



Number 17 of 2011

DEFENCE (AMENDMENT) ACT 2011

ARRANGEMENT OF SECTIONS

Section

1. Definitions.
 2. Amendment of section 2 of Principal Act.
 3. Amendment of section 184C of Principal Act.
 4. Amendment of section 184D of Principal Act.
 5. Amendment of section 184J of Principal Act.
 6. Amendment of section 184K of Principal Act.
 7. Circuit Judge to perform functions of military judge in certain circumstances.
 8. President of Circuit Court to temporarily designate Circuit Judge to perform functions of military judge in certain circumstances.
 9. Amendment of section 240 of Principal Act.
 10. Amendment of section 240B of Principal Act.
 11. Amendment of Courts-Martial Appeals Act 1983.
 12. Short title, collective citation, construction and commencement.
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ACTS REFERRED TO

Civil Service Regulation Act 1956	1956, No. 46
Courts of Justice Act 1947	1947, No. 20
Courts-Martial Appeals Act 1983	1983, No. 19
Defence Act 1954	1954, No. 18
Defence Acts 1954 to 2007	
Defence (Amendment) Act 1987	1987, No. 8



Number 17 of 2011

DEFENCE (AMENDMENT) ACT 2011

AN ACT TO AMEND AND EXTEND THE DEFENCE ACT 1954; TO MAKE FURTHER PROVISION FOR THE SERVICE REQUIRED FOR APPOINTMENT AS DIRECTOR OF MILITARY PROSECUTIONS AND MILITARY JUDGE; TO PROVIDE FOR PERSONS WHO ARE NOT OFFICERS OF THE PERMANENT DEFENCE FORCE TO BE APPOINTED AS DIRECTOR OF MILITARY PROSECUTIONS AND MILITARY JUDGE; TO PROVIDE FOR THE TEMPORARY DESIGNATION OF CIRCUIT COURT JUDGES TO PERFORM THE FUNCTIONS OF A MILITARY JUDGE; TO AMEND AND EXTEND THE COURTS OF JUSTICE ACT 1947; TO AMEND AND EXTEND THE COURTS-MARTIAL APPEALS ACT 1983; AND TO PROVIDE FOR RELATED MATTERS.

[26th July, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- 1.—In this Act, “Principal Act” means the Defence Act 1954. Definitions.
- 2.—Section 2 of the Principal Act is amended—
- (a) by inserting the following definition:
- “ ‘Act of 1947’ means the Courts of Justice Act 1947;”, and
- (b) by substituting the following definition for the definition of “military judge”—
- “ ‘military judge’—
- (a) means a military judge appointed under Chapter IVC of Part V of this Act, and
- (b) in relation to the performance of the functions of a military judge under this Act or any statutory instrument made under it, where a temporary designation of a Circuit Judge to carry out such functions of a military judge has been made under section 11A of the Act of 1947, references to the performance of such functions shall be construed in accordance with section 184LA(3);”.
- Amendment of section 2 of Principal Act.

Amendment of section 184C of Principal Act.

3.—(1) Section 184C(1) of the Principal Act is amended by inserting “, or a qualified person other than an officer of the Permanent Defence Force,” after “Permanent Defence Force”.

(2) Section 184C(2) of the Principal Act is amended by inserting “, or a person other than an officer of the Permanent Defence Force,” after “an officer”.

(3) Section 184C of the Principal Act is amended by inserting the following subsection after subsection (3):

“(3A) For the purposes of this section—

- (a) service, in respect of which a determination has been made in accordance with section 184D(3A), shall be deemed to be practice as a barrister or a solicitor, as the case may be, for the period to which that service relates, and
- (b) the officer in respect of whom that service relates shall be deemed to be a practising barrister or a practising solicitor, as the case may be, while holding the position to which that service relates.”.

(4) Section 184C of the Principal Act is amended by inserting the following subsection after subsection (3A):

“(3B) For the purposes of this section, having regard to the appointment of a person other than an officer of the Permanent Defence Force—

- (a) service for any period in a position in the full-time service of the State (including as a member of the Permanent Defence Force and as a civil servant within the meaning of the Civil Service Regulation Act 1956) for which qualification as a barrister or solicitor was a requirement shall be deemed to be practice as a barrister or a solicitor, as the case may be, for that period, and
- (b) a person, other than an officer of the Permanent Defence Force, while holding that position, shall be deemed to be a practising barrister or a practising solicitor, as the case may be.”.

(5) Section 184C of the Principal Act is amended by inserting the following subsection after subsection (4):

“(5) Where a qualified person, referred to in subsection (1), is to be appointed under subsection (1) to be the Director that person shall, for the purposes of subsection (4), be nominated for appointment as a commissioned officer under section 42 at the rank specified in subsection (4).”.

