

**LAWS OF BRUNEI**

**REVISED EDITION 1984**

**CHAPTER 149**

**ROYAL BRUNEI ARMED FORCES**

**ARRANGEMENT OF SECTIONS**

Section

**PART I**

**PRELIMINARY**

1. Short title
2. Interpretation

**Military forces**

3. Military forces to be raised in Brunei
4. Composition of the Armed Forces and the Reserve Regiment
5. Personnel and units of the Armed Forces and the Reserve Regiment
6. Power to make provision for cadets
7. Power to modify provisions relating to females

**LAWS OF BRUNEI**

2

**CAP. 149**

*Royal Brunei Armed Forces*

---

**PART II**

**OFFICERS**

8. Commissioning and appointing of officers
9. Appointment of Colonel in Chief
10. Appointment of Commander

**PART III**

**APPOINTMENT OF WARRANT OFFICERS AND  
ENLISTMENT INTO THE ARMED FORCES AND  
RESERVE REGIMENT**

**Warrant Officers**

11. Appointment of warrant officers

**Enlistment**

12. Enlistment of soldiers and men
13. Enlistment of boy soldiers and boy reservists
14. Proceedings for enlistment and attestation

**Extension of service**

15. Postponement in certain cases of discharge or transfer to the Reserve Regiment

**Discharge and transfer to Reserve Regiment**

16. Discharge of soldiers
17. Transfer to the Reserve Regiment
18. Postponement of discharge or transfer pending proceedings for offences

19. Right of recruit to purchase discharge
20. Right of warrant officer to discharge on reduction to the ranks

Miscellaneous and supplementary provisions

21. Forfeiture of service for desertion and restoration of forfeited service
22. Validity of attestation on enlistment
23. False answers in attestation papers
24. Uniform

PART IV

SPECIAL PROVISIONS RELATING TO THE  
RESERVE REGIMENT

Call out of Reserve Regiment

25. Call out of Reserve Regiment for full-time service

Extension of service

26. Postponement of discharge

Release

27. Release from full-time service

Training

28. Call out of the Reserve Regiment for training

**LAWS OF BRUNEI**

4

**CAP. 149**

*Royal Brunei Armed Forces*

---

Application of Order

29. Application of Order to members of Reserve Regiment when subject to military law

Offences

30. Offences by men of Reserve Regiment

**PART V**

**DISCIPLINE AND TRIAL AND PUNISHMENT OF  
MILITARY OFFENCES**

Interpretation

31. Interpretation of Part V

Misconduct in action and other offences arising out of  
military service

32. Misconduct in action  
33. Assisting the enemy  
34. Becoming a prisoner of war through disobedience or  
wilful neglect  
35. Failure to attend for duty, neglect of duty, etc.  
36. Looting

Mutiny and insubordination

37. Mutiny  
38. Failure to suppress mutiny  
39. Insubordinate behaviour  
40. Disobedience to lawful commands

- 
41. Obstruction of provost officers
42. Disobedience to standing orders
- Desertion, absence without leave, etc.
43. Desertion
44. Absence without leave
45. Failure to report or apprehend deserters or absentees
- Malingering and drunkenness
46. Malingering
47. Drunkenness
- Disorderly conduct
48. Fighting, threatening words, etc.
- Offences relating to property
49. Damage to, and loss of, public or service property, etc.
50. Damage to and loss of aircraft or aircraft material
51. Misapplication or waste of public or service property
52. Offences relating to issues and decorations
- Navigation and flying, etc. offences
53. Damage to and loss, etc. of ships or naval material
54. Dangerous flying, etc.
55. Inaccurate certification of ships and aircraft
56. Low flying
57. Annoyance by flying

Offences relating to, and by, persons in custody

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

Offences in relation to courts-martial

- 61. Offences in relation to courts-martial

Miscellaneous offences

- 62. Unauthorised disclosure of information
- 63. Making of false statements on enlistment
- 64. Falsification of documents
- 65. Offences against morale
- 66. Scandalous conduct by officers
- 67. Ill-treatment of personnel of inferior rank
- 68. Disgraceful conduct
- 69. Conduct to the prejudice of good order and military discipline
- 70. Attempts to commit military offences
- 71. Aiding and abetting, etc., or inciting the commission of military offences

