounds as may be prescribed.

[S. 30 substituted by s. 13 of Act 87 of 1984.]

31 Transfer from Citizen Force to Controlled Reserve

A person who has served in the Citizen Force shall, on the termination of his service therein, be transferred to the Controlled Reserve for service subject to the conditions provided in Chapter VI.

[S. 31 substituted by s. 8 of Act 103 of 1982, by s. 14 of Act 87 of 1984 and by s. 11 of Act 134 of 1993.]

CHAPTER V COMMANDOS (ss 32-45)

32 Composition of commandos

The commandos shall consist of-

- (a) persons allotted thereto in terms of Chapter VIII;
- (b) persons who have applied to serve in the commandos and who have been enrolled therein; and
- (c) persons who have been called out to render service in terms of Chapter X and have been posted to the commandos.

[Para. (c) substituted by s. 12 of Act 134 of 1993.]

[S. 32 amended by s. 5 of Act 77 of 1963 and by s. 16 of Act 85 of 1967 and substituted by s. 5 of Act 34 of 1983 and by s. 15 of Act 87 of 1984.]

33 Organization of commandos

(1) The organization and command of commandos, the ranks therein, the manner of enrolment, appointment and promotion therein and the conditions applicable in connection with any such enrolment, appointment and promotion, shall be as prescribed.

[Sub-s. (1), formerly s. 33, amended by s. 6 of Act 77 of 1963 and substituted by s. 16 of Act 87 of 1984.]

(2) Officers in the commandos required to render service in connection with the Cadet Corps, shall as far as may be practicable be selected from amongst persons on the staff of schools or other educational institutions.

[Sub-s. (2) added by s. 17 of Act 85 of 1967.]

34 Change of address

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

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

(a) an acknowledgement by the prescribed officer of the receipt of his notification of his address or of a change therein, as the case may be; or

(b) proof that he has posted by registered post a notification of his change of address to the prescribed officer; or

(c) other proof to the satisfaction of the court that he has in fact notified the prescribed officer of his address or of a change therein.

[S. 34 substituted by s. 9 of Act 103 of 1982.]

35 Liability to serve in commandos

Every person who has at any time been allotted to the commandos in terms of section 67 (1) (b) shall, subject to the provisions of this Act, be liable to serve in the commandos until his fifty-fifth year or until he has been officially discharged therefrom: Provided that any such person who due to any act or omission whatever on his part has not rendered any service to which he is liable in terms of section 44, shall, notwithstanding the provisions of the said section 44, remain liable to render such service over such period and in such period or periods of service as the Minister or any person acting under his authority may determine, and shall render such service as he may be called up to do.

[S. 35 amended by s. 3 of Act 12 of 1961, by s. 6 of Act 42 of 1961 and by s. 4 of Act 81 of 1964, substituted by s. 18 of Act 85 of 1967, amended by s. 3 of Act 66 of 1972, by s. 4 of Act 8 of 1974, by s. 4 of Act 83 of 1974 and by s. 2 of Act 68 of 1977 and substituted by s. 10 of Act 103 of 1982, by s. 17 of Act 87 of 1984, by s. 6 of Act 132 of 1992 and by s. 13 of Act 134 of 1993.]

36 Voluntary service in commandos

(1) Any citizen referred to in section 3 (1) (b), other than a citizen in respect of whom section 21 (1) or 35 applies, or any person (other than a citizen) domiciled in the Republic, may apply to serve in the commandos, and may be enrolled therein on such

conditions and in such manner as may be prescribed.

(2) A citizen or person referred to in subsection (1), shall be liable to render the service mentioned in section 44 (3) (a) for which he is called up, until he has been officially discharged from the commandos.

[Sub-s. (2) substituted by s. 14 of Act 134 of 1993.]

[S. 36 substituted by s. 1 of Act 3 of 1969, by s. 2 of Act 42 of 1979 and by s. 18 of Act 87 of 1984.]

37 Honorary members of commandos

(1) With the approval of the Minister or any person acting under his authority, and under such conditions as may be prescribed, persons who are not eligible in terms of section 36 to engage as members of a commando may be appointed as honorary members thereof, but the number of such honorary members shall not exceed ten in any commando.

[Sub-s. (1) substituted by s. 2 of Act 3 of 1969.]

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

38

[S. 38 amended by s. 7 of Act 77 of 1963, substituted by s. 19 of Act 85 of 1967 and repealed by s. 19 of Act 87 of 1984.]

39 Issue of arms, ammunition and accoutrements to commandos

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

[Sub-s. (1) amended by s. 8 of Act 77 of 1963.]

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

practice and the temporary use of other items of military clothing or equipment.

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

[Sub-s. (3) amended by s. 8 of Act 77 of 1963.]

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

(1) Any person serving voluntarily as a member of a commando may be allowed to obtain a military rifle from Government stores either-

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

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

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

[Sub-s. (1) substituted by s. 20 (a) of Act 85 of 1967.]

(2) Any person who has obtained a rifle under this section, shall at all times and at his own expense keep such rifle and any other arm which has been issued to him by virtue of his membership of a commando in accordance with the provisions of the Arms and Ammunition Act, 1969 (Act 75 of 1969), in his personal possession and shall maintain such rifle and other arm in good order and condition at his own expense and bring them with him whenever he is called up to present himself for inspection or called out for service in terms of Chapter X of this Act.

[Sub-s. (2) substituted by s. 15 (a) of Act 134 of 1993.]

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

[Sub-s. (3) substituted by s. 20 (b) of Act 85 of 1967.]

(4) If any such person contravenes or fails to comply with any provision of this section, or fails to comply with the conditions of purchase, or fails to render the service referred to in section 44 (3) (a) for which he has been called up in any year during the aforesaid period of five years, the rifle shall be forfeited to the Government and may be taken possession of by a prescribed officer without payment of compensation or refund of the purchase price.

[Sub-s. (4) substituted by s. 20 (c) of Act 85 of 1967, by s. 20 of Act 87 of 1984 and by s. 15 (b) of Act 134 of 1993.]

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

(6) No issuer of licences under the Arms and Ammunition Act, 1969 (Act 75 of 1969), shall issue a licence under that Act in respect of any rifle which has been purchased in terms of this section unless the certificate mentioned in subsection (5) has been exhibited to him.

[Sub-s. (6) substituted by s. 15 (c) of Act 134 of 1993.]

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

(8) Any rifle obtained by any person by purchase or on loan prior to the commencement of this Act, by virtue of his having been a member of a rifle commando established under the South Africa Defence Act, 1912 (Act 13 of 1912), shall be deemed to have been so obtained by such person under sub-section (1) of this section.

41 Inspection of rifles, ammunition and accoutrements

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

[S. 41 amended by s. 9 of Act 77 of 1963 and by s. 36 of Act 132 of 1992.]

42 Rifle ranges

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

42bis Aircraft for training of air commandos

The use of aircraft necessary for the training of air commandos may be obtained from the owners thereof by agreement and against such compensation and subject to such conditions as the Chief of the South African Defence Force in consultation with the Treasury may determine.

[S. 42bis inserted by s. 10 of Act 77 of 1963 and substituted by s. 21 of Act 87 of 1984.]

43

[S. 43 amended by s. 11 of Act 77 of 1963 and repealed by s. 22 of Act 87 of 1984.]

44 Service in commandos

(1) Service by a person in the commandos shall after he has, with due regard to the requirements of the South African Defence Force, been called up to render it, be rendered by him during a period of service stated in his call-up and in any of the areas contemplated in section 66 (1) and shall be as may be prescribed or determined by the Chief of the South African Defence Force or an officer authorized thereto by him.

[Sub-s. (1) substituted by s. 11 (a) of Act 103 of 1982 and by s. 7 (a) of Act 132 of 1992.]

(2)

[Sub-s. (2) deleted by s. 11 (b) of Act 103 of 1982.]

(3) (a) Without derogating from the provisions of section 40 (3) but subject to section 89A a member of a commando except a member referred to in paragraph (b) shall, after having been called up therefor, be liable to render service in a commando which shall be completed in a single period of service not exceeding 12 days in any calendar year or periods which shall not exceed 12 days in any calendar year in the aggregate.

(b) A person liable to serve in a commando after having been allotted to the commandos in terms of section 67 (1) (b) and after having been called up for service

therein shall render service which during the period of 16 years following upon the date upon which he was so allotted, shall be completed in periods of service of which none shall exceed 30 days in any calendar year and which shall not exceed 240 days in the aggregate.

[Sub-s. (3) substituted by s. 2 of Act 28 of 1970, by s. 4 (a) of Act 66 of 1972, by s. 5 (1) (a) of Act 8 of 1974, by s. 3 (a) of Act 35 of 1977, by s. 3 (a) of Act 68 of 1977 and by s. 11 (c) of Act 103 of 1982, amended by s. 23 of Act 87 of 1984 and by s. 7 of Act 132 of 1992 and substituted by s. 16 of Act 134 of 1993.]

(4) For the purpose of calculating service in terms of this section-

- (a) a period of service lasting eight hours;
- (b) two periods of service each lasting four hours;
- (c) three periods of service each lasting three hours; or
- (d) six periods of service each lasting one hour and a half,

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

[Sub-s. (4) substituted by s. 11 (d) of Act 103 of 1982.]

(5)

[Sub-s. (5) deleted by s. 11 (e) of Act 103 of 1982.]

(5A)

[Sub-s. (5A) inserted by s. 5 (1) (b) of Act 8 of 1974 and deleted by s. 3 (b) of Act 68 of 1977.]

(6)

[Sub-s. (6) substituted by s. 4 (b) of Act 66 of 1972 and by s. 5 of Act 83 of 1974 and deleted by s. 3 (b) of Act 68 of 1977.]

(7)

[Sub-s. (7) substituted by s. 5 (1) (c) of Act 8 of 1974, by s. 3 (b) of Act 35 of 1977 and by s. 3 (c) of Act 68 of 1977 and deleted by s. 11 (e) of Act 103 of 1982.]

(8)

[Sub-s. (8) deleted by s. 11 (*e*) of Act 103 of 1982.]

(9) Members of commandos may, subject to the regulations, be permitted to render service in the Citizen Force or, subject to such conditions as may be prescribed, to attend any training or course of instruction, or voluntarily to render service in addition to service to which they are liable.

[Sub-s. (9) substituted by s. 11 (*f*) of Act 103 of 1982.]

[S. 44 substituted by s. 21 of Act 85 of 1967.]

44A Transfer from commandos to Controlled Reserve

Subject to the provisions of this Act, any person who has at any time served in the commandos after having been allotted thereto in terms of section 67 (1) (*b*), shall, on the termination of his service therein, be transferred to the Controlled Reserve.

[S. 44A inserted by s. 17 of Act 134 of 1993.]

45 Discharge of officers and other ranks from commandos

(1) Subject to sections 86 and 96, a member of the commandos shall be discharged therefrom-

(*a*) in the case of a person referred to in section 35, excluding in the proviso to that section, on attaining the age of 55 years or such earlier age as the Minister or a person acting under his authority may determine; or

(*b*) in the case of a person referred to in the proviso to that section, upon completion of such period as may be directed in respect of such person; and

(*c*) in the case of persons referred to in section 36, on attaining the prescribed age or on earlier resignation in accordance with the regulations.

(2) Subject to subsection (1), members of the commandos shall be discharged therefrom on such other grounds as may be prescribed.

[S. 45 repealed by s. 6 of Act 34 of 1983 and inserted by s. 24 of Act 87 of 1984.]

CHAPTER VI THE RESERVE (ss 46-55)

46 Controlled Reserve

(1) Notwithstanding anything to the contrary in any law contained, the Controlled Reserve shall consist of-

- (a) (i) subject to the provisions of section 66 (2) (a) (ii), all persons who have served in the Permanent Force in a permanent or a temporary capacity, or in both such capacities, for a total period of not less than one year;
- (ii) all persons who have served in the Citizen Force as members thereof but excluding those who are in terms of section 89A deemed to be such members on account of their service in that Force,

and whose service therein has, for whatever reason, terminated within a period of 15 years before the commencement of the Defence Second Amendment Act, 1993, or whose service therein, for whatever reason, terminates on or after the commencement of the said Act; and

- (b) all persons who have at any time within a period of 15 years before the commencement of the said Defence Second Amendment Act, 1993, or who, on or after the commencement of that Act, after having been allotted to the commandos in terms of section 67 (1) (b), completed service in the commandos in terms of section 44 (3) (b) for a period of not less than 16 years.

(2) Subject to section 53 (2), no person referred to in subsection (1) (a) (i), other than-

- (a) an officer who has in terms of section 86 tendered the resignation of his commission and appointment or whose commission has been cancelled or is deemed to have been cancelled in terms of section 83;
- (b) an other rank who has been discharged with ignominy or otherwise from the South African Defence Force,

shall serve in the Reserve in a rank lower than that which he held in the Permanent Force at the termination of his service therein, and no person shall serve in the Controlled Reserve for a period exceeding 16 years or beyond his sixty-fifth year.

[S. 46 repealed by s. 12 of Act 103 of 1982 and inserted by s. 18 of Act 134 of 1993.]

47

[S. 47 substituted by s. 22 of Act 85 of 1967, by s. 13 of Act 103 of 1982 and by s. 25 of Act 87 of 1984 and repealed by s. 19 of Act 134 of 1993.]

48

[S. 48 substituted by s. 23 of Act 85 of 1967, by s. 14 of Act 103 of 1982 and by s. 26 of Act 87 of 1984 and repealed by s. 20 of Act 134 of 1993.]

48A

[S. 48A inserted by s. 24 of Act 85 of 1967 and repealed by s. 15 of Act 103 of 1982.]

49 Composition of National Reserve

The National Reserve shall consist of all citizens mentioned in section 3 (1) (b) who are not members of any of the forces constituting the South African Defence Force or of the Controlled Reserve, and shall include all persons domiciled in the Republic who are citizens of any country specified by the State President by proclamation in the *Gazette*: Provided that no person shall be required to serve in the said Reserve beyond his sixty-fifth year.

[S. 49 substituted by s. 16 of Act 103 of 1982 and by s. 21 of Act 134 of 1993.]

50 Organization of Reserves

The Controlled Reserve and the National Reserve shall respectively be organized in such manner as may in the case of each of those Reserves be determined by the Minister or a person acting under his authority or be prescribed.

[S. 50 substituted by s. 25 of Act 85 of 1967, by s. 17 of Act 103 of 1982 and by s. 22 of Act 134 of 1993.]

51 Training of Reserves

(1) Members of the Controlled Reserve shall be liable to undergo such training as may be prescribed, or otherwise determined by the Minister, whilst members of the said Reserve who have at any time undergone training of a special nature may, on the directions of the Minister or any person acting under his authority, be required to undergo a refresher course or training: Provided that-

(a) the period of such training shall in the aggregate not exceed 30 days; and

(b) such refresher course shall not exceed 30 days, in any year which extends from the first day of January to the last day of December.

[Sub-s. (1) amended by s. 23 of Act 134 of 1993.]

(2) The calling up of a person in terms of subsection (1) shall be effected by means of a registered letter addressed to him at his registered address or the address where he happens to be by a prescribed officer or by means of a letter by such an officer served on him personally, and such letter shall state the date on which and the place where training is to be commenced, and such date shall be such and the letter shall be so posted or, as the case may be, so served that he receives reasonable notice of the call-up.

[Sub-s. (2) substituted by s. 27 of Act 87 of 1984 and by s. 8 of Act 132 of 1992.]

[S. 51 amended by s. 5 of Act 81 of 1964, by s. 26 of Act 85 of 1967, by s. 3 of Act 3 of 1969 and by s. 4 of Act 68 of 1977 and substituted by s. 18 of Act 103 of 1982.]

52 Liability of members of reserves for service

(1) A member of the Reserve-

(a) shall be liable to render service in terms of Chapter X; and

(b) may in addition be called up at any time, on the instructions of the Minister, to render service, other than service contemplated in paragraph (a), irrespective of whether or not such service is service as contemplated in section 3 (2) (a).

[Para. (b) substituted by s. 24 (a) of Act 134 of 1993.]

[Sub-s. (1) substituted by s. 27 (a) of Act 85 of 1967, by s. 6 (a) of Act 83 of 1974 and by s. 28 (a) of Act 87 of 1984.]

(2) Any member of the National Reserve or the Controlled Reserve, other than a person referred to in section 46 (2), may be required to render service as contemplated in subsection (1), in any portion of the South African Defence Force in a rank lower than that which he holds in the Reserve concerned, and such a member shall, while thus rendering service, be deemed to be a member of the Citizen Force, unless he is rendering service in a commando and is in terms of the regulations deemed to be a member of a commando.

[Sub-s. (2), formerly sub-s. (1A), inserted by s. 27 (b) of Act 85 of 1967 and substituted by s. 28 (b) of Act 87 of 1984 and by s. 24 (b) of Act 134 of 1993.]

(3) Any member of the Reserve whose services are, under circumstances or for service not contemplated in Chapter X, required for any service mentioned in section 3 (2) (a), shall be called up for service in terms of subsection (1) (b) and may, notwithstanding the provisions of section 92*ter*, after having been so called up but before commencing with such service or while he is rendering such service, be employed for such service in terms of section 92*ter*, and any such person who, after having been called up for service but before commencing with it, is so employed, shall be deemed to be lawfully employed on such service within the contemplation of section 92*ter* and he may be attached to any portion of the South African Defence Force as may be required.

[Sub-s. (3), formerly sub-s. (2), substituted by s. 4 of Act 3 of 1969, by s. 28 (c) of Act 87 of 1984 and by s. 24 (c) of Act 134 of 1993.]

(3)

[Sub-s. (3) substituted by s. 27 (c) of Act 85 of 1967 and deleted by s. 28 (d) of Act 87 of 1984.]

(4) No member of the Reserve called up for service in terms of subsection (1) (b) shall be required at any time to serve in any portion or portions of the South African Defence Force for a continuous period exceeding three months during a calendar year.

[Sub-s. (4) substituted by s. 6 (b) of Act 83 of 1974 and by s. 28 (e) of Act 87 of 1984.]

(5) If a person has been called up under the provisions of subsection (1) or (3) the Minister shall within fourteen days of such calling up communicate the reasons therefor to Parliament, if Parliament is then in session, or, if Parliament is not then in session, within fourteen days after the commencement of its next ensuing session.

[Sub-s. (5) substituted by s. 6 (c) of Act 83 of 1974 and by s. 28 (f) of Act 87 of 1984.]

(5)*bis*

[Sub-s. (5)*bis* inserted by s. 1 of Act 83 of 1962, amended by s. 27 (d) of Act 85 of 1967 and deleted by s. 28 (g) of Act 87 of 1984.]

(6) (a) The calling up of a person in terms of subsections (1) (b) and (3) shall be effected by means of a registered letter addressed to him at his registered address or the address where he happens to be by a prescribed officer or by means of a letter by

such an officer served on him personally, and such letter shall state the date on which and the place where his service is to commence, and such date shall be such and the letter shall be so posted or, as the case may be, so served that he receives reasonable notice of the call-up.

[Para. (a) substituted by s. 9 (c) of Act 132 of 1992.]

(b) The letter referred to in paragraph (a) shall state-

(i) the date on which and the place where the service is to be commenced;

(ii) when applicable, the service referred to in section 3 (2) for which the person during his service is to be employed in terms of section 92*ter*; and

(iii) the duration of any service.

[Sub-s. (6), formerly sub-s. (5)*ter*, inserted by s. 1 of Act 83 of 1962 and substituted by s. 28 (h) of Act 87 of 1984.]

(6)

[Sub-s. (6) deleted by s. 27 (e) of Act 85 of 1967.]

52A Voluntary training and service in Reserve

Any member of the Reserve may, on such conditions as may be prescribed, be permitted voluntarily to undergo training or to render service in addition to the training or service for which he may be liable or which is provided for in this Act.

[S. 52A inserted by s. 29 of Act 87 of 1984.]

53 Conditions of service in Controlled Reserve

(1) The conditions of service in the Controlled Reserve shall be as prescribed, and any member of that Reserve referred to in section 46 (1) (a) (i) shall in respect of any service performed or required to be performed in pursuance of this Act, be deemed to be a member of the Permanent Force.

(2) Notwithstanding the provisions of section 46 (2), any such member of the Controlled Reserve contemplated in that subsection who has been called up or out, as the case may be, for service in terms of the provisions of this Act may, with his consent, or shall, in pursuance of action taken under the Military Discipline Code, be

required to serve in a rank lower than that which he holds in the said Reserve.

[S. 53 amended by s. 4 of Act 12 of 1961, substituted by s. 28 of Act 85 of 1967, amended by s. 10 of Act 132 of 1992 and substituted by s. 25 of Act 134 of 1993.]

54 Liability to report

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

[Sub-s. (1) deleted by s. 19 (1) (a) of Act 103 of 1982 and inserted by s. 26 (a) of Act 134 of 1993.]

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

(a) an acknowledgement by the prescribed officer of the receipt of his notification of his address or of a change therein, as the case may be;

(b) proof that he has posted by registered post a notification of his address or of a change therein to the prescribed officer; or

(c) other proof to the satisfaction of the court that he has in fact notified the prescribed officer of his address or of a change therein.

[Sub-s. (1A) inserted by s. 26 (a) of Act 134 of 1993.]

(2) Every member of the Controlled Reserve shall in such manner and at such time or times or within such period or periods as may be prescribed, report in writing or in person to a prescribed officer and shall supply that officer with such prescribed information as may be required by that officer.

[Sub-s. (2) amended by s. 2 of Act 83 of 1962 and substituted by s. 29 (a) of Act 85 of 1967, by s. 19 (1) (b) of Act 103 of 1982 and by s. 26 (b) of Act 134 of 1993.]

(2A) A member of the National Reserve shall, if so required by registered letter addressed to him by an officer designated for the purpose by the Minister-

(a) furnish such officer within such period as may be specified in such letter, with information concerning his personal particulars,

address, work, profession or occupation and such other information as the said officer may deem necessary;

(b) report to such officer in writing in such manner and at such times or within such periods as the said officer may determine; and

(c) advise that officer of any change in his address within fourteen days after such change has occurred.

[Sub-s. (2A) inserted by s. 29 (b) of Act 85 of 1967.]

(2B) Whenever the Minister by notice in the *Gazette* requires members of the National Reserve or such members belonging to any category or kind specified in such notice, to furnish an officer so specified, with the information referred to in subsection (2A) (a), any such member or any such member belonging to such category or kind shall, within such period as may be so specified, comply with the requirements of such notice.

[Sub-s. (2B) inserted by s. 29 (b) of Act 85 of 1967.]

(3) Any person charged under this section with having failed to notify an officer of any change in his address, or with having failed to furnish an officer with any information, shall be presumed to have so failed, unless he produces-

(a) an acknowledgment by the officer concerned of his notification of such change or of his having furnished such information; or

(b) other proof to the satisfaction of the court that he has in fact notified the officer concerned of such change or furnished him with such information.

[Sub-s. (3) substituted by s. 29 (c) of Act 85 of 1967.]

55 Liability to maintain uniform and equipment

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

[Sub-s. (1) substituted by s. 20 of Act 103 of 1982.]

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

[S. 55 substituted by s. 30 of Act 85 of 1967.]

CHAPTER VII THE CADET CORPS (ss 56-61)

56 Establishment and organization of Cadet Corps

(1) There shall be a Cadet Corps which shall consist of such cadet detachments as may under such conditions as may be prescribed be established under the directions of the Minister or a person acting under his authority at any school or other educational institution.

[Sub-s. (1) substituted by s. 31 of Act 85 of 1967 and by s. 3 of Act 28 of 1970.]

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

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

57 Liability for service as a cadet

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

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

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

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

58 Extension of period of cadet training

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

59

[S. 59 repealed by s. 32 of Act 85 of 1967.]

60

[S. 60 repealed by s. 33 of Act 85 of 1967.]

61 Cost of training to be defrayed by State

All arms, ammunition, uniforms, equipment, instruction and training prescribed for cadets shall be provided at public expense.

[S. 61 substituted by s. 34 of Act 85 of 1967.]

**CHAPTER VIII
REGISTRATION AND SELECTION OF PERSONS FOR ALLOTMENT TO
CITIZEN FORCE, COMMANDOS, SOUTH AFRICAN POLICE OR SOUTH
AFRICAN RAILWAYS POLICE FORCE (ss 62-72I)**

[Heading to Chapter VIII substituted by s. 35 of Act 85 of 1967, by s. 23 of Act 57 of 1975 and by s. 30 of Act 87 of 1984.]

62 Appointment of registering officer

The Minister or any person acting under his authority shall appoint an officer of the South African Defence Force as the registering officer for the purposes of this Chapter.

[S. 62 substituted by s. 5 of Act 3 of 1969.]

63 Registration

(1) The principal or person in charge of or responsible for any school, college (whether or not it is a correspondence college) or institution attended by male pupils who are citizens who are in their final year for obtaining a senior certificate and who, for the duration of that year, will not be older than 26 years, or any person so acting as principal or person so in charge or responsible for such school, college or institution shall, on or before the last working day of February in each year, supply the registering officer with-

(a) the full names;

(b) the date of birth;

(c) the residential and postal address; and

(d) such other information as the registering officer may require and

of which he has given notice in the *Gazette*,

in respect of any such pupil, including any such pupil whose previous selection by ballot, or whose allotment, has lapsed as contemplated in section 66B (5).

(2) Every such principal or person so in charge or responsible or persons so acting shall, within 14 days after having supplied the particulars referred to in subsection (1), notify every such pupil in writing of the fact that the particulars have been supplied to the registering officer.

(3) Any person who during a particular year will not be 26 years of age, excluding a person registered in terms of subsection (1) read with subsection (4), and who obtains or has obtained a senior certificate or a qualification which is in terms of or under any law deemed to be equivalent to or of a higher educational standing than a senior certificate (irrespective of whether such qualification has been obtained within or outside the Republic or has been obtained at a secondary or tertiary academic or technical school, college, university or other institution), shall, if such person is a citizen, within 30 days after obtaining the qualification, or if he becomes a citizen, within 30 days after becoming a citizen, supply the registering officer with the particulars referred to in subsection (1).

(4) All persons in respect of whom the information has been furnished in terms of subsections (1) and (3), shall be registered by the registering officer, and thereafter they shall be deemed to be registered for the purposes of this Act.

(5) The registering officer shall issue every person registered in terms of subsection (4) with a certificate of registration, which may, in the event of the said information having been provided in terms of subsection (1), be sent to the school, college or institution where such a person is a pupil.

(6) Any person who has been registered under this section shall-

(a) within 14 days after being requested thereto in writing by the registering officer, which request may under the circumstances referred to in subsection (5) be sent to the school, college or institution concerned; or

(b) before a date notified by the registering officer by notice in the *Gazette*,

supply the registering officer with such additional information as may be requested by him or made known by him by notice in the *Gazette*.

(7) Any registration which took place in terms of this section before the substitution thereof by the Defence Second Amendment Act, 1993, shall lapse if the person so registered was not before such substitution allotted under section 67.

(8) Notwithstanding the provisions of subsection (7), the registering officer may for the purpose of executing his functions under this Act, make use of any information in his possession regarding any registration which has so lapsed.

[S. 63 amended by s. 6 of Act 81 of 1964, by s. 36 of Act 85 of 1967 and by s. 21 of Act 103 of 1982 and substituted by s. 27 of Act 134 of 1993.]

64 Notification of address

(1) Every person who has been registered in terms of section 63 shall, unless he has been relieved of the obligation to do so by the registering officer, notify that officer in writing of every change in his residential or postal address.

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

(a) an acknowledgment by the registering officer of the notification of such change;

(b) other proof to the satisfaction of the court that he has in fact notified the registering officer of such change; or

(c) proof to the satisfaction of the court that he has been duly relieved of the obligation to notify such change.

[S. 64 substituted by s. 28 of Act 134 of 1993.]

65 Voluntary enrolment in lieu of service after ballot

(1) Every citizen whose name has been included in a ballot list referred to in section 66 or, although his name has not been so included, qualifies to have his name so included or whose name has in any year not been selected by ballot as provided for in section 66B or who has not before the commencement of the Defence Second Amendment Act, 1993, rendered service in the Citizen Force, may, if he is in the year concerned below the age of 26 years, at any time before a date determined by the registering officer by notice in the *Gazette*, apply to be enrolled in the Citizen Force for service provided for in this Act, by appearing personally before, or submitting a written application in the proper form to, the registering officer.

(2) Such citizen may be provisionally accepted for enrolment pending the outcome of his medical examination and, if applicable, the result of the taking of the ballot in terms of section 66B and his obtaining a senior certificate, and he shall at his own expense present himself for and shall at public expense undergo the required medical examination at a time and place of which he shall be notified.

[S. 65 amended by s. 7 of Act 81 of 1964, substituted by s. 37 of Act 85 of 1967, repealed by s. 31 of Act 87 of 1984 and inserted by s. 29 of Act 134 of 1993.]

