CHAPTER 45

An Act to increase to forty-five million pounds the limit of fifteen million pounds on the contributions out of moneys provided by Parliament which may be made under section one of the Rural Water Supplies and Sewerage Act, 1944. [1st August 1951.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Increase of limit of contributions under s. 1 (5) of 7 & 8 Geo. 6. c. 26.

1. The limit imposed by subsection (5) of section one of the Rural Water Supplies and Sewerage Act, 1944, on the contributions which may be made under that section towards expenses incurred by local authorities in England and Wales shall be increased from fifteen million pounds to forty-five million pounds.

Short title and citation.

2. This Act may be cited as the Rural Water Supplies and Sewerage Act, 1951, and the said Act of 1944 and this Act may be cited together as the Rural Water Supplies and Sewerage Acts, 1944 and 1951.

CHAPTER 46

Courts-Martial (Appeals) Act, 1951

ARRANGEMENT OF SECTIONS

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PART III

SHORT TITLE

36. Short title.

An Act to establish a Courts-Martial Appeal Court and provide for appeals thereto from courts-martial and certain naval disciplinary courts; to make provision with respect to the offices of Judge Advocate of His Majesty's Fleet and Judge Advocate General; and for purposes connected with the matters aforesaid.

[1st August 1951.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

APPEALS FROM COURTS-MARTIAL

The Courts-Martial Appeal Court

Constitution of Courts-Martial Appeal Court.

1.—(1) There shall be a Courts-Martial Appeal Court (in this Part of this Act referred to as " the Court ") whereof the judges shall be—

(*a*) the Lord Chief Justice and the puisne judges of the High Court;

(*b*) such of the Lords Commissioners of Justiciary as the Lord Justice General may from time to time nominate for the purpose;

(*c*) such of the judges of His Majesty's High Court of Justice in Northern Ireland as the Lord Chief Justice of Northern Ireland may from time to time nominate for the purpose; and

(*d*) such other persons, being persons of legal experience, as the Lord Chancellor may appoint.

(2) The appointment of a person under paragraph (*d*) of the foregoing subsection to be a judge of the Court shall be for such term as may be determined by the Lord Chancellor, with the approval of the Treasury, before his appointment, and shall be subject to such conditions as may be so determined; and a person appointed as aforesaid to be a judge of the Court who ceases to hold office as such a judge shall be eligible for re-appointment.

(3) There may be paid to the persons appointed under paragraph (*d*) of subsection (1) of this section to be judges of the Court such remuneration, and to all the judges of the Court such travelling and subsistence allowances, as the Lord Chancellor may, with the approval of the Treasury, determine.

(4) There shall be a registrar of the Court (in this Part of this Act referred to as " the registrar ") to be appointed by the Lord

PART I —*cont.*

Chancellor, and the Lord Chancellor may appoint such other officers and servants of the Court as he may, with the approval of the Treasury as to numbers, determine.

(5) The remuneration of the officers and servants of the Court shall be such as the Lord Chancellor may, with the approval of the Treasury, determine, and the Superannuation Acts, 1834 to 1950, shall have effect as if service as an officer or servant of the Court were service in an established capacity in the permanent civil service of the State in an appointment held directly from the Crown.

(6) There shall be defrayed out of moneys provided by Parliament—

(*a*) the remuneration of persons appointed under paragraph (*d*) of subsection (1) of this section to be judges of the Court;

(*b*) the travelling and subsistence allowances of the judges of the Court;

(*c*) the remuneration of the officers and servants of the Court and such other expenses of the Court as the Treasury may sanction; and

(*d*) any increase attributable to the last foregoing subsection in the sums which, under the Superannuation Acts, 1834 to 1950, are payable out of moneys so provided.

Supplementary provisions relating to the Court.

2.—(1) For the purpose of hearing and determining appeals under this Part of this Act, or any matter preliminary or incidental to an appeal, the Court shall be summoned in accordance with directions given by the Lord Chief Justice with the consent of the Lord Chancellor, and shall be deemed to be duly constituted if—

(*a*) it consists of an uneven number of judges, not being less than three; and

(*b*) (subject as hereinafter provided) at least one of the number of judges of which it consists is a judge of the Court by virtue of paragraph (*a*), (*b*) or (*c*) of subsection (1) of section one of this Act.

(2) If the Lord Chief Justice so directs, the Court may sit in two or more divisions.

(3) The Court shall sit in such place as the Lord Chief Justice shall direct, whether within or outside the United Kingdom.

(4) Where the Court is directed to sit at a place outside the United Kingdom, the Lord Chancellor may, if he thinks it expedient so to do, direct that paragraph (*b*) of subsection (1) of this section shall not have effect in relation to the Court while sitting at that place.