Civil Offences

- 72. Civil offences

Punishments available to courts-martial

- 73. Scale of punishments and supplementary provisions

## Arrest

- 74. Power to arrest offenders
- 75. Provisions for avoiding delay after arrest

## Investigation of, and summary dealing with, charges

- 76. Investigation of charges by commanding officer
- 77. Charges to be dealt with summarily or by court-martial
- 78. Further proceedings on charges against non-commissioned officers below the rank of staff-sergeant and soldiers
- 79. Further proceedings on charges against officers, etc.
- 80. Summary proceedings by an appropriate superior authority
- 81. Directions by higher authority or appropriate superior authority for dismissal of charges or stay of proceedings
- 82. Confession of desertion by warrant officer, non-commissioned officer or soldier
- 83. Officers who are to act as commanding officers and appropriate superior authorities
- 84. Limitation of powers of summary dealings with charges

## Courts-martial: general provisions

- 85. Convening and constitution of courts-martial
- 86. Place for sitting of courts-martial and adjournment to other places

Courts-martial: provisions relating to trial

- 87. Challenges by accused
- 88. Administration of oaths
- 89. Courts-martial to sit in open court
- 90. Dissolution of courts-martial
- 91. Decisions of courts-martial
- 92. Finding and sentence
- 93. Power to convict of offence other than that charged
- 94. Evidence relating to bankers' books
- 95. Rules of evidence
- 96. Privileges of witnesses and others at courts-martial
- 97. Offences in relation to courts-martial by civilians
- 98. Affirmations

Offences procedure

- 99. Rules of Procedure
- 100. Rules as to exercise of functions of judge advocate
- 101. Taking of offences into consideration

Confirmation and review of proceedings of courts-martial

- 102. Confirmation of proceedings of courts-martial
- 103. Petitions against finding or sentence
- 104. Powers of confirming officers
- 105. Confirming officers
- 106. Review of findings and sentences of courts-martial



## Review of summary findings and awards

## 107. Review of summary findings and awards

## Findings of insanity, etc.

## 108. Provisions where accused unfit to stand trial

## Saving for functions of Judge Advocate General

## 109. Saving for functions of Judge Advocate General

## Commencement and duration of sentences

## 110. Commencement

## 111. Consecutive terms of imprisonment and detention

## 112. Limitation of total period of sentences of detention

Execution of sentences of death, imprisonment and  
detention

## 113. Execution of sentences of death

## 114. Imprisonment and Detention Rules

115. Supplementary provisions relating to regulations and  
rules under sections 113 and 114

## 116. Special provisions as to civil prisons in Brunei

117. Duties of superintendents or officers in charge of civil  
prisons to receive prisonersTrial of persons ceasing to be subject to military law and  
time limits for trials118. Trial and punishment of offences under military law  
notwithstanding offender ceasing to be subject to  
military law

LAWS OF BRUNEI

10

**CAP. 149**

*Royal Brunei Armed Forces*

---

119. Limitation of time for trial of offences under military law

Relations between military law and civil courts and finality of trials

120. Jurisdiction of civil courts

121. Persons not to be tried under this Act for offences already disposed of

Inquiries

122. Boards of inquiry

123. Inquiries into absence

Provisions with respect to the Office of Judge Advocate General

124. Judge Advocate General

Miscellaneous Provisions

125. Restitution or compensation for theft, etc.

126. Appointment of judge advocates

127. Promulgation

128. Custody of proceedings of courts-martial and right of accused to a copy thereof

PART VI

FORFEITURES AND DEDUCTIONS AND  
ENFORCEMENT OF MAINTENANCE LIABILITIES

129. Forfeitures and deductions: general provisions

130. Forfeiture of pay for absence from duty

131. Deductions for payment of civil penalties
132. Compensation for loss occasioned by wrongful act or negligence
133. Deductions for barrack damage
134. Remission of forfeitures and deductions
135. Enforcement for dependants' maintenance orders by deduction from pay
136. Deductions from pay for maintenance of wife or child
137. Limit of deductions under sections 135 and 136 and effect on forfeiture