66 Preparation of ballot lists

(1) The registering officer shall every year prepare a ballot list for each of such areas into which the Minister may from time to time divide the Republic for that purpose.

(2) The ballot list for any area for any year shall contain the name and particulars of every person whose registered address or address known to the registering officer is in such area, and-

(a) who-

(i) has been registered in terms of section 63 and-

(aa) has, subject to subparagraph (iii), not been included in any previous ballot list;

(bb) is not the holder of a certificate of exemption issued under section 69 (1) (a) (i); and

(cc) has not been enrolled for training or service under this Act, except in terms of section 20 or 24;

(ii) is a pupil or a person contemplated in section 63 (1) or (3), respectively, who has, notwithstanding subparagraph (i) (cc) but subject to section 22 (9), failed to render the service or undergo the training in full for which he has been enrolled in terms of section 9 (1) in a temporary capacity or in terms of section 65 or who, after having been enrolled for service in the South African Police, failed to render service for two years in that Force;

(iii) has under section 66B (5) not been allotted to the Citizen Force and remains a pupil as contemplated in section 63 (1); or

(iv) obtains a qualification as contemplated in section 63

(3); or

(b) in respect of whom there has not been compliance with the provisions of section 63 (1) or who has to the knowledge of the registering officer failed to apply for registration as required by section 63 (3).

[S. 66 amended by s. 7 of Act 42 of 1961, repealed by s. 8 of Act 81 of 1964, inserted by s. 38 of Act 85 of 1967, amended by s. 6 of Act 3 of 1969, by s. 22 of Act 103 of 1982, by s. 7 of Act 34 of 1983 and by s. 32 of Act 87 of 1984 and substituted by s. 30 of Act 134 of 1993.]

66A Number of persons to be trained

(1) The Minister shall in each year not later than the fifteenth day of April in that year, determine the number of persons to be newly trained in the Citizen Force in the next training year.

(2) The difference between the number so determined and the expected number of persons to be enrolled in terms of section 65 for the year in question, shall be made good by ballot in the manner provided in section 66B.

[S. 66A inserted by s. 39 of Act 85 of 1967, amended by s. 2 of Act 26 of 1973, repealed by s. 23 of Act 103 of 1982 and inserted by s. 31 of Act 134 of 1993.]

66B Ballot

(1) As soon as possible after the final preparation of the ballot lists, the registering officer shall take a ballot of the citizens whose names appear on those lists, to select the number of citizens contemplated in section 66A (2).

(2) The procedure and rules for the taking of the ballot shall be determined by the Minister by notice in the *Gazette*, but the names on the ballot lists shall be selected singly and the percentage of names selected from each list shall as nearly as possible be the same.

(3) A percentage of names from time to time selected by the Minister in excess of the said number, shall, as may be required, be selected by a simultaneous ballot in order to make good any loss caused or likely to be caused by reason of the fact that persons selected by ballot may subsequently not report for service or not obtain a senior certificate or be found medically unfit or otherwise unsuitable for military training, or by reason of the fact that any person so selected may be granted deferment or exemption from training by an exemption board or for any other reason, and any

person who has, as the need arises, been so notified by the registering officer to make good any such loss, shall be deemed to have been selected under subsection (1).

(4) Every citizen whose name has been selected by ballot in pursuance of this section, shall attend and submit to medical examination at a time, date and place of which he has been informed in writing, and such examination shall take place at public expense.

(5) The selection by ballot of the name of any person under this section and his allotment in terms of section 67 to the Citizen Force shall lapse if he does not obtain a senior certificate in the year in respect of which such ballot was taken.

(6) The taking of any ballot under this section may be accomplished by using an electronic computer.

[S. 66B inserted by s. 31 of Act 134 of 1993.]

67 Allotment to Citizen Force and commandos

(1) The registering officer shall, subject to any decisions of exemption boards, allot-

(a) to the Citizen Force all persons whose names have been selected by ballot in terms of section 66B (1) or whose names are deemed to have been so selected in terms of section 66B (3) and persons to whom deferment of allotment has been granted under section 69 (1) (a) (ii) to the year concerned and he shall also provisionally allot to that Force all persons whose names have been selected by ballot to make good any loss as contemplated in the said section 66B (3);

(b) to the commandos persons who have completed the period of service referred to in section 22 (3) (a) and in respect of whom an exemption board has, under proviso (iii) to section 70*bis* (1), directed that they be allotted to the commandos for service in any of the areas referred to in section 66 (1):

Provided that any person who is a member of the Police Reserve or a reserve force established in terms of an Act of Parliament in respect of the South African Police or the Department of Correctional Services, shall not be allotted in terms of this subsection.

(2) The registering officer shall notify any person who has been classified into a category of conscientious objectors referred to in section 72D (1) (a) (i) or (ii), of the unit where he shall render service and in the manner provided for in section 72E (1) or (2) in respect of the appropriate category of conscientious objectors.

(3) Whenever the registering officer has allotted any person under this section, he may for sufficient reasons re-allot the person or cancel the allotment, and upon such cancellation such person shall be deemed not originally to have been so allotted.

(4) Every person allotted unconditionally or provisionally under this section to the Citizen Force or the commandos shall be notified by the registering officer of such allotment and, if possible, he shall inform every person so allotted to the Citizen Force or the commandos of the name of the unit or commando and place where he is required to render service, after he has been called up to do so.

[S. 67 amended by s. 9 of Act 81 of 1964, substituted by s. 40 of Act 85 of 1967, amended by s. 4 of Act 28 of 1970 and by s. 5 of Act 66 of 1972, substituted by s. 24 of Act 57 of 1975, amended by s. 4 of Act 35 of 1977 and by s. 5 of Act 68 of 1977, substituted by s. 24 of Act 103 of 1982, amended by s. 8 of Act 34 of 1983, by s. 33 of Act 87 of 1984 and by s. 11 of Act 132 of 1992 and substituted by s. 32 of Act 134 of 1993.]

67A

[S. 67A inserted by s. 25 of Act 57 of 1975, substituted by s. 34 of Act 87 of 1984 and by s. 12 of Act 132 of 1992 and repealed by s. 33 of Act 134 of 1993.]

68 Exemption boards

(1) The Minister of Manpower may from time to time, in consultation with the Minister-

(a) appoint one or more exemption boards-

(i) to consider applications in terms of section 69;

(ii) to consider applications with regard to the rendering of service in areas referred to in section 66 (1) and to give decisions thereon; and

(iii) to exercise such other powers and to perform such other duties as may be conferred or imposed upon them by or under this Act;

(b) abolish any such board; and

(c) withdraw the appointment of any member of such a board and, if deemed necessary, appoint some other person as a member of such board in his stead.

(2) (a) Any such board shall consist of a chairman, a deputy-chairman and so many other members as the Minister of Manpower may, in consultation with the Minister, determine.

(b) At least one of the members of any such board shall be a member of the South African Defence Force.

(c) The Minister of Manpower shall in respect of every member of such board, except the chairman and deputy-chairman, appoint an alternate, who shall, in the absence of the member concerned from any meeting of the board, have at that meeting all the duties and powers of such member.

(d) The quorum at a meeting of the board shall consist of the chairman and two members of whom one shall be a member referred to in paragraph (b).

(e) In the absence of the chairman the deputy-chairman shall preside at meetings of the board, and in the event of the absence of both the chairman and the deputy-chairman, the members present at a meeting shall elect one of their number to act as chairman at that meeting.

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

(4)

[Sub-s. (4) deleted by s. 15 of Act 88 of 1996.]

(5) The Minister of Manpower may from time to time in writing delegate his powers under subsection (1) (c) to an officer in the Department of Manpower to be exercised by such officer in consultation with an officer of the South African Defence Force designated by the Minister, and the Minister of Manpower may at any time withdraw such delegation.

[Sub-s. (5) substituted by s. 35 of Act 87 of 1984.]

[S. 68 amended by s. 8 of Act 42 of 1961, by s. 10 of Act 81 of 1964 and by s. 41 of Act 85 of 1967 and substituted by s. 25 of Act 103 of 1982.]

69 Application for deferment of or exemption from service or allotment to commandos, and procedure of exemption boards

(1) (a) Any-

(i) citizen who is a pupil as contemplated in section 63, may at any time apply in writing to a board referred to in section 68 for a certificate of exemption on account of his being permanently unfit for military service in any capacity;

(ii) citizen whose name has been selected by ballot in terms of section 66B, may apply in writing to such board for deferment of allotment under section 67 for that year;

(iii) person who, after having been allotted, is liable to serve in terms of section 21 (1) or 35 or any interested person acting on behalf of such person with his consent in writing but subject to his right to make representations, may apply to such board-

(aa) before the person so liable commences service in terms of section 22 or 44, for deferment of or exemption from service;

(bb) after the person so liable has commenced such service, for deferment of or exemption from such service; and

(cc) after the person liable to serve in terms of section 21 (1) has commenced service in terms of section 22 and has completed the period of service referred to in section 22 (3) (a), for allotment to the commandos to render service in any area referred to in section 66 (1).

(b) Any application, including any representations in connection with such an application if made under-

(i) subparagraph (i), (ii) or (iii) (aa) of paragraph (a), shall be lodged with the chairman of the said board; or

(ii) subparagraph (iii) (bb) or (cc) of paragraph (a), shall be lodged with the commanding officer of the unit in which the person concerned is serving.

[Sub-s. (1) substituted by s. 34 of Act 134 of 1993.]

(2) The board concerned shall make such investigations in connection with any application and representations under subsection (1) as it may consider necessary, and for that purpose the provisions of the Commissions Act, 1947 (Act 8 of 1947), except

sections 1 and 4 thereof, shall apply with reference to the board, and in the application of the said provisions the reference in section 3 of that Act to the secretary of a commission shall be construed as a reference to the registering officer.

(3) Any person who has made an application in terms of this section or on whose behalf such application had been made, shall at his own expense attend at the time and place determined by the board and submit himself to any examination relating to any matter connected with the application, and such examination shall take place at public expense.

(4) The Minister of Manpower may make such rules not inconsistent with this Act as he may deem necessary for regulating the procedure and the conduct of the business of boards appointed under section 68.

(5) No person shall disclose any information obtained by him in the exercise of his powers, the performance of his functions or the carrying out of his duties in terms of this section, except-

(a) to the extent to which it may be necessary for the proper administration of this section; and

(b) for the purposes of any legal proceedings.

[S. 69 amended by s. 9 of Act 42 of 1961, substituted by s. 11 of Act 81 of 1964, amended by s. 42 of Act 85 of 1967 and by s. 6 of Act 66 of 1972 and substituted by s. 26 of Act 103 of 1982.]

70

[S. 70 amended by s. 10 of Act 42 of 1961, by s. 12 of Act 77 of 1963 and by s. 12 of Act 81 of 1964 and repealed by s. 43 of Act 85 of 1967.]

70bis Powers of exemption board in regard to application for deferment of or exemption from training

(1) Any board appointed under section 68 which has considered an application in terms of section 69, may, with due regard to any general instructions issued by the Minister of Manpower in consultation with the Minister, grant such application where in its opinion it is justified-

(a) in order to prevent the interruption of the course of full-time educational studies of the person concerned; or

[Para. (a) substituted by s. 35 (a) of Act 134 of 1993.]

(b) by reason of the nature and extent of such person's domestic obligations or any circumstances connected with any trade, profession or business in which he is engaged; or

(c) on the ground of physical defects, ill-health or mental incapacity on the part of such person; or

(d) on the ground that such person is being compulsorily detained in an institution; or

(e) on any other ground it may deem sufficient:

Provided that-

(i) no application shall be granted except where the board is satisfied that undue hardship would otherwise be caused or that it is in the public interest that the application be granted;

(ii) the board may in its discretion, if it is so satisfied, grant deferment of or exemption from service irrespective of whether or not the application is for such deferment or exemption;

(iii) in the case of a person who has completed the period of service referred to in section 22 (3) (a), the board may, instead of granting deferment of or exemption from service for any of the periods of service referred to in section 22 (3) (b), direct that he be allotted to the commandos for service in any area referred to in section 66 (1);

[Para. (iii) deleted by s. 5 (b) of Act 28 of 1970, inserted by s. 27 (b) of Act 103 of 1982 and substituted by s. 13 of Act 132 of 1992.]

(iv) no deferment shall be granted which shall have the effect of allowing the applicant to commence service or training contemplated in section 22 (3) (a), after reaching the age of 27 years.

[Para. (iv) added by s. 35 (b) of Act 134 of 1993.]

[Sub-s. (1) substituted by s. 44 of Act 85 of 1967 and amended by s. 27 (a) of Act 103 of 1982.]

(2) The provisions of this section shall not derogate from the provisions of subparagraph (ii) of paragraph (a) of sub-section (1) of section *seventy-four bis*.

[S. 70*bis* inserted by s. 13 of Act 81 of 1964.]

70*ter* Withdrawal of decision of exemption board

(1) A board appointed under section 68 which has granted an application for deferment of or exemption from service or of allotment to the commandos in terms of section 70*bis* may, if it is satisfied that the facts upon which such decision is founded have changed, after having afforded the person who made the application and the person to whom that decision relates an opportunity of being heard, withdraw or amend that decision with effect from a date determined by the board.

(2) If a decision withdrawn in terms of subsection (1) relates to the allotment of a person to the commandos, such person shall, with effect from the date determined under subsection (1), be deemed to have been allotted to the Citizen Force: Provided that service rendered by such person in a commando shall for the purposes of the application of the provisions of this Act relating to liability to serve in the Citizen Force be regarded, in accordance with the regulations, as service rendered in the Citizen Force.

[S. 70*ter* inserted by s. 28 of Act 103 of 1982.]

71 Exemption from service if medically unfit

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

[S. 71 substituted by s. 45 of Act 85 of 1967.]

72

[S. 72 repealed by s. 46 of Act 85 of 1967.]

72A Boards for religious objection

(1) The Minister of Manpower may from time to time, in consultation with the Minister-

(a) appoint one or more boards for conscientious objection-

- (i) to consider applications in terms of section 72B; and
- (ii) to exercise such powers and perform such other duties as may be conferred or imposed upon them by or in terms of this Act;

[Para. (a) amended by s. 14 (a) of Act 132 of 1992.]

- (b) abolish any such board;
- (c) withdraw the appointment of any member of such a board, and appoint in his stead some other person as a member of such board;
- (d) determine the seat of any such board.

[Para. (d) added by s. 14 (b) of Act 132 of 1992.]

(2) Any such board shall consist of-

(a) a chairman, who shall be a judge of the Supreme Court of South Africa or a person who has been involved in the administration of justice for a period of not less than 10 years or who, in the opinion of the Minister of Manpower, has sufficient knowledge of law, and who shall be appointed by the said Minister in consultation with the Minister of Justice;

[Para. (a) substituted by s. 1 of Act 32 of 1993.]

(b) two members who shall be theologians or clergymen who belong to different religious denominations and who shall be appointed by the Minister of Manpower;

(c) two members who shall be appointed by the Minister of Manpower on the ground of their knowledge of the functions of the board;

(cA) a member who is a psychologist as defined in section 1 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974), appointed by the Minister of Manpower; and

(d) if the applicant referred to in section 72B, states in his application that-

(i) he is applying to be classified in a category of conscientious objectors contemplated in section 72D (1) (a) (i) or (ii), a member of the South African Defence Force designated in particular or in general by the Minister or a person authorized thereto by the Minister, for co-option by the board and who; or

(ii) the reasons or grounds for his qualms of conscience and conscientious objection are of a religious nature, and it appears from his application that he belongs to a religious denomination and none of the theologians or clergymen serving on the board during the consideration of his application is a member of that religious denomination, a theologian or clergyman who belongs to that religious denomination who, after the board has in such manner as it may deem fit invited persons who are such theologians or clergymen to serve on the board for the consideration of such application, has informed the board, within a period which the board may regard as reasonable, of his willingness so to serve, and who,

has been co-opted by the board as a member: Provided that if the applicant has not mentioned any such category or reason or grounds, as the case may be, in his application and it first comes to the notice of the board during the consideration of his application, or no such theologian or clergyman referred to in subparagraph (ii) has informed the board within such period of his willingness to serve on the board, the board may consider the application in question without such a member of the South African Defence Force or such a theologian or clergyman, as the case may be, having been thus co-opted.

[Sub-s. (2) amended by s. 36 of Act 87 of 1984 and substituted by s. 14 (c) of Act 132 of 1992.]

(3) The Minister of Manpower shall appoint an alternate in respect of every member of such board, who shall, in the absence of the member concerned from a meeting of the board, have at such meeting all the powers and duties of such member.

(4) Without derogating from the power of the Minister of Manpower under subsection (1) (c), the members of the board referred to in paragraphs (a), (b), (c) and (cA) of subsection (2) and their alternates, shall be appointed for a period of not less than two

years.

[Sub-s. (4) substituted by s. 14 (*d*) of Act 132 of 1992.]

(5) In addition to a member referred to in subsection (2) (*d*) who may be present, the quorum at a meeting of the board shall consist of the chairman and three members, and in the event of an equality of votes the chairman shall have a casting vote.

[Sub-s. (5) substituted by s. 14 (*e*) of Act 132 of 1992.]

(6) A member of any such board who is not in the full-time employment of the State shall be paid such remuneration and allowances as the Minister of Manpower may in consultation with the Minister of Finance determine.

[S. 72A inserted by s. 9 of Act 34 of 1983.]

72B Application for classification as conscientious objector

(1) Any person (excluding a person who has committed himself voluntarily to any service in the South African Defence Force or any auxiliary or nursing service established under this Act or a person who, in consequence of the withdrawal or amendment of a decision, or because a decision is deemed to have been withdrawn, as contemplated in section 72F (3), is liable to service in the South African Defence Force and may be called up to render such service, or a person whose classification has lapsed in terms of section 74E (4B)) called up under the provisions of this Act to render service in the South African Defence Force, may before or after having commenced with such service, apply to a board referred to in section 72A to be classified in terms of section 72D as a conscientious objector.

(2) Any application in terms of subsection (1)-

(*a*) shall be made in writing and shall, subject to the provisions of paragraphs (*d*) and (*e*), be drawn up by the applicant himself or by a person according to his instructions, contain a statement by him that it has been so drawn up, be signed by him and be addressed by himself to the board;

(*b*) shall state the category of conscientious objectors referred to in section 72D (1) (*a*) in which the applicant wishes to be classified;

(*c*) shall contain an affidavit by the applicant which concisely sets out the reasons or grounds for his conscientious objection, as well as the other facts and grounds upon which his application is based;

(d) shall state, if the reasons or grounds for the conscientious objection of the applicant-

(i) are of a moral or ethical nature, any writings (if any) on which the moral or ethical convictions of the applicant are based; or

(ii) are of a religious nature, the books of revelation and the articles of faith (if any) upon which the religious convictions of the applicant are based, as well as the religious denomination (if any) of which he is a member;

(e) shall include affidavits of all witnesses whom the applicant intends to call in support of his application;

(f) shall contain such other information as may be prescribed by the Minister of Manpower by regulation,

and the applicant shall, if the board so requests, provide the board at his own expense with copies of the writings referred to in paragraph (d) or with such parts thereof as the board may specify.

(3) The board may in its discretion hear any application which does not comply in any material respect with the provisions of subsection (2), but may cause such application, together with any remark or request which the board may deem necessary, to be returned to the applicant.

(4) (a) Any application in terms of subsection (1) which is made by a person before commencing service or undergoing training, shall be heard by the board only if it is served upon the board by post, or if it is delivered to the board against acknowledgement of receipt, within 30 days from the date upon which the call-up to render service or undergo training was delivered to the applicant concerned: Provided that the board may for reasons advanced by the applicant and which are regarded as well-founded by the board, condone any failure to make the application within such period.

(b) Subject to the proviso to section 72C (2), the board shall consider and decide upon such an application as soon as possible after receipt thereof.

(5) (a) Any application in terms of subsection (1) by a person who has commenced to render service or to undergo training shall be handed by the applicant to the officer commanding of the unit in which he is rendering service or undergoing training.

(b) An applicant who makes an application referred to in paragraph (a) remains liable

to render the service or to undergo the training which he has been called up to render or undergo, as the case may be, until the board has decided on his application, unless an exemption board contemplated in section 68 has, after consultation with the officer commanding of the unit referred to in paragraph (a), authorized him in writing to discontinue it pending the decision of the board.

(c) Subject to the proviso to section 72C (2), the board shall consider and decide upon the application as soon as possible after receipt thereof.

(6) The board shall not consider an application made under subsection (1) if such application in the opinion of the board is founded on facts and grounds substantially the same as an earlier application under that subsection by the same applicant which was rejected by the board, irrespective of whether the last-mentioned application was made before or after the commencement of the Defence Amendment Act, 1992.

[S. 72B inserted by s. 9 of Act 34 of 1983 and substituted by s. 15 of Act 132 of 1992.]

72C Procedure of boards for conscientious objection

(1) A board referred to in section 72A may in connection with an application made to it under section 72B make such investigation as it may deem necessary, and for that purpose the provisions of the Commissions Act, 1947 (Act 8 of 1947), except section 1 thereof, shall apply with reference to the board, and in the application of the said provisions the reference in section 3 of that Act to the secretary of the commission shall be construed as a reference to the chairman or any member of the board or to an officer of the Department of Manpower or an officer in the public service placed at the disposal of the said Department, who has been appointed for that purpose by the Minister of Manpower.

(2) The onus to prove that he is a conscientious objector who belongs to any of the categories of conscientious objectors referred to in section 72D (1) (a) and to satisfy the board of the matters referred to in section 72D (1A) shall rest upon the applicant, and he, as well as any witness whom he may desire to call, shall at their own expense appear before the board at the time and place determined by the board, and subject themselves to any investigation concerning a matter relating to such application, and such investigation shall take place at public expense: Provided that the board may grant an application without the applicant having appeared before it.

(3) The procedure to be followed in respect of proceedings before the board may be prescribed by the Minister of Manpower by regulation after consultation with the board.

(4) An applicant shall not be entitled to legal representation before the board.

[S. 72C inserted by s. 9 of Act 34 of 1983 and substituted by s. 16 of Act 132 of 1992.]

72D Powers of boards for conscientious objection

(1) A board referred to in section 72A which has considered an application in terms of section 72B may-

- (a) grant such application and classify the applicant-
 - (i) as a conscientious objector with whose conscientious convictions it is in conflict to render service in a combatant capacity in any or a particular armed force;
 - (ii) as a conscientious objector with whose conscientious convictions it is in conflict to render service in a combatant capacity in any or a particular armed force, to perform maintenance tasks of a combatant nature therein and to be clothed in a military uniform; or
 - (iii) as a conscientious objector with whose conscientious convictions it is in conflict to render the military service or to undergo the military training which he has been called up to render or to undergo as contemplated in section 72B (1);
- (b) classify the applicant in a category referred to in subsection (1) (a), other than that for which application is made, if such other classification is justified; or
- (c) refuse the application.

(1A) No application shall be granted as contemplated in subsection (1) (a), unless the board is also satisfied that-

- (a) the applicant has conscientious objection to render military service or undergo military training under this Act;
- (b) the conscientious objection is based on moral, ethical or religious grounds and corresponds to the particulars thereanent in the application of the applicant;

(c) the applicant's conscientious objection is sincere and deep-rooted; and

(d) the applicant's conscience does not permit him conduct, or support for conduct, which is in conflict with the reasons and grounds for his application and that he condemns crime and the pursuit or furtherance of any form of criminal violence and anarchy in or against any community or person.

(2) (a) If the board has refused an application in terms of this section, but is of the opinion that it is an application which should be considered by an exemption board referred to in section 68, the board may refer that application, together with such recommendation as it may deem fit, to an exemption board.

(b) The exemption board shall consider such application as if it were an application made to it in terms of section 69.

(3) (a) If the board classifies an applicant in terms of this section as a conscientious objector, but is of the opinion that the liability imposed by section 72E upon a person thus classified should be deferred, the board may refer the application, its decision thereon, and its recommendation relating to the granting of such postponement, to an exemption board referred to in section 68.

(b) The exemption board shall deal with an application referred to it in terms of paragraph (a) as if it were an application in terms of section 69 and may, if any circumstance contemplated in paragraph (b), (c) or (d) of section 70bis (1) is present, grant such deferment of the liability in question as it may grant in respect of an application referred to in section 69.

(4) Any person who, at the time of his classification as a conscientious objector in terms of subsection (1) (a) (ii) or (iii)-

(a) is an officer, shall be regarded as having his commission terminated and cancelled on the date of such classification;

(b) is a warrant officer or non-commissioned officer, shall be regarded as having been reduced to the ranks on the date of such classification.

(5)

[Sub-s. (5) deleted by s. 16 of Act 88 of 1996.]

[S. 72D inserted by s. 9 of Act 34 of 1983 and substituted by s. 17 of Act 132 of 1992.]

72E Service by classified conscientious objectors

(1) A person classified as a conscientious objector in terms of section 72D (1) (a) (i) shall render service or undergo training under the provisions of this Act in a non-combatant capacity in the South African Defence Force.

(2) (a) A person classified in terms of section 72D (1) (a) (ii) as a conscientious objector shall render such service or undergo such training as he is under the provisions of this Act called up to render or to undergo and while he is clothed in the prescribed clothing, other than a military uniform.

(b) Service referred to in paragraph (a) shall be rendered by performing prescribed maintenance tasks of a non-combatant nature in the South African Defence Force, and training referred to in the said paragraph shall be training to perform such maintenance tasks.

(3) A person classified as a conscientious objector in terms of section 72D (1) (a) (iii) shall, instead of-

(a) rendering service in terms of section 22, perform service in a department or with an institution, council, board or body contemplated in subsection (4) (in this Act referred to as 'community service as contemplated in this Act'), which shall be completed in a single continuous period of service, determined in accordance with the formula-

L X M X R

in which-

(i) 'L' represents a loading of 1,5;

(ii) 'M' represents a period of time (expressed in days) which is the aggregate of the maximum of all the periods of service mentioned in section 22 (3) during which any person referred to in section 21 may still, as from when the conscientious objector in question (whose single continuous period of community service as contemplated in this Act is being calculated) was classified as such, be called up from time to time in terms of section 22 to

render service (notwithstanding any determination or call-up referred to in section 22 (1)); and

(iii) 'R' represents the relation of-

D1

D2

in which-

(aa) 'D1' represents the actual period of time (expressed as the number of the months of which it consists), at the time contemplated in subparagraph (ii), determined in general in terms of section 22 (1) for persons referred to in section 21 in respect of the first period of service referred to in section 22 (3) (a); and

(bb) 'D2' represents the number of the maximum number of months of the first period of service as mentioned in section 22 (3) (a); or

[Para. (a) amended by s. 3 (a) of Act 32 of 1993.]

(b) rendering service in terms of any other provision of this Act, perform community service as contemplated in this Act for a period which is one-and-a-half times as long as the particular period of service during which he would otherwise, as a result of his call-up to render service in terms of that other provision, have had to render service or 36 days, whichever is the longer:

Provided that the Minister may, after consultation with the Minister of Manpower, on account of any consideration, including the duration of actual military service which any person or category, class or group of persons in terms of this Act has been or is being or could possibly be called up to render, determine that-

(i) such community service;

(ii) community service as contemplated in this Act which has to be rendered by a person in compliance with the conditions of parole laid down for his release from the detention barracks where he had to serve a sentence of detention imposed on him in terms of section 72I (2) (a); or

(iii) community service as contemplated in this Act which has to be rendered by a person in compliance with a condition on which the operation of a sentence imposed under section 72I (2) (a) has been suspended under section 72I (5),

may be completed during a shorter period.

(4) Any person who is under or because of any provision of this Act liable or obliged to perform community service as contemplated in this Act, shall perform it as ordered by the Minister of Manpower or an officer authorized thereto by him-

(a) in a department as defined in section 1 of the Public Service Act, 1984 (Act 111 of 1984);

(b) with an institution, council or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961);

(c) with a council as defined in section 1 of the Regional Services Councils Act, 1985 (Act 109 of 1985);

(d) with a board as defined in section 1 of the Kwazulu and Natal Joint Services Act, 1990 (Act 84 of 1990),

and at a place specified by that Minister or officer in that order: Provided-

(i) that the Minister of Manpower or an officer authorized thereto by him may, if he deems fit, at any time while community service as contemplated in this Act is being performed as ordered in terms of this subsection, order that such community service shall be performed in another such department or with another such institution, council, board or body; and

[Para. (i) substituted by s. 3 (b) of Act 32 of 1993.]

(ii) that if such community service has been performed by a person in more than one department or with more than one institution, council, board or body, the period of service performed in every such department or with every such institution, council, board or body shall be taken into account for the purpose of determining the duration of the community service as contemplated in this Act performed by such person.