PART I —*cont.*

(5) The determination of any question before the Court shall be according to the opinion of the majority of the judges of the Court hearing the case.

(6) The Court shall be a superior court of record and shall, for the purposes of and subject to the provisions of this Part of this Act, have full power to determine, in accordance with this Part of this Act, any question necessary to be determined for the purpose of doing justice in any case before the Court.

(7) Any direction which may be given under this section by the Lord Chief Justice may, in the event of a vacancy in the office or the incapacity of the Lord Chief Justice to act for any reason, be given by the senior puisne judge of the King's Bench Division of the High Court.

Appeals to the Courts-Martial Appeal Court

Right of appeal from court-martial.

3.—(1) Subject to the following provisions of this Part of this Act, a person convicted by a court-martial may, with the leave of the Court, appeal to the Court against his conviction.

(2) Except in the case of a conviction involving sentence of death, the right conferred by the foregoing subsection on a person convicted by a court-martial shall not be exercisable—

(*a*) unless, within such period as may be prescribed, he presents to the appropriate authority a petition praying that his conviction be quashed; and

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

(3) For the purposes of the last foregoing subsection the appropriate authority shall be—

(*a*) in the case of a conviction by a naval court-martial, the Admiralty; and

(*b*) in the case of a conviction by an army or air force court-martial, the Secretary of State:

Provided that, in the case of the conviction by an army court-martial of an officer, non-commissioned officer or man of the Royal Marines or Royal Marine Forces Volunteer Reserve or the conviction by an air force court-martial of an officer, petty officer or seaman of the naval forces, the appropriate authority shall, instead of being the Secretary of State, be the Admiralty.

(4) Rules of court may provide that, in such circumstances as may be specified in the rules, any such petition as is mentioned in subsection (2) of this section which is presented to such person

PART I —*cont.*

as may be specified in the rules shall be treated, for the purposes of that subsection, as having been presented to the appropriate authority.

Application for leave to appeal.

4.—(1) Leave to appeal to the Court shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged, within the prescribed period, with the registrar, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

(2) Rules of court may provide that, in such circumstances as may be specified in the rules, any such application as aforesaid which is lodged with such person (other than the registrar) as is specified in the rules shall be treated, for the purposes of the last foregoing subsection, as having been lodged with the registrar.

(3) Where an application for leave to appeal to the Court is lodged with a person other than the registrar in accordance with rules of court having effect by virtue of the last foregoing subsection, it shall be the duty of that person—

(*a*) to forward the application to the registrar with as much expedition as practicable; and

(*b*) if it appears to that person that it is practicable to furnish the registrar, before the receipt by him of the application, with such particulars of the application as will enable him to prepare a copy of it, and that in all the circumstances it is expedient so to do, forthwith to furnish him with those particulars.

(4) Where an appellant convicted by a court-martial held outside the United Kingdom duly presents a petition under the last foregoing section and, before the expiration of the period within which an application for leave to appeal to the Court against the conviction is required by subsection (1) of this section to be lodged, the appropriate authority for the purposes of subsection (2) of the last foregoing section receives from the appellant such an application accompanied by a request that that authority will forward the application to the registrar in the event of its being decided not to grant the petition, it shall be the duty of that authority to comply with the request, and accordingly, the right conferred upon the appellant by subsection (1) of the last foregoing section shall, if it has not previously become exercisable, become exercisable on the happening of that event.

(5) Except in the case of a conviction involving sentence of death, the Court may extend the period within which an application for leave to appeal must be lodged, whether that period has expired or not.

PART I —*cont.*

(6) In considering whether or not to give leave to appeal, the Court shall have regard to any expression of opinion made by the Judge Advocate of His Majesty's Fleet or the Judge Advocate General that the case is a fit one for appeal, and, if any such expression is so made, may, without more, give leave to appeal.

(7) Where the Court dismiss an application for leave to appeal they may, if they consider the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismiss the application.

Determination of appeals in ordinary cases.

5.—(1) Subject to the provisions of the next following section, on an appeal under this Part of this Act the Court shall allow the appeal if they think that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision of a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) If the Court allow an appeal under this Part of this Act, they shall quash the conviction.

Powers of the Court in special cases.

6.—(1) If it appears to the Court that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant was not warranted by the relevant Act for the offence of which he was convicted on the other charge, the Court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence so warranted as they think proper.

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Court that the court-martial must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Act for that other offence but not being a sentence of greater severity.