Amendment of section 184D of Principal Act.

4.—(1) Section 184D(1) of the Principal Act is amended by inserting “, and persons other than officers,” after “identifying officers”.

(2) Section 184D of the Principal Act is amended by inserting the following subsection after subsection (3):

“(3A) A committee established under this section, having considered—

- (a) the service of an officer, other than an officer referred to in section 184C(3), who is a qualified barrister or solicitor in a position in the full-time service of the State (including as a member of the Permanent Defence Force and as a civil servant within the meaning of the Civil Service Regulation Act 1956) for any period following that qualification, and
- (b) the duties and role discharged by the officer in relation to the service, during that period,

may determine that it is satisfied that—

- (i) such duties and role are substantially similar in substance and effect to those discharged by an officer referred to in section 184C(3), and
- (ii) such duties and role were carried out by the officer on a day to day basis throughout that period.”.

(3) Section 184D(4) of the Principal Act is amended by inserting “, or, as the case may be, one, or more than one, person other than an officer,” after “select an officer or officers”.

(4) Section 184D(5) of the Principal Act is amended—

- (a) by substituting “an officer, or a person other than an officer, to be the Director unless the officer, or person,” for “an officer to be the Director unless the officer”,
- (b) in paragraph (a), by substituting “a suitable officer or person other than an officer,” for “a suitable officer”,
- (c) in paragraph (b), by substituting “the officer or any of the officers, or such person or any of such persons selected by the committee” for “the officer or any of the officers selected by the committee”,
- (d) in paragraph (i), by substituting “appoint an officer, or as the case may be, a person other than an officer, to be the Director” for “appoint an officer to be the Director”, and
- (e) in paragraph (ii), by substituting “the Government shall appoint an officer, or such person, to be the Director” for “the Government shall appoint an officer to be the Director”.

5.—(1) Section 184J(1) of the Principal Act is amended by inserting “, or a qualified person other than an officer of the Permanent Defence Force,” after “Permanent Defence Force”. Amendment of section 184J of Principal Act.

(2) Section 184J(2) of the Principal Act is amended by inserting “, or a person other than an officer of the Permanent Defence Force,” after “An officer”.

(3) Section 184J of the Principal Act is amended by inserting the following subsection after subsection (3):

“(3A) For the purposes of this section—

- (a) service, in respect of which a determination has been made in accordance with section 184K(2A), shall be deemed to be practice as a barrister or a solicitor as the case may be, for the period to which that service relates, and
- (b) the officer in respect of whom that service relates shall be deemed to be a practising barrister or a practising solicitor, as the case may be, while holding the position to which that service relates.”.

(4) Section 184J of the Principal Act is amended by inserting the following subsection after subsection (3A):

“(3B) For the purposes of this section, having regard to the appointment of a person other than an officer of the Permanent Defence Force—

- (a) service for any period in a position in the full-time service of the State (including as a member of the Permanent Defence Force and as a civil servant within the meaning of the Civil Service Regulation Act 1956) for which qualification as a barrister or solicitor was a requirement shall be deemed to be practice as a barrister or a solicitor, as the case may be, for that period, and
- (b) a person other than an officer of the Permanent Defence Force, while holding that position, shall be deemed to be a practising barrister or a practising solicitor, as the case may be.”.

(5) Section 184J of the Principal Act is amended by inserting the following subsection after subsection (4):

“(5) Where a qualified person, referred to in subsection (1), is to be appointed under subsection (1) to be a military judge that person shall, for the purposes of subsection (4), be nominated for appointment as a commissioned officer under section 42 at the rank specified in subsection (4).”.

Amendment of section 184K of Principal Act.

6.—(1) Section 184K(1) of the Principal Act is amended—

- (a) by inserting “, and persons other than officers,” after “identifying officers”, and
- (b) by inserting “, and such persons,” after “the suitability of those officers”.

(2) Section 184K of the Principal Act is amended by inserting the following subsection after subsection (2):

“(2A) A committee established under this section, having considered—

- (a) the service of an officer, other than an officer referred to in section 184J(3), who is a qualified barrister or solicitor in a position in the full-time service of the State (including as a member of the Permanent Defence Force and as a civil servant within the meaning of the Civil Service Regulation Act 1956) for any period following that qualification, and

(b) the duties and role discharged by the officer in relation to the service, during that period,

may determine that it is satisfied that—

- (i) such duties and role are substantially similar in substance and effect to those discharged by an officer referred to in section 184J(3), and
- (ii) such duties and role were carried out by the officer on a day to day basis throughout that period.”.

(3) Section 184K(3) of the Principal Act is amended—

- (a) by inserting “, or, as the case may be, one, or more than one, person other than an officer,” after “select an officer or officers”, and
- (b) by substituting “the officer or officers, or such person or persons, so selected,” for “the officer or officers so selected”.