[Para. (ii) substituted by s. 3 (b) of Act 32 of 1993.]

(4A) (a) Any person who, for whatever reason, has to perform community service as contemplated in this Act, shall, by the order referred to in subsection (4), also be ordered to report at a specified time for and commence with such community service if it is-

(i) determined in accordance with the provisions of subsection (3) (a), on a specified date within 32 days; or

(ii) determined in accordance with the provisions of subsection (3) (b), on a specified date within 42 days,

from the day upon which the liability to perform such community service arose.

(b) For the purposes of paragraph (a) the liability in the case of a conscientious objector classified in terms of section 72D (1) (a) (iii) who is liable to that community service to comply with any conditions of parole which have been imposed, shall be deemed to have arisen on the day on which he accepted the conditions of parole, and in the case of such a classified conscientious objector who is liable to that community service to comply with a condition subject to which the execution of a sentence imposed under section 72I (2) (a), was suspended under section 72I (5), shall be deemed to have arisen on the day on which such sentence was imposed.

(c) Such community service shall, for the purpose of calculating the period during which it is to be performed, be deemed to have commenced on the date on which it commences according to that order or on the actual date of commencement thereof, whichever occurs first, or, if the Minister or officer referred to in subsection (4) fails to order that such community service shall commence as contemplated in paragraph (a) of this subsection and it first commences after that thirty-second or forty-second day, as the case may be, it shall be deemed to have commenced on that thirty-second or forty-second day, as the case may be: Provided that such person shall not be exempted from his liability to comply with such order if that specified date does not fall within the said 32 or 42 days, as the case may be.

(4B) If any person who is under or on account of any provision of this Act liable or obliged to perform community service as contemplated in this Act and he, by reason of the fact that he has left his ordinary place of residence and it is unknown where he happens to be or that he has left the Republic and remains absent therefrom, does not perform or further perform such community service, or by reason of any such circumstances cannot be ordered under subsection (4) to perform such community service, his classification as such a conscientious objector shall lapse after the expiration of a period of 90 days from the date on which he so left his ordinary place of residence or the Republic, as the case may be, and he shall under those

circumstances be deemed to be still liable to render the military service which he had before his said classification (which has thus lapsed) been called up to render, and shall be deemed, by having thus left his ordinary place of residence or the Republic, as the case may be, and remaining absent therefrom, to refuse to render such military service.

(5) (a) Any department, institution, council, board or body referred to in subsection (4) shall take any person who in terms of this section is obliged to perform community service as contemplated in this Act with it, into its employment as ordered in terms of that subsection or, if such person is already in its employment, with effect from the specified date contemplated in subsection (4A).

(b) If any person is obliged to perform community service as contemplated in this Act in any capacity with a department, institution, council, board or body, such service shall be performed in accordance with the regulations made under section 72G, and such regulations shall apply to the exclusion of any other law or any contractual obligation in respect of such community service and such person, in relation to his performance of such community service.

[Para. (b) substituted by s. 3 (c) of Act 32 of 1993.]

(c) If any person who already is in the employment of a department, institution, council, board or body is obliged for any reason to perform community service as contemplated in this Act with such department, institution, council, board or body, such person shall perform his community service in accordance with the regulations made under section 72G, and the first year of such community service shall, in respect of such person, for the purposes of seniority, promotion, salary or compensation and increase in salary or compensation not be regarded as service with that department, institution, council, board or body.

[S. 72E inserted by s. 9 of Act 34 of 1983, amended by s. 37 of Act 87 of 1984 and by s. 1 of Act 45 of 1987 and substituted by s. 18 of Act 132 of 1992.]

72F Withdrawal or amendment of decision of board for conscientious objection

(1) (a) If a board appointed in terms of section 72A is of the opinion, as a result of facts becoming available to it, that the facts on which an application for classification as a conscientious objector was granted have possibly changed, it may, after it-

(i) has provided the conscientious objector concerned with a summary of the first-mentioned facts and informed him of its

opinion;

(ii) has afforded the officer commanding the unit of such conscientious objector or the person who supervises the conscientious objector at the department, institution, council, board or body where he is performing community service as contemplated in this Act, an opportunity to state his views; and

(iii) has afforded the conscientious objector an opportunity to present his case, orally or in writing, as he may choose, (but without legal representation before the board),

withdraw its decision with effect from a date determined by the board or amend that decision and classify the conscientious objector into another category of conscientious objectors referred to in section 72D.

(b) If any person who has been classified as a conscientious objector informs the board for conscientious objection concerned in a notice signed by him that he no longer belongs to that category of conscientious objectors and that he is prepared to render military service or undergo military training, that decision of the board shall be deemed to have been withdrawn with effect from the date on which the notice was received by the board.

(2) If a decision referred to in subsection (1)-

(a) has been withdrawn or is deemed to have been withdrawn in terms of that subsection, the person in respect of whom that decision applied shall, subject to the provisions of subsection (3), be liable, in addition to any other liability to service in the South African Defence Force in terms of this Act, to render service, if called up to do so, in accordance with the call-up, under section 22 or 44 in the Citizen Force or the commandos, according as to whether such person was in terms of section 67 allotted to the Citizen Force or the commandos;

(b) has been amended in terms of that subsection and the person concerned has been classified into any other category of conscientious objectors referred to in section 72D, the provisions of section 72E which are applicable to such other category shall with effect from the date of such amendment apply in respect of such person.

(3) If any person after and as a result of the withdrawal or amendment in terms of subsection (1) of a decision or the withdrawal of a decision deemed to have been effected in terms of subsection (1), becomes liable to render service in accordance with section 22 or 44, any period of community service as contemplated in this Act performed by such person and any period of detention served by him by virtue of a sentence imposed upon him under section 72I (2) (a), shall for the purposes of sections 22 and 44 be regarded as service as contemplated in those sections, to the extent determined by the Minister.

(4) Anything done under this section or resulting from the application thereof shall not be regarded as non-compliance with or a breach of any condition of parole or a suspended sentence in terms of which the person concerned had to perform community service as contemplated in this Act before the withdrawal or amendment of a decision in terms of subsection (1), or the withdrawal or amendment of a decision deemed to have been effected in terms of subsection (1).

[S. 72F inserted by s. 9 of Act 34 of 1983 and substituted by s. 19 of Act 132 of 1992.]

72G Regulations relating to community service

(1) The Minister of Manpower may in respect of persons classified in terms of section 72D (1) (a) (iii) as conscientious objectors make regulations relating to-

(a) employment, training, qualifications or obtaining of qualifications at the expense of the department, institution, council, board or body where the community service as contemplated in this Act is performed, unsuitability for service, transfer, duties, powers, classification, grading and, subject to the provisions of section 72E (5) (c), promotion, and any other matter with regard to the service of such persons during the performance of community service as contemplated in this Act, including hours of duty, the performance of overtime duties, leave and special leave with pay;

(b) subject to the provisions of section 72E (5) (c) and subsection (1A) of this section, salaries, wages, leave and sick benefits, subsistence and travel, local, cost of living and other allowances, and the circumstances under which, the manner in which and the beneficiaries to whom such payments shall or may be made, as well as the prohibition of the granting of additional benefits by employers;

(c) occupation of official quarters, the provision of lodging,

including meals, obligations with regard to and the conditions of such occupation and lodging, the liability for, or the exemption from liability for, damage or loss arising from or in connection with such occupation and lodging, including the circumstances in which security shall be furnished with respect to such liability;

(d) use of official transport, vehicles, equipment and property, obligations with regard to and the conditions applying to such use, including the training and qualifications required with regard to such use and the obtaining of such qualifications at the expense of the department, institution, council, board or body where the community service as contemplated in this Act is performed, and the furnishing of security in respect of and the granting of exemption from liability for damage or loss arising out of or in connection with such use;

(e) liability of the department, institution, council, board or body where community service as contemplated in this Act is performed, for damage or loss arising out of or connected with such community service and the exemption of the department, institution, council, board or body from such liability;

(f) registration by such persons with any body, board, society, association or similar organization where such registration is in terms of any law or agreement required before the commencement or during the performance of any service to be rendered by such persons during the performance of community service as contemplated in this Act;

(g) the uniform, protective clothing, equipment, tools and other articles to be worn or used by such persons during the performance of community service as contemplated in this Act, allowances therefor and the issue thereof at the expense of the department, institution, council, board or body where such community service is performed and the directions with respect to the use, utilization, care and safe-keeping thereof;

(h) discipline, behaviour and conduct of such persons during the period of performance of community service as contemplated in this Act, the extent to which such persons may during that period take part in political activities, in general or in a particular case, the investigation of alleged disciplinary contraventions, the nature of

such contraventions and the authority which shall hold such investigation, the procedure to be followed by it, and the disciplinary steps which may be taken by it against persons who have committed such disciplinary contraventions, including the imposition of a fine not exceeding R50, and the recovery thereof by deduction from the remuneration of the persons concerned;

(i) the application of any law to community service as contemplated in this Act or to any matter in connection therewith, including injuries and temporary or permanent disability sustained in any manner by persons while performing such community service and including the provision to them of medicine and prosthesis at State expense and their medical, dental and hospital treatment at State expense at institutions or by medical practitioners or para-medical practitioners designated by their employers, for illnesses and injuries contracted or sustained during and arising from their said community service;

(j) all matters in connection with community service as contemplated in this Act, which in terms of this Act shall or may be prescribed;

(k) generally, all matters which he may deem necessary or expedient to prescribe in order to achieve the aims of this section, and such regulations may prescribe an authority as well as the powers of such authority to amend the provisions of such regulations with regard to any such person or category of such persons.

(1A) Regulations made in terms of subsection (1) (b) shall not provide for salaries, wages, benefits and allowances which are more favourable than those which are enjoyed by persons who serve in that part of the South African Defence Force and during that period of service in which or during which the conscientious objector concerned would have served if it had not been for his classification as a conscientious objector.

(2) Without derogating from the provisions of subsection (1) (h), regulations made under subsection (1) may prescribe in respect of a contravention thereof or failure to comply therewith, a penalty of a fine not exceeding R500 or imprisonment for a period not exceeding six months or both such fine and such imprisonment.

(3) Notwithstanding anything to the contrary in any law contained, such a regulation

which is to the advantage of conscientious objectors may be made with retrospective effect.

[S. 72G inserted by s. 9 of Act 34 of 1983, amended by s. 9 of Act 51 of 1991 and substituted by s. 20 of Act 132 of 1992.]

72H Participation in political activities

(1) Any person who in terms of this Act has been classified as a conscientious objector or who in terms of this Act or the conditions of a suspended sentence or of parole is liable to perform community service as contemplated in this Act, shall not, while he is obliged to perform such community service, participate in any political activities other than those which have been prescribed: Provided that this section shall not preclude such an objector from voting at an election in terms of the Electoral Act, 1979 (Act 45 of 1979), or at a referendum in terms of the Referendums Act, 1982 (Act 97 of 1982).

[Sub-s. (1) amended by s. 21 (a) of Act 132 of 1992.]

(2) Any person who-

(a) contravenes subsection (1);

(b) fails to take reasonable steps to prevent the publication during the period of his community service as contemplated in this Act, of a document drawn up by him before the commencement of his period of such community service the drawing up or publication of which during that period would have constituted a contravention of subsection (1);

[Para. (b) substituted by s. 21 (b) of Act 132 of 1992.]

(c) publishes in the period during which any person is in terms of this Act or the conditions of a suspended sentence or of parole liable to render community service as contemplated in this Act, any document drawn up by the person so liable, if the drawing up or publication of that document by the person so liable would have constituted a contravention of subsection (1),

[Para. (c) substituted by s. 21 (b) of Act 132 of 1992.]

shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or imprisonment for a period not exceeding 12 months or both such fine and such imprisonment: Provided that a person shall be deemed to have taken reasonable steps

to prevent the publication or further publication of a document in terms of paragraph (b) if he has by means of a writing, sent by registered post, informed any person or body who to his knowledge was or probably was in possession or would probably come into possession of such a document, that the document may not be published during the rendering by him of community service.

(3) In any prosecution for a contravention of-

(a) subsection (2), any document purporting to have been drawn up by a person whose name corresponds with that of the accused, shall upon its production to the court be presumed in the absence of proof to the contrary to have been drawn up by the accused;

(b) subsection (2) (a), if it is alleged that the accused committed the offence by the publication of any document and it is proved or, by reason of the operation of paragraph (a) of this subsection, is presumed that the accused is the author thereof, it shall be presumed in the absence of proof to the contrary that the accused published the document during the period of his community service as contemplated in this Act;

[Para. (b) substituted by s. 21 (c) of Act 132 of 1992.]

(c) subsection (2) (c), upon proof that the accused published a document of which a person classified in terms of section 72D as a conscientious objector is the author, or by reason of the operation of paragraph (a) of this subsection is presumed to be the author, it shall in the absence of proof to the contrary be presumed that the accused knew when he published the document that it was a document the publication of which is prohibited in terms of this section.

[Para. (c) substituted by s. 21 (c) of Act 132 of 1992.]

(4) In the application of this section 'document' includes any book, pamphlet, letter, circular, list, register, placard or poster and any part thereof.

[S. 72H inserted by s. 9 of Act 34 of 1983.]

72I Offences by conscientious objectors, and documentary evidence

(1)

(2) Any conscientious objector referred to in section 72E (3) who has in terms of the said section 72E (3) to perform community service as contemplated in this Act by reason of his classification as such a conscientious objector and who, when ordered to do so-

(a) refuses or fails to perform such community service shall be guilty of an offence and shall, notwithstanding anything to the contrary in any other law contained, on conviction be sentenced to detention for a period which is equal to the period of community service which he still had to perform at the time of such refusal or failure.

(b)

(2A) Any person who, for whatever reason, is liable to perform community service as contemplated in this Act and, when ordered to perform it, fails (under circumstances where his conduct does not constitute an offence in terms of subsection (2) (a), or does not constitute a breach of any condition subject to which the operation of his sentence may have been suspended, or does not constitute a breach of the conditions of parole for the release of such person from a detention barracks where he had to serve a sentence of detention) to report therefor on the date and at the time and place mentioned in the order for the commencement of such community service, shall be guilty of an offence and liable on conviction to a fine not exceeding R600 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2B) Any person who, for whatever reason, performs community service as contemplated in this Act, and refuses or fails or omits (under circumstances where his conduct does not constitute an offence in terms of subsection (2) (a), or does not constitute a breach of any condition subject to which the operation of his sentence may have been suspended, or does not constitute a breach of the conditions of parole for the release of such person from a detention barracks where he had to serve a sentence of detention) to comply with a lawful order, instruction or duty in connection with such community service, shall be guilty of an offence and liable on conviction to a fine not exceeding R600 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2C) Imprisonment served by a conscientious objector pursuant to a sentence referred to in subsection (2A) or (2B) while he should have performed community service as contemplated in this Act, shall not be regarded as such community service, and the period of such community service shall be extended by the period of imprisonment so served by him.

(2D) The superintendent of the detention barracks to which any person who has been sentenced for a contravention of subsection (2) (a), is to be admitted or an officer authorized thereto by him, shall give such person the choice to be released as prescribed on parole on condition that he performs community service as contemplated in this Act, for a period equal to the period of such community service which he still had to perform at the time of his refusal or failure to perform it, and if such person chooses to be so released, shall so release him.

(2E) In any prosecution for a contravention of subsection (2) (a) the accused shall, upon proof that he did not on the date and at the time and place in question report to commence with the community service in question in the department in question or with the institution, council, board or body in question, be deemed, unless the contrary is proved, to have refused to perform such community service.

[Sub-s. (2E) substituted by s. 4 (a) of Act 32 of 1993.]

(3) Any person who has served detention pursuant to a sentence in terms of subsection (2) (a) in full or who, after he has been sentenced in terms of subsection (2) (a), has been released on parole and has complied with the conditions of parole, or who has complied with the conditions subject to which the operation of his sentence in terms of subsection (2) (a) was suspended, shall be exempted from his liability to perform the particular community service in terms of section 73E (3): Provided that the preceding provisions of this paragraph shall not derogate from the power of the Minister to make a determination under and as contemplated in the proviso to the said section 72E (3).

(4) Notwithstanding anything to the contrary in any law contained a magistrate's court shall be competent to impose the sentence provided for in subsection (2) (a).

(5) Any court which sentences any person to detention in terms of subsection (2) (a), may suspend the operation thereof only if the conditions of suspension provide that the person concerned shall perform community service as contemplated in this Act for a period equal to the period of such community service which that person still had to perform at the time of his refusal or failure as contemplated in subsection (2) (a): Provided that the operation of such sentence which is thus suspended shall, notwithstanding anything to the contrary in any law contained, not be suspended for a period which is shorter than the remaining period of such community service which still had to be performed by the person concerned, and any court which is otherwise competent to try such case shall have the power to suspend such sentence on such conditions.

(6) In any prosecution for a contravention-

(a) of subsection (2) (a), (2A) or (2B) a certificate purporting to be signed by the secretary of a board for conscientious objection and stating-

(i) the full name of the accused and of a person who has been classified into a category of conscientious objectors contemplated in section 72D (1) (a) (iii) and whose name corresponds to the name of the accused; and

(ii) the category of conscientious objectors into which that person has been classified and the date of such classification,

shall on the mere production thereof to the court, be *prima facie* proof of the particulars stated therein and that those particulars pertain to the accused;

(b) of subsection (2) (a) or (2A), a certificate purporting to be signed by a person who states therein that he is an officer of the Department of Manpower and stating-

(i) the name of such officer;

(ii) his appointment in the Department of Manpower;

(iii) his authorization by the Minister of Manpower to issue the certificate;

(iv) the full name of the accused;

(v) the full name of the person who gave the order referred to in section 72E (4) and the capacity in which and authorization under which he gave such order, and particulars concerning the order he had given with regard to-

(aa) the place where; and

(bb) the date on which and time at which,

the accused had to report to commence with the community service as contemplated in this Act, as well as the capacity, if it had been determined, in which the accused had to perform his community service;

[Sub-para. (v) amended by s. 4 (b) of Act 32 of 1993.]

(vi) the period during which the accused has to perform such community service;

(vii) the manner in which the order referred to in subparagraph (v) was given or conveyed to the accused;

(viii) particulars of any communication which the accused may have made to any officer of that Department regarding his willingness or otherwise to comply with the said order or to perform his community service or otherwise, and the date, time and place thereof; and

(ix) compliance or otherwise by the accused with the said order or the performance or otherwise of his community service in accordance with his liability,

shall on the mere production thereof to the court be *prima facie* proof of the particulars contained therein.

[S. 72I inserted by s. 9 of Act 34 of 1983 and substituted by s. 22 of Act 132 of 1992.]

CHAPTER IX ADMINISTRATION AND GENERAL POWERS OF THE STATE PRESIDENT, THE MINISTER AND OFFICERS (ss 73-89A)

73 Council of Defence

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

[S. 73 amended by s. 9 of Act 51 of 1991.]

74 Defence Staff Council

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

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

74bis Manpower board

(1) The Minister of Manpower may, in consultation with the Minister-

(a) appoint a manpower board to-

(i) advise the Government in time of peace and war concerning the use of the manpower of the Republic with particular regard to the allocation of the necessary manpower to the South African Defence Force to enable that Force to carry out the tasks assigned to it from time to time;

(ii) determine from time to time, with due regard to the maintenance of the economy of the Republic, which categories or portions of categories of persons employed in or practising any particular profession, industry, trade or occupation, should be exempted from military service and submit recommendations in accordance with such determinations to the Minister of Manpower, who may, in terms of the powers conferred hereby, direct any exemption board appointed in terms of this Act to authorize the exemption of persons in any such category or portion thereof from such service; or

[Sub-para. (ii) substituted by s. 47 of Act 85 of 1967.]

(iii) perform such other duties as the Minister of Manpower in consultation with the Minister may assign to it;

(b) abolish the manpower board;

(c) terminate the appointment of any member of the manpower board, and if considered necessary, appoint another person to take his place as a member of the board; and

(d) authorize the manpower board to appoint committees to investigate such matters as the board may deem necessary and report thereon to the board.

[Sub-s. (1) amended by s. 36 of Act 132 of 1992.]

(2) The manpower board shall consist of a chairman and as many other members as the Minister of Manpower, in consultation with the Minister, may deem necessary to

represent the interests of the State, the South African Defence Force, employers and employees.

[Sub-s. (2) amended by s. 36 of Act 132 of 1992.]

(3) A member of the manpower board or of a committee appointed in terms of sub-section (1) who is not in the full-time employment of the State, shall be paid such remuneration and allowances in respect of his services as may be determined by the Minister of Manpower in consultation with the Minister of Finance.

[Sub-s. (3) amended by s. 36 of Act 132 of 1992.]

[S. 74*bis* inserted by s. 13 of Act 77 of 1963.]

75 Establishment of commands, areas, headquarters, services, formations, units and personnel musterings

The Minister may establish and designate-

- (a) military commands, areas and districts throughout the Republic;
- (b) headquarters and arms of the service;
- (c) formations, units and personnel musterings of the Permanent Force, the Citizen Force, the commandos and the Reserve, or of members of such Forces, the commandos and the Reserve.

[S. 75 substituted by s. 6 of Act 28 of 1970 and by s. 10 of Act 34 of 1983.]

76 General powers of Minister

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

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

- (a) acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes;
- (b) establish, maintain and operate factories for the manufacture and repair of arms, ammunition, vehicles, aircraft, vessels, military clothing and other stores and equipment;

(c) notwithstanding anything contained in any law relating to the seashore or aviation, but subject to the provisions of any law relating to harbours, acquire, construct, maintain, manage and control harbours, docks, quays, jetties, aerodromes (as defined in sub-section (2) of section *ninety-nine*) and other facilities necessary for vessels or aircraft of the South African Defence Force;

(d) acquire arms, ammunition, vehicles, aircraft, vessels, clothing, animals, stores and other equipment required for defence purposes;

(e) sell, let or otherwise dispose of any land, building, animal or thing mentioned in any of the preceding paragraphs which is no longer required for defence purposes;

(f) permit persons of any category or kind who are not members of the South African Defence Force and have registered in such manner as the Minister may determine, to participate voluntarily in any training exercises with the commandos, subject to such conditions as the Minister may from time to time determine and may, after consultation with the Minister of Finance, by notice in the *Gazette* declare that such provisions of sections 39, 40, 41 or 125 as may be specified in the notice shall, to such extent and with such modifications as may be so specified, apply in respect of such persons as if they were citizens voluntarily serving as members of a commando.

[Para. (f) added by s. 48 of Act 85 of 1967.]

(2A) The Minister may in writing authorize the Chief of the South African Defence Force or any officer designated for that purpose by the said Chief to exercise on behalf of the Minister, any power contemplated in subsections (1) and (2).

[Sub-s. (2A) inserted by s. 23 of Act 132 of 1992.]

(3) The Minister may, in consultation with the Minister of Finance, and any person acting under the authority of the Minister may, in consultation with an officer in the Department of Finance deputed thereto by the Minister of Finance, whenever he deems it expedient in the public interest or in case of emergency, authorize-

(a) the conveyance, on such terms and conditions as the Minister or such person acting in consultation as aforesaid may deem fit of any person other than an officer or employee of the State acting in the

execution of his duty as such, or on behalf of any such person of any goods, not being the property of the State, by means of any vehicle, aircraft or vessel which is the property of the State in its Department of Defence;

(b) the rendering of any service, on such terms and conditions as aforesaid to any person other than an officer or employee of the State acting in the execution of his duty as such; or

(c) the use, on such terms and conditions as aforesaid of any vehicle, aircraft, vessel, equipment or any other thing, the property of the State in its Department of Defence, by any person other than an officer or employee of the State acting in the execution of his duty as such.

[Sub-s. (3) added by s. 5 of Act 12 of 1961.]

77 Military training institutions

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

[Sub-s. (1) amended by s. 7 of Act 28 of 1970.]

(2) Subject to the provisions of this Act, the appointment of the staff of a military training institution, the duration and description of the courses of instruction and training therein, the conditions of admission thereto of students (including the admission as students of members of other forces, bodies, institutions or departments of State), the conditions of future service required from graduates of or persons who have completed their courses or training at the institution or from students who have not completed their courses or training and all matters relating to the management, control and good government of any such institution shall be as determined by the Chief of the South African Defence Force or an officer designated by him for that purpose.

[Sub-s. (2) substituted by s. 36 (a) of Act 134 of 1993.]

(3) All students referred to in subsection (2) under instruction at a military training institution shall be subject to the Military Discipline Code, and for that purpose and for the purpose of jurisdiction, arraignment and punishment-

(a) a student who is a member of another force, shall be deemed to

hold the rank which he holds in that force; and

(b) any other person who is not a member of the South African Defence Force, shall be deemed to hold the equivalent of a rank in the South African Defence Force which the Chief of the South African Defence Force determines, whereafter he shall, for the purposes of this subsection, be deemed to hold such a military rank.

[Sub-s. (3) substituted by s. 36 (b) of Act 134 of 1993.]

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

78

[S. 78 substituted by s. 30 of Act 55 of 1965 and repealed by s. 95 of Act 63 of 1975.]

79 Areas for training

(1) (a) The Minister may from time to time appoint areas wherein any portion of the South African Defence Force may, without the consent of any person affected or likely to be affected thereby, conduct military exercises, and may prescribe the conditions under which compensation may be claimed by and paid to an owner or occupier of land in any such area for damage or loss sustained by him in consequence of the conduct of such exercises on such land: Provided that no camp shall be erected within a radius of five hundred metres of a private dwelling, except with the consent of the owner or occupier thereof.

[Para. (a) amended by s. 7 of Act 28 of 1970 and by s. 36 of Act 132 of 1992.]

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

[Para. (b) amended by s. 36 of Act 132 of 1992.]

(2) The officer in command of any portion of the South African Defence Force which

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

80 Establishment of auxiliary services

(1) The Minister may establish and designate for the purposes of the South African Defence Force, or any portion thereof, auxiliary services to perform such functions as he may determine.

[Sub-s. (1) amended by s. 7 of Act 28 of 1970 and substituted by s. 6 of Act 68 of 1977.]

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

[Sub-s. (2) substituted by s. 38 of Act 87 of 1984.]

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

(a) the exercise of authority over members of such auxiliary services by other members of such auxiliary services or by members of the South African Defence Force;

(b) the trial and sentence of members of such auxiliary services by a military court or by an officer of such auxiliary services or of the South African Defence Force;

(c) the review of proceedings at trials and of sentences;

(d) the attendance and examination of witnesses, including witnesses who are not members of such auxiliary services, at such trials;

(e) penalties for offences under such disciplinary rules by way of a fine not exceeding R1 200 or imprisonment for a period not

exceeding two years, or both such fine and such imprisonment or by way of detention for a period not exceeding two years or by way of confinement to barracks or the performance of extra duties: Provided that no officer who tries such member summarily shall have jurisdiction to impose a penalty of detention for a period exceeding 40 days or a fine exceeding R200;

[Para. (e) substituted by s. 24 of Act 132 of 1992.]

(f) the recovery of any fine imposed upon a member of such auxiliary services by deductions from any pay or allowances or other moneys due or which may become due to him by the Government;

(g) the recovery by deductions from any pay and allowances or other moneys due or which may become due by the Government to a member of such auxiliary services of the amount of any deficiency, loss, injury, damage or destruction of Government property or of any expense to the Government caused by his wrongful act, omission, negligence or failure to carry out a duty; and

(h) any other matter affecting the conduct and discipline of members of such auxiliary services.

81 Voluntary nursing service

(1) The Minister may establish and designate a voluntary nursing service for tending the sick and wounded.

[Sub-s. (1) amended by s. 7 of Act 28 of 1970.]

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

82

[S. 82 repealed by s. 21 of Act 39 of 1966.]

82bis Salaries, pay and allowances to be determined by Minister for the Public Service and Administration

Members of the South African Defence Force, the Reserve, the Cadet Corps or any auxiliary or nursing service established under this Act shall receive such salaries, pay or allowances in respect of their service, training or duty in pursuance of this Act as the Minister for the Public Service and Administration may from time to time determine.

[S. 82*bis* inserted by s. 6 (1) of Act 12 of 1961, amended by s. 20 (a) of Act 39 of 1966 and by s. 36 of Act 132 of 1992 and substituted by s. 35 (1) of Act 47 of 1997.]

83 Commission

(1) (a) The State President may confer a commission, other than a temporary commission, on any citizen who is a member of the South African Defence Force and who has successfully completed the prescribed period of probation, and may issue to such citizen a Deed of Commission bearing his signature or a replica thereof.

(b) The Minister may confer a temporary commission in the South African Defence Force on any citizen or any other person who is or who is eligible to become a member of such Force.

(2) Subject to the provisions of subsection (3), a citizen on whom a commission has been conferred in terms of subsection (1) (a), shall retain his commission on being transferred to the Reserve.