PART I —*cont.*

(3) Where—

(*a*) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Court that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment; or

(*b*) an appellant has been convicted of an offence and it appears to the Court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations;

the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Act for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the Court that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody under section sixty-eight of the Naval Discipline Act, section one hundred and thirty of the Army Act or section one hundred and thirty of the Air Force Act, as the case may require, in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

(5) The term of any sentence passed by the Court under any of the foregoing provisions of this section shall, unless the Court otherwise direct, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the Court as aforesaid shall—

(*a*) if passed on an appeal against a conviction by a naval court-martial, be deemed, for the purposes of the Naval Discipline Act, to be a sentence passed by such a court-martial; and

(*b*) if passed on an appeal against a conviction by an army or air force court-martial, be deemed, for the purposes of the Army Act or the Air Force Act, as the case

PART I —*cont.*

may be, to be a sentence passed by an army or, as the case may be, an air force court-martial, being a sentence that has been confirmed.

(6) In this section the expression " the relevant Act " means, in relation to an appellant, the Act under which he was tried.

Decision of the Court to be final subject to appeal to House of Lords.

7.—(1) If, in the case of an appeal under this Part of this Act, the Attorney General, upon an application in that behalf made to him within a period of fourteen days from the date when the decision of the Court was given, grants to the appellant or to the Admiralty, the Army Council or the Air Council a certificate that the decision of the Court involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be brought, an appeal to the House of Lords from the decision of the Court shall lie at the instance of the person or authority to whom the certificate is granted ; but subject to the foregoing provisions of this subsection the determination by the Court of any appeal or other matter which they have power to determine shall be final, and no appeal shall lie from the Court to any other court.

(2) Where the Court have allowed an appeal and, immediately after the decision of the Court has been given, notice is given to the Court on behalf of the Admiralty, the Army Council or the Air Council of their intention to apply to the Attorney General for such a certificate as aforesaid, the Court may make an order providing for the detention of the appellant or directing that he shall not be released except on bail until either the Attorney General has refused to grant the certificate or a decision on the appeal has been given by the House of Lords or the appeal has been abandoned, as the case may be.

Supplementary powers of the Court.

8.—(1) For the purposes of this Part of this Act the Court may, if they think it necessary or expedient in the interests of justice—

(*a*) order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case ;

(*b*) order the taking of such steps as are requisite to obtain from any member of the court-martial by which the appellant was tried or the person who officiated as judge advocate at the trial a report giving his opinion upon the case or upon any point arising therein or containing a statement as to any facts whereof the ascertainment appears to the Court to be material for the purpose of the determination of the case ;

PART I —*cont.*

(*c*) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in the prescribed manner before any judge of the Court or before any other person appointed by the Court for that purpose, and allow the admission of any depositions so taken as evidence before the Court;

(*d*) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application;

(*e*) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in the prescribed manner for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as they think fit to adopt it; and

(*f*) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case;

and may issue any warrants necessary for enforcing the orders or sentences of the Court:

Provided that the Court shall not make an order under paragraph (*b*) of this subsection for the purpose of obtaining a report from a member of a court-martial other than the president thereof unless they also make such an order for the purpose of obtaining a report from the president or are satisfied that the obtaining of a report from him is impracticable or would involve undue delay.

(2) There may be paid out of moneys provided by Parliament—

(*a*) to a witness attending before the Court in obedience to an order under paragraph (*c*) of the foregoing subsection or examined in pursuance of such an order before any such person as is mentioned in that paragraph, such travelling and subsistence allowances as may be prescribed by regulations made by the Lord Chancellor; and

PART I —*cont.*

(*b*) to a special commissioner to whom a question is referred under paragraph (*e*) of that subsection for inquiry and report and to a person appointed under paragraph (*f*) of that subsection to act as assessor to the Court, such remuneration and such travelling and subsistence allowances as may be so prescribed.

The powers conferred on the Lord Chancellor by this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Right of appellant to present his case in writing.

9. An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

Legal aid to appellants.

10.—(1) The Court may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to obtain that aid.

(2) If, on a question of granting an appellant legal aid under the foregoing subsection, there is a doubt whether it is desirable in the interests of justice that the appellant should have legal aid or whether he has sufficient means to enable him to obtain that aid, the doubt shall be resolved in favour of granting him legal aid.

(3) Before a person is granted legal aid under this section he may be required to furnish a written statement in the prescribed form about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid, and if a person in furnishing such a written statement as aforesaid (whether required so to do or not) knowingly makes any false statement or false representation he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding four months or to both.

(4) The registrar shall report to the Court or a judge thereof any case in which it appears to him that, although no application has been made for the purpose, legal aid ought to be granted under this section to an appellant.