## PART VII

### APPEALS FROM COURTS-MARTIAL

#### Interpretation

138. Interpretation of Part VII

#### Right of appeal and initiating procedure

139. Right of appeal
140. Application for leave to appeal
141. Consideration of application by Court of Appeal

#### Disposal of appeal

142. Power to quash conviction as wrong in law, etc.
143. Adjustment of sentences in case of conviction on two or more charges
144. Substitution of conviction of different charge

LAWS OF BRUNEI

12

**CAP. 149**

*Royal Brunei Armed Forces*

---

- 145. Variation of conviction so as to attract different sentences
- 146. Substitution of finding of insanity or unfitness to plead
- 147. Term of sentence passed under section 143, 144 or 145

Retrial

- 148. Retrial generally excluded
- 149. Power to authorise retrial in certain cases
- 150. Implementation of authority for retrial, and supplementary orders of Court of Appeal
- 151. Provisions as to retrial

Insanity

- 152. Appeal against finding of not guilty by reason of insanity
- 153. Consequence where appeal under section 152 allowed
- 154. Power of Court of Appeal to order continued detention

Unfitness to stand trial

- 155. Appeal against finding of unfitness
- 156. Disposal of appeal under section 155

General procedural provisions

- 157. Presentation of appellant's case
- 158. Presence of appellant of hearing
- 159. Evidence

- 160. Power to call for report by member of trial court
- 161. Other powers for facilitating disposal of appeal

#### Costs

- 162. Costs of successful appeal
- 163. Costs against appellant
- 164. Witnesses' expenses

#### Special references to Court of Appeal

- 165. Reference of cases by Judge Advocate General or Minister
- 166. Order for costs of defence on reference under section 165

#### Supplementary

- 167. Determination by majority of Court of Appeal
- 168. Judgement
- 169. Powers under Part VII which are exercisable by single judge or commissioner
- 170. Documents relating to trial to be furnished for appeal
- 171. Defence of appeals

#### Provisions in relation to capital cases

- 172. Appeals in capital cases
- 173. Deferment of execution of sentence of death
- 174. Summary execution of sentence of death

LAWS OF BRUNEI

14

**CAP. 149**

*Royal Brunei Armed Forces*

---

Miscellaneous and General

- 175. Rules of court
- 176. Duties of registrar with respect to appeals, etc.
- 177. Removal of prisoners
- 178. Saving for prerogative

PART VIII

MISCELLANEOUS AND GENERAL PROVISIONS

Provisions relating to personnel engaged under agreement

- 179. Personnel engaged under agreement

Redress of complaints

- 180. Complaints by officers
- 181. Complaints by soldiers

Exemptions

- 182. Exemptions from tolls, etc.
- 183. Exemption from taking in execution of property used for military purposes

Provisions relating to deserters and absentees without leave

- 184. Arrest of deserters and absentees without leave
- 185. Proceeding before a civil court where persons suspected of illegal absence
- 186. Deserters and absentees without leave surrendering to police

187. Certificates of arrest or surrender of deserters and absentees

188. Duties of superintendents of prisons and others to receive deserters and absentees

Further powers of arrest of civil authorities

189. Arrest under warrant of Commander

190. Arrest of persons unlawfully at large

Searches

191. Search of place entered by person sought to be arrested

192. Search of person arrested

193. General power to search military places and personnel

Provisions as to evidence

194. General provisions as to evidence

195. Proof of outcome of civil trial

196. Evidence of proceedings of court-martial

Miscellaneous Provisions

197. Restrictions on reduction in rank of warrant and non-commissioned officers

198. Temporary reception in civil custody of persons under escort

199. Avoidance of assignment of or charge on military pay, pensions, etc.

200. Power to certain officers to take affidavits and declarations

LAWS OF BRUNEI

16

**CAP. 149**

*Royal Brunei Armed Forces*

---

201. Exclusion of requirement of Attorney General's consent for proceedings

PART IX

APPLICATION OF MILITARY LAW AND  
SUPPLEMENTAL PROVISIONS

Persons subject to military law

202. Persons subject to military law: general provisions  
203. Application of Act to passengers in ships and aircraft of His Majesty  
204. Application of Act to civilians