(3) (a) Subject to the provisions of paragraph (c), all officers of the South African Defence Force or the Reserve on whom commissions have been conferred by the State President shall hold their commissions during the pleasure of the State President, but the commission of an officer shall not be cancelled without the holder thereof, being notified in writing of any complaint or charge made against him and of any action proposed to be taken in respect thereof, nor without his being called upon to show cause in relation thereto: Provided that no notification shall be necessary in the case of an officer absent from duty without leave for a period of three months or more, or an officer of the Reserve who has failed to advise the prescribed officer of any change in his address in accordance with any requirement of this Act.

(b) Subject to the provisions of paragraph (c), all officers of the South African Defence Force on whom temporary commissions have been conferred, shall hold their commissions during the pleasure of the Minister.

(c) The commission (including a temporary commission) of any officer shall terminate and shall be deemed to have been cancelled-

(i)

[Sub-para (i) deleted by s. 2 (a) of Act 105 of 1997.]

(ii) on the date on which effect is given to a sentence of cashiering or dismissal from the South African Defence Force which may have been imposed upon him;

(iii) on the date on which he is imprisoned pursuant to a sentence of imprisonment imposed upon him by a competent court (whether with or without the option of a fine):

Provided that if any such sentence has been imposed by a military court, such commission shall not terminate and shall not be deemed to have been cancelled unless such sentence is confirmed under the First Schedule and, if under any law it may not be carried into effect or be executed (as the case may be), although it has thus been confirmed, unless and until it has been reviewed and endorsed by a board or council of review or, unless and until the finding in question as well as the sentence has been endorsed by a council of review as being in accordance with real and substantial justice, it has after such confirmation been thus reviewed and endorsed or been thus endorsed, as the case may be.

[Para. (c) substituted by s. 25 of Act 132 of 1992 and amended by s. 2 (b) of Act 105 of 1997.]

(4) Any person whose commission has been cancelled under this section or who has resigned his commission in terms of section 86, shall within 14 days after receipt of notice to that effect addressed to him by registered post to his registered address, deliver or cause to be delivered his Deed of Commission to the officer mentioned in such notice.

(5) Any person who fails to comply with the provisions of subsection (4), shall be guilty of an offence.

(6) The appointment in the South African Defence Force of any person whose commission has been cancelled under this section, other than a person liable for service in the Citizen Force, the commandos or the Reserve, shall be terminated simultaneously with such cancellation, but no citizen shall thereby become exempt from the liability to render service in terms of Chapter X.

[S. 83 amended by s. 8 of Act 28 of 1970 and substituted by s. 39 of Act 87 of 1984.]

83A Chief of Defence Force and Secretary for Defence to be on same hierarchical level in Department of Defence

(1) Notwithstanding anything to the contrary contained in the laws governing the Public Service the Secretary for Defence and the Chief of the South African National Defence Force shall for all purposes be deemed to be on the same hierarchical level in the Department of Defence, with such division of duties, functions and responsibilities as may be determined by this Act: Provided that the Secretary for Defence-

(a) shall be vested with all the powers and charged with all the duties and functions conferred or imposed on or entrusted to the head of the department by or under any law; and

(b) shall not be responsible for the execution of the military duties and functions vested in the Chief of the Defence Force under this Act.

(2) The terms and conditions of service of the Chief of the Defence Force shall, subject to the provisions of section 2 (2) of the Public Service Act, 1994 (Proclamation 103 of 1994), be governed by this Act: Provided that the Chief of the Defence Force shall be entitled to the salary, benefits and privileges of a head of a department in terms of that Act.

(3) For the purposes of the maintenance of discipline over officers within the meaning of the laws governing the Public Service who are employed in the Department of Defence, members of the Permanent Force shall be deemed to be officers within the meaning of those laws.

[S. 83A inserted by s. 7 of Act 3 of 1969, amended by s. 6 of Act 8 of 1974, by s. 36 of Act 132 of 1992, by s. 5 of Act 32 of 1993 and by s. 4 of Act 72 of 1995 and substituted by s. 8 of Act 4 of 1997.]

84 Retirement of officers

(1) The ages of retirement of officers of the South African Defence Force shall be as prescribed, but in special cases, and subject, in the case of members of the Permanent Force, to the provisions of section 9, the Minister or any person acting under his authority may, with the consent of any officer, extend the date of his retirement to a date beyond that on which he attains the prescribed age.

[Sub-s. (1) substituted by s. 8 of Act 3 of 1969.]

(2) Officers of the South African Defence Force who have not been or are not in terms of section 15, 31 or 44A transferred to the Controlled Reserve or who are otherwise not liable or no longer liable for service therein shall, at the termination of their service in the said Force or said Reserve, be placed on a retired list, and any officer on

that list shall retain his commission and shall, as prescribed, be entitled, if he holds a rank of at least major or the equivalent thereof, to use the appellation of his rank and to wear uniform: Provided that the Minister may for sufficient reasons direct that an officer shall not so be placed on a retired list.

[Sub-s. (2) amended by s. 7 of Act 12 of 1961, substituted by s. 49 of Act 85 of 1967 and by s. 29 of Act 103 of 1982, amended by s. 9 of Act 51 of 1991 and substituted by s. 37 of Act 134 of 1993.]

85 Termination of service

The Minister may, and shall if ordered thereto by the State President, terminate the services of any member of the South African Defence Force, but no citizen shall thereby become exempt from liability to render any service which he may in terms of Chapter X be required to render.

[S. 85 substituted by s. 27 of Act 97 of 1986.]

86 Resignation of officers

(1) An officer may by notice in writing tender the resignation of his commission and appointment or of his appointment: Provided that an officer serving in the Citizen Force or the commandos, other than any such officer serving voluntarily, may so tender the resignation of his commission and appointment or of his appointment only with the approval of the Minister or a person acting under his authority.

[Sub-s. (1) amended by s. 50 of Act 85 of 1967, substituted by s. 40 of Act 87 of 1984 and amended by s. 36 of Act 132 of 1992.]

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

[Sub-s. (2) amended by s. 8 of Act 12 of 1961 and substituted by s. 9 of Act 3 of 1969.]

87 Regulations

(1) The Minister may make regulations, not inconsistent with this Act, relating to-

(a) the training (including sport as part thereof) and inspection of

the South African Defence Force, the Reserve, the Cadet Corps and any auxiliary or nursing service established under this Act;

[Para. (a) amended by s. 20 (a) of Act 39 of 1966 and substituted by s. 38 (a) of Act 134 of 1993.]

(b) the establishment of training camps;

(c) courses of instruction for persons undergoing training or engaged for service under this Act;

(d) the control of funds which are administered by a committee or other like body under the chairmanship of a member of the South African Defence Force and have been collected or accepted by or from members of that Force or any headquarters, arm of the service, formation, unit or personnel mustering therein, or by or from members of a force which prior to the commencement of this Act formed part of the defence forces of the Republic, for the benefit of such members or their dependants;

[Para. (d) substituted by s. 41 of Act 87 of 1984.]

(dA) the establishment, management and control of funds and non-trading institutions of the South African Defence Force the aims or some of the aims of which are the acquisition and possession of property, movable as well as immovable, for the provision of recreational facilities within the Republic exclusively for the benefit of members and ex-members of that Force or any headquarters, arm of the service, formation, unit or personnel mustering therein and their dependants and other prescribed persons or classes of persons;

[Para. (dA) inserted by s. 7 of Act 66 of 1972 and substituted by s. 41 of Act 87 of 1984.]

(e) the seniority and precedence of headquarters, arms of the service, formations, units and personnel musterings and of members of the South African Defence Force, the Reserve, the Cadet Corps and any auxiliary or nursing service established under this Act;

[Para. (e) amended by s. 20 (a) of Act 39 of 1966 and substituted by s. 41 of Act 87 of 1984.]

(f) the leave of absence of members of the South African Defence

Force;

(f)bis the establishment, management and control of a fund to provide for medical, dental and hospital treatment of members of the Permanent Force who retired or retire on pension on or after the first day of January, 1964, and their families, and of the families of members of the said Force who died or die on or after the said date, the class of members of the said Force or other persons who shall be or may become members of the fund, the scale or aggregate amount of contributions (if any) to be made to the fund by any particular class of members thereof, the termination of membership of the fund, the rights, privileges and obligations of members of the fund, and generally all matters reasonably necessary for the regulation and operation of such fund;

[Para. *(f)bis* inserted by s. 15 (*a*) of Act 81 of 1964.]

(f)ter the establishment, management and control of a fund to provide for medical, dental and hospital treatment of members of the Permanent Force who retired on pension before the first day of January, 1964, and their families, and of the families of members of the said Force who died before the said date, the class of members of the said Force or other persons who shall be or may become members of the fund, the scale or aggregate amount of contributions (if any) to be made to the fund by any particular class of members thereof, the termination of membership of the fund, the rights, privileges and obligations of members of the fund, and generally all matters reasonably necessary for the regulation and operation of such fund;

[Para. *(f)ter* inserted by s. 9 of Act 28 of 1970.]

(g) (i) the performance of police functions by those members of the South African Defence Force authorized thereto by the Chief of the South African Defence Force, or by any officer designated by him, for the purpose of enforcing any provision of this Act or, in so far as it applies in respect of the South African Defence Force or any member or any property thereof or any land or premises under its control, of any other law;

(ii) the powers and duties which may or shall be exercised

or executed by such members in connection with the performance of such police functions, including any powers and duties which in terms of any law may or shall be exercised or executed by any member of the South African Police established under the Police Act, 1958 (Act 7 of 1958), or by any functionary who, in terms of a definition contained in such law, is or includes a member of the South African Police;

(iii) The admissibility and evidential value in legal proceedings of any statement by a person in respect of whom such powers or duties have been exercised or executed or who has been affected thereby, irrespective of whether or not such statement was made to or in the presence of any such members;

[Para. (g) substituted by s. 41 of Act 87 of 1984.]

(h) the registration of citizens liable for service;

[Para. (h) substituted by s. 51 of Act 85 of 1967.]

(i) the exemption of any member of the South African Defence Force, the Reserve or the Cadet Corps from carrying out any full course of training prescribed for any one year;

[Para. (i) substituted by s. 51 of Act 85 of 1967.]

(j) the standards of physical fitness and the medical examination of members of the South African Defence Force and the Reserve, and authorizing medical authorities to determine such standards;

[Para. (j) substituted by s. 51 of Act 85 of 1967.]

(k) the formation, maintenance, control and management of commandos and cadet detachments;

(l) the design, award, use, care and custody of colours, standards and flags for military use, and all matters pertaining to military ceremony;

(m) honorary appointments and ranks in the South African Defence Force;

(*n*) the furnishing by the employers of persons engaged in specified occupations or industries of specified particulars in respect of such persons, the furnishing by such persons of their addresses to a specified officer, and the notification by them to such an officer of any changes in their addresses;

(*o*) the furnishing by any person in the Republic of full and accurate information as to buildings, premises, vehicles, aircraft, vessels, animals, foodstuffs, forage, fuels, oils, materials, articles or things in his possession or under his control;

(*p*) the issue and care of arms, accoutrements, ammunition, including ammunition to be held in reserve for use in cases of emergency, supplies, animals, transport, clothing and equipment;

(*q*) the government and management of, and the discipline which may be enforced in places appointed as prisons under this Act;

(*qA*) the prohibition or regulation of vehicular or other traffic in any military camp, barracks, dockyard or installation or on any other premises or any land used for military or defence purposes or which is under military control;

[Para. (*qA*) inserted by s. 30 of Act 103 of 1982.]

(*r*) the registration of motor vehicles which are the property of the State in the South African Defence Force, and the licensing of drivers of such vehicles;

[Para. (*r*) amended by s. 36 of Act 132 of 1992.]

(*rA*) the compulsory insurance of members of the South African Defence Force (other than members of the Permanent Force and any other particular class of members of the South African Defence Force) in respect of bodily injury, disablement or death occurring in the course of or as a result of military service or training, and the recovery from the salaries or pay or allowances payable to such members in terms of this Act, of the premiums payable in respect of such insurance and the payment thereof to the insurers concerned;

[Para. (*rA*) inserted by s. 3 of Act 42 of 1979.]

(*rB*) the rights of members of the Permanent Force in connection

with all matters concerning labour relations between them and the State as their employer (including conditions of service, salaries and other benefits) and the administration and management of such matters, including the settlement of disputes and the establishment of mechanisms for such purpose;

[Para. (rB) inserted by s. 11 of Act 34 of 1983, deleted by s. 26 (a) of Act 132 of 1992 and inserted by s. 38 (b) of Act 134 of 1993.]

(rC)

[Para. (rC) inserted by s. 11 of Act 34 of 1983 and deleted by s. 26 (a) of Act 132 of 1992.]

(s) all other matters which are by this Act required or permitted to be prescribed or which are necessary or convenient to be prescribed for securing the discipline and good government of the South African Defence Force, the Reserve, the Cadet Corps or any auxiliary or nursing service established under this Act or for carrying out and giving effect to this Act; and

[Para. (s) amended by s. 20 (a) of Act 39 of 1966.]

(t) penalties which may be imposed for breaches of the regulations but which shall not exceed a fine of R1 000 or imprisonment for a period of six months.

[Para. (t) substituted by s. 26 (b) of Act 132 of 1992.]

[Sub-s. (1) amended by s. 9 of Act 51 of 1991.]

(2) The Minister may under subsection (1) make different regulations for male and female persons if in his opinion the fundamental differences between the sexes necessitate the making of such different regulations.

[Sub-s. (2) amended by s. 9 of Act 51 of 1991 and substituted by s. 26 (c) of Act 132 of 1992.]

(2)*bis* Regulations under paragraph (f)*bis* of sub-section (1) may provide for benefits in respect of medical, dental and hospital treatment on the basis applicable in respect of members of the Permanent Force and their families under this Act, subject to payment for such benefits from a fund established by or under such regulations, on such basis as may be specified in or determined in accordance with such regulations.

[Sub-s. (2)*bis* inserted by s. 15 (*b*) of Act 81 of 1964.]

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

[Sub-s. (3) amended by s. 9 of Act 12 of 1961 and by s. 20 (*a*) of Act 39 of 1966.]

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

88 Protection of defence stores

(1) The Minister or any person acting under his authority may from time to time, by notice in the *Gazette*, designate a mark or marks to be applied to animals or articles to denote the ownership of the Republic or of any visiting force in those animals or articles.

[Sub-s. (1) substituted by s. 10 of Act 3 of 1969.]

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

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

89 Prohibition of access to military premises

(1) The Minister may by notice in the *Gazette* or in any other manner which he considers sufficient in the circumstances, prohibit or restrict and, in any such event,

allow on such conditions as he may deem fit access of any person to any military camp, barracks, dockyard, installation, other property (whether movable or immovable) or other premises or any land or area of water which is used either temporarily or permanently by the South African Defence Force or which is under control of that Force, including any such building, premises or area which is also being used or occupied by, or is the property of, any other person or to any part thereof.

(2) The officer in command (and, in the case of movable property, the officer in control) of any such camp, barracks, dockyard, installation, property, premises, land or area (in this section called 'military premises or property') may by order issued under his hand and made known or displayed in such manner as he considers sufficient in the circumstances, temporarily prohibit or restrict and, in any such event, allow on such conditions as he may deem fit access of any person to such military premises or property or any part thereof.

(3) Any person who enters or is within or on any such military premises or property or the part thereof to which such prohibition or restriction relates, contrary to any prohibition or restriction or condition contemplated in subsection (1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

(3A) No provision of this section shall be construed as derogating from the rights of the State through the South African Defence Force, or, if applicable, any other department of State under or pursuant to the Prevention of Illegal Squatting Act, 1951 (Act 52 of 1951), and the Minister shall for all purposes in relation to any right or expectation of the South African Defence Force to or in respect of any military premises or property in respect of which any unlawful action has been or may be taken, be competent to act as applicant, respondent, plaintiff, defendant or party in any legal proceedings.

(4) The Minister or the Chief of the South African Defence Force or an officer in command referred to in subsection (2), may further undertake or cause to be undertaken the works and take or cause to be taken such measures as he considers necessary for the efficient defence, protection or safeguarding of any military premises or property, and may in connection with any works and measures so undertaken or taken cause such notices to be published or such warning notices to be displayed or erected as he may in each particular case consider necessary.

(5) Neither the State nor any member of the Executive Authority nor any person in the service of the State nor any member of the South African Defence Force or the

Reserve shall be liable for any loss or damage suffered by any person as a result of any bodily injury, loss of life or loss of or damage to property, whether movable or immovable, caused by or arising out of or connected with any act or omission by the State, any member of the Executive Authority, any person in the service of the State or any member of such Force or Reserve in connection with any measures taken or works undertaken for the defence, protection or safeguarding of, or the prohibition or restriction of access to, any such military premises or property.

(6) For the purposes of this section (excluding subsection (2) and, in so far as it confers powers on the Chief of the South African Defence Force or an officer in command, subsection (4)), land or premises (including any part of a building) on or in which armaments as defined in the Armaments Development and Production Act, 1968 (Act 57 of 1968), are developed, manufactured, serviced, repaired or maintained by any person, or on or in which any function of the Armaments Corporation of South Africa, Limited, established under the said Act, is carried out, shall be deemed to be land or premises used by, or under the control of, the South African Defence Force.

(7) Before any person is in terms of subsection (1) or (2) allowed access to any military premises or property, anything that may in terms of section 2 (2) of the Control of Access to Public Premises and Vehicles Act, 1985 (Act 53 of 1985), be required of any person, may *mutatis mutandis* be required of him, and the conditions referred to in the said subsections (1) and (2) may include such conditions as are mentioned in section 2 (3) of the said Act.

[S. 89 amended by s. 10 of Act 12 of 1961, by s. 16 of Act 81 of 1964, by s. 20 of Act 80 of 1971 and by s. 8 of Act 66 of 1972 and substituted by s. 27 of Act 132 of 1992.]

89A Service in Citizen Force or commandos

The Minister or a person acting under his authority may at any time, in the interest of the South African Defence Force, on the prescribed conditions direct that a member of the Citizen Force shall render the service for which he is liable in terms of this Act in the commandos or *vice versa*, and such member shall, while rendering the service in question, be deemed to be a member of the commandos or the Citizen Force, as the case may be.

[S. 89A inserted by s. 9 of Act 66 of 1972 and substituted by s. 42 of Act 87 of 1984.]

CHAPTER X

PROVISIONS APPLICABLE IN TIME OF WAR OR IN CONNECTION WITH THE COMBATING OF TERRORISM OR IN CONNECTION WITH AN ARMED CONFLICT OUTSIDE THE REPUBLIC OR IN CONNECTION

WITH INTERNAL DISORDER OR OTHER EMERGENCY (ss 90-103^{quat})

[Heading substituted by s. 3 of Act 1 of 1976.]

90 Employment of Permanent Force

Subject to the provisions of this Act, the whole or any portion or any member of the Permanent Force and any member of the Citizen Force enrolled for temporary whole-time service in terms of section 20 may at any time be employed on service as provided in subsection (2) of section 3.

[S. 90 amended by s. 11 of Act 12 of 1961 and by s. 14 of Act 77 of 1963 and substituted by s. 43 of Act 87 of 1984.]

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

(1) The Minister may in time of war by notice in the *Gazette* or in such other manner as he may deem expedient, call out the whole or any portion of the Citizen Force, the whole or any portion of the Reserve and the whole or any portion of the commandos for mobilization for service in defence of the Republic.

[Sub-s. (1) amended by s. 36 of Act 132 of 1992.]

(2) If any action is taken under subsection (1) at a time when Parliament is in session, the Minister shall forthwith communicate the reason for such action to Parliament, and if Parliament be not then sitting, the State President shall summon Parliament to meet as soon as possible but not later than thirty days after the said date, and the Minister shall thereupon at its first sitting communicate the reason aforesaid.

[S. 91 amended by s. 12 of Act 12 of 1961 and substituted by s. 3 of Act 51 of 1991.]

92 Mobilization of Citizen Force, Reserve and commandos for the combating of terrorism, internal disorder or other emergency

(1) The Minister may by notice in the *Gazette* or in such other manner as he may deem expedient call out the whole or any portion of the Citizen Force, the whole or any portion of the Reserve and the whole or any portion of the commandos for service in the prevention or suppression of terrorism or in the prevention or suppression of internal disorder in the Republic or in the preservation of life, health or property or the maintenance of essential services.

[Sub-s. (1) amended by ss. 9 and 10 of Act 51 of 1991 and by s. 36 of Act 132 of

1992.]

(2)

[Sub-s. (2) deleted by s. 4 of Act 51 of 1991.]

(3) Where the urgency of the circumstances in a magisterial district of the Republic requires the immediate employment of members of the South African Defence Force in the service mentioned in subsection (1) before action can be taken in terms of subsection (1), all or some of the members of the Citizen Force or the commandos who are resident in the magisterial district concerned, may, in anticipation of such action, on the authority of the Chief of the South African Defence Force or any officer authorized thereto by him, in such manner as may be deemed expedient, be called up for the said service, and any action under this subsection shall have the same effect as any corresponding action by the Minister under subsection (1) but shall not remain in force in any case for longer than 24 hours.

[Sub-s. (3) substituted by s. 44 of Act 87 of 1984 and amended by s. 36 of Act 132 of 1992.]

[S. 92 amended by s. 13 of Act 12 of 1961, by s. 15 of Act 77 of 1963 and by s. 7 of Act 83 of 1974 and substituted by s. 4 of Act 1 of 1976.]

92bis Notification to persons called out

(1) Any member of the Citizen Force or the Reserve or the commandos who has been called out for mobilization for service under section 91 or section 92 (1) or called out for service under section 92 (3), may be notified by the Chief of the South African Defence Force or an officer authorized thereto by him, by radio or telecommunication or through the press or by letter or by word of mouth or by public notice or in such other manner as the Chief of the South African Defence Force or such officer may deem fit, of the time and place at which he is to present himself.

[Sub-s. (1) amended by s. 16 of Act 77 of 1963, substituted by s. 7 of Act 8 of 1974 and amended by s. 36 of Act 132 of 1992.]

(2) If for reasons beyond his control a person referred to in sub-section (1) is unable to present himself at the time notified as provided in that sub-section, he shall without delay personally or through any Police Station communicate such reasons to his commanding officer or the commanding officer of the nearest military headquarters, and if such commanding officer is satisfied that such person is unable to present himself at the time so notified he may, in accordance with the regulations and any orders and instructions issued under this Act, authorize that person to present himself

at such later time as may be determined by such commanding officer either at the place referred to in sub-section (1) or at such other place as may be so determined.

(3) Subject to the provisions of sub-section (2), any person who fails to present himself at the time notified as aforesaid, may be apprehended as a deserter and may be tried and punished under the Military Discipline Code for the offence of desertion committed while on service, and in any proceedings under this sub-section the onus of proof that any notification under sub-section (1) did not come to the notice of the accused, shall, subject to the provisions of section *one hundred and fifty*, be on the accused.

[S. 92*bis* inserted by s. 14 of Act 12 of 1961.]

92ter Persons performing service or undergoing training may be employed in terms of section 3 (2)

(1) Notwithstanding the provisions of section 92, a member of the Citizen Force or the Reserve or the commandos who is performing any service or duty or undergoing training in any portion of the South African Defence Force may at any time be employed as provided by section 3 (2), and any such employment shall in relation to any such member have the same force and effect as if such member had been called out under section 91 or 92: Provided that, unless the period of such employment has been extended under subsection (2) of this section-

(a) no service under this subsection in defence of the Republic shall extend for a period of more than four days beyond the termination of the time which would have been occupied by the service, duty or training which the member is performing or undergoing; and

(b) no service under this subsection in the prevention or suppression of terrorism, or in the prevention or suppression of internal disorder in the Republic, or in the preservation of life, health or property or the maintenance of essential services, shall extend for a period of more than seven days beyond the termination of the time which would have been occupied by the service, duty or training which the member is performing or undergoing.

[Para. (b) substituted by s. 5 of Act 1 of 1976.]

[Sub-s. (1) amended by s. 36 of Act 132 of 1992.]

(2) The Minister may, whenever he considers it to be necessary in the interest of the South African Defence Force or in the public interest, extend the period during which

service in terms of subsection (1) shall be rendered by a member referred to therein, by such a period or periods as he may deem fit, but not till after the termination of six months after the termination of the time which would have been occupied by the service, duty or training which the member is performing or undergoing.

[Sub-s. (2) substituted by s. 7 of Act 68 of 1977.]

(3) If any period of service is extended under subsection (2), the Minister shall within fourteen days of such extension communicate the reasons therefor to Parliament, if Parliament is then in session, or, if Parliament is not then in session, within fourteen days after the commencement of its next ensuing session.

[Sub-s. (3) amended by s. 36 of Act 132 of 1992.]

[S. 92*ter* inserted by s. 14 of Act 12 of 1961 and substituted by s. 17 of Act 77 of 1963 and by s. 8 of Act 83 of 1974.]

93 Definition of expression 'any portion'

For the purposes of sections *ninety*, *ninety-one* and *ninety-two*, the expression 'portion', in relation to any Force or the Reserve or the commandos, includes persons belonging to that Force or the Reserve or the commandos, who are of or below or above a specified age or are engaged in a specified profession, trade, occupation or calling or in a profession, trade, occupation or calling other than a specified profession, trade, occupation or calling or are resident in a particular area.

[S. 93 amended by s. 15 of Act 12 of 1961 and by s. 36 of Act 132 of 1992.]

94

[S. 94 repealed by s. 52 of Act 85 of 1967.]

95 Compulsory service outside the Republic

(1) A member of the South African Defence Force may in time of war be required to perform service against an enemy at any place outside the Republic.

(2) For the purposes of subsection (1) service for the prevention or suppression of terrorism or of any armed conflict contemplated in paragraph (c) of the definition of 'service in the defence of the Republic' in section 1, shall be deemed to be service in time of war against an enemy: Provided that the employment, for a period exceeding one month, beyond the borders of the Republic of members of the South African Defence Force for the prevention or suppression of any armed conflict outside the

Republic, shall be deemed to be mobilization in terms of section 91 and shall be subject to the provisions of section 91 (2).

[S. 95 substituted by s. 6 of Act 1 of 1976.]

96 Release and discharge from service

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

[Sub-s. (1) amended by s. 18 of Act 77 of 1963 and by ss. 9 and 10 of Act 51 of 1991.]

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

[Sub-s. (2) substituted by s. 7 of Act 1 of 1976 and by s. 45 of Act 87 of 1984.]

97 Exemption from service

(1) No person shall be liable to be called up in terms of section 91 or 92 for mobilization to render service as contemplated in the said sections, if he is-

(a)

[Para. (a) deleted by s. 28 (b) of Act 132 of 1992.]

(b) an officer of Parliament;

(c) a judge of the Supreme Court of South Africa or an officer thereof (other than an advocate, attorney, notary or conveyancer) or a judicial officer of any other court of law of the Republic;

(d) a minister of religion of a prescribed denomination;

(e) a member of the South African Police;

[Para. (e) substituted by s. 28 (c) of Act 132 of 1992.]

(f) a member of the Department of Correctional Services;

[Para. (f) substituted by s. 53 (a) of Act 85 of 1967 and by s. 28 (c) of Act 132 of 1992.]

(g) employed in a lighthouse;

(h) occupying a post which has been designated by the Minister of Manpower, acting in consultation with the Minister and upon the recommendation of the manpower board established under section 74bis, for the purposes of this paragraph as a key post in a key industry or service;

[Para. (h) deleted by s. 19 of Act 77 of 1963, inserted by s. 9 of Act 83 of 1974 and substituted by s. 28 (d) of Act 132 of 1992.]

(i) the head of a department of State as contemplated in the Public Service Act, 1984 (Act 111 of 1984); or

[Para. (i) substituted by s. 28 (d) of Act 132 of 1992.]

(j) engaged in any prescribed employment or occupation.

[Sub-s. (1) amended by s. 28 (a) of Act 132 of 1992.]

(2) Any other person called up for service as aforesaid may-

(a) be granted deferment of the rendering of such service-

(i) for a period during which he is, according to a certificate by the prescribed medical authority, medically or psychologically unfit for the rendering of such service; or

(ii) for a period determined by an exemption board, constituted as provided in section 98, if it appears to such board that it is in the public interest that he should be granted such deferment for such period; or

(b) be exempted from such service if-

(i) he has been certified by the prescribed medical authority as being medically or psychologically permanently unfit for such service; or

(ii) it appears to such an exemption board that it is in the public interest that he should be so exempted.

[Sub-s. (2) substituted by s. 28 (e) of Act 132 of 1992.]

(3)

[Sub-s. (3) substituted by s. 53 (b) of Act 85 of 1967 and deleted by s. 12 of Act 34 of 1983.]