(5) A solicitor or counsel assigned to an appellant under this section shall be entitled to be paid by the Admiralty or the Secretary of State (according as to whether the matter in relation to which solicitor or counsel is so assigned arises out of a naval court-martial or an army or air force court-martial) such sums in respect of fees and disbursements as may be prescribed by regulations made by the Lord Chancellor.

PART I —*cont.*

The power conferred on the Lord Chancellor by this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Proceedings to be heard in absence of appellants.

11. An appellant shall not be entitled to be present at the hearing of an appeal under this Part of this Act to the Court or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the Court give him leave to be present, and accordingly any power of the Court under this Part of this Act to pass a sentence may be exercised notwithstanding the absence of the appellant.

Defence of appeals.

12. It shall be the duty—

(*a*) on an appeal under this Part of this Act to the Court against a conviction by a naval court-martial, of the Admiralty;

(*b*) on such an appeal against a conviction by an army court-martial, of the Army Council; and

(*c*) on such an appeal against a conviction by an air force court-martial, of the Air Council;

to undertake the defence of the appeal.

Costs.

13.—(1) Where the Court allow an appeal they may, if they think fit, direct the payment by the Admiralty or the Secretary of State (according as to whether the conviction that was the subject of the appeal was by a naval court-martial or by an army or air force court-martial) of such sums as appear to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the prosecution of his appeal (including any proceedings preliminary or incidental thereto) or in carrying on his defence before the court-martial by which he was convicted or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted.

(2) Where an appeal to the House of Lords under subsection (1) of section seven of this Act from a decision of the Court is determined in favour of the person who was the appellant in the proceedings before the Court, the House of Lords may, if they think fit, direct the payment by the Admiralty or the Secretary of State (according as to whether the conviction that was the subject of those proceedings was by a naval court-martial or by an army or air force court-martial) of such sums as appear to the House of Lords to be reasonably sufficient to compensate the person aforesaid for any expenses properly incurred by him in the appeal to the House of Lords, in the prosecution of his

PART I —*cont.*

appeal to the Court (including any proceedings preliminary or incidental thereto) or in carrying on his defence before the court-martial by which he was convicted or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted.

(3) Where the Court dismiss an appeal or application for leave to appeal they may, if they think fit, order the appellant or applicant, as the case may be, to pay to the Admiralty or the Secretary of State (according as to whether the conviction that was the subject of the proceedings before the Court was by a naval court-martial or by an army or air force court-martial) the whole or any part of the costs of the appeal or application, including the costs of copying or transcribing any documents for the use of the Court, and an order under this subsection may be enforced—

(*a*) in the same manner as an order for the payment of costs made by the High Court in civil proceedings; or

(*b*) by making deductions from pay due to the applicant or appellant, as the case may be;

or partly in the one way and partly in the other.

Supplementary Provisions relating to Appeals

Suspension of death sentences.

14.—(1) Where a conviction by court-martial involves sentence of death—

(*a*) the sentence shall not in any case be executed until the expiration of the period prescribed under this Part of this Act as the period within which an application for leave to appeal to the Court against the conviction must be lodged;

(*b*) if such an application is duly lodged, the sentence shall not be executed until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;

(*c*) if leave to appeal is granted and the appeal is dismissed, the sentence shall not be executed until the expiration of the period within which an application may be made under section seven of this Act for a certificate of the Attorney General; and

(*d*) if an application under the said section seven is duly made, the sentence shall not be executed until the grant of a certificate is refused or the application is withdrawn or the further appeal that lies to the House of Lords by virtue of the grant of a certificate is determined or abandoned:

Provided that, where a sentence of death passed on a person on active service by an army or air force court-martial is confirmed, and the authority who confirms the sentence certifies

PART I —*cont.*

that it is essential in the interests of discipline and for the purpose of securing the safety of the force with which that person is present that the sentence should be carried out forthwith, the foregoing provisions of this subsection shall not apply to the sentence.

(2) Any appeal to the Court against a conviction by a court-martial involving sentence of death, any application for leave to appeal to the Court against any such conviction and any appeal to the House of Lords against a decision of the Court on an appeal thereto against any such conviction shall be heard and determined with as much expedition as practicable.

Restitution of stolen, &c., property.

15.—(1) The operation of any order made under section seventy-five of the Army Act or section seventy-five of the Air Force Act (which relate to the restitution of stolen property) on a conviction by a court-martial shall (unless the authority making the order directs to the contrary in any case in which, in the opinion of that authority, the title to the property is not in dispute) be suspended—

(*a*) in any case, until the expiration of the period prescribed under this Part of this Act as the period within which an application for leave to appeal to the Court against the conviction must be lodged; and

(*b*) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;

and where the operation of any such order as aforesaid is suspended under this subsection, it shall not take effect if the conviction is quashed on appeal.