Supplemental provisions

205. Loaned personnel  
206. Execution of orders, instrument, etc.  
207. Provisions as to active service  
208. Power of His Majesty in Council to make regulations  
209. General Orders  
210. Powers exercisable by subsidiary legislation  
211. Application of Queen's Regulations  
212. Repeal and transitional provisions

SCHEDULES

Schedule 1 — Alternative offences of which accused may be convicted by court-martial

Schedule 2 — Transitional provisions



## ROYAL BRUNEI ARMED FORCES ACT

**An Act to provide for the raising, maintenance and discipline of an armed force in Brunei and for purposes incidental thereto** S.35/83  
S.16/80

*Commencement: 1st January 1984* S.1/84

### PART I

#### PRELIMINARY

1. This Act may be cited as the Royal Brunei Armed Forces Act. Short title

2. (1) In this Act, unless the context otherwise requires — Interpretation

“abroad” means out of Brunei;

“active service” shall be construed in accordance with section 207;

“aircraft” means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;

“aircraft material” includes —

(a) parts of, and components of or accessories for, aircraft, whether for the time being in aircraft or not;

(b) engines, armaments, ammunitions and bombs and other missiles of any description in, or for use in, aircraft;

(c) any other gear, apparatus or instruments in, or for use in, aircraft;

(d) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft; and

(e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

“appropriate superior authority” has the meaning assigned to it by section 77 (1) and 83 (2);

“arrest” includes open arrest;

“boy reservist” means an eligible young person who has been enlisted into the Reserve Regiment as a boy reservist under section 13;

“boy soldier” means an eligible young person who has been enlisted into the Armed Forces as a boy soldier under section 13;

“civil court” means a court of ordinary criminal jurisdiction in Brunei;

“civil offence” has the meaning assigned to it by section 72 (2);

“Colonel in Chief” means the officer appointed by His Majesty the Sultan and Yang Di-Pertuan under section 9 to be Colonel in Chief of the Armed Forces and Reserve Regiment;

“Commander” means the officer or other suitable person appointed by His Majesty under section 10 to be the Commander of the Armed Forces and the Reserve Regiment;

“Commanding Officer” has the meaning assigned to it by section 83 (1);

“competent authority” means His Majesty or any officer or officers for the time being authorised by His Majesty to exercise or perform all or any of the powers or duties conferred or imposed upon the competent authority under this Act;

“corresponding civil offence” has the meaning assigned to it by section 72(2);

“damage” includes destruction, and references to damaging shall be construed accordingly;

“date of attestation” shall be construed in accordance with section 14 (5);

“decoration” includes medal, medal ribbon, clasp and good conduct badge;

“desertion” shall be construed in accordance with section 43 (2);

“eligible person” means a person who was born in Brunei and is commonly accepted as belonging to one of the following indigenous groups of the Malay race, namely Belait, Bisayah, Brunei, Dusun, Kedayan, Murut or Tutong; and includes a non-indigenous Malay who professes the Muslim religion, conforms to Malay custom as practised in Brunei and is a subject of His Majesty by virtue of any written law relating to nationality;

“eligible young person” means an eligible person who has attained the age of 17½ years;

“enemy” includes all persons engaged in armed operations against any of the forces of His Majesty or any forces co-operating with such persons, and also includes all armed mutineers, armed rebels, armed rioters and pirates;

“foreign force” means any of the naval, military or air forces of any foreign country;

“General Orders” means General Orders of His Majesty made under section 209;

“man” includes, in relation to the Reserve Regiment, a non-commissioned officer and a warrant officer;

“member” means, in relation to the Armed Forces, an officer, soldier or boy soldier, and, in relation to the Reserve Regiment, an officer, man or boy reservist;

“naval material” includes —

(a) parts of, and components of or accessories for ships, whether for the time being in ships or not;

(b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in ships;

(c) any other gear, apparatus or instruments in, or for use in, ships;

(d) any apparatus used in connection with the berthing of ships or for detecting the movement of ships; and

(e) any fuel used for the propulsion of ships and any material used as a lubricant for ships or naval material;

“oath” includes affirmation, and references to swearing shall be construed accordingly;

“officer” means any person holding a commission granted under this Act;

“place” includes a ship, aircraft or vehicle;

“prescribed” means, except in Parts V and VII, prescribed by regulations made by His Majesty in Council; *the Sultan and the*