(4) Where in consequence of an application any question arises as to whether a person should under this section be granted deferment of or be exempted from the rendering of service, the burden of proving it shall lie on the applicant, and all applications for deferment or exemption shall be heard and decided by an exemption board, constituted as provided in section 98.

[Sub-s. (4) substituted by s. 28 (f) of Act 132 of 1992.]

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

98 Appointment and proceedings of exemption boards

(1) Whenever the circumstances so require, the Minister of Manpower shall, in consultation with the Minister, appoint one or more exemption boards to consider and, subject to a directive in terms of sub-paragraph (ii) of paragraph (a) of sub-section (1) of section *seventy-four bis*, decide upon applications for exemption under section *ninety-seven*.

[Sub-s. (1) substituted by s. 11 (a) of Act 42 of 1961 and amended by s. 20 of Act 77 of 1963 and by s. 36 of Act 132 of 1992.]

(2) Any such board shall be constituted in the same manner as a board appointed in terms of section *sixty-eight*.

[Sub-s. (2) substituted by s. 11 (a) of Act 42 of 1961.]

(3) The provisions of sub-section (3) of section *sixty-eight* and sub-sections (2) and (3) of section *sixty-nine* shall *mutatis mutandis* apply with reference to an exemption board appointed under this section, and in the application of the said sub-section (2) the reference therein to the registering officer shall be construed as a reference to a prescribed officer.

(4)

[Sub-s. (4) added by s. 11 (b) of Act 42 of 1961 and deleted by s. 17 of Act 88 of 1996.]

99 Security of harbours and aerodromes

(1) The Minister may during operations in defence of the Republic or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in the Republic issue orders and instructions, which may be made known in such manner as he deems most suitable in the circumstances-

(a) forbidding or restricting in any way he may think fit all entrance to or egress of vessels or aircraft from a harbour or aerodrome;

(b) forbidding or restricting in any way he may think fit the movements of vessels or aircraft when within the limits of a harbour or aerodrome;

(c) for the examination of all vessels or aircraft seeking to enter or leave a harbour or an aerodrome or being within a harbour or on an aerodrome or within the airspace above the Republic and for requiring or forcing any such aircraft within the airspace above the Republic to land within the Republic for the purpose of being examined;

(d) for the taking of such other steps as may be thought necessary or desirable for securing the safety of any harbour or aerodrome or otherwise for the purposes of defence, the generality of this provision not being limited by the particular matters provided for in paragraphs (a), (b) and (c) of this subsection.

[Sub-s. (1) amended by s. 5 of Act 35 of 1977 and by s. 9 of Act 51 of 1991.]

(2) For the purposes of this section-

'harbour' means any harbour under the jurisdiction of the 'Company' or the 'Corporation' defined in section 1 of the Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989), any area of land and sea which the State President may designate as a harbour or any area of land and sea which the State President may assign to any harbour; and

'aerodrome' means a defined area of land or water (including any building, installation

and equipment thereon) intended to be used either wholly or in part in connection with the arrival, departure or movement of aircraft, and includes any area which the State President may by proclamation in the *Gazette* designate as an aerodrome, and the airspace above any aerodrome.

[Sub-s. (2) amended by s. 36 of Act 132 of 1992.]

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

[Sub-s. (3) amended by s. 9 of Act 51 of 1991.]

99A Safeguarding borders of Republic

(1) The Minister may in defence of the Republic or for the prevention or suppression of terrorism cause any land to be entered upon, without the consent of any person who is or may be affected thereby, by persons with the necessary equipment and cause to be performed within a strip not exceeding 10 kilometres in width along the border between the Republic and any state or country other than the Republic, such functions as the Minister may determine.

(2) Without derogating from the generality of those functions, they may comprise the removal of trees, plants, buildings and structures, the erection of buildings and structures and the planting of trees and plants.

(3) The State, the Minister, a member of the South African Defence Force, or any other person in the service of the State or any other person shall not be liable by reason of anything done by virtue of the provisions of subsection (1).

(4) Any person who obstructs or hinders any person in the performance of his functions referred to in subsection (1), shall be guilty of an offence.

(5) Any person who without the written authority of the Minister or his deputy removes, alters, damages, destroys or interferes with anything done or effected or planted on land by virtue of the provisions of subsection (1), shall be guilty of an offence.

[S. 99A inserted by s. 3 (1) of Act 49 of 1978.]

100 Commandeering

(1) The State President may during operations in defence of the Republic or for the

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

[Sub-s. (1) amended by s. 16 of Act 12 of 1961 and substituted by s. 6 of Act 35 of 1977.]

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

101 Censorship

(1) The State President may during operations in defence of the Republic or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in the Republic by proclamation in the *Gazette*, or in such other manner as he deems expedient in the circumstances, establish and provide for the doing of all things necessary to enforce a censorship over all or any description of postal, telegraphic, telephonic or radio matter or communications passing within, into or from the Republic, and over all or any description of letters, written or printed matter, parcels, pictures, drawings, sketches, photographs or gramophone records (including any article, apparatus or device upon which or by means of which intelligence or sounds of any kind have been recorded and can be reproduced) addressed or intended to be delivered or conveyed to any person, and prescribe the conditions under which the postal, telegraph, telephone or radio services may be used.

[Sub-s. (1) substituted by s. 7 of Act 35 of 1977.]

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

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

(4) In addition to the powers vested in him under any law, the Postmaster-General or

the managing director of the telecommunications company as defined in the Post Office Act, 1958 (Act 44 of 1958), may delay the transmission of any radio or telegraphic communication, respectively, which in his opinion improperly discloses or deals with information relating to defence the publication of which is prohibited under section 118, and may with the sanction of the Minister or a person acting under his authority refuse to transmit any such communication in whole or in part.

[Sub-s. (4) substituted by s. 78 of Act 85 of 1991.]

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

102 Control and use of transport systems

(1) The State President may during operations in defence of the Republic or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in the Republic, authorize any officer of the South African Defence Force to assume control over any railway, road, inland water or sea transport system or any air service, or any portion thereof, within the Republic.

(2) The Minister may during operations in defence of the Republic or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in the Republic, requisition the authorities controlling any transport system or air service referred to in subsection (1), to supply suitable engines and rolling stock, vehicles, vessels or aircraft for the conveyance of members of the South African Defence Force or other forces acting in co-operation therewith, or any auxiliary or voluntary nursing service established under this Act, and their guns, armament, ammunition, baggage, stores, supplies, vehicles, vessels and animals, and to convey the same by rail, road, water or air to or from any point within or outside the Republic, as may be necessary.

[S. 102 amended by s. 17 of Act 12 of 1961 and substituted by s. 54 of Act 85 of 1967 and by s. 8 of Act 35 of 1977.]

103

[S. 103 amended by s. 21 of Act 77 of 1963, substituted by s. 55 of Act 85 of 1967, amended by s. 36 of Act 132 of 1992 and repealed by s. 4 of Act 86 of 1995.]

103bis Evacuation or concentration of persons

During operations in defence of the Republic or for the prevention or suppression of

terrorism or for the prevention or suppression of internal disorder in the Republic the Minister or any officer acting under his authority may, for the efficient defence or protection of the Republic or the prevention or suppression of terrorism or such internal disorder, by order made known in such manner as the Minister or any such officer may deem sufficient in the circumstances, require any person or all persons, or persons of any particular class, to evacuate within a time specified in the order or to assemble in any particular building, premises or area, and any such person who fails to comply with such an order which is applicable to him, shall be guilty of an offence: Provided that no order under this section to assemble in any building, premises or area shall remain in force for longer than four days.

[S. 103*bis* inserted by s. 18 of Act 12 of 1961 and substituted by s. 9 of Act 35 of 1977 and by s. 31 of Act 103 of 1982.]

103*ter*

[S. 103*ter* inserted by s. 8 of Act 1 of 1976, amended by s. 10 of Act 35 of 1977, by s. 1 of Act 77 of 1980 and by s. 36 of Act 132 of 1992 and repealed by s. 18 of Act 88 of 1996.]

103*quat* Compensation

(1) Any person who-

(a) suffered damage as a result of an act or omission in respect of which, in terms of section 103*ter*, no proceedings may be instituted or any proceedings have lapsed; or

(b) in connection with any civil proceedings which have lapsed as aforesaid, incurred any costs in respect of which the court may in terms of that section not make an order,

may apply to the Minister in writing for compensation, setting out fully the grounds on which the application is based, the extent and nature of the damage or costs and the compensation desired.

(2) (a) The Minister, acting in consultation with the Minister of Finance, may grant any application made under subsection (1) and pay an amount by way of compensation to the person who made the application.

(b) If the application is not granted under paragraph (a) or is so granted but no amount is paid under that paragraph by way of compensation or is so granted and the applicant considers the compensation inadequate, the Minister shall refer the application to a

board established under subsection (3).

(3) The Minister shall, as often as he may deem it expedient, establish a board, to be known as a compensation board, which shall consider any application referred to it under subsection (2) and make a recommendation to the Minister as to the granting or refusal of such application or any part thereof and the amount of the compensation to be paid in so far as it recommends that the application is to be granted.

(4) (a) A compensation board shall consist of a chairman, who shall be a person who holds or held office as a judge of the Supreme Court of South Africa or as a magistrate, and such number of other members (if any), not exceeding four, as the Minister may determine.

(b) The members of a compensation board shall be appointed by the Minister.

(c) A member of a compensation board shall hold office under such conditions, including conditions relating to his period of office and remuneration, as the Minister may subject to the provisions of paragraph (d) determine at the time of his appointment.

(d) A member of a compensation board who is not in the full-time service of the State may be paid such remuneration or allowances as the Minister may determine in consultation with the Minister of Finance.

(5) (a) A compensation board shall meet at such time and place and shall adhere to such procedure as the chairman may determine.

(b) Where a compensation board consists of more than two members, the majority shall constitute a quorum for any meeting and any decision of the majority present at any meeting shall be the decision of the compensation board.

(c) Where a compensation board consists of two or more members, the chairman shall in the event of an equality of votes on any matter have a casting vote in addition to his deliberative vote.

(6) (a) A compensation board may furnish its recommendation in connection with any application after consideration of the documents submitted to it in terms of subsection (2), or, at its discretion, make such investigation in connection with that application in such manner as it may deem necessary in order to enable it to furnish a recommendation.

(b) For the purposes of such an investigation a compensation board may, in so far as it deems necessary-

- (i) receive or hear written or oral statements, evidence or arguments;
- (ii) through its chairman administer an oath or solemn affirmation to any person;
- (iii) by notice in writing signed by or under the authority of its chairman, require any person to appear before the compensation board, at a time and place stated in the notice, to give evidence or to produce any book or other document or thing in his possession or custody or under his control and indicated in the notice.

(7) The Minister shall in writing notify a compensation board's recommendation in connection with an application for compensation to the person who made the application, and shall give effect to such recommendation.

(8) Any amount payable by the Minister in terms of this section shall be paid out of the Consolidated Revenue Fund.

(9) (a) The Minister or a compensation board shall not be obliged to furnish any person with any information in connection with or any reasons for a decision or recommendation for the purposes of this section.

(b) No person shall be entitled to attend the proceedings of a compensation board or to appear or be represented before a compensation board, except with the leave or at the request of such compensation board or in compliance with a notice under subsection (6) (b) (iii).

(10) Any person who-

(a) fails to comply with a notice under subsection (6) (b) (iii); or

(b) refuses to supply or produce to a compensation board, after having been required by such compensation board to do so, any information at his disposal or any book, other document or thing in his possession or custody or under his control; or

(c) makes a false statement, knowing it to be false, in any application for compensation under subsection (1) or to a compensation board in connection with any such application,

shall be guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a) or (b), to a fine not exceeding two hundred rand or imprisonment

for a period not exceeding three months, and, in the case of an offence referred to in paragraph (c), to any punishment that may in law be imposed for perjury.

[S. 103^{quat} inserted by s. 8 of Act 1 of 1976.]

CHAPTER XI

DISCIPLINE, LEGAL PROCEDURE AND OFFENCES (ss 104-127)

104 Military Discipline Code

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

(2) (a) The State President may, with the approval by resolution, of Parliament, by proclamation in the *Gazette* insert any new provision in or amend or repeal any provision of the First Schedule.

[Para. (a) amended by s. 36 of Act 132 of 1992.]

(b) The State President may exercise any of the powers conferred upon him by paragraph (a) with regard to sections 58 to 59 of the First Schedule with retrospective effect: Provided that in so doing he shall not create any offence or increase any penalty.

[Para. (b) added by s. 2 of Act 77 of 1980.]

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

[Sub-s. (3) amended by s. 9 of Act 51 of 1991 and by s. 36 of Act 132 of 1992.]

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

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

(a) to all members of the Permanent Force;

(b) to members of the Citizen Force, commandos and the Reserve, while they are rendering any service, undergoing any training or doing any duty in pursuance of this Act or, when liable or called up therefor, fail to render such service or to undergo such training or to do such duty;

[Para. (b) amended by s. 56 of Act 85 of 1967, by s. 10 of Act 28 of 1970, by s. 11 of Act 35 of 1977 and by s. 4 of Act 49 of 1978 and substituted by s. 47 of Act 87 of 1984.]

(c) to all persons (other than members of a visiting force) lawfully detained by virtue of or serving sentences of detention or imprisonment imposed under the Military Discipline Code;

[Para. (c) added by s. 19 of Act 12 of 1961.]

(d) to members of the auxiliary services, established in terms of section 80, being on service as defined in the First Schedule.

[Para. (d) added by s. 4 of Act 42 of 1979.]

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

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

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

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

106 Person tried once only

Any person who has been convicted or acquitted of an offence by a military court, and any person to whom the Military Discipline Code applies and who has been convicted or acquitted of an offence by any other court, shall not be liable to be tried again in respect of that offence or any other offence of which he could have been convicted in terms of the provisions of any law on a charge of the first-mentioned offence, by any court.

[S. 106 substituted by s. 30 of Act 132 of 1992.]

107

[S. 107 repealed by s. 43 (a) of Act 16 of 1999.]

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

A military court may try any person to whom the Military Discipline Code applies, for any offence under this Act as if the offence were an offence under the Military Discipline Code: Provided that such court shall not impose in respect of any such offence a penalty which is beyond the jurisdiction of such a court in terms of the Military Discipline Code or exceeds the penalty prescribed for that offence by this Act.

[S. 108 amended by s. 22 of Act 77 of 1963.]

109 Offences by persons against members of other forces

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

110

[S. 110 amended by s. 20 of Act 12 of 1961 and by s. 11 of Act 28 of 1970 and repealed by s. 5 of Act 49 of 1978.]

111 Warrants

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

112 Place of imprisonment for military offences

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

[S. 112 amended by s. 46 of Act 97 of 1986.]

113 Limitation of actions

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

(2) If notice is to be given to the State in connection with a civil action referred to in subsection (1), any notice given to the Chief of the South African Defence Force shall be deemed to be a notice given to the State.

[Sub-s. (2) added by s. 32 of Act 103 of 1982.]

114 Prohibition on possession of, and performance of certain acts in connection with, certain goods with certain camouflage patterns

(1) (a) Subject to the provisions of subsection (2) no person shall have in his possession, use, wear or be dressed in, acquire, import, manufacture or supply, alienate, lend or give to any person any textile, material, article of clothing or any other article whatsoever which in whole or in part-

(i) is coloured with a combination of colours forming a pattern so as

to render it inconspicuous in a natural environment; or

(ii) displays a near-infra-red reflection pattern or level or a combination of near-infra-red reflection patterns or levels,

and which, subject to the provisions of section 26A of the Police Act, 1958 (Act 7 of 1958), and a notice by the Minister of Law and Order thereunder, is determined by the Minister from time to time by notice in the *Gazette* to be a camouflage of the South African Defence Force for exclusive use in or in relation to the execution or performance of their service or functions in terms of this Act by the members of that Force, the Reserve or an auxiliary or voluntary nursing service established under this Act.

(b) The provisions of paragraph (a) shall be applicable *mutatis mutandis* in relation to any textile, material, article of clothing or any other article whatsoever which in whole or in part-

(i) displays a pattern or combination of colours which so resembles a combination of colours forming a pattern as contemplated in paragraph (a) (i); or

(ii) displays a reflection pattern or level or a combination of reflection patterns or levels which so resembles a reflection pattern or level or a combination of reflection patterns or levels as contemplated in paragraph (a) (ii),

that it may be mistaken therefor: Provided that a determination by the Minister in the *Gazette* contemplated in paragraph (a) shall not be necessary in respect of such a pattern, combination of colours, reflection pattern or level or combination thereof which may be so mistaken.

(c) Any near-infra-red reflection pattern or level or any combination of near-infra-red reflection patterns or levels contemplated in paragraph (a) (ii) or (b) (ii) is a reflection pattern or level or a combination of reflection patterns or levels, respectively, which is observed by means of an instrument picking up, measuring and registering electromagnetic waves reflected by any textile, material, article of clothing or any other article whatsoever, in a band of 700 to 1100 nanometers, and which reproduces it in a manner which can be observed by the human eye.

(2) The provisions of subsection (1) (a) shall not be applicable to-

(a) a member of the South African Defence Force, the Reserve or an auxiliary or voluntary nursing service established under this Act

in or in relation to the execution or performance of his service or functions in terms of this Act; or

(b) any person who acts in terms of a written contract with the South African Defence Force in accordance with the provisions of such contract; or

(c) any person who acts in terms of an authorization by the Chief of the South African Defence Force or a person designated by him, in accordance with the provisions of such authorization.

(3) The Minister may, in making any determination in the *Gazette* contemplated in subsection (1) (a), also make use of a sketch or photograph.

(4) Any person who contravenes any provision of subsection (1) (a) or (b) read with (a) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[S. 114 repealed by s. 21 of Act 12 of 1961 and inserted by s. 6 of Act 32 of 1993.]

115 Misuse of uniforms

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

(a) he is a member of the South African Defence Force or of a force of such country, as the case may be, who by reason of his rank is entitled to wear such uniform; or

(b) he has been granted permission by the proper authority to wear such uniform.

(2) Any person who wears or displays any uniform of the South African Defence Force or any dress having the appearance or bearing the marks of any such uniform, or who in time of war wears or displays a uniform of any force of a country which is allied to the Republic, or any dress having the appearance or bearing the marks of any such uniform, in such a manner and in such circumstances as to bring or to be likely to bring contempt or ridicule upon the uniform or service of any such Force, or who employs any other person so to wear or display that uniform or dress, shall be guilty of

an offence.

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

[Sub-s. (3) substituted by s. 13 of Act 34 of 1983.]

116 Unauthorized use of decorations

(1) Any person who-

(a) wears or uses any military decoration or the distinctive ribbon thereof; or

(b) represents himself to be a person who is or has been entitled to wear or use any such decoration or ribbon,

shall be guilty of an offence, unless he is a person to whom such decoration has been awarded or he has been authorized by competent authority to wear or use such decoration or ribbon.

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

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

117 Use of name, title, etc indicating connection with force

(1) No organization, association or other body of persons, corporate or unincorporate, shall, without the approval of the Minister, take, use or in any manner whatever publish any name, title, description or symbol indicating or purporting to indicate or calculated or likely to lead persons to infer that it has been established under or in

pursuance of any provision of this Act or in or by the South African Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering therein or that it is in any manner connected or associated with such force, headquarters, arm, formation, unit or personnel mustering if it has not been so established or is not so connected or associated.

[Sub-s. (1) substituted by s. 14 of Act 34 of 1983.]

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

118 Improper disclosure of information

(1) No person shall publish in any newspaper, magazine, book or pamphlet or by radio or any other means-

(a) any information relating to the composition, movements or dispositions of-

(i) the South African Defence Force or any auxiliary or voluntary nursing service established under this Act, or any force of a country which is allied to the Republic; or

(ii) any South African or allied ships or aircraft used for naval or military purposes; or

(iii) any engines, rolling stock, vehicles, vessels or aircraft of any railway, road, inland water or sea transport system or air service over which an officer of the South African Defence Force has assumed control in terms of section 102 (1), or anything which has been supplied on requisition by the Minister in terms of section 102 (2) or any statement, comment or rumour calculated directly or indirectly to convey such information, except where the information has been furnished or the publication thereof has been authorized by the Minister or under his authority; or

(b) any statement, comment or rumour relating to any member of the South African Defence Force or any activity of the South

African Defence Force or any force of a foreign country, calculated to prejudice or embarrass the Government in its foreign relations or to alarm or depress members of the public, except where publication thereof has been authorized by the Minister or under his authority.

[Sub-s. (1) substituted by s. 57 (a) of Act 85 of 1967.]

(1A) No prosecution in respect of an offence under subsection (1) shall be instituted except on the written authority of the attorney-general having jurisdiction in the area concerned or of a member of his staff designated by him in writing.

[Sub-s. (1A) inserted by s. 57 (b) of Act 85 of 1967.]

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

[Sub-s. (2) substituted by s. 57 (c) of Act 85 of 1967.]

(3) Any proprietor, printer, publisher or editor of any newspaper, magazine, book or pamphlet in which any such information as aforesaid is published, and any person responsible for the publication of such information by such or any other means, shall be guilty of an offence, and proceedings in respect thereof may be taken against all or any of such persons.

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

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

(a) that any information relating to the defence of the Republic is secret or confidential; and

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

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

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

119 Prohibition on taking of photographs or making of sketches, etc, of military premises or installations

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

(a) take any photograph or make any sketch, plan, model or note of any military camp, barracks, dockyard, installation or other premises or any land or area of water used for military or defence purposes or which is under military control, or of any part thereof or any object therein; or

(b) have in his possession in or on such camp, barracks, dockyard, installation, premises, land or area any camera or other apparatus which may be used for the taking of photographs.

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

[S. 119 amended by s. 58 of Act 85 of 1967 and substituted by s. 12 of Act 35 of 1977.]

120 Obstructing South African Defence Force

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

[S. 120 amended by s. 20 (b) of Act 39 of 1966.]

121 Prohibition of certain acts in connection with liability to render service

Any person who-

(a) agrees with or induces, or attempts to induce, any member of the South African Defence Force or any auxiliary service or voluntary nursing service established under this Act, to neglect or to act in conflict with his duty in that Force or service; or

(b) is a part to or aids or abets or incites to the commission of any act whereby any lawful command given to any member of that Force or service or any law or regulation with which it is the duty of any member of that Force or service to comply, may be evaded or infringed; or

[Para. (b) amended by s. 5 of Act 72 of 1995.]

(c) uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any other person or any category of persons or persons in general to refuse or fail to render any service to which such other person or a person of such category or persons in general is or are liable or may become liable in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.

[S. 121 amended by s. 23 of Act 77 of 1963 and by s. 20 (c) of Act 39 of 1966 and substituted by s. 10 of Act 83 of 1974.]

121A Prohibition of certain acts in connection with service as mercenaries

(1) Any person who-

(a) is a member of the South African Defence Force or the Reserve or an auxiliary or voluntary nursing service established in terms of this Act and who binds himself to service or renders service as a mercenary; or

(b) makes any utterance or performs any act or does anything with intent to advise, encourage, assist, incite, instigate, suggest to or otherwise persuade any member referred to in paragraph (a) to bind himself to serve or to render service as a mercenary,

shall be guilty of an offence.

(2) Any person convicted of a contravention of-

(a) subsection (1) (a), shall be liable to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

(b) subsection (1) (b), shall be liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) In any prosecution for a contravention of subsection (1) (b), it shall be presumed in the absence of proof to the contrary that the accused at the time when he made the utterance, performed the activity or acted otherwise, knew that the person in respect of whom the offence is alleged to have been committed was a member referred to in subsection (1) (a).

(4) Any court of law with penal jurisdiction may try a person for a contravention of subsection (1) (a) or (b), notwithstanding the act that the whole or any part of the act constituting the offence was committed outside the Republic.

[S. 121A inserted by s. 15 of Act 34 of 1983.]

122 Offences relating to intoxicating liquor

(1) Any person who-

(a) supplies or is a party to supplying any member of the South African Defence Force or any auxiliary service or voluntary nursing service established under the Act with intoxicating liquor when that member is on duty and is prohibited under regulations, orders or instructions from receiving or taking intoxicating liquor;

[Para. (a) amended by s. 24 of Act 77 of 1963 and by s. 20 (c) of Act 39 of 1966.]

(b) supplies intoxicating liquor for other than medicinal purposes to any cadet in uniform;

[Para. (b) substituted by s. 59 (a) of Act 85 of 1967.]

(c)

[Para. (c) deleted by s. 59 (b) of Act 85 of 1967.]

shall be guilty of an offence.

(2)

[Sub-s. (2) deleted by s. 59 (c) of Act 85 of 1967.]

123 Personation

Any person who by word, conduct or demeanour falsely represents himself to be a member of the South African Defence Force or any auxiliary service or voluntary nursing service established under this Act or a particular member thereof or a person holding a particular rank or appointment therein, shall be guilty of an offence.

[S. 123 amended by s. 25 of Act 77 of 1963 and by s. 20 (c) of Act 39 of 1966.]

124 Offences in connection with commandeering

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

125 Wrongful disposal of property

(1) Any member of the South African Defence Force or the Reserve or the Cadet

Corps or any Auxiliary Service established under this Act, who without authority gives away, sells, pledges, lends or otherwise disposes of any moneys, animals, arms, ammunition, accoutrements, clothing, supplies or any other articles entrusted to or held by him in the service of such defence force, reserve, corps or auxiliary service, or who as a result of his negligence loses any such articles so entrusted to or held by him, shall be guilty of an offence, and made apart from any penalty which may be imposed upon him for such an offence under this Act, be ordered by the court or other competent authority which imposes that penalty, to make good any loss or deficiency caused by the commission of such offence, and every such gift, sale, pledge, loan or other disposition shall be null and void.

(2) Whenever it is proved on a charge under this section for the loss of any article as a result of negligence, that the said article was entrusted to or held by the accused for any service referred to in subsection (1), and that he has failed to produce such article on demand to any person holding a rank superior to his, it shall be presumed, until the contrary is proved, that the accused had lost the said article as a result of his negligence.

[S. 125 substituted by s. 60 of Act 85 of 1967.]

126

[S. 126 substituted by s. 61 of Act 85 of 1967 and repealed by s. 6 of Act 49 of 1978.]

126A Refusal or failure of service

(1) Any person liable to render service in terms of section 22 or 44 who when called up to do so-

(a) refuses to render such service in the South African Defence Force, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding the prescribed period of community service as contemplated in this Act to which he would have been liable if he had been classified as a conscientious objector in terms of section 72D (1) (a) (iii) at the time when he so refused to render service; or

(b) fails to report therefor, shall be guilty of an offence and liable on conviction only to imprisonment for a period not exceeding four months or, irrespective of his rank, detention for a period not exceeding four months or such a fine as may be imposed upon him, according to his rank, by a court martial in terms of the provisions

of the First Schedule.

[Sub-s. (1) amended by s. 2 of Act 45 of 1987 and substituted by s. 31 (a) of Act 132 of 1992.]

(2) Any person liable in terms of any other provision of this Act to render service or undergo training in the South African Defence Force or the Reserve, other than a liability to render service in terms of Chapter X, and who when called up-

(a) refuses to render such service or to undergo such training, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding 18 months;

(b) fails to report therefor, shall be guilty of an offence and liable on conviction only to imprisonment for a period not exceeding four months or, irrespective of his rank, to detention for a period not exceeding four months or such fine as may be imposed upon him, according to his rank, by a court martial in terms of the provisions of the First Schedule.

[Sub-s. (2) substituted by s. 31 (b) of Act 132 of 1992.]

(2A) Any person liable in terms of this Act to render service in terms of Chapter X and who, on account of his refusal to render such service or to report therefor, is convicted of desertion as contemplated in section 92*bis* (3), shall be liable to imprisonment for a period not exceeding six months or such longer period as the Minister may by notice in the *Gazette* determine.

[Sub-s. (2A) inserted by s. 31 (c) of Act 132 of 1992.]

(3) Notwithstanding anything to the contrary contained in any law-

(a) a magistrate's court shall, if it otherwise has jurisdiction, have jurisdiction to impose the sentences and determine conditions provided for in this section;

(b) at the imposition in terms of this section of-

(i) any sentence of imprisonment or detention which, if permissible, has not been suspended in full; or

(ii) a sentence in terms of this section of a fine by a magistrate's court at the non-payment of which imprisonment is served, where, due to such non-payment,

imprisonment is served,

the commission of an officer shall be deemed to have been cancelled and a warrant officer or a non-commissioned officer shall be deemed to have been sentenced to reduction to the ranks.

[Sub-s. (3) substituted by s. 31 *(d)* of Act 132 of 1992.]

(4) If in any prosecution for a contravention of subsection (1) *(a)* or (2) *(a)* or an offence referred to in subsection (2A), it is proved that the accused failed to report for the service referred to therein or, having reported for service, failed to render military service or undergo military training, it shall be presumed, unless the contrary is proved, that he refused to render service or undergo training, as the case may be, in the South African Defence Force or the Reserve, as the case may be.

