EMERGENCY POWERS (No. 41) ORDER, 1940.

The Government, in exercise of the powers conferred on them by the Emergency Powers Acts, 1939, and 1940, and of every and any other power them in this behalf enabling, hereby order as follows:

1. This Order may be cited as the Emergency Powers (No. 41) Order, 1940.

2. In this Order, the expression "specified offence" means any offence set out in the schedule to this Order which is alleged to have been committed after the passing of the Emergency Powers (Amendment) (No. 2) Act, 1940, (No. 16 of 1940), whether before or after the making of this Order.

3. (1) Any three persons, being commissioned officers of the Defence Forces, who are for the time being members of any Special Criminal Court, shall constitute a military court for the purposes of this Order, and the expression "military court" shall in this Order be construed accordingly.

   (2) The president of a military court shall be the member who is the senior officer, and if any question arises as to who is the senior officer it shall be determined by the Adjutant General.

4. Where a person is alleged to have committed a specified offence, such person may be brought before a military court, and such military court shall have jurisdiction to try such person for such specified offence and, if such military court find such person guilty of such specified offence, to order such person to suffer death by shooting.

5. (1) Where a person charged with having committed a specified offence is brought before a military court such person shall be detained in military custody until -

   (a) in case he is acquitted of such charge, his acquittal,

   (b) in any other case, the sentence imposed on him by such military court has been remitted, commuted or carried into execution.

   (2) Where sentence imposed by a military court has been commuted to penal servitude or imprisonment, the sentence of penal servitude or imprisonment shall be carried out in all respects as if it were imposed by a Special Criminal Court.

6. Where a person, charged with having committed a specified offence is brought before a military court, such military court shall satisfy itself before commencing the trial, that statement of the charge or charges against him has been delivered to such person and that he has been afforded any facilities (which he has requested and which
such military court, having regard to the exigencies of the situation, considers reasonable) for preparing his defence, and if not so satisfied shall adjourn such trial for such time as such military court thinks proper.

7. (1) Subject to the provisions of this article, every military court shall determine its own procedure.

(2) Every question arising before a military court shall be determined by the votes of a majority of the members of such military court.

(3) A military court shall, at the request of a person charged before it, afford to him every facility, which such military court, having regard to the exigencies of the situation, considers reasonable, for making his defence.

8. Where a military court has found a person guilty of a specified offence, such military court shall sentence such person to suffer death by shooting.

9. The president of a military court trying any person under this order shall make or cause to be made a record of the proceedings at such trial, and shall enter on such record every finding of such military court and, where such military court finds such person guilty, the sentence, and upon conclusion of the trial such president shall sign and date such record and transmit it to the Government.

10. Where the record of the proceedings of a trial held by a military court under this order has been transmitted to the Government in accordance with the immediately preceding Article, the following provisions shall have effect, that is to say -

(a) the Government may do one of the following things -

(i) remit the sentence imposed by such military court,

(ii) commute such sentence to a term of penal servitude or imprisonment,

(iii) decline to remit or commute such sentence;

(b) if the Government decline to remit or commute such sentence, such decision shall be conveyed to the Adjutant-General who shall as soon as may be give all necessary directions for the execution of such sentence and such directions shall be complied with not later than forty-eight hours after such directions are given.

11. Where a person is executed in accordance with a sentence passed by a military court, the following provisions shall have effect, that is to say -

(a) notwithstanding anything contained in any enactment, no inquest shall be held by a coroner upon the body of such person;

(b) the body of such person shall be interred in such place as the Adjutant-General may direct.
SCHEDULE.

1. Treason which consists in levying war against the State, or assisting any State or person or inciting or conspiring with any person to levy war against the State, or attempting by force of arms or other violent means to overthrow the organs of Government established by the Constitution, or taking part or being concerned in or inciting or conspiring with any person to make or to take part or be concerned in any such attempt.

2. The obtaining, recording, or communicating in any manner likely to prejudice the public safety or the preservation of the State of any information directly or indirectly prejudicial to the State or being in possession of any document or other record whatever containing such information in contravention of Article 28 of the Emergency Powers Order, 1939 (S.R.O. No. 224 of 1939).

3. The doing of any Act or the omitting to do anything on the part of a person who is under a duty either to the public or any other person to do, with intent to impair the efficiency or impede the work or repair of any vessel, aircraft, vehicle, machinery, apparatus or other thing used or intended to be used for the purposes of the Defence Forces or for the purpose of any undertaking engaged in the performance of essential services so declared by the Order of a Minister under the Emergency Powers Order, 1939 (S.R.O. No. 224 of 1939).

4. Murder.

5. Unlawfully wounding or causing grievous bodily harm or shooting at with intent to maim or to do some other grievous bodily harm or with intent to resist or prevent a lawful arrest.

6. Assault and Unlawful imprisonment and detention of any person against the will of such person.

7. Unlawfully causing an explosion likely to endanger life or to cause serious injury to property whether any injury to person or property has been actually caused or not.

8. Making or knowingly having in his or her possession or under his or her control any explosive substance under such circumstances as to give rise to a reasonable suspicion that the person charged is not making or does not have it in his or her possession or under his or her control for a lawful object.

9. Possession or control of any firearm or ammunition with intent to endanger life or cause serious injury to property or with intent to enable any other person by means of such firearm or ammunition to endanger life or cause serious injury to property whether any injury to person or property has or has not been caused thereby.

10. Attempting or conspiring to commit, or aiding, abetting, counselling or procuring the commission of any of the offences hereinbefore set out in this Schedule.

Given under the Official Seal of the Government this 16th day of August, 1940.

EAMON DE VALERA,
TAOISEACH.