“provost officer” means a provost marshal or officer appointed to exercise the functions conferred by or under this Act on provost officers;

“public property” means any property belonging to or held for the purposes of any public body;

“recruiting officer” means a person authorised by the competent authority to enlist recruits in the Armed Forces or the Reserve Regiment;

“the Armed Forces” means the Royal Brunei Armed Forces raised and maintained under this Act;

“the Reserve Regiment” means the Royal Brunei Malay Reserve Regiment raised and maintained under this Act;

“Rules of Procedure” has the meaning assigned to it by section 99;

“service” when used adjectively, means belonging to or connected with the Armed Forces or the Reserve Regiment or any part of either of such forces;

“ship” includes any description of vessel;

“stoppages” means the recovery, by deductions from the pay of the offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

“theft” has the same meaning as in the Penal Code. Cap. 22

(2) Subject to the provisions of section 7, any provision of this Act or of any other written law in so far as it contains the words “man” or “soldier” or any other words importing a reference to persons of the male sex only as, or as having been, or as capable of being members of or temporarily enlisted into or attached to the Armed Forces or the Reserve Regiment, shall have effect as if for such words there has been substituted therein words having a like meaning in other respects but importing a reference to persons of either sex.

(3) Save in Part V, references in this Act to soldiers shall, where the context permits, include references to warrant officers and non-commissioned officers.

(4) Any reference in this Act to any ships of His Majesty is a reference to ships in the service of His Majesty, whether belonging to His Majesty or not, but does not include a reference to ships of any foreign force other than ships placed at the disposal of His Majesty for service with the Armed Forces or the Reserve Regiment, and any reference to naval material shall be construed accordingly.

(5) Any reference in this Act to aircraft of His Majesty is a reference to aircraft in the service of His Majesty, whether belonging to His Majesty or not, but does not include a reference to aircraft of any foreign force other than aircraft placed at the disposal of His Majesty for service with the Armed Forces or the Reserve Regiment, and any reference to aircraft material shall be construed accordingly.

#### Military forces

Military  
forces to be  
raised in  
Brunei

3. (1) There shall be raised and maintained in Brunei military force consisting of such number of persons as His Majesty may determine and as moneys provided for that purpose by the Legislature from time to time may permit, to be styled “Angkatan Bersenjata Di-Raja Brunei” or, in English, “the Royal Brunei Armed Forces” and “Askar Simpanan Melayu Di-Raja Brunei” or in English, “the Royal Brunei Malay Reserve Regiment”.

(2) Subject to the provisions of this Act, the Armed Forces and Reserve Regiment shall be under the supreme government, command and disposition of His Majesty.

(3) His Majesty may at any time order that the Armed Forces or the Reserve Regiment shall be employed abroad:

Provided that the Reserve Regiment may be employed abroad only when called on for full-time service in accordance with the provisions of section 25.

(4) His Majesty may from time to time order that any member of the Armed Forces shall be temporarily attached to any foreign force in Brunei or abroad under such conditions as His Majesty may deem fit.

4. (1) The Armed Forces shall consist of officers appointed, and of soldiers and boy soldiers enlisted, in accordance with the provisions of this Act and any regulations made thereunder.

Composition  
of the Armed  
Forces and  
the Reserve  
Regiment

(2) The Reserve Regiment shall consist of —

(a) officers appointed to the Reserve Regiment;

(b) officers appointed to the Armed Forces and for the time being attached to the Reserve Regiment;

(c) soldiers transferred to the Reserve Regiment at the end of their period of full-time service with the Armed Forces;

(d) men and boy reservists enlisted for service in the Reserve Regiment,

in accordance with the provisions of this Order and any regulations made thereunder.

5. (1) The Armed Forces and the Reserve Regiment shall consist of such number of officers, soldiers, boy soldiers, men and boy reservists as may from time to time be determined by His Majesty.

Personnel  
and units of  
the Armed  
Forces and  
the Reserve  
Regiment

(2) The Armed Forces and the Reserve Regiment shall consist of such units capable of operating by land, sea

LAWS OF BRUNEI

24

CAP. 149

Royal Brunei Armed Forces

or air as His Majesty may from time to time by order published in the *Government Gazette* constitute and establish.