(2) The Court may by order annul or vary any such order as aforesaid although the conviction is not quashed and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.

(3) Provision may be made by rules of court for securing the safe custody of any property to which any such order as aforesaid relates during the period during which the operation of the order is suspended under this section.

Person not to be tried again where conviction is quashed.

16. Where the conviction of a person by court-martial for an offence has been quashed under this Part of this Act, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

Removal of prisoners for purposes of proceedings under Part I.

17. Rules under—

(*a*) section one hundred and thirty-two of the Army Act (either as it applies by virtue of that Act or as it applies by virtue of subsection (2) of section eighty-one of the Naval Discipline Act);

PART I —*cont.*

(*b*) section one hundred and thirty-three of the Army Act;

(*c*) section one hundred and thirty-two or one hundred and thirty-three of the Air Force Act;

(*d*) section fifty-two of the Criminal Justice Act, 1948;

(*e*) section fifty-three of the Criminal Justice (Scotland) Act, 1949; or

(*f*) section thirteen of the General Prisons (Ireland) Act, 1877, or any corresponding enactment of the Parliament of Northern Ireland for the time being in force;

may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for the purposes of this Part of this Act or any place to which the Court or a judge thereof may order him to be taken for the purpose of any proceedings of the Court.

Furnishing, on appeal, of documents relating to trial.

18. In the case of every appeal, or application for leave to appeal, under this Part of this Act to the Court against a conviction by a naval court-martial, it shall be the duty of the Admiralty to furnish to the registrar, in accordance with rules of court, the proceedings of the court-martial and any petition presented by the person convicted, and in the case of every such appeal or application for leave to appeal as aforesaid against a conviction by an army or air-force court-martial it shall be the duty of the Judge Advocate General to furnish to the registrar, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the finding or sentence of the court-martial in pursuance of subsection (2) of section fifty-four of the Army Act or subsection (2) of section fifty-four of the Air Force Act, as the case may be) the proceedings with respect to the confirmation of the finding and sentence of the court-martial and any petition presented by the person convicted.

Duties of registrar with respect to appeals, &c.

19.—(1) The registrar shall take all necessary steps for obtaining the determination of an appeal or application under this Part of this Act, and shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) The registrar shall furnish the necessary forms and instructions relating to applications for leave to appeal under this Part of this Act to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms

PART I —*cont.*

and instructions to be placed at the disposal of persons confined in that place who desire to make application for leave to appeal under this Part of this Act.

Special References to the Courts-Martial Appeal Court

Special references to the Court.

20.—(1) If, in the case of the conviction of a person by a court-martial—

(*a*) it appears to the Judge Advocate of His Majesty's Fleet or the Judge Advocate General that the finding of the court-martial involves a point of law of exceptional importance which in his opinion should be determined by the Court; or

(*b*) it appears to the Admiralty or the Secretary of State, upon consideration of matters appearing to them or him not to have been brought to the notice of the court-martial at the trial, to be expedient that the finding of the court-martial should be considered or reconsidered by the Court;

the Judge Advocate of His Majesty's Fleet, the Judge Advocate General, the Admiralty or the Secretary of State, as the case may be, may refer the finding to the Court, and a reference under this section shall, for the purposes of the foregoing provisions of this Part of this Act (other than those of subsections (1) and (3) of section thirteen) be treated as an appeal by the person convicted against his conviction.

(2) Where, on a reference under this section, the person convicted appears before the Court, the Court shall direct the payment by the Admiralty or the Secretary of State (according as to whether the finding that is the subject of the reference is a finding of a naval court-martial or of an army or air force court-martial) of such sums as appear to the Court reasonably sufficient to compensate the person convicted for any expenses properly incurred by him for the purposes of his appearance and may, if they think fit, also direct the payment by the Admiralty or the Secretary of State (according as aforesaid) of such sums as appear to them reasonably sufficient to compensate that person for any expenses properly incurred by him in carrying on his defence before the court-martial by which he was convicted or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the court-martial by which he was convicted.

Miscellaneous and General

Exercise of certain powers of the Court by a judge thereof.

21. The powers of the Court under this Part of this Act—

(*a*) to give leave to appeal;

(*b*) to extend the period within which an application for leave to appeal must be lodged;

(*c*) to grant an appellant legal aid;

PART I —*cont.*

(*d*) to allow an appellant to be present at any proceedings under this Part of this Act;

(*e*) to make an order under subsection (3) of section thirteen of this Act for the payment of costs;

may be exercised by any judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions; but, if the judge refuses an application on the part of an appellant to exercise in his favour any of the powers mentioned in paragraphs (*a*) to (*d*) of this section, the appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner, shall be entitled to have the application determined by the Court as duly constituted for the hearing and determination of appeals under this Part of this Act.