(4) Section 184K(4) of the Principal Act is amended—

- (a) by inserting “, or a person other than an officer,” after “name of an officer”, in both places where it occurs,
- (b) by substituting “the officer or person concerned” for “the officer concerned”, and
- (c) by inserting “or person” after “in the opinion of the committee, the officer”.

(5) Section 184K(5) of the Principal Act is amended by inserting “or a person other than an officer” after “An officer”.

7.—The Principal Act is amended by inserting the following section after section 184L:

“Circuit Judge to perform functions of military judge in certain circumstances.

184LA.—(1) The Minister may, having consulted with the Minister for Justice and Equality, request the President of the Circuit Court to temporarily designate, under section 11A of the Act of 1947, one, or more than one, Circuit Judge to perform the functions of a military judge in all or any of the following circumstances:

Circuit Judge to perform functions of military judge in certain circumstances.

- (a) where there is a vacancy for the position of military judge and no person has been appointed, under section 184J(1), as military judge;
- (b) where a military judge, appointed under section 184J(1), is ill, absent or otherwise unable to carry out his or her functions;
- (c) where a military judge appointed under section 184J cannot properly deal with any matter before him or her by reason of the fact that he or she has a personal interest in the matter or personal

knowledge of the facts or the parties as might prejudice the hearing and determination of the matter;

- (d) without prejudice to paragraphs (a) to (c), any other circumstance in respect of which the Minister is satisfied that such temporary designation is necessary or appropriate.

(2) Where a Circuit Judge has been temporarily designated under section 11A of the Act of 1947 pursuant to a request under this section, sections 184J, 184K, 184L, 184N, 184O and 184P shall not apply to such Circuit Judge.

(3) Where a Circuit Judge has been temporarily designated under section 11A of the Act of 1947 pursuant to a request under this section, notwithstanding the definition of military judge in section 2, references in this Act, or any instrument made under it, to a military judge in relation to the carrying out of the functions of a military judge shall be construed in accordance with such temporary designation of such Circuit Judge and nothing in this Act, or any statutory instrument made under it, shall be construed as preventing such Circuit Judge from carrying out such functions of a military judge.

(4) For the purposes of this Act, without prejudice to the generality of subsection (1), references to functions of a military judge includes the judicial functions referred to in section 240(1)(r), if any, as may be provided for in rules of procedure made under that section.

(5) In this section, ‘functions of a military judge’ means—

- (a) the functions of a military judge under this Act and any instrument made under it, and under section 8 of the Defence (Amendment) Act 1987, and
- (b) the functions of a military judge under the Courts-Martial Appeals Act 1983 and any instrument made under that Act;

(6) In this Act—

‘Circuit Judge’ has the meaning assigned to it by the Act of 1947;

‘President of the Circuit Court’ shall be construed in accordance with section 9 of the Act of 1947.”.

8.—The Courts of Justice Act 1947 is amended by inserting the following section after section 11:

President of Circuit Court to temporarily designate Circuit Judge to perform functions of military judge in certain circumstances.

“President of Circuit Court to temporarily designate Circuit Judge to perform functions of military judge in certain circumstances.

11A.—(1) The President of the Circuit Court, may, following a request from the Minister for Defence under section 184LA of the Act of 1954, temporarily designate one, or more than one, Circuit Judge (whether such Circuit Judge is permanently, or temporarily, assigned to a circuit), with the consent of that Circuit Judge, to perform the functions of a military judge and ‘temporarily designated’ shall be construed accordingly.

(2) A Circuit Judge who is permanently assigned to a circuit (in this section referred to as a ‘permanently assigned Circuit Judge’) may be temporarily designated under this section to perform the functions of a military judge and where such permanently assigned Circuit Judge is temporarily designated under this section, that temporary designation shall not terminate or affect that permanent assignment to a circuit or deprive or relieve that permanently assigned Circuit Judge of any of the privileges, powers and duties vested in or imposed on him or her by virtue of such permanent assignment to a circuit.

(3) Where a Circuit Judge, whether he or she is a permanently assigned Circuit Judge or is temporarily assigned to a circuit, is temporarily designated under this section and a military judge—

- (a) has, at the time of such temporary designation, been appointed under section 184J(1) of the Act of 1954, and such appointment continues during the period of such temporary designation, that Circuit Judge shall, while so temporarily designated have, in relation to the functions of a military judge, concurrently with that military judge, all the privileges, powers and duties for the time being conferred or imposed by law, on that military judge, or
- (b) has not been appointed under section 184J(1) of the Act of 1954, that Circuit Judge shall have, in relation to the functions of a military judge while so temporarily designated, all the privileges, powers and duties as would for the time being be conferred or imposed by law as if that Circuit Judge were a military judge appointed under section 184J(1) of the Act of 1954.