(3) A unit constituted and established by order under subsection (2) may consist of such sub-units as the Commander may from time to time direct.

(4) Every unit shall be known by such name or title as His Majesty may in such order direct and any reference in any written law to such name or title shall be deemed to be a reference to such unit or, as the context may require, to the members of that unit.

(5) His Majesty may by order published in the *Government Gazette* disband any unit in whole or in part or amalgamate any such unit with any other unit or alter or amend the name or title of any such unit.

Power to  
make provi-  
sion for  
cadets

Military Cadets Reg.  
S 27/98

Am s. 16/96

6. Regulations made under this Act by His Majesty <sup>the Sultan and</sup> ~~in~~ Council may provide for the temporary enlistment into or the temporary attachment to the Armed Forces or the Reserve Regiment of eligible young persons as cadets for the purpose of part-time training subject to such terms and conditions of service generally as may be prescribed; and such regulation may make provision for adaptations and modifications of any provision of this Act or of any other written law appearing to His Majesty ~~in Council~~ <sup>the Sultan and</sup> to be requisite in relation to such cadets.

Powers to  
modify provi-  
sions relating  
to females

7. His Majesty may by order make provisions for adaptations and modifications of any provision of this Act or of any other written law appearing to him to be requisite in consequence of the provisions of section 2 (2) or of things done thereunder.



## PART II

## OFFICERS

8. (1) Subject to the provisions of this section, eligible persons shall be commissioned by His Majesty as officers in the Armed Forces and in the Reserve Regiment.

Commissioning and appointing of officers

(2) Every commission shall be in such form as His Majesty may approve with such modifications as circumstances may require and may, if His Majesty deems it expedient, be granted for such a period as may be specified therein.

(3) A commission granted in accordance with subsection (2) for a specified period may be extended by His Majesty for such further period or periods as His Majesty may deem expedient.

(4) His Majesty may, without assigning any reason therefor, cancel any such commission.

(5) An officer may be appointed to serve full-time with the Armed Forces or to serve either full-time or part-time with the Reserve Regiment.

(6) An officer may be posted to the Reserve of Officers or may be placed on a list to be known as the Retired List, in accordance with regulations made under this Act.

(7) His Majesty may grant an honorary commission to such person and in such rank as His Majesty may think fit.

(8) Officers may from time to time be promoted or advanced in rank by His Majesty at his discretion.

Appointment  
of Colonel in  
Chief

**9.** His Majesty may appoint any officer holding a commission or honorary commission to be Colonel in Chief of the Armed Forces and the Reserve Regiment.

Appointment  
of Commander

**10.** His Majesty may appoint an officer or other suitable person to be the Commander and to have the command, direction and general superintendence of the Armed Forces and the Reserve Regiment subject to the provisions of this Act and to the supreme powers conferred on His Majesty under section 3 (2).

### PART III

#### APPOINTMENT OF WARRANT OFFICERS AND ENLISTMENT INTO THE ARMED FORCES AND RESERVE REGIMENT

##### Warrant Officers

Appointment  
of warrant  
officers

**11.** Eligible persons entitled under this Part may be appointed warrant officers of the Armed Forces and the Reserve Regiment by His Majesty and shall be issued by His Majesty with a warrant of appointment.

##### Enlistment

Enlistment of  
soldiers and  
men

**12.** Subject to the provisions of this Act, a recruiting officer may enlist such eligible persons who have attained the age of 17½ years into the Armed Forces and the Reserve Regiment in such manner and to serve in the Armed Forces or the Reserve Regiment or in any unit of either of such forces for such period or periods and generally subject to such terms and conditions of service as may be prescribed.

Enlistment of  
boy soldiers  
or boy reser-  
vists

**13.** (1) Notwithstanding the provisions of section 12, a recruiting officer may enlist eligible young persons into the Armed Forces or the Reserve Regiment for the purpose of

raising and maintaining any unit consisting of or including boy soldiers or boy reservists.