Rules of court.

22.—(1) Rules of court may provide for regulating the procedure and practice to be followed in the Court.

(2) Rules of court made for the purposes of any provision of this Part of this Act may make different provision in relation to different classes of cases and may provide for any incidental or supplementary matters for which it appears to the authority making the rules to be necessary or expedient for the purposes of that provision to provide.

(3) Any power conferred by this Part of this Act to make rules of court shall be exercisable by statutory instrument, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing rules of court made under this Part of this Act in like manner as if the rules had been made by a Minister of the Crown.

(4) A statutory instrument containing rules of court made under this Part of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Expenses and receipts.

23.—(1) Any expenses incurred under this Part of this Act by the Admiralty or the Secretary of State shall be defrayed out of moneys provided by Parliament.

(2) Any sums which, by virtue of paragraph (*a*) of subsection (3) of section thirteen of this Act, are recovered from any person by the Admiralty or the Secretary of State shall be paid into the Exchequer.

Interpretation of Part I.

24.—(1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"air force court-martial" means a court-martial under the Air Force Act;

PART I —*cont.*

"appellant" includes a person who has been convicted by a court-martial and desires to appeal under this Part of this Act to the Court;

"army court-martial" means a court-martial under the Army Act;

"the Court" means the Courts-Martial Appeal Court constituted by this Part of this Act;

"court-martial" means a naval, army or air force court-martial;

"the Judge Advocate General" means the Advocate General or Judge Martial of all His Majesty's regular, auxiliary and reserve land and air forces;

"the Lord Chief Justice" means the Lord Chief Justice of England;

"naval court-martial" means a court-martial under the Naval Discipline Act, and includes a disciplinary court constituted under section fifty-seven A of that Act;

"prescribed" means prescribed by rules of court;

"the registrar" means the registrar of the Court;

"rules of court" means rules of court made by the Lord Chief Justice with the approval of the Lord Chancellor.

(2) In this Part of this Act the expression "on active service", in relation to a person subject to military law, has the meaning assigned to it by subsection (1) of section one hundred and eighty-nine of the Army Act and, in relation to a person subject to the Air Force Act, has the meaning assigned to it by subsection (1) of section one hundred and eighty-nine of that Act, and a person who is deemed for the purposes of either of those Acts to be on active service shall be deemed also for the purposes of this Part of this Act to be on active service.

(3) For the purposes of this Part of this Act, any finding or sentence substituted, by virtue of powers conferred in that behalf by the Army Act or the Air Force Act, for a finding of, or sentence passed by, a court-martial shall be deemed to be a finding of, or sentence passed by, that court-martial, and any conviction obtaining by virtue of a finding substituted as aforesaid shall be deemed to be a conviction by the court-martial.

Operation of provisions of Part I relating to appeals and references.

25. Subject to the provisions of the next following section, the provisions of this Part of this Act relating to appeals to the Court against convictions by courts-martial and the provisions of this Part of this Act relating to references to the Court, in cases

of convictions by courts-martial, of the findings of the courts-martial— PART I —*cont.*

(*a*) shall have effect in relation to convictions by naval courts-martial on or after such date as His Majesty may by Order in Council appoint in relation to such courts-martial;

(*b*) shall have effect in relation to convictions by army or air force courts-martial the findings whereof are promulgated on or after such date as His Majesty may by Order in Council appoint in relation to such courts-martial.

Exclusion of appeals from, and references of findings of, certain Dominion naval courts-martial.

26. Nothing in this Part of this Act shall be construed as conferring a right of appeal against the conviction by a naval court-martial of a person who, at the time of the conviction, was borne on the books of a ship of the Royal Australian Navy or the Royal New Zealand Navy, not being a ship which at that time was placed at the disposal of the Admiralty, and the provisions of this Part of this Act relating to references to the Court, in cases of convictions by courts-martial, of the findings of the courts-martial shall not apply in the case of any such conviction as aforesaid.

Saving for prerogative.

27. Nothing in this Part of this Act shall affect His Majesty's Royal prerogative to quash a conviction by a court-martial, so far as regards the exercise thereof at a time before the receipt by the registrar of an application for leave to appeal to the Court against the conviction or the receipt by him of particulars of such an application furnished in pursuance of paragraph (*b*) of subsection (3) of section four of this Act, whichever event first occurs, and nothing in this Part of this Act shall affect His Majesty's Royal prerogative of mercy.