(4) Without prejudice to subsection (3), where more than one Circuit Judge is temporarily designated under this section at the same time, whether he or she is a permanently assigned Circuit Judge or is temporarily assigned to a circuit, each such Circuit Judge shall have concurrently, with such other Circuit Judge so temporarily designated

under this section to carry out the functions of a military judge, all the privileges, powers and duties for the time being conferred or imposed by law on a military judge.

(5) The President of the Circuit Court may at any time terminate a temporary designation made under this section.

(6) In this section—

‘Act of 1954’ means the Defence Act 1954;

‘functions of a military judge’ means the functions of a military judge under—

(a) the Act of 1954 and any instrument made under that Act and under section 8 of the Defence (Amendment) Act 1987 and such functions shall be construed in accordance with section 184LA of that Act, and

(b) the Courts-Martial Appeals Act 1983 and any instrument made under that Act and such functions shall be construed in accordance with section 3A of that Act.”.

Amendment of section 240 of Principal Act.

9.—Section 240 of the Principal Act is amended by inserting the following subsection after subsection (1):

“(1A) Without prejudice to the generality of subsection (1), rules of procedure made under this section may, in relation to the functions of a military judge provided for in those rules, including the judicial functions referred to in subsection (1)(r), include provisions required for the performance of the functions of a military judge by a Circuit Judge who, pursuant to section 184LA, is temporarily designated to perform such functions under section 11A of the Act of 1947.”.

Amendment of section 240B of Principal Act.

10.—Section 240B of the Principal Act is amended by inserting the following subsection after subsection (1):

“(1A) Without prejudice to the generality of subsection (1), court-martial rules made under this section may, in relation to the functions of a military judge provided for in those rules, include provisions required for the performance of the functions of a military judge by a Circuit Judge who, pursuant to section 184LA, is temporarily designated to perform such functions under section 11A of the Act of 1947.”.

Amendment of Courts-Martial Appeals Act 1983.

11.—The Courts-Martial Appeals Act 1983 is amended—

(a) in section 3, by inserting the following definitions:

“ ‘Act of 1947’ means the Courts of Justice Act 1947;

‘military judge’—

- (a) means a military judge appointed under Chapter IVC of Part V of the Act of 1954, and
- (b) in relation to the performance of the functions of a military judge under this Act or any instrument made under it, where a temporary designation of a Circuit Judge to carry out the functions of a military judge has been made under section 11A of the Act of 1947, references to the performance of such functions shall be construed in accordance with section 3A.”,

(b) by inserting the following section after section 3:

“Performance of functions of military judge by Circuit Judge. 3A.—(1) Where a Circuit Judge has been temporarily designated under section 11A of the Courts of Justice Act 1947 pursuant to a request under section 184LA of the Act of 1954, notwithstanding the definition of military judge in section 3, references in this Act, or any instrument made under it, to a military judge in relation to the carrying out of the functions of a military judge under this Act, or any instrument made under it, shall be construed in accordance with such temporary designation of such Circuit Judge and nothing in this Act, or any statutory instrument made under it, shall be construed as preventing such Circuit Judge from carrying out such functions of a military judge.

(2) In this section ‘Circuit Judge’ has the meaning assigned to it by the Act of 1947.”,

(c) by inserting the following section after section 23:

“Section 23: supplemental provisions. 23A.—Without prejudice to the generality of section 23, rules of court made under that section may, in relation to the functions of a military judge provided for in those rules, include provisions required for the performance of the functions of a military judge by a Circuit Judge who, pursuant to section 184LA of the Act of 1954 is temporarily designated to perform such functions under section 11A of the Act of 1947.”,

and

(d) in section 33, by inserting the following subsection after subsection (2):

“(2A) Without prejudice to the generality of subsection (1), regulations under this section may, in relation to the functions of a military judge provided for in those regulations, include provisions required for the performance of the functions of a military judge by a Circuit Judge who, pursuant to section 184LA of the Act of 1954 is temporarily designated to perform such functions under section 11A of the Act of 1947.”.

[No. 17.] *Defence (Amendment) Act 2011.* [2011.]

Short title,
collective citation,
construction and
commencement.

12.—(1) This Act may be cited as the Defence (Amendment) Act 2011.

(2) This Act and the Defence Acts 1954 to 2007 may be cited together as the Defence Acts 1954 to 2011 and shall be construed together as one.

(3) This Act shall come into operation on such day or days as the Minister for Defence may appoint by order or orders either generally or with reference to any particular provision and different days may be so appointed for different purposes and different provisions.