[Sub-s. (4) substituted by s. 31 *(e)* of Act 132 of 1992.]

(5) If in any prosecution for a contravention of-

(a) subsection (1) *(a)* the evidence does not prove a contravention of that subsection, but a contravention of subsection (1) *(b)*;

(b) subsection (2) *(a)* the evidence does not prove a contravention of that subsection, but a contravention of subsection (2) *(b)*,

the accused may be convicted of a contravention of subsection (1) *(b)* or (2) *(b)*, as the case may be.

(6) Any person who has served the full period of imprisonment imposed upon him in terms of subsection (1) *(a)* or (2) *(a)*, shall be exempt from his liability to render service in terms of this Act.

(7) Any person convicted in terms of subsection (1) *(a)* or (2) *(a)* or of an offence referred to in subsection (2A) who, before the expiry of any term of imprisonment which he is serving in consequence thereof, in a notice signed by him and directed to the Chief of the South African Defence Force, states that he is willing to render service or to undergo training in terms of this Act, shall be exempted from serving the remaining portion of his sentence of imprisonment provided he renders the service or undergoes the training which in terms of this Act he is obliged and has been called up, and may be called up over a period of 60 months as from the date of his notice, to render or undergo: Provided that if that person should at any time during the said period of 60 months refuse to render the last-mentioned service or undergo the last-mentioned training he shall, notwithstanding anything to the contrary contained in any

law, serve the said remaining portion of his term of imprisonment: Provided further that the Minister may determine that any part of the period of imprisonment which that person has served as contemplated in this subsection, shall be regarded as service or training which he is liable to render or to undergo and has rendered or undergone.

[Sub-s. (7) substituted by s. 31 (f) of Act 132 of 1992.]

(8) If at the trial of any person for a contravention in terms of this Act it is necessary to-

(a) determine the duration of any period or periods of service which such person who is in terms of this Act liable to render service or to undergo training in the South African Defence Force or the Reserve,

(i) has been called up; or

(ii) may still be called up, whether for one or more periods of service as contemplated in this Act,

to render service or undergo training in that Force or Reserve;

(b) determine, in accordance with the provisions of this Act, the period of community service as contemplated in this Act to which he is liable, and with reference thereto, to determine the facts and factors referred to in section 72E (3) (a) which are necessary to determine the said period;

(c) determine the period of any imprisonment or detention which, upon conviction, may be or has to be imposed upon him in accordance with or by taking into consideration the formula mentioned in section 72E (3) (a) and, with reference thereto, to determine the facts and factors which are necessary to apply the said formula,

a certificate purporting to be signed by the Chief of the South African Defence Force or by any person authorized by him for the purpose in general or in particular and in which-

(i) any period contemplated in paragraph (a);

(ii) the period of community service referred to in paragraph (b) and any fact or factor referred to in that paragraph which is necessary to determine such period;

(iii) any period of punishment referred to in paragraph (c) and any fact or factor referred to in that paragraph which is necessary to determine such period in accordance with or by taking into consideration the formula referred to in section 72E (3) (a),

are mentioned and, where necessary or useful, explained in detail in respect of any person whose name is mentioned in the certificate and corresponds to the name of the accused shall, on its mere production to the court be *prima facie* evidence (as the case may be) of-

(aa) any period referred to in paragraph (a);

(bb) the period of community service referred to in paragraph (b) and of any fact or factor mentioned in the certificate which is necessary to determine such period;

(cc) any period of punishment referred to in paragraph (c) and of any fact or factor mentioned in the certificate which is necessary to determine such period in accordance with or by taking into consideration the formula mentioned in section 72E (3) (a),

and of any explanatory detail thereanent mentioned in the certificate.

[Sub-s. (8) substituted by s. 31 (g) of Act 132 of 1992.]

(9) In the determination or calculation in terms of any provision of this Act of-

(a) any period of community service;

(b) any period of punishment,

in which any period of service mentioned in section 22 (3) (b) is to be determined or to be taken into consideration, it shall be deemed that the maximum period of service which any person may, in terms of subsection 22 (1), be called up to render during a cycle referred to in the first-mentioned section, shall be such part of 120 days as stands to 120 days in the same proportion as the unexpired portion of such cycle stands to two years.

[Sub-s. (9) added by s. 31 (h) of Act 132 of 1992.]

[S. 126A inserted by s. 10 of Act 66 of 1972 and substituted by s. 7 of Act 49 of 1978 and by s. 16 of Act 34 of 1983.]

126B Prohibition regarding membership of trade unions and participation in strikes and protests

(1) A member of the Permanent Force shall not be or become a member of any trade union as defined in section 1 of the Labour Relations Act, 1956 (Act 28 of 1956): Provided that this provision shall not preclude any member of such Force from being or becoming a member of any professional or vocational institute, society, association or like body approved by the Minister.

(2) Without derogating from the provisions of sections 4 (*h*) and 10 of the Military Discipline Code, a member of the South African Defence Force who is subject to the said Military Discipline Code, shall not strike or perform any act of public protest or participate in any strike or act of public protest or conspire with or incite or encourage, instigate or command any other person (whether or not such person is a member of the South African Defence Force or an officer or employee referred to in section 83A (2) serving in the South African Defence Force or a member of any auxiliary or nursing service established under this Act) to strike or to perform such an act or to participate in a strike or such an act.

(3) A member of the South African Defence Force who contravenes subsection (1) or (2), shall be guilty of an offence.

(4) For the purpose of subsection (2)-

'act of public protest' means any act, conduct or behaviour which, without derogating from the generality of the foregoing, includes the holding or attendance of any meeting, assembly, rally, demonstration, procession, concourse or other gathering and which is calculated, destined or intended to influence, support, promote or oppose any proposed or actual policy, action, conduct or decision of the Government of the Republic of South Africa or another country or territory or any proposed or actual policy, action, conduct or decision of any public or parastatal authority of the Republic or another country or territory or to support, promote, further, oppose or publicise any real or supposed private or public interest, object, principle, cause, concern, demand or claim, grievance, objection or outrage or to indicate, demonstrate or display real or supposed private or public support for, opposition or objection to, dissatisfaction, sympathy, association or solidarity with, or concern or outrage regarding any such policy, action, conduct, decision, interest, object, principle, cause, concern, demand or claim, grievance, objection or outrage, or to do so in relation to any event or occurrence of national or public concern or importance or significance, or eliciting national or public concern or interest, in such manner as to attract or direct thereto, or be calculated, destined or intended to attract or direct thereto, the attention of-

- (i) any such Government or authority;
- (ii) any other country, territory or international or multinational organization, association or body; or
- (iii) the public or any member or sector of the public, whether within or outside the Republic;

'strike' means any strike as defined in section 1 of the Labour Relations Act, 1956.

[S. 126B inserted by s. 39 of Act 134 of 1993.]

126C Labour matters

Any member of the Permanent Force shall exercise his rights with respect to labour matters in terms of the regulations, and the State as his employer shall handle and administer all such matters, including the resolution of disputes, in accordance with the regulations.

[S. 126C inserted by s. 39 of Act 134 of 1993.]

127 Offences and penalties

Any person who-

- (a) contravenes or fails to comply with or to observe any provision or requirement of this Act for which no penalty is specially prescribed; or
- (b) contravenes or fails to comply with or to observe any provision or requirement of this Act which is not elsewhere declared to be an offence,

shall be guilty of an offence and liable on conviction-

- (i) in the case of an offence referred to in section 4 (2) (b) or (c), 79 (2), 88 (2), 99A (4) or (5), 101 (3), 115 (1) or (3), 118 (3) or (4), 120, 123, 124 or 125 (1) or an offence of non-compliance with the provisions of section 40 (3) or (5), 99 (1), 117 (1) or 119 (1), to a fine not exceeding R10 000 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (ii) in the case of an offence referred to in section 4 (2) (a), 4A (1), 115 (2), 122, 143 (2) or 126B (1) or (2) or an offence of non-

compliance with the provisions of section 27 (1) or (2), 29 (1), 34 (1), 40 (2), 41, 54 (1), (2), (2A) (a), (b) or (c) or (2B), 55 (1) or (2), 63 (1), (2), (3) or (6), 64 (1) or 66B (4), to a fine, or to imprisonment for a period not exceeding one year;

[Para. (ii) substituted by s. 40 of Act 134 of 1993.]

(iii) in the case of an offence referred to in section 116 (1) or (2), an offence of non-compliance with the provisions of section 69 (5) or 144*bis* (1), or any other offence, to a fine not exceeding R1 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[S. 127 amended by s. 62 of Act 85 of 1967 and by s. 11 of Act 83 of 1974 and substituted by s. 32 of Act 132 of 1992.]

CHAPTER XII

VISITING AND OTHER FORCES (ss 128-135)

128 Discipline and internal administration of visiting forces

(1) A military court or other authority of any country may exercise within the Republic in relation to members of a visiting force of that country in matters concerning discipline and the internal administration of that force (including the administration of the property or the estate of a deceased member of that force) all such powers as are conferred upon such court or authority by the law of that country.

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

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

against him, shall for the purposes of any such proceedings be deemed to be in legal custody.

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

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

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

129 Relations of visiting forces to the civil power and civilians

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

[Sub-s. (1) amended by s. 36 of Act 132 of 1992.]

(2) If the State President by proclamation in the *Gazette* so provides, members of the visiting force, if sentenced by a military court of the country to which such force

belongs, to penal servitude, imprisonment or detention, may under the authority of the Minister, given at the request of the officer in command of the visiting force, be detained in custody in prisons, goals or detention barracks in the Republic during the whole or any part of the term of their sentences, and the State President may by the same or a subsequent proclamation in the *Gazette* make provision relating to any of the following matters, namely-

- (a) the reception of such persons from and their return to the military authorities of the country concerned;
- (b) their treatment while in such custody or while so imprisoned;
- (c) the circumstances under which they are to be discharged; and
- (d) the manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody or while so imprisoned.

(3) Any costs incurred in the maintenance and return of, or otherwise in connection with, any person dealt with in accordance with the provisions of sub-section (2), shall be defrayed in such manner as may, with the consent of the Minister of Finance, be agreed upon between the Minister and the government of the country concerned.

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

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

African Defence Force or any portion thereof, or any member or military court thereof,

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

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

130 Deserters from other forces

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

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

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

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

[Para. (a) amended by s. 63 of Act of 1967.]

(b) a document purporting to be a certificate under the hand of the officer in command of a unit or detachment of a force of any country that a named and described person was at the date of the

certificate a deserter or absentee without leave from that force, shall be admissible without proof as evidence of the facts so certified.

131 Attachment of personnel

(1) The Minister may-

(a) attach temporarily to the South African Defence Force any member of a force or of a reserve of any country who is placed at his disposal for that purpose by the military authorities of that country;

(b) subject to anything to the contrary contained in the conditions applicable to his service, place any member of the South African Defence Force at the disposal of the military authorities of any country for the purpose of being attached temporarily by those authorities to the forces of that country.

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

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

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

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

(b) an offence against property, was committed in relation to the

property of the country to which the visiting force belongs or of a member of the same force or another visiting force of the same country or of a person directly associated with any such force,

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

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

(a) if the alleged offender, at the time of the commission of the offence, was not subject to the jurisdiction of the military courts of the country to which the visiting force belongs;

(b) in relation to a member of a civilian component of a visiting force unless the offence in question is also an offence under the law of the country to which the visiting force concerned, belongs;

(c) in respect of any case in which the competent Attorney-General or the Solicitor-General has certified that he has been notified by the appropriate authority of the country to which the visiting force belongs, that it is not proposed to charge the offender under the law of that country.

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

(4) For the purpose of this section-

'offence against the person' means-

(a) murder, culpable homicide, assault of whatever nature, rape, criminal injuria, incest, sodomy, procuring abortion, kidnapping, child-stealing;

[Para. (a) substituted by s. 33 of Act 132 of 1992.]

(b) a contravention of section 113 of the General Law Amendment Act, 1935 (Act 46 of 1935), section 39 (1) (i) of the Arms and Ammunition Act, 1969 (Act 75 of 1969), section 12 (1), 14 (1) or (3) or 15 of the Sexual Offences Act, 1957 (Act 23 of 1957), section 66 of the Mental Health Act, 1973 (Act 18 of 1973), section

50 of the Child Care Act, 1983 (Act 74 of 1983), or section 45 of the Liquor Act, 1989, (Act 27 of 1989); or

[Para. (b) substituted by s. 12 of Act 28 of 1970 and by s. 33 of Act 132 of 1992.]

(c) any offence relating to-

(i) the negligent driving of a motor vehicle whereby any person is injured;

(ii) the procuring or detention of a female for the purpose of unlawful carnal intercourse; or

(iii) the keeping of a brothel;

'offence against property' means-

(a) theft whether at common law or as provided by statute, housebreaking with intent to commit a crime, robbery, fraud, forgery and uttering a forged instrument knowing it to be forged, extortion, receiving stolen property knowing it to have been stolen, malicious injury to property;

(b) any offence relating to the driving of a motor vehicle without the consent of the owner; or

(c) a contravention of section *one* of the General Law Amendment Act, 1956 (Act 50 of 1956).

(5) Any reference to an offence mentioned in sub-section (4) shall be deemed to include a reference to-

(a) an attempt to commit that offence;

(b) a conspiracy to aid or procure the commission of or to commit that offence;

(c) an incitement or instigation, or a command or procurement to commit that offence; or

(d) being accessory to the commission of that offence.

133 Mutual powers of command

(1) Whenever a Republic force and any other force are serving together, whether alone

or not-

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

(b) if the forces are acting in combination any officer of the other force appointed by, or in accordance with regulations made by or on the authority of the State President after consultation with the appropriate authority of the country to which that force belongs, to command the combined forces or any part thereof, shall be treated and shall have over members of the Republic 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 Republic force of relative rank and holding the same command.

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

134 Proof of membership of visiting force

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

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

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

(2) Whenever a magistrate holding an inquest is satisfied that a person subject to the jurisdiction of the military courts of any other country is being detained for the purpose of being charged or has been charged before a court of that country with an offence arising out of the death which is the subject of the inquest, he shall, unless the

Minister otherwise directs, adjourn the inquest and furnish the assistant registrar of births and deaths with such particulars necessary for the registration of the death as he may have ascertained at the inquest up to the time of its adjournment.

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

(4) Section 29 of the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963), shall not apply in respect of any case where the body of a deceased person who at the time of his death was a member of a visiting force or of a civilian component of such a force, is to be buried at any place outside the Republic except as regards the burial of the body of a deceased person in relation to whose death an inquest has been held or resumed in pursuance of instructions given by the Minister under subsection (1) or (3).

[Sub-s. (4) amended by s. 36 of Act 132 of 1992.]

CHAPTER XIII

GENERAL (ss 136-154)

136 Decorations and medals

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

[Sub-s. (1) amended by s. 20 (d) of Act 39 of 1966, substituted by s. 12 (a) of Act 83 of 1974 and by s. 28 (a) of Act 97 of 1986 and amended by s. 36 of Act 132 of 1992.]

(1A) The State President may, in peace or war, institute decorations and medals which may, subject to such rules as he may in the case of every such decoration or medal consider necessary, be awarded by him or the Minister to civilian persons of a foreign State and to South African citizens who render services of military importance to the South African Defence Force.

[Sub-s. (1A) inserted by s. 33 of Act 103 of 1982, substituted by s. 28 (b) of Act 97 of

1986 and amended by s. 36 of Act 132 of 1992.]

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

[Sub-s. (2) substituted by s. 12 (b) of Act 83 of 1974 and amended by s. 36 of Act 132 of 1992.]

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

[Sub-s. (3) substituted by s. 12 (c) of Act 83 of 1974 and amended by s. 36 of Act 132 of 1992.]

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

137 Language of instruction

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

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

138 Where service is to be performed

(1) Any training required to be undergone and any service to be performed under this Act, shall be undergone or performed in such areas or at such places, whether within or outside the Republic, as the Minister may direct.

(2) (a) Where in the opinion of the Chief of the South African Defence Force the

urgency of the circumstances requires that members of that Force or the Reserve who have been employed on service for the prevention or suppression of terrorism be immediately engaged on such service in a particular area or at a particular place before the Minister can act in terms of subsection (1), he may authorize such engagement.

(b) An authorization in terms of paragraph (a) shall lapse upon expiry of 24 hours, unless the Minister confirms such authorization before such expiry.

[S. 138 substituted by s. 34 of Act 103 of 1982.]

139 Pay and allowances not to be assigned or attached

No member of the South African Defence Force shall, without the approval of the Minister or a person thereto authorized by the Minister, assign the whole or any part or any pay or allowance due to him in respect of service in that Force, nor shall the whole or any part of such pay or allowance be capable of being seized or attached under or by virtue of any writ of execution, other than a garnishee order issued in terms of any law in force in the Republic, sued out against any member entitled to such pay or allowance, nor shall the same pass under or by virtue of any order made for the sequestration of the estate of any such member.

140 Exemption from stamp duties

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

141 Exemption from registration and licensing of defence vehicles and drivers

Nothing in any law relating to the registration and licensing of motor vehicles or the licensing of drivers of such vehicles, shall apply in respect of any such vehicle which is the property of the State in the South African Defence Force.

[S. 141 amended by s. 22 of Act 12 of 1961 and by s. 36 of Act 132 of 1992.]

142 Exemption from laws relating to conveyance of firearms

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

143 Exemption from tolls and like payments

(1) Subject to the provisions of subsection (3)-

(a) any member of the South African National Defence Force; or

(b) any member of the Reserve,

who in the exercise of his powers or the performance of his duties or functions under or in terms of this Act passes through any wharf, landing place, bridge, pont, ferry, toll-bar, gate or point of entry or exit at or in respect of which any toll, fee, or due may be charged in respect of any such member or any other person or means of transport or goods or animal which such member, in the said exercise of performance of his powers, duties or functions conveys or has with him, shall, upon such member-

(i) if he is a member of the South African National Defence Force exhibiting both his military identification and applicable official authorisation documents; or

(ii) if he is a member of the Reserve-

(aa) who is rendering service or undergoing training under this Act, exhibiting his military identification document; or

(bb) who has been called up, exhibiting his call-up and personal official identification documents; and

(iii) if he is driving a military vehicle or operating any other means of transport, exhibiting his military driver's licence or other military licence to operate such other means of transport and his trip authorisation or, if he is not driving or operating any such means of transport, exhibiting his official authorisation to pass through that wharf, landing place, bridge, pont, ferry, toll-bar, gate or point,

be exempt from such payment, and such member and any such other person, means of transport, goods or animal shall be allowed to pass through without any such payment having to be made in respect of any of them.

(2) Any person who in conflict with subsection (1) demands such toll, fee or due or who wilfully subjects any such member, other person, means of transport, goods or animal to unreasonable delay or detains any of them in respect of or at such wharf, landing place, bridge, pont, ferry, toll-bar, gate or point, shall be guilty of an offence.

(3) The Chief of the Defence Force may, if, with regard to the nature of any power, duty or function of any member or group of members of the South African National Defence Force, it is necessary, determine that the provisions of subsection (1) shall not apply to such member or group of members, in which case, such toll, fee or due shall be payable and such payment shall, with respect to the Department of Defence be deemed to be an authorised expenditure.

[S. 143 substituted by s. 6 of Act 72 of 1995.]

144 Railway charges

Any member of the South African Defence Force travelling on the service of that Force shall when provided with a government warrant, be conveyed over any portion of any railway system in the Republic at fares which shall be determined by agreement between the 'Company' or the 'Corporation' defined in section 1 of the Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989), and the South African Defence Force acting in consultation with the Treasury.

[S. 144 amended by s. 36 of Act 132 of 1992.]

144bis Compulsory immunization and prophylaxis

(1) Any member of the South African Defence Force or any auxiliary service or voluntary nursing service established under this Act may be required to submit to and if so required shall submit to immunization or prophylaxis against such communicable, infectious or epidemic illness as may be determined from time to time by a prescribed authority.

[Sub-s. (1) amended by s. 20 (e) of Act 39 of 1966.]

(2) Such immunization or prophylaxis may be carried out by means of vaccination or injection with, or oral administration of, the specific antigen or prophylactic medicament determined for the purpose by a registered medical officer.

[S. 144bis inserted by s. 26 of Act 77 of 1963.]

145

[S. 145 amended by s. 18 of Act 80 of 1959, by s. 23 of Act 12 of 1961, by s. 27 of Act 77 of 1963, and by s. 64 of Act 85 of 1967, substituted by s. 8 of Act 8 of 1974, amended by s. 13 of Act 83 of 1974 and by s. 9 of Act 1 of 1976 and repealed by s. 24 of Act 84 of 1976.]

145A Payment of the remuneration of a missing member of the South African Defence Force

(1) If a member of the South African Defence Force is missing and the Chief of the South African Defence Force is satisfied that his absence arose from the performance of his duties or functions while he was rendering service in terms of this Act, such member shall for all purposes be deemed to be still serving in the South African Defence Force from the first day after the day on which such absence commenced until the day on which he again reports for duty or, in the opinion of the Chief of the South African Defence Force, should again have reported for duty, or on which a competent court issues an order whereby the death of such member is presumed.

[Sub-s. (1) amended by s. 35 of Act 103 of 1982.]

(2) The salary or wages and allowances accruing to a member during his absence contemplated in subsection (1) shall, subject to the provisions of subsection (4), be paid to his spouse or, if he has no spouse, to his other dependants, or to any person who, in the opinion of the Chief of the South African Defence Force, is competent to receive and administer such salary or wages and allowances on behalf of his spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) shall for all purposes be deemed to be payment thereof to the member concerned, and an amount so paid shall not be recoverable by the State from any person.

(4) Notwithstanding the provisions of subsection (2) the Chief of the South African Defence Force may in his discretion direct that only a portion of the salary or wages and allowances of a member be paid in terms of the said subsection or that no portion thereof be so paid.

[S. 145A inserted by s. 26 of Act 57 of 1975.]

145B Payment of remuneration of member of South African Defence Force who has been taken prisoner of war

(1) If a member of the South African Defence Force is captured and the Chief of the South African Defence Force is satisfied that his capture arose from the performance of his duties or functions while he was rendering service in terms of this Act, such member shall for purposes of salary or wages and allowances be deemed to be still serving in the South African Defence Force from the first day on which such capture became known until the day on which he again reports for duty or, in the opinion of the Chief of the South African Defence Force, should again have reported for duty, or

on which a competent court issues an order whereby the death of such member is presumed: Provided that a member who is captured while serving in terms of section 22 (3) (a) of this Act, shall, for the duration of his captivity and for the purpose of salary, wages or allowances, be deemed to be still so serving.

(2) The salary or wages and allowances accruing to a member during his captivity contemplated in subsection (1) shall, subject to the provisions of subsection (4), be paid to his spouse or, if he has no spouse, to his other dependants, or to any person who, in the opinion of the Chief of the South African Defence Force, is competent to receive and administer such salary or wages and allowances on behalf of his spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) shall for all purposes be deemed to be payment thereof to the member concerned, and an amount so paid shall not be recoverable by the State from any person.

(4) Notwithstanding the provisions of subsection (2) the Chief of the South African Defence Force may in his discretion direct that only a portion of the salary or wages and allowances of a member be paid in terms of the said subsection or that no portion thereof be so paid.

[S. 145B inserted by s. 36 of Act 103 of 1982.]

146 Injuries received or illness contracted on service or training

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

[Sub-s. (1) amended by s. 24 of Act 12 of 1961 and by s. 28 of Act 77 of 1963 and substituted by s. 13 of Act 35 of 1977.]

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

[Sub-s. (2) substituted by s. 14 of Act 83 of 1974.]

(3) A period referred to in subsection (1) shall, unless the wound, injury or illness is attributable to the member's own misconduct, be regarded as duty for the purposes of sections 22 and 44.

[Sub-s. (3) added by s. 48 of Act 87 of 1984.]

146A Date of membership of Citizen Force or commandos

A person becomes a member of the Citizen Force or the commandos when he, after having been called up for service therein, reports for service therein for the first time: Provided that any person who has been called up in terms of section 22 (1) to serve in a first period of service as contemplated in section 22 (3) (a) or who has in terms of section 44 been called up to render service for a first time in a period of service as contemplated in paragraph (a) or (b) of section 44 (3), shall be deemed to be a member of the Citizen Force or the commandos, as the case may be-

(a) for the purposes of section 104 (5), from the date on which his service is so to commence;

(b) for the purposes of section 146, from the date upon which he commences his journey to the place where he is required to commence his service.

[S. 146A inserted by s. 65 of Act 85 of 1967, amended by s. 15 of Act 83 of 1974, by s. 14 of Act 35 of 1977 and by s. 49 of Act 87 of 1984, substituted by s. 34 of Act 132 of 1992 and amended by s. 41 of Act 134 of 1993.]

146B

[S. 146B inserted by s. 65 of Act 85 of 1967 and repealed by s. 50 of Act 87 of 1984.]

147 Conveyance of members of South African Defence Force

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

148 Clubs, messes, etc

Clubs, messes and trading institutions for the exclusive use or benefit of members of the South African Defence Force, or other forces, or any auxiliary service established under this Act, the families of such members, and other prescribed persons or classes of persons, may be established and conducted under such conditions and in such

manner as may be prescribed.

[S. 148 amended by s. 29 of Act 77 of 1963 and substituted by s. 11 of Act 66 of 1972.]

149 Exemption from licences, etc

No licence moneys, tax, duty or fee (other than customs, excise or sales duty where leviable by law, but including any tax on or in respect of property, whether movable or immovable) under any law shall be payable by or in respect of any club, mess or trading institution established under section 148 in or in connection with any base, camp, station or ship for any portion of the South African Defence Force in the Republic, or in respect of any article on sale at such a club, mess or institution, or by or in connection with a fund or non-trading institution established in accordance with regulations made under section 87 (1) (*dA*).

[Sub-s. (1) amended by s. 16 of Act 83 of 1974 and substituted by s. 34 (*a*) of Act 94 of 1974.]

(1A) For the purpose of subsection (1) any fund or non-trading institution which existed on 1 November 1958 and the aims or some of the aims of which are the acquisition and possession of property for the provision of recreational facilities within the Republic for the benefit of members and ex-members of the South African Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering therein or any portion thereof and their dependants, shall be deemed to have been established in accordance with regulations made under section 87 (1) (*dA*), whether or not such regulations exist or existed at any relevant time.

[Sub-s. (1A) inserted by s. 34 (*b*) of Act 94 of 1974 and substituted by s. 51 (*a*) of Act 87 of 1984.]

(2) A certificate under the hand of the Minister or of a person authorized by the Minister, stating-

(*a*) that a club, mess or trading institution specified therein has been established under section 148 in or in connection with any base, camp, station or ship for any portion of the South African Defence Force in the Republic; or

(*b*) that a fund or non-trading institution specified therein has been established in accordance with regulations made under section 87 (1) (*dA*); or

(c) that a fund or non-trading institution specified therein existed on 1 November 1958 and that its aims or some of its aims are the acquisition and possession of property for the provision of recreational facilities within the Republic for the benefit of members and ex-members of the South African Defence Force or any headquarters, arm of the service, formation, unit or personnel mustering therein or any portion thereof and their dependants.

[Para. (c) substituted by s. 51 (b) of Act 87 of 1984.]

shall on its production by any person in any proceedings in any court of law be conclusive proof of the correctness of the statements contained therein.

[Sub-s. (2) substituted by s. 34 (c) of Act 94 of 1974.]

(3) Clubs, messes, institutions and funds certified under subsection (2) shall be deemed to be bodies corporate.

[S. 149 substituted by s. 12 of Act 66 of 1972.]

149bis Non-liability of department

(1) The Government or any person in the service of the State shall not be liable (except in the case of any wilful act or omission on the part of any such person) to any other person, irrespective of whether such other person is a person referred to in paragraph (a), (b) or (c) of subsection (3) of section 76 or not (except any person who is an officer or employee of the State acting in the execution of his duty as such), who makes use of any vehicle, aircraft or vessel which is the property of the State in the South African Defence Force or which is private property which has been appropriated by the State for use by its officers or employees, or which has been hired by the State and is used by the lessor or his employees for or on behalf of the State, or to whom services are rendered by the said Force or who makes use of any other property of the State in the South African Defence Force, or to the spouse, or any parent, child or other dependant of such other person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of any such other property.

[Sub-s. (1) substituted by s. 30 of Act 77 of 1963 and by s. 37 of Act 103 of 1982 and amended by s. 36 of Act 132 of 1992.]

(2) Whenever the Government has paid any compensation in respect of a claim by any person for any such loss or damage, the Government may, without having obtained any formal cession of the right of action, recover from the appropriate person referred

to in any of the aforementioned paragraphs, the amount paid by way of compensation or so much thereof, if anything, as the Minister in consultation with the Minister of Finance (or any person acting under the Minister's authority in consultation with any officer in the Department of Finance deputed thereto by the Minister of Finance) considers the circumstances justify the Government in claiming.