PART II

PROVISIONS WITH RESPECT TO OFFICES OF JUDGE ADVOCATE OF HIS MAJESTY'S FLEET AND JUDGE ADVOCATE GENERAL

Provisions with respect to Office of Judge Advocate of His Majesty's Fleet

Provisions with respect to office of Judge Advocate of His Majesty's Fleet.

28.—(1) Any appointment made by His Majesty after the passing of this Act of a person to be the Judge Advocate of His Majesty's Fleet shall be of a person recommended to His Majesty by the Lord Chancellor.

(2) No person shall be qualified for appointment as Judge Advocate of His Majesty's Fleet unless he is a barrister-at-law of not less than ten years' standing or an advocate of not less than ten years' standing.

PART II —*cont.*

(3) The Judge Advocate of His Majesty's Fleet shall be removable by His Majesty on the ground of inability or misbehaviour upon a recommendation in that behalf made by the Lord Chancellor, and shall vacate his office at the end of the completed year of service in the course of which he attains the age of seventy years:

Provided that, where the Lord Chancellor considers it desirable in the public interest to retain the Judge Advocate of His Majesty's Fleet in office after the time when his office is required to be vacated under the foregoing provisions of this subsection, the Lord Chancellor may from time to time authorise the continuance of the Judge Advocate of His Majesty's Fleet in office up to such age (not exceeding seventy-two years) as the Lord Chancellor thinks fit.

(4) There may be paid to the Judge Advocate of His Majesty's Fleet, out of moneys provided by Parliament, such salary and such travelling and subsistence allowances as the Lord Chancellor may, with the approval of the Treasury, determine.

(5) In this section the reference to a barrister-at-law shall be construed as a reference to one who is a member of the bar either of England or of Northern Ireland, whether or not he is a member of the bar of the other country also.

Provisions with respect to Office of Judge Advocate General

Appointment of Judge Advocate General.

29. Any appointment after the passing of this Act of a person to be the Advocate General or Judge Martial of all His Majesty's regular, auxiliary and reserve land and air forces (commonly known, and hereafter in this Part of this Act referred to, as the "Judge Advocate General") shall be of a person recommended to His Majesty by the Lord Chancellor.

Assistants to Judge Advocate General.

30.—(1) For the purpose of assisting the Judge Advocate General in the exercise and performance of his powers and duties there shall be—

(*a*) an officer to be known as the Vice Judge Advocate General, to be appointed by the Lord Chancellor; and

(*b*) such number of officers to be known as Assistant Judge Advocates General, and such number of officers to be known as Deputy Judge Advocates, to be appointed in each case by the Lord Chancellor, as the Lord Chancellor, with the approval of the Treasury, may determine.

(2) If at any time it appears to the Lord Chancellor that it is expedient that the Judge Advocate General should be temporarily assisted in the exercise and performance of his powers

PART II —*cont.*

and duties by more persons than hold appointments by virtue of the foregoing subsection, the Lord Chancellor may appoint such persons temporarily to assist the Judge Advocate General in the exercise and performance of his powers and duties as the Lord Chancellor may, with the approval of the Treasury as to numbers, determine.

Qualifications of Judge Advocate General and assistants.

31.—(1) No person shall be qualified for appointment as Judge Advocate General unless he is a barrister-at-law of not less than ten years' standing or an advocate of not less than ten years' standing or is the Vice Judge Advocate General or an Assistant Judge Advocate General.

(2) No person shall be qualified for appointment as the Vice Judge Advocate General or an Assistant Judge Advocate General unless he is a barrister-at-law of not less than seven years' standing or an advocate of not less than seven years' standing or a Deputy Judge Advocate.

(3) No person shall be qualified for appointment as a Deputy Judge Advocate unless he is a barrister-at-law of not less than five years' standing or an advocate of not less than five years' standing.

(4) Before recommending a person for appointment as Judge Advocate General or appointing a person to be the Vice Judge Advocate General, an Assistant Judge Advocate General or a Deputy Judge Advocate, the Lord Chancellor shall take steps to satisfy himself that the health of the person proposed to be recommended for appointment, or to be appointed, as the case may be, is satisfactory.

(5) In this section the references to a barrister-at-law shall be construed as references to one who is a member of the bar either of England or of Northern Ireland, whether or not he is a member of the bar of the other country also.

Tenure of office of Judge Advocate General and assistants.

32.—(1) The Judge Advocate General shall be removable by His Majesty on the ground of inability or misbehaviour upon a recommendation in that behalf made by the Lord Chancellor, and the Lord Chancellor may remove the Vice Judge Advocate General, an Assistant Judge Advocate General or a Deputy Judge Advocate for inability or misbehaviour.