[S. 149*bis* inserted by s. 25 of Act 12 of 1961.]

149*ter* Right of recourse of Government in respect of expenditure for injuries of members

(1) Whenever the Government-

(a) has incurred any expenditure or has paid any amount in respect of medical, dental or hospital treatment of the bodily injuries of a member of the South African Defence Force or the supply of articles or the rendering of service in connection with that treatment; or

(b) has made any payments in respect of any salary, pay, allowances or any compensation to the member during his incapacity,

and the expenditure has been incurred or the payments have been made in circumstances where the member or his estate would otherwise have a claim against another person as a result of the bodily injury or incapacity of the member in respect of whom the expenditure was incurred or the payments were made, the Government shall have a right of recourse against that person for that portion of the expenditure thus incurred or payments thus made as could have been claimed by that member or his estate from such person.

(2) A certificate by the Chief of the South African Defence Force, or by an officer authorized thereto for that purpose by him, in which a statement of the expenditure incurred or payments made in terms of subsection (1) is given, shall on its mere production in any court be *prima facie* proof that the expenditure or payments referred to in that subsection were incurred or made.

(3) The right of recourse referred to in subsection (1) may be exercised by the institution of an action therefor or by intervention in an action instituted by the member or his estate against the other person referred to.

[Sub-s. (3) substituted by s. 52 of Act 87 of 1984.]

[S. 149^{ter} inserted by s. 17 of Act 34 of 1983.]

149^{quat} Indemnity in respect of trespass and nuisance

No action shall lie in respect of trespass or nuisance, by reason only of the flight of aircraft, the property of the State in the South African Defence Force, over any property at a height, which, having regard to wind, weather and all the circumstances of the case, is reasonable, or in respect of the ordinary incidents of such flight.

[S. 149^{quat}, previously s. 149^{ter}, inserted by s. 13 of Act 28 of 1970 and amended by s. 36 of Act 132 of 1992.]

150 Presumption as to delivery of notices

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

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

151 Act to apply both within and outside Republic

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

152 Repeal of laws and savings

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

(2) Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by sub-section (1), shall be deemed to have been issued, made or done under the corresponding provisions of this Act, and shall in so

far as it relates to any force, reserve or service established or any training or service provided for under any such repealed law be construed as if it related to the corresponding force, reserve, service or training established or provided for under this Act.

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

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

153 Delegation of powers by Chief of South African Defence Force

(1) The Chief of the South African Defence Force may, subject to such conditions or restrictions as the Minister may determine and subject to the provisions of section 15 of the Exchequer Act, 1975 (Act 66 of 1975), delegate in writing any power conferred upon him by or under any provision of this Act or any other law to-

(a) any member or person in the service of the South African Defence Force or other person;

(b) the temporary or permanent-

(i) holder of any post or office in the South African Defence Force; or

(ii) assignee or person designated or ordered,

who has to execute or perform any service or function of or in relation to the South African Defence Force; or

(c) a committee consisting of one or more of the members or persons contemplated in paragraph (a) or holders of posts or offices contemplated in paragraph (b) (i) appointed or designated for that purpose by the Chief of the South African Defence Force,

whether with or without the authority to delegate such power in writing to a person or holder of any post or office determined by that Chief, and such power shall, if it has been delegated, be exercised subject to such conditions, directives and instructions as that Chief may determine.

(2) The Chief of the South African Defence Force may at any time revoke in writing any delegation, authority or determination under subsection (1), and no such delegation of a power shall prevent the exercise of such power by that Chief himself.

(3) Any delegation of a power by the Chief of the South African Defence Force under this section shall remain in force notwithstanding the vacating by a particular person of the office of Chief of the South African Defence Force until it is revoked or amended by a subsequent Chief of the South African Defence Force or person acting in that office.

(4) Any delegation of a power by the Chief of the South African Defence Force which was made before the commencement of the Defence Amendment Act, 1993, and which could have been made under the provisions of this section shall be deemed to have been so made: Provided that the Minister may also determine conditions or restrictions in relation to such a delegation.

[S. 153 amended by s. 26 of Act 12 of 1961 and by s. 66 of Act 85 of 1967, repealed by s. 35 of Act 132 of 1992 and inserted by s. 7 of Act 32 of 1993.]

154 Short title and commencement

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

First Schedule

[First Schedule amended by Proclamations 166 of 1962, 162 of 1963, 145 of 1964, 75 of 1966, R2 of 1970, R85 of 1971, 126 of 1975, R159 of 1980, 111 of 1981, R141 of 1982, 47 of 1983, 156 of 1983 and 29 of 1985, by s. 46 of Act 97 of 1986, by s. 12 of Act 132 of 1993, by ss. 3 to 19 inclusive of Act 105 of 1997 and by s. 43 of Act 16 of 1999.]

1 Definitions

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

'**board of inquiry**' means a board of inquiry convened under section *one hundred and*

thirty-five or one hundred and thirty-six;

'board of review'

[Definition of 'board of review' deleted by s. 43 (b) of Act 16 of 1999.]

'camp' includes a ship;

'capital offence'

[Definition of 'capital offence' deleted by s. 3 of Act 105 of 1997.]

'chief of staff' means any officer of rank and command not below that of a brigadier or its equivalent who has been empowered by warrant to convene general military courts, and in sections 60A and 65A includes any officer of rank not below the said rank who has been empowered in writing by such chief of staff to exercise in any particular case the powers conferred upon a chief of staff by section 60A or 65A, respectively;

[Definition of 'chief of staff' amended by s. 43 (b) of Act 16 of 1999.]

'civil court' means any court of criminal jurisdiction in the Republic;

'civil offence' means any offence in respect of which any penalty may be imposed by a court of law, not being an offence under sections *four* to *fifty*, inclusive, of this Code;

'convening authority'

[Definition of 'convening authority' deleted by s. 43 (b) of Act 16 of 1999.]

'counsel' means any advocate entitled to practise and appear before a provincial division of the Supreme Court of South Africa, and includes any attorney entitled to practise and appear in a magistrate's court in the Republic and any defending officer;

'council of review'

[Definition of 'council of review' deleted by s. 43 (b) of Act 16 of 1999.]

'court martial'

[Definition of 'court martial' deleted by s. 43 (b) of Act 16 of 1999.]

'defending officer' means a defence counsel in terms of the Military Discipline Measures Act, 1999;

[Definition of 'defending officer' substituted by s. 43 (b) of Act 16 of 1999.]

'desert' in relation to any person, includes, without in any way limiting its ordinary meaning-

(a) be absent without authority while on service from the unit or formation of such person with the intention of avoiding service;

(b) miss any form of transport, by which such person has been warned to travel, with the intention of not accompanying his unit or formation on service or not proceeding on service; and

(c) fail to report for any service under the Act within seven days after having been called up for such service;

'enemy' includes any armed rebels or mutineers;

'field punishment' means the performance in custody in the field of such labour and extra drills and duties as may be prescribed;

'field rank' means any rank not lower than that of major or any equivalent rank;

'General Officer Commanding, South African Defence Force', means the chief military executive officer of the South African Defence Force, and in section *one hundred and twenty-eight* includes the officer commanding any portion of the South African Defence Force on service beyond the borders of the Republic;

'hospital' includes any military medical institution for the treatment of patients;

'imprisonment' means imprisonment with or without compulsory labour;

'institution' means a club, mess or trading or other institution established or conducted under section *one hundred and forty-eight* of the Act and any fund controlled under the regulation;

'member', when used in relation to a military court or board of inquiry, includes the president;

[Definition of 'member' amended by s. 43 (b) of Act 16 of 1999.]

'military court' means a military court as defined in section 1 of the Military Discipline Supplementary Measures Act, 1999;

[Definition of 'military court' substituted by s. 43 (b) of Act 16 of 1999.]

'oath' includes a solemn declaration or affirmation;

'pay' in relation to any person, includes all amounts to which such person is entitled in respect of any training, duty or service undergone or performed by him as a member of the South African Defence Force, except amounts payable to him under the Government Service Pensions Act, 1965 (Act 62 of 1965);

'prescribed' means prescribed in the rules made under section *one hundred and four* of the Act;

'public property' means any property belonging to or in the possession or under the control of the Republic Government or belonging to any force acting in co-operation with the South African Defence Force;

'safeguard' means a party of soldiers detached for the protection of any person or of any place, including any village or house or other property;

'service' means service in defence of the Republic or in the prevention or suppression of internal disorder in the Republic or of terrorism;

'superior court' means a provincial or local division of the Supreme Court of South Africa;

'superior officer', in relation to a person subject to this Code, means any officer, warrant officer or non-commissioned officer subject to this Code who holds a higher rank than such person, or who holds the same or an equivalent rank but is in a position of authority over such person;

'vary' includes alter, remit, mitigate and commute.

(2) Any reference in this Code to the South African Defence Force shall be construed as including a reference to any portion of that Force.

2

[S. 2 repealed by s. 43 (a) of Act 16 of 1999.]

3 Application of code beyond area of compulsory service

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

4 Offences endangering safety of forces

Any person who, being on service:

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

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years.

[S. 4 amended by s. 4 of Act 105 of 1997.]

5 Offences by a person in command of troops, vessels or aircraft

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

- (a) when his duty requires him to engage the enemy, fails to do so

or to do so as expeditiously or effectively as circumstances permit;

(b) being in action without proper cause withdraws from the action or forsakes his post; or

(c) improperly fails to pursue an enemy or to consolidate any position gained,

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

6 Offences in relation to conduct in action

Any person who-

(a) shamefully and in the presence of the enemy abandons or casts away any arms, ammunition, equipment or tools;

(b) behaves before the enemy in such a manner as to show cowardice;

(c) improperly delays or discourages any action against the enemy;

(d) improperly does or omits to do anything which results or is calculated to result in the capture by the enemy of any member of the South African Defence Force or of any forces co-operating with the South African Defence Force, or endangers or is calculated to endanger any such member, or which results or is calculated to result in the capture or destruction by the enemy of any aircraft, vessel, arms, ammunition or other war material;

(e) in action or prior to going into action, acts in a manner or uses words calculated to create alarm or despondency;

(f) without authority communicates with the enemy or sends a flag or signal of truce to the enemy;

(g) knowingly harbours or protects an enemy, not being a prisoner of war; or

(h) is taken prisoner of war through want of precaution, neglect of duty or disobedience to orders, or having been taken prisoner of war fails to rejoin the South African Defence Force when able to do

so,

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

7 Offences relating to failure to report activities likely to endanger safety of force

Any person who, being aware or having reasonable suspicion that any other person-

(a) is communicating with the enemy or giving intelligence to the enemy;

(b) is giving to the enemy or is assisting the enemy to acquire arms, ammunition or any material or equipment; or

(c) is about to commit any act calculated to imperil the success or safety of the South African Defence Force or any forces co-operating with the South African Defence Force or any part of any such forces,

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

8 Offences relating to signals, watchwords and disclosure of information

Any person who-

(a) without authority or contrary to his duty in any way uses, alters, adjusts or interferes with any instrument, machine or device designed or used for signalling, directing or detecting;

(b) without authority or contrary to his duty alters, mutilates or delays any signal;

(c) makes known the parole, watchword or countersign to any person not entitled to receive it;

(d) wilfully or negligently gives or conveys to a person entitled to receive it, any parole, watchword or countersign different to that which he has received;

(e) without proper authority discloses any information concerning the numbers, movements, location or preparations of the South African Defence Force or any forces co-operating therewith, or concerning any weapons, aircraft, vessels, stores, machines, instruments, devices or signal codes used or intended for use by such Force or forces, to the prejudice of such Force or forces; or

(f) contrary to his duty discloses the contents of any document or is negligent in the performance of any duty, in consequence of which an unauthorized person becomes or might become aware of the contents of any document, to the prejudice of the South African Defence Force,

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

9 Interference with aircraft, vehicles, vessels, etc

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

10 Mutiny

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

11 Interference with guards, sentries, etc

Any person who-

(a) forces or evades any safeguard;

(b) assaults any sentry or watchkeeper;

(c) in any manner whatever prevents a sentry or watchkeeper from doing his duty; or

(d) occasions false alarm,

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

12 Dereliction of duty by sentry, watchkeeper, etc

Any person who-

(a) while on sentry duty or on duty as a watchkeeper leaves his post before he is regularly relieved or sleeps or is under the influence of intoxicating liquor or narcotic drugs; or

(b) while on duty with his unit or at a post or guard leaves such unit, post or guard without orders or good and sufficient cause,

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

13 Desertion

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

14 Absence without leave and non-attendance where required to attend

Any person who-

(a) absents himself without leave;

(b) fails to appear at a place of parade or duty or at any other place appointed by his commanding officer, or leaves any such place without good and sufficient cause;

(c) without good and sufficient cause goes into any prohibited area

or beyond the fixed confines of his camp; or

(d) Being required to attend any school or other educational institution, whether civilian or otherwise, fails to attend thereat or absents himself therefrom without leave,

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

15 Assaulting superior officer

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

16 Assaulting or ill-treating subordinate

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

17 Using threatening, insubordinate or insulting language

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

18 Malingering, feigning or producing disease, maiming, etc

Any person who-

(a) malingers or feigns or produces disease or infirmity;

(b) maims or injures himself with the intention of avoiding any service or duty;

(c) wilfully commits or omits to perform an act, in consequence whereof he becomes or is likely to become unable to perform any service or duty; or

(d) wilfully maims or injures any other person subject to this Code, whether at the request or with the connivance of such other person

or otherwise, thereby rendering such person unfit for service or duty,

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

19 Disobeying lawful commands or orders

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

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

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

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

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

20 Theft of public property or property belonging to a comrade, mess, etc

Any person who-

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

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

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

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

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

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

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

21 Offences in relation to the acquisition or disposal of public property

Any person who-

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

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

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

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

Defence Force or any institution,

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

22 Causing or allowing a vessel or aircraft to be hazarded, stranded or wrecked

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

23 Abandoning or diverting public property or supplies

Any person who-

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

(b) improperly diverts or detains supplies,

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

24 Negligently losing kit, equipment, arms, etc

(1) Any person who-

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

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

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

(2) If in any proceedings for a contravention of paragraph (a) of sub-section (1), it is proved that any article or property mentioned in that paragraph which is alleged in the charge to have been lost, was issued to the accused and that on a date subsequent to

such issue the accused was found not to be in possession of such article or property, it shall be presumed unless the contrary is proved, that such article or property was negligently lost by the accused.

25 Negligently or wilfully causing damage to or destruction of public property

Any person who-

(a) negligently or wilfully commits any act which causes or is likely to cause damage to or destruction of public property or property belonging to any institution; or

(b) negligently or wilfully omits to take action to prevent damage to or destruction of public property or property belonging to any institution,

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

26 Deficiencies in stores, etc

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

(2) If in any prosecution for a contravention of subsection (1) it is proved that the accused as alleged in the charge was responsible for stores, stocks or moneys in any South African Defence Force store, office or institution, and that while he was so responsible a deficiency in such stores, stocks or moneys was caused, it shall be presumed, unless a satisfactory explanation to the contrary is given by the accused, that he so negligently performed his duties that the said deficiency was caused.

27 Using or taking article issued to or under control of another person

(1) Any person who-

(a) improperly uses or takes or removes from the possession or control of any other person subject to this Code any article issued to such other person for personal use in the execution of his duties of the personal property of such other person without the permission of the said person; or

(b) without proper authority takes or removes any article of public property from its appointed place, or uses such articles for any purpose otherwise than in the public interest; or

(c) without proper authority uses or takes or removes from its appointed place any article belonging to any institution,

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

28 Offences in relation to the driving of vehicles and the flying of aircraft

Any person who-

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

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

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

29 Fraudulent enlistment

(1) Any person who -

(a) being a member of any portion of the South African Defence Force and not having been regularly discharged therefrom, enrolls in any other portion of that Force;

(b) having been discharged with disgrace from the South African Defence Force or from a military, naval or air force of any country, enrolls in the South African Defence Force without disclosing such discharge with disgrace at the time of enrolment; or

(c) wilfully gives a false answer to any question set forth on any enrolment or enlistment paper,

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

exceeding one year.

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

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

30 False statements in official documents

Any person who-

(a) knowingly or negligently makes a false statement or entry in a document made or signed by him that is required or made for official purposes;

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

(c) when signing a document that is required or made for official purposes leaves in blank any material part for which his signature is a voucher;

(d) with intent to deceive, alters, defaces, suppresses or makes away with any document required, made, kept or issued for official purposes; or

(e) forges any signature upon any document required, made, kept or issued for official purposes or uses any document for official purposes knowing the signature thereon to be forged,

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

31 False accusations or statements

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

32 Scandalous behaviour

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

33 Drunkenness

Any person who-

(a) is drunk whether on or off duty; or

(b) unfits himself for the proper performance of his duty by excessive use of alcohol or narcotic drugs,

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

34 Offences in relation to a military court

(1) Any person who-

(a) having been duly summoned or warned to attend as a witness before a military court, fails to attend or to remain in attendance until authorized to leave;

(b) being present at a military court after having been duly summoned or warned to attend as a witness, refuses to be sworn or to affirm;

(c) when giving evidence at a military court, refuses to answer any questions which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his possession or under his control which in law he could be compelled to produce; or

(d) uses threatening or insulting language at a military court or wilfully causes a disturbance or interruption thereat or wilfully commits any other act calculated or likely to bring such military court into contempt, ridicule or disrepute,

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

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

[S. 34 amended by s. 43 (b) of Act 16 of 1999.]

35 False evidence before a military court

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

[S. 35 amended by s. 43 (b) of Act 16 of 1999.]

36 Refusing to answer questions or produce documents or giving false evidence at preliminary investigation, summary trial or board of inquiry

(1) Any person who-

(a) having been duly summoned or warned to attend as a witness before a preliminary investigation, summary trial or board of inquiry, fails to attend or to remain in attendance until authorized to leave;

(b) being present at a preliminary investigation, summary trial or board of inquiry after having been duly summoned or warned to attend as a witness, fails, refuses to be sworn or to affirm;

(c) when giving evidence at a preliminary investigation, summary trial or board of inquiry, refuses to answer any questions which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his possession or under his control which in law he could be compelled to produce; or

(d) uses threatening or insulting language at a preliminary investigation, summary trial or board of inquiry or wilfully causes a

disturbance or interruption thereof or wilfully commits any other act calculated or likely to bring the recording officer, trial officer or board of inquiry into contempt, ridicule or disrepute,

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

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

37 Obstruction in relation to the arrest, custody or confinement of a person subject to the code

Any person who-

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

(b) when called upon by any such member, refuses or neglects to assist that member in the performance of any such duty; or

(c) when called upon by an appropriate civil authority to deliver over any person under his control accused of an offence punishable by civil court, fails or neglects to do so,

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

38 Offences in relation to arrest

Any person who-

(a) without due and just cause orders any person into arrest or custody;

(b) unnecessarily detains a person in arrest or custody;

(c) contrary to his duty fails to bring the case of a person in arrest or custody before the proper authority within the prescribed time; or

(d) having committed a person to the custody of any authorized person, fails to deliver to such authorized person within twenty-four

hours of such committal an account in writing signed by himself of the offence with which the person so committed is charged,

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

39 Resisting arrest

Any person who-

(a) being ordered into arrest, refuses to obey such order or assaults the person ordering him into arrest;

(b) being ordered into arrest, resists the person whose duty it is to apprehend him or have him in charge;

(c) assaults any person in whose custody he has been placed;

(d) escapes from custody; or

(e) hinders or obstructs any person lawfully carrying out a search of his person, personal kit or belongings or his living quarters,

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

40 Offences in relation to a person in custody

Any person who-

(a) without reasonable excuse allows any person committed to his custody or charge to escape;

(b) without proper authority releases any person committed to his custody or charge; or

(c) uses unnecessary violence to any person in custody or otherwise ill-treats such person,

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

41 False complaints in writing

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

42 Offences in relation to the redress of wrongs

Any person who-

(a) when a complaint by another person subject to this Code has been made to him, unduly delays in redressing the wrong complained of or sending the complaint to higher authority in accordance with this Code; or

(b) complains to higher authority or to the Minister when it is his duty to direct his complaint to his commanding officer or other authority as directed in this Code,

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

43 False representations concerning rank

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

44 Offences in relation to decorations or medals

Any person who knowingly wears-

(a) any decoration, medal or clasp or any decoration or medal ribbon or wound stripe to which he is not entitled; or

(b) any badge, emblem, colours or other insignia of a political organization,

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

45 Riotous or unseemly behaviour

Any person who-

(a) at any time behaves in a riotous or an unseemly manner; or

(b) when able to do so, does not suppress any riotous or unseemly behaviour by any person subject to this Code,

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

46 Conduct to the prejudice of military discipline

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

47 Civil offences committed outside the Republic

Any person who beyond the borders of the Republic commits or omits to do any act in circumstances under which he would, if he had committed or omitted to do that act in the Republic, have been guilty of a civil offence, shall be guilty of an offence under this Code and liable on conviction to any penalty which could under section twelve of the Military Discipline Supplementary Measures Act, 1999, be imposed by a military court in respect of such offence: Provided that no such penalty of such a nature that it could, if the offence in question had been committed within the Republic, have been imposed by any competent civil court, shall exceed the maximum penalty that could be imposed in respect of such offence by that civil court.

[S. 47 amended by s. 43 (b) of Act 16 of 1999.]

48 Aiding, abetting, inciting, etc

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

49 Defeating the course of justice

Any person who, with intent to defeat or obstruct the course of justice, assists or harbours any person who to his knowledge has committed an offence under this Code,

shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the offence committed by the person he so assisted or harboured.

50 Attempt

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

51 Alternative punishments

The court convicting any person of any offence under this Code may, instead of imposing upon that person any penalty prescribed herein in respect of such offence, impose upon him or her any other penalty within the court's jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed.

[S. 51 substituted by s. 5 of Act 105 of 1997.]

52 Arrest

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

(2) Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits treason, murder, rape or culpable homicide or any offence under section 4 of this Code or any other prescribed offence, may be arrested by any person subject to this Code in whose presence he or she is so engaged or commits any such offence: Provided that an officer shall not be liable to arrest by any person other than an officer.

[Sub-s. (2) amended by s. 6 of Act 105 of 1997.]

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

53 Search

(1) Whenever it appears to a local representative of the Adjutant General from information contained in at least one sworn statement that there are reasonable grounds for suspecting that there is upon any person who is subject to this Code, or

upon or at any premises, place, vehicle, vessel, aircraft or receptacle of whatever nature belonging to or occupied by or under the control of the South African National Defence Force-

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

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

[Sub-s. (1) amended by s. 43 (b) of Act 16 of 1999.]

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

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

54 Jurisdiction of civil courts

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

55 Person convicted or acquitted not to be tried again

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

56 Civil offence may be tried under code

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

57 Territorial jurisdiction of military courts

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

58 Prescription of offences

No person shall be triable by a military court for any offence in respect of which such a court has jurisdiction unless the trial is commenced within three years after the date of the commission of the offence: Provided that a person charged with treason, murder, rape or culpable homicide committed by him or her outside the Republic or an offence under section 4, 10, 13 or 29 of this Code may be tried by a military court at any time after the commission of the offence.

[S. 58 amended by s. 7 of Act 105 of 1998.]

59 Trial under code when accused no longer subject to code

(1) Any person who, while he is subject to this Code, commits an offence in respect of which a military court has jurisdiction, may-

(a) in the case where that offence is treason, murder, rape or culpable homicide committed outside the Republic or an offence

under section 4, 10, 13 or 29, be tried and punished for that offence by that military court at any time after he or she has ceased to be so subject; and

[Para. (a) substituted by s. 8 of Act 105 of 1997.]

(b) in the case where that offence is an offence other than one contemplated in paragraph (a), but subject to the provisions of section 58, be tried and punished for that offence by that military court at any time within a period of three months after he has ceased to be subject to this Code.

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

60 Person arrested to be brought before officer

(1) Any person charged with an offence other than an offence which in terms of section 56 may not be tried by a military court, shall within the prescribed period be brought before a prescribed officer who shall try the accused summarily or direct that a preliminary investigation be held.

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

60A

[S. 60A repealed by s. 43 (a) of Act 16 of 1999.]

61 to 65 inclusive

[Ss. 61 to 65 inclusive repealed by s. 43 (a) of Act 16 of 1999.]

65A

[S. 65A repealed by s. 43 (a) of Act 16 of 1999.]

66 to 68 inclusive

[Ss. 66 to 68 inclusive repealed by s. 43 (a) of Act 16 of 1999.]

69 Trial of more than one person

Where two or more persons are charged jointly with the same offence, the joint trial of such persons shall be conducted by the military court which have jurisdiction to try the most senior in rank of such persons.

[S. 69 substituted by s. 43 (b) of Act 16 of 1999.]

70

[S. 70 repealed by s. 43 (a) of Act 16 of 1999.]

71

[S. 71 substituted by s. 9 of Act 105 of 1997 and repealed by s. 43 (a) of Act 16 of 1999.]

72

[S. 72 amended by s. 10 of Act 105 of 1997 and repealed by s. 43 (a) of Act 16 of 1999.]

73 to 77 inclusive

[Ss. 73 to 77 inclusive repealed by s. 43 (a) of Act 16 of 1999.]

78

[S. 78 amended by s. 12 of Act 132 of 1993 and repealed by s. 43 (a) of Act 16 of 1999.]

79

80 How charge to be framed

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

81 More than one charge may be joined in same charge sheet

(1) Any number of charges, including alternative charges, may be brought against an accused either separately or on the same charge sheet.

[Sub-s. (1) amended by s. 11 of Act 105 of 1997.]

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

82 Joinder of persons

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

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

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

[Sub-s. (3) amended by s. 43 (b) of Act 16 of 1999.]

83

[S. 83 repealed by s. 43 (a) of Act 16 of 1999.]

84 Rules of evidence applicable in civil courts to apply also in military courts

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

85 Evidence must be given *viva voce* and in open court

(1) Every witness appearing to give evidence at a trial by a military court shall give his evidence *viva voce* and on oath.

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

[S. 85 amended by s. 43 (b) of 16 of 1999.]

86 and 87

[Ss. 86 and 87 repealed by s. 43 (a) of Act 16 of 1999.]

88 Alternative verdicts

(1) An accused who is charged-

(a) with desertion, may be found guilty of having been absent without leave;

(b) with having used threatening language to his superior officer, may be found guilty of having used insulting language to or of having by word or conduct displayed insubordination or of having behaved with contempt towards his superior officer;

(c) with having by words or conduct displayed insubordination or of having behaved with contempt towards his superior officer, may be found guilty of having used insulting or threatening language to his superior officer;

(d) with malingering, may be found guilty of feigning or producing disease or infirmity;

(e) with feigning disease or infirmity, may be found guilty of producing disease or infirmity;

(f) with producing disease or infirmity, may be found guilty of feigning disease or infirmity;

(g) with maiming, may be found guilty of injuring;

(gA) with an offence under section 19 (1), may be found guilty of having committed an offence under section 19 (2);

(h) with theft, may be found guilty of receiving stolen property knowing it to have been stolen;

(i) with any other offence under this Code, may, failing proof of the commission of an offence in circumstances involving a higher degree of punishment, be found guilty of the same offence as having been committed in circumstances involving a lesser degree of punishment;

(j) with any offence under this Code, may be found guilty of having

attempted to commit that offence or of having aided, abetted, induced, incited, instigated, instructed or commanded any person to commit that offence or having procured the commission of that offence.

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

[Sub-s. (2) amended by s. 43 (b) of Act 16 of 1999.]

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

[Sub-s. (3) amended by s. 43 (b) of Act 16 of 1999.]

89 How finding and sentence of military court to be arrived at under certain circumstances

The finding, sentence or any other decision of a Court of Military Appeals as defined in section (1) of the Military Discipline Supplementary Measures Act, 1999, and a Court of Senior Military Judges composed in terms of section 9 (3) of the said Act, shall be determined by the vote of the majority of its members, all of whom shall vote.

[S. 89 amended by s. 12 of Act 105 of 1997 and substituted by s. 43 (b) of Act 16 of 1999.]

90

[S. 90 repealed by s. 43 (a) of Act 16 of 1999.]

91

[S. 91 amended by s. 13 of Act 105 of 1997 and repealed by s. 43 (a) of Act 16 of 1999.]

92 One sentence imposed in respect of all the charges

Whenever an accused is convicted by military court of more than one offence alleged in the same charge sheet, such court shall, subject to the provisions of section *ninety-*

three, impose only one sentence in respect of all the charges, and if such sentence in respect of all the charges, and if such sentence is a valid sentence in respect of any one of the charges on which the accused has been convicted, it shall be deemed to be a valid sentence in respect of all the charges on which he has been convicted.

[S. 92 amended by s. 43 (b) of Act 16 of 1999.]

93 Certain provisions to apply in case of particular punishments

(1)

[Sub-s. (1) deleted by s. 14 of Act 105 of 1997.]

(2) (a) Save as provided in sub-section (2) of section *thirty-four*, no sentence of imprisonment shall be for a shorter period than thirty days.

(b) The punishment of imprisonment shall not be combined with the field punishment or the punishment of detention.

(3) An officer sentenced to imprisonment shall also be sentenced to be cashiered, and the latter sentence shall be executed before the officer concerned is lodged in any prison, gaol or other place to serve the sentence of imprisonment.

(4) (a) A warrant officer, non-commissioned officer or private who is sentenced to imprisonment, shall also be sentenced to be discharged with ignominy.

(b) A warrant officer or non-commissioner officer who is sentenced to detention, shall also be sentenced to reduction to the ranks, and may also be sentenced to be discharged from the South African Defence Force.

(5) Field punishment shall be imposed only beyond the borders of the Republic and shall not be combined with the punishment of detention.

(6) (a) Any person whose trial commences or is concluded after he has ceased to be subject to this Code, may on conviction, if a sentence of a fine is imposed, be sentenced to a period of imprisonment not exceeding two months in default of the payment of the fine.

(b) A sentence of imprisonment or detention shall continue to run even though the offender ceases to be subject to this Code during the currency of the sentence.

94

[S. 94 repealed by s. 43 (a) of Act 16 of 1999.]

95 Court may where applicable, order deductions or forfeitures of pay

Whenever a military court imposes upon any person any punishment mentioned in this Code, it may order such deductions from or forfeitures of the pay of such person as may be authorised by this Code.

96

[S. 96 repealed by s. 43 (a) of Act 16 of 1999.]

97 Acquittal is not subject to confirmation

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

98 to 103 inclusive

[Ss. 98 to 103 inclusive repealed by s. 43 (a) of Act 16 of 1999.]

104 and 105

[Ss. 104 and 105 repealed by s. 15 of Act 105 of 1997.]

106

[S. 106 substituted by s. 16 of Act 105 of 1997 and repealed by s. 43 (a) of Act 16 of 1999.]

107 Reasons for judgment

(1) A review authority may direct a military court to give written reasons for any ruling or finding of such court, which reasons shall show-

(a) the facts the court found to be proved;

(b) the grounds upon which the court arrived at the finding;

(c) the reasons for any ruling of law or for the admission or rejection of any evidence,

as may be specified in the direction.

[Sub-s. (1) amended by s. 43 (b) of Act 16 of 1999.]

(2) Such reasons shall be furnished within such period as the direction may stipulate,

not being less than four days from the date of receipt of the direction by the military court.

[Sub-s. (2) amended by s. 43 (b) of Act 16 of 1999.]

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

[Sub-s. (3) amended by s. 43 (b) of Act 16 of 1999.]

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

108 to 112 inclusive

[Ss. 108 to 112 inclusive repealed by s. 43 (a) of Act 16 of 1999.]

113 Prosecutor may make representations to council of review

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

114 Council of review to hear argument in certain cases

In any case in which a sentence of 12 months imprisonment or more or of cashiering has been imposed, or where application has been made by the offender in terms of section 112 for the review of the proceedings of his or her case, the council of review shall, at the request of the offender, allow the offender or his or her counsel and the officer who prosecuted at the trial or any other person appointed for the purpose by the Adjutant-General in his or her stead, to appear before it and hear argument on the issues in the case.

[S. 114 substituted by s. 17 of Act 105 of 1997.]

115

[S. 115 repealed by s. 43 (a) of Act 16 of 1999.]

116 Reviewed finding or sentence deemed to be finding or sentence of military court

Any finding, sentence or order of a military court as upheld, substituted or varied by a review authority, shall be deemed to be the finding of the court which passed the original sentence or made the original finding or order.

[S. 116 substituted by s. 43 (b) of Act 16 of 1999.]

117

[S. 117 repealed by s. 43 (a) of Act 16 of 1999.]

118 When sentence commences

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

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

119 Where sentences of imprisonment, detention or field punishment to be served

The whole or any portion of any sentence of imprisonment or field punishment imposed by a military court may by order of the Adjutant General, and any sentence of detention shall, be served in a detention barracks.

120 State President may establish prisons and detention barracks and make regulations in regard thereto

(1) The Minister may establish one or more prisons in the Republic to which offenders sentenced to imprisonment under this Code may be committed to serve such sentences, or may direct that offenders so sentenced be committed to any prison established or deemed to have been established under the Prisons Act, 1959 (Act 8 of 1959).

(2) The Minister may make establish one or more detention barracks in the Republic to which offenders sentenced to detention may be committed to serve such sentences, or may direct that certain premises or portions of premises be deemed to be detention barracks to which such offenders may be so committed.

(3) The Minister may make regulations, not inconsistent with the Act, relating to all or any of the following matters in regard to any prisons or detention barracks established

or premises or portions thereof deemed to be detention barracks under this section, namely-

- (a) supervision and management;
- (b) the admission, safe custody and release of offenders and inmates;
- (c) discipline of the staff, offenders and inmates;
- (d) the release of offenders on parole or the remission of sentences for good behaviour;
- (e) the labour or compulsory labour that may be performed by offenders;
- (f) the punishments, not including corporal punishment, which may be imposed for offences in such establishments and the persons by whom and the manner in which such punishments may be imposed or executed;
- (g) the powers of the officers in charge of such establishment;
- (h) the restraint which may be applied to offenders;
- (i) visitors;
- (j) inspections;
- (k) death of offenders and inmates;
- (l) the extent to which all or any of the regulations under the Prisons Act, 1959 (Act 8 of 1959), may be applied to such prisons;
- (m) any matters which he considers necessary or expedient for the purposes for which such prisons or barracks are established or such premises or portions thereof are intended.

121 How sentences of imprisonment and detention imposed outside the Republic to be served

(1) The General Officer Commanding, South African Defence Force, may authorize any officer in command of troops on service beyond the borders of the Republic to establish such detention barracks as may be deemed necessary by such officer, to

which offenders sentenced to detention under this Code may be committed to serve such sentences.

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

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

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

[Sub-s. (4) amended by s. 43 (b) of Act 16 of 1999.]

(5) The regulations applicable to detention barracks in the Republic shall apply to detention barracks established under sub-section (1): Provided that the officer in general command of the South African Defence Force in the area in which such detention barracks are situated may in writing authorize such amendments or additions to the regulations for such detention barracks as local or service conditions render necessary or advisable: Provided further that such amendments or additions shall not make the conditions more severe for offenders or inmates.

122 Person in charge of prison, etc, must receive and detain person charged under code

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

123 Unsoundness of mind at time of commission of offence

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

124 Unsoundness of mind while under arrest or in custody

(1) If any person while under the arrest or in custody under this Code in the Republic on a charge of an offence is committed by a magistrate to an institution under the provisions of the Mental Disorders Act, 1916 (Act 38 of 1916), the charge may in the discretion of the Adjutant General be withdrawn or be proceeded with when such person is fit to stand his trial.

(2) (a) If any person under arrest or in custody beyond the borders of the Republic on a charge under this Code is, in the opinion of two registered medical practitioners appointed by the senior military medical authority in the area concerned, mentally disordered or defective as defined in the Mental Disorders Act, 1916 (Act 38 of 1916), as he shall be committed by his commanding officer to such hospital, prison, detention barracks or other place as the circumstances may permit and shall be detained therein in safe custody until his removal to the Republic can reasonably be effected or until he is fit to stand his trial, whichever is the earlier.

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

125 Unsoundness of mind upon arraignment or during trial in Republic

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

(2) If such accused is not committed by the magistrate to an institution under the provisions of the Mental Disorders Act, 1916 (Act 38 of 1916), he may be charged before the same or some other court.

(3) If the accused is not committed by the magistrate to an institution under the provisions of that Act, the charge against him may, in the discretion of the Adjutant-

General be withdrawn or may, when the accused is fit to stand his trial, be proceeded with before the same court or be commenced *de novo* before another court.

126 Unsoundness of mind upon arraignment or during trial outside the Republic

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

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

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

(a) that the accused be removed to the Republic and there detained in detention barracks or some other prescribed place pending the signification of the State President's decision; and

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

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

127 Only authorized deductions may be made from pay

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

(a) such deductions as are authorized by the Act or this Code or as may be required to be made by virtue of any provision of the Exchequer and Audit Act, 1956 (Act 23 of 1956);

(b) deductions in settlement of a debt due to the Government; or

(c) deductions in pursuance of a garnishee order issued in terms of any law in force in the Republic.

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

128 Forfeitures of pay

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

(a) he has been absent from duty, whether on desertion or without leave, in respect of which he has been convicted by a competent court;

(b) he has been detained under arrest or in custody for an offence in respect of which-

(i) he has been sentenced to imprisonment; or

(ii) a sentence referred to in paragraph (d) has been imposed upon him;

(c) he has been imprisoned in pursuance of a sentence of a competent court;

(d) he has been under detention in pursuance of a sentence of a competent court with which there has been combined a sentence of discharge;

(e) he is in hospital in consequence of an offence under paragraph (b) of section *eighteen* of which he has been convicted by a competent court;

(f) he has been detained under arrest by or in custody of the South African Police for an offence in respect of which he has been convicted by a competent court;

(g) he is absent from duty as a prisoner of war due to his own wilful act or omission;

(h) he voluntarily serves the enemy;

(i) he has been on bail or released on his own recognizance by a civil court but failed to return to duty; or

(j) he is not on duty owing to his having been ordered by the Chief of the South African National Defence Force not to return to duty during any period subsequent to his release from arrest or custody pending or during trial, whether on bail or on his own recognizance or otherwise in respect of an offence of which he has thereafter been convicted: Provided that the provisions of this paragraph shall also apply to a person who has been convicted and intends appealing against his conviction or applying for the review of the proceedings of his case.

[Para. (j) amended by s. 43 (b) of Act 16 of 1999.]

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

(a) if he is married or is a widower or divorced person who has a child, stepchild or legally adopted child who lives with and is maintained by him, one-third of his pay; or

(b) if he is unmarried, two-thirds of his pay.

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

(4) The full amount withheld under subsection (3) shall be paid to the person from whom it has been withheld if he is exonerated by any court of competent jurisdiction or if, in the opinion of the Adjutant General, he is not charged before any such court within a reasonable time.

129 Deductions from pay

(1) Whenever a competent court convicts any person subject to this Code of an offence, other than an offence relating to the driving of a motor vehicle, and any act or omission constituting such offence has caused any loss of or damage to public property or property belonging to any institution, the court shall, subject to the provisions of subsection (3), order that the accused be placed under deductions of pay to the amount of the loss or damage: Provided that where the court is satisfied that the offence was not committed wilfully, it may order that the accused be placed under deductions of pay to such lesser amount as it may in its discretion determine.

(1)*bis* Any amount deducted from a member's pay in pursuance of an order made under subsection (1) in respect of loss of or damage to property belonging to any institution shall be paid to the institution concerned.

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

(3) Whenever a competent court convicts a person subject to this Code of having in contravention of section 24 negligently lost, damaged or destroyed his equipment, arms, kit or any other property issued to him at public expense for personal use in the execution of his duties, it shall order that such equipment, arms, kit or other property be replaced or repaired and that the costs involved in such replacement or repair be recovered from the person concerned: Provided that no such order shall be made in the case of a sentence of cashiering, dismissal from the South African Defence Force, discharge with ignominy from the South African Defence Force or discharge from the South African Defence Force, if the said equipment, arms, kit or other property has at the time of sentence become the property of the accused pursuant to the regulations.

(4)

130 Fine may be deducted from pay

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

131 Maintenance orders

(1) If the General Officer Commanding, South African Defence Force, is satisfied-

(a) that a magistrate's court or a superior court has made an order against a member of the Permanent Force or against any member of the South African Defence Force performing service in defence of the Republic, for the regular payment of a specified amount towards the maintenance of such member's wife or child, he may order that the member concerned be placed under deductions of pay for the amount of the order of court;

(b) that any member of the Permanent Force or any other member of the South African Defence Force performing service in defence of the Republic, is not maintaining or adequately maintaining his wife or child, he may order that the member concerned be placed under deductions of pay for such amount as, in all the circumstances of the case, he considers to be reasonable.

(2) Any amount deducted from a member's pay in pursuance of an order made under sub-section (1), shall be paid to the wife of the member concerned or to the legal guardian of the child concerned or to the magistrate of the district in which such wife or guardian resides for distribution to or on behalf of such wife or child as such magistrate may determine.

132 Garnishee orders

(1) Notwithstanding anything to the contrary in any other law contained no garnishee order shall be issued in terms of any law in force in the Republic in respect of the pay of any member of the South African Defence Force while he is on service beyond the borders of the Republic or before the expiration of a period of three months after his return to the Republic.

(2) The provisions of paragraph (c) of subsection (1) of section *one hundred and twenty-seven* shall not apply to the pay of any such member while he is on such service or during the said period in respect of any garnishee order issued while such member was not on such service.

133 General Officer Commanding may remit deductions or forfeitures

Whenever the General Officer Commanding, South African Defence Force, is satisfied that any forfeiture of the pay of a member of the South African Defence Force, made under section *one hundred and twenty-eight*, will, having regard to the member's pay and the nature of the offence, if any, create or result in undue hardship, he may remit the whole or any portion of such forfeiture.

134 Redress of wrongs

(1) Any person subject to this Code (hereinafter in this section referred to as 'the complainant') who is aggrieved by any act or omission of any other person subject to this Code, may complain in writing to his commanding officer, and if such complaint is against the commanding officer or such commanding officer is unable to redress the wrong or otherwise to satisfy the complainant within a reasonable time, such commanding officer shall refer the complaint to the officer under whose command he is serving who holds a warrant to convene courts martial.

(2) Such latter officer shall, if he is unable to redress the wrong or otherwise to satisfy the complainant, without unreasonable delay transmit the complaint to the appropriate chief of staff for decision, and such chief of staff shall, if he is unable to redress the wrong or to satisfy the complainant, without delay transmit the complaint to the General Officer Commanding, South African Defence Force.

(3) If the General Officer Commanding, South African National Defence Force, is unable to redress the wrong or otherwise to satisfy the complainant, he or she shall, if requested by the complainant to do so, transmit the complaint to the President, for a decision.

[Sub-s. (3) substituted by s. 19 of Act 88 of 1996.]

(4) If an officer who has received a complaint transmits such complaint to higher authority in terms of this section, he shall notify the complainant of such transmission at the time thereof.

(5) Any person who has lodged a complaint with his commanding officer and whose wrong is not redressed or who is not otherwise satisfied within a reasonable time, or who has not been advised within a reasonable time that his complaint has been sent to higher authority, may complain directly to such higher authority and ultimately to the General Officer Commanding, South African Defence Force: Provided that such complainant shall send a copy of such further complaint to his commanding officer at the same time as he complains to higher authority or the General Officer Commanding, South African Defence Force.

135 Board of inquiry in relation to absence without leave

(1) When any person has been absent without leave for more than thirty days, a board of inquiry may be convened to inquire into such absence and into any deficiencies there may be in his kit, arms and equipment or any articles of public property whatsoever on issue to him.

(2) Such board of inquiry shall be convened and shall conduct its inquiry in the prescribed manner and take evidence on oath, for which purpose the president may administer the prescribed oath to witnesses, interpreters and shorthandwriters.

(3) If the board of inquiry finds that such person has been so absent for more than thirty days and is still so absent, it shall record such finding, including the date of the commencement of the absence without leave, as also its finding on any deficiencies of his kit, arms and equipment and any articles of public property on issue to him and the estimated value thereof.

(4) If such person is not thereafter arrested, or until he is arrested, the finding of the board of inquiry shall have the force and effect of a finding of guilty by a military court on a charge of desertion, and if there is any finding by the board of inquiry of any deficiencies, such finding shall have the force and effect of a finding of guilty on a charge of an offence under section 24 (1) (a).

[Sub-s. (4) amended by s. 43 (b) of Act 16 of 1999.]

(5) A copy of any finding of a board of inquiry under this section, if duly certified to be a true copy of the original by the commanding officer of the person or the appropriate chief of staff or the officer in charge of the records of the said chief of staff, shall on its mere production be admissible in evidence against such person on a charge of desertion or absence without leave or on a charge under section 24 (1) (a) as proof of his absence without leave and of any deficiencies and the value thereof: Provided that such proof shall be rebuttable by such person.

136 Boards of inquiry

(1) The General Officer Commanding, South African Defence Force, or any prescribed officer, may at any time or place convene a board of inquiry to inquire into any matter concerning the South African Defence Force, any member thereof or any public property or the property or affairs of any institution or any regimental or sports funds of the said Force, and to report thereon or to make a recommendation as may be directed.

(2) The president of any such board of inquiry is hereby empowered to administer the prescribed oath to witnesses, interpreters and shorthandwriters at such inquiry.

137 Attendance of witnesses at and composition of board of inquiry

(1) The president of any board of inquiry convened under section *one hundred and thirty-five* or *one hundred and thirty-six*, may summon any person in the Republic, whether or not otherwise subject to this Code, to attend such board of inquiry and to

give evidence thereat: Provided that no person shall be required to answer any question at such inquiry which he could not in a civil court be compelled to answer.

(2) The composition of boards of inquiry, the method of convening such boards and the procedure to be followed by such boards shall be as prescribed.

138 Attendance of witnesses at military courts, preliminary investigations or boards of inquiry

(1) Any person not subject to this Code who is required to give evidence or to produce any document or thing at any military court, a preliminary investigation or board of inquiry in the Republic, may be summoned in the prescribed manner to attend such court, preliminary investigation or board and to give such evidence or produce such document or thing.

(2) Any person not subject to this Code who has been summoned in the prescribed manner to attend any military court, preliminary investigation or board of inquiry to give evidence or to produce any document or thing, and who fails to attend or to remain in attendance until authorized to leave or refuses to be sworn or to affirm or to answer any question which in similar proceedings in a civil court he could be compelled to answer, or fails or refuses to produce any document or thing which in similar proceedings in a civil court he could be compelled to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding one month.

139 Competent but not compellable witness giving evidence outside the Republic

If at any trial by a military court beyond the borders of the Republic a competent but not compelled witness gives evidence but refuses to answer any question put to him by the court, or by the defence if he has been called by the prosecution, or by the prosecutor if he has been called by the defence, to which question he could be bound in law to reply if he were a witness at such a trial in the Republic, the court shall, if satisfied that the answer to the question is material order the witness to stand down and strike the whole of his evidence from the record of the proceedings.

140 Evidence

(1) Whenever a person subject to this Code is required to produce at the trial before a civil or a military court of any person for an offence, any document made or intended for official use, such person may in lieu of the original document produce a copy certified by him to be a true copy of the original and such copy shall be admissible in

evidence as proof of its existence and of its contents as if it were the original: Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of such document shall be produced.

(2) A photographic reproduction of a document, if certified by the officer having the custody of the original to be a photographic reproduction of the original, shall be admissible in evidence before a military or civil court trying an offence as proof of its existence and of its contents as if it were the original: Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of the document shall be produced.

(3) Any entry in the records of the South African Defence Force concerning the pay or any allowances of any person subject to this Code may, unless objection is made by any interested party, be proved in a civil or military court trying an offence by the production of a copy or a photographic reproduction of such entry if such a copy or reproduction purports to be certified by the officer having charge of the original record to be a true copy or reproduction, as the case may be, of such entry.

(4) Any attestation or enrolment paper purporting to have been signed by any person, shall be evidence of such person having given the answers to questions which he is therein represented as having given, and the existence and contents of such attestation paper may, unless objection is made by any interested party, be proved in evidence before a civil court or military court by the production of a copy or a photographic reproduction thereof, if certified to be a true copy or reproduction of the original by the officer having charge of the original.

(5) A certificate purporting to be signed by an officer having charge of the records of any person charged with an offence, stating-

(a) the rank or appointment held by such person at any time during his service;

(b) the date of his enrolment or discharge;

(c) the decorations, medals, clasps, good conduct or long service badges or wound stripes or other emblems of merit to which such person is or is not entitled; or

(d) the rate of pay or any allowances to which such person is or was at any time entitled, shall upon its mere production be admissible as evidence of the contents thereof at the trial of such person for an

offence by a civil or military court: Provided that the accused shall have the right to require such officer to be called to give oral evidence.

141 How persons arrested for desertion or absence without leave to be dealt with

(1) (a) Whenever a person surrenders himself to or is arrested by the chief disciplinary officer, an assistant disciplinary officer, a military policeman, a superior officer or a member of the South African Police on a charge under this Code of desertion or absence without leave, the person to whom he surrenders himself or who arrests him shall prepare and sign a certificate stating the fact of such surrender or arrest and the time, date and place thereof.

(b) A certificate prepared and signed in terms of paragraph (a) of this sub-section shall at the trial of such person on such charge by a civil or military court on its mere production be admissible in evidence as proof of the surrender or arrest, as the case may be, and of the time, date and place thereof as stated in the certificate.

(2) (a) Where a person is arrested by, or surrenders himself to, a member of the South African Police on a charge of desertion or absence without leave, and such person cannot be delivered over within forty-eight hours to his commanding officer or the chief disciplinary officer or an assistant disciplinary officer, he shall without delay be brought before a magistrate of the district in which he then is and such magistrate, if satisfied after due enquiry that such person is a deserter or an illegal absentee, or that there are reasonable grounds for suspecting that such person is a deserter or an illegal absentee, may order that he be delivered over to his commanding officer or to the chief disciplinary officer or an assistant disciplinary officer and that he be committed to custody in a prison, police cell or lock-up or other place of confinement until such delivery over can be effected: Provided that if such person is not so delivered over within fourteen days of his committal to custody by the magistrate, he shall again be brought before a magistrate who may order his committal for a further period not exceeding fourteen days.

(b) If there is not sufficient evidence available to the magistrate when such person is brought before him to enable the magistrate to determine whether such person is a deserter or an illegal absentee or whether there are reasonable grounds for so suspecting him, the magistrate may remand him in custody from time to time not exceeding seven days at a time.

(c) Where such person on being brought before a magistrate voluntarily confesses to being a deserter or an illegal absentee, the magistrate shall record such confession and

obtain the signature of such person thereto, if he is willing to sign it, and shall thereafter himself sign such record and cause a true copy thereof to be made and certified by himself or the clerk of the court, and such certified copy shall be admissible in evidence on its mere production at the trial of such person by a civil or military court on a charge of desertion or absence without leave as proof of such confession.

142 Orders by General Officer Commanding may be signed by order, instruction or letter

(1) Where any order is authorized by this Code to be made by the General Officer Commanding, South African Defence Force, or any other commanding officer, such order may be signified by an order, instruction or letter under the hand of any officer authorized to issue such orders on behalf of the General Officer Commanding, South African Defence Force, or other commanding officer, and an order, instruction or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

(2) An order deviating from any form that may be prescribed for it shall not be rendered invalid merely because of such deviation.

143 Registrar or clerk of a civil court must furnish particulars of trial by civil court of persons subject to code

Whenever any person subject to this Code has been tried by a civil court, the registrar or clerk of such court shall, if required by the commanding officer of such person or by any other officer, transmit to him a certificate setting forth the offence for which such person was tried, the judgment and the sentence and any order of the court or, if he was acquitted, a statement to that effect, and such certificate shall for all purposes be proof of the conviction and the sentence, or of the order of the court or of the acquittal of such person.

144 Members of South African Defence Force deemed to have been properly arrested or enrolled in certain circumstances

(1) Every person who has served as a member of the South African Defence Force for a period of not less than one month, or who has accepted pay as a member of the said Force, shall be deemed to have been properly attested or enrolled and shall have no right to claim his discharge or release on the ground of any error, illegality or misunderstanding in his attestation or enrolment.

(2) If a person claims his discharge or release within one month of engagement for

service on the ground of any error, illegality or misunderstanding in his attestation or enrolment, and obtains his discharge as a result of such claim, he shall nevertheless be deemed to have been properly attested or enrolled to the date of his claim.

145

[S. 145 amended by s. 18 of Act 105 of 1997 and repealed by s. 43 (a) of Act 16 of 1999.]

146

[S. 146 repealed by s. 43 (a) of Act 16 of 1999.]

147 Appointment and powers of chief disciplinary officer and assistants

(1) The General Officer Commanding, South African Defence Force, or an officer authorized thereto by him may appoint an officer as chief disciplinary officer of the South African Defence Force and so many assistant disciplinary officers as he may deem necessary.

(2) The chief disciplinary officer or, subject to the provisions of section 52 (2), any assistant disciplinary officer may at any time or place arrest any person subject to this Code for an offence and detain such person as prescribed.

(3) The chief disciplinary officer or any assistant disciplinary officer may under warrant take such steps as may be prescribed for the execution of any sentence of imprisonment, detention or field punishment imposed by a military court: Provided that the provisions of this subsection shall also apply in respect of a sentence of detention imposed by a civil court.

[Sub-s. (3) amended by s. 19 of Act 105 of 1997.]

(4)

148 Restitution or confiscation of property

(1) When any person is convicted by a military court of theft, or any other offence whereby he has unlawfully obtained any property, and such property or any portion thereof is found in the possession or under the control of such person, the court may order that such property or such portion thereof be restored to the lawful owner.

(2) A military court convicting any person of an offence which was committed by means of any weapon, instrument or other article produced to the court may, if it

thinks fit, declare such weapon, instrument or other article to be forfeited to the State.

149 Field punishment

(1) An offender undergoing field punishment may be required to perform any or all of his normal military duties.

(2) Field punishment may be carried out regimentally when the unit to which the offender belongs is on the move or about to move or when the chief disciplinary officer or an assistant disciplinary officer is not reasonably available, and to prevent the escape of the offender he may be handcuffed or otherwise secured.

(3) When a unit is not on the move or about to move, and the chief disciplinary officer or an assistant disciplinary officer is available to the unit, an offender sentenced to field punishment shall be handed over to such disciplinary officer to undergo the sentence.

150 Exercise of powers vested in holders of military office

Any power or jurisdiction given to and any act or thing to be done by, or before any person holding any office in the South African Defence Force, may be exercised or done by or before any other person for the time being authorized in that behalf according to the customs of the service or as may be prescribed.

151 Contempt of military court by person not subject to the code

(1) Any person not subject to this Code who in the Republic wilfully causes any disturbance or interruption at any military court or wilfully commits any act calculated or likely to bring such court into contempt, ridicule or disrepute, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or in default of payment to imprisonment for a period not exceeding two months.

(2) Any person who, within the precincts of a military court, commits any act or causes any disturbance or interruption mentioned in subsection (1) may be ordered by the court to be removed from the precincts of the court by any member of the Permanent Force and to be taken into custody and handed over to the South African Police.

152 Corporal punishment may not be imposed

Notwithstanding anything to the contrary contained in any other other law, no civil or military court may in respect of any offence under this Code sentence an offender to any form of corporal punishment.

153 Defending officer as a witness

No defending officer appointed in terms of this Code to defend an accused person shall be competent to give evidence against such person at his trial without the consent of such person, concerning any fact, matter or thing which came to his knowledge after and by reason of his appointment and duties as the defending officer of such person.

154 Trials commenced prior to commencement of code

(1) The trial of any person subject to this Code which was commenced prior to the date of the coming into operation of this Code shall be proceeded with and concluded in all respects as if this Code had not been in operation.

(2) In respect of any trial referred to in sub-section (1), the finding and the sentence shall be confirmed the sentence or any order shall be executed and the proceedings shall be reviewed as if this Code had not been in operation.

(3) Any proceedings which may be instituted in any civil court arising out of or based on any proceedings under sub-section (1) or (2) shall likewise in all respects be dealt with as if this Code had not been in operation.

(4) For the purposes of this section, a trial shall be deemed to have commenced if the accused has pleaded or has been required to plead to the charges against him or if any evidence has been recorded at a summary of evidence in respect of any charges against him.

Second Schedule

No and Year of Act	Title	Extent of Repeal
Act 13 of 1912	South Africa Defence Act, 1912	The whole.
Act 22 of 1922	South Africa Defence Act Amendment Act, 1922	The whole.
Act 32 of 1932	Defence Act (Amendment) and Dominion Forces Act, 1932	The whole.
Act 33 of 1943	Pension Laws Amendment Act, 1943	Section one.
Act 58 of 1946	War Pension Laws Amendment Act, 1946	Section forty-six.
Act 39 of 1947	Defence Amendment	The whole.

	Act, 1947	
Act 48 of 1947	Finance Act, 1947	Section sixteen.
Act 43 of 1949	Defence Amendment Act, 1949	The whole.
Act 44 of 1951	Defence Amendment Act, 1951	The whole.
Act 62 of 1952	Defence Amendment Act, 1952	The whole.
Act 43 of 1954	Defence Amendment Act, 1954	Section three.