(2) The Judge Advocate General shall vacate his office at the end of the completed year of service in the course of which he attains the age of seventy years, and any such officer as is mentioned in subsection (1) of section thirty of this Act shall vacate his office at the end of the completed year of service in the course of which he attains the age of sixty-five years:

Provided that, where the Lord Chancellor considers it desirable in the public interest to retain the Judge Advocate General or any such officer as aforesaid in office after the time when his office is required to be vacated under the foregoing provisions

PART II —*cont.*

of this subsection, the Lord Chancellor may, from time to time authorise the continuance of the Judge Advocate General or officer in office up to such age (not exceeding seventy-two years in the case of the Judge Advocate General and seventy years in any other case) as the Lord Chancellor thinks fit.

(3) A person appointed under subsection (2) of section thirty of this Act temporarily to assist the Judge Advocate General in the exercise and performance of his powers and duties shall hold and vacate office in accordance with the terms of his appointment.

Salaries of Judge Advocate General and assistants.

33. There may be paid to the Judge Advocate General and the persons appointed under this Part of this Act to assist him in the exercise and performance of his powers and duties, out of moneys provided by Parliament, such salaries and such travelling and subsistence allowances as the Lord Chancellor may, with the approval of the Treasury, determine.

Pension of Judge Advocate General.

34.—(1) Subject to the provisions of this section, there may be paid to any person who has held the office of Judge Advocate General for a period of not less than fifteen years, on his ceasing to hold that office, a pension at the following rate:—

(*a*) if he has held that office for a period of not less than twenty years, two-thirds of the salary payable to him immediately before he ceased to hold it;

(*b*) if he has held that office for a period of less than twenty years, one-half of that salary.

(2) No pension shall be paid to any person under the foregoing subsection unless at the time of his ceasing to hold the office of Judge Advocate General he has attained the age of sixty years or is disabled by a permanent infirmity from performing the functions of that office.

(3) No pension shall be paid to any person under subsection (1) of this section unless within three months after his appointment to the office of Judge Advocate General he gives notice in writing to the Treasury that he elects that that subsection shall apply to him.

(4) Unless a person who holds the office of Judge Advocate General duly elects that subsection (1) of this section shall apply to him, the Superannuation Acts, 1834 to 1950, shall have effect in his case as if service in that office were service in an established capacity in the civil service of the State in an appointment held directly from the Crown; but, where such a person duly elects that the said subsection (1) shall apply to him—

(*a*) for the purposes of section forty-one of the Superannuation Act, 1949 (which empowers the Treasury to pay a gratuity or allowance to or in respect of a civil servant who is injured in the actual discharge of his duty or contracts a disease to which the nature of his duty exposes him) he shall be deemed to be a civil servant

PART II —*cont.*

and any pension payable to him under the said subsection (1) shall be deemed to be a superannuation allowance; but

(*b*) no pension, allowance or gratuity shall be payable to or in respect of him under any other provision of the Superannuation Acts, 1834 to 1950, by reference to any service of his (whether before or after the date of the election).

(5) The foregoing provisions of this section shall not apply to any person who ceased to hold the office of Judge Advocate General before the date of the passing of this Act, and in their application to the person who holds that office at that date shall have effect with the substitution, in subsection (3), for the reference to three months after his appointment to that office, of a reference to three months from the said date.

(6) Any pension paid to a person under subsection (1) of this section, and any increase attributable to subsection (4) of this section in the sums which, under the Superannuation Acts, 1834 to 1950, are payable out of moneys provided by Parliament, shall be paid out of moneys so provided.

Pensions of assistants to Judge Advocate General.

35.—(1) The Superannuation Acts, 1834 to 1950, shall have effect as if service as such an officer as is mentioned in subsection (1) of section thirty of this Act were service in an established capacity in the permanent civil service of the State in an appointment held directly from the Crown.

(2) Any increase attributable to the foregoing subsection in the sums which, under the Superannuation Acts, 1834 to 1950, are payable out of moneys provided by Parliament shall be paid out of moneys so provided.

PART III

SHORT TITLE

Short title.

36. This Act may be cited as the Courts-Martial (Appeals) Act, 1951.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
General Prisons (Ireland) Act, 1877	40 & 41 Vict. c. 49.
Statutory Instruments Act, 1946	9 & 10 Geo. 6. c. 36.
Criminal Justice Act, 1948	11 & 12 Geo. 6. c. 58.
Superannuation Act, 1949	12, 13 & 14 Geo. 6. c. 44.
Criminal Justice (Scotland) Act, 1949	12, 13 & 14 Geo. 6. c. 94.