(2) A recruiting officer shall not enlist any eligible young person into the Armed Forces or the Reserve Regiment under this section unless consent to such enlistment has been given in writing —

(a) if the eligible young person offering to enlist is living with both or one of his parents, by the parent or parents;

(b) if he is not living with both or one of his parents, but any person (whether a parent or not) whose whereabouts are known or can, after reasonable inquiry be ascertained, has parental rights and powers in respect of him, by that person;

(c) if there is no such person as is mentioned in either paragraph (a) or (b) or if, after reasonable inquiry, it cannot be ascertained whether there is any such person, by the District Officer of the district in which the eligible person offering to enlist resides.

(3) Where the recruiting officer is satisfied by the production of a certified copy of entry in the register of births or by any other evidence appearing to him to be sufficient, that a person offering to enlist under this section has or has not attained the age of 14 years, that person shall be deemed for the purposes of this Act to have attained or as the case may be, not to have attained that age; and a certificate purporting to be signed by the recruiting officer, stating that he is satisfied as mentioned above shall be sufficient evidence until the contrary is proved, that he is so satisfied.

(4) An eligible young person enlisted under the provisions of this section shall not be deemed to have entered a period of original enlistment as a soldier of the Armed Forces or a man of the Reserve Regiment until that person has attained the age of 17½ years.

Proceedings  
for enlist-  
ment and  
attestation

14. (1) Every recruiting officer shall give to every eligible person or eligible young person offering to enlist in the Armed Forces or Reserve Regiment under this Act a notice in the prescribed form stating the general requirements of attestation and the general conditions of the engagement to be entered into by the recruit, and directing such person to appear, either forthwith or at the time and place therein mentioned, before a magistrate or an officer who has been appointed by His Majesty ~~in Council~~ as an Attesting Officer.

Am. S. 16/86

(2) Upon the appearance before a magistrate or an Attesting Officer of an eligible person or eligible young person offering to enlist in the Armed Forces or the Reserve Regiment, such person shall be asked whether he has been served with and understands the notice and whether he assents to be enlisted, and the magistrate or Attesting Officer shall not proceed with the enlistment of such person if he considers him to be under the influence of drugs or liquor.

(3) If an eligible person or eligible young person offering to enlist in the Armed Forces or the Reserve Regiment does not appear before a magistrate or an Attesting Officer at the time and place mentioned in the notice given to him, or on appearing does not assent to be enlisted no further proceedings shall be taken.

(4) If an eligible person or eligible young person offering to enlist in the Armed Forces or the Reserve Regiment assent to be enlisted —

(a) the magistrate or Attesting Officer, as the case may be, after cautioning such person that if he

makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the prescribed attestation paper and shall satisfy himself that such person understands each question so read and after ascertaining that the answer of such person to each question has been duly recorded in the appropriate column of the attestation paper shall require him to make and sign the declaration as to the truth of the answers recorded therein, and shall then administer the prescribed oath of service as set out in the attestation paper;

(b) upon signing the declaration and taking the oath, such person shall be deemed to be enlisted as a soldier or boy soldier of the Armed Forces or a man or boy reservist of the Reserve Regiment as the case may be;

(c) the magistrate or Attesting Officer, as the case may be, shall attest by his signature in the manner required by the attestation paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper to the recruiting officer;

(d) the officer who finally approves of a recruit for service shall at his request furnish him with a certificate copy of the attestation paper.

(5) The date on which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of attestation of such recruit.

(6) The competent authority, if satisfied that there is an error in the attestation paper of a recruit, may cause the recruit to attend before a magistrate or an Attesting Officer,

and that magistrate or Attesting Officer, as the case may be, if satisfied that such error exists, and that the error is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper so amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.

#### Extension of service

Postpone-  
ment in cer-  
tain cases of  
discharge or  
transfer to  
the Reserve  
Regiment

15. (1) Where at the time at which, apart from this section, a soldier of the Armed Forces would be entitled to be discharged or would fall to be transferred to the Reserve Regiment, men of the Reserve Regiment are called out for full-time service, pursuant to section 25, or he is serving outside Brunei, he may be retained in full-time service in the Armed Forces for such period as is hereinafter mentioned and his service may be prolonged accordingly.

(2) No person shall be retained in full-time service in the Armed Forces by virtue of this section later than the expiration of 12 months after the date on which, apart from this section, he would be entitled to be discharged.

(3) Subject to subsection (2), a person who apart from this section would be entitled to be discharged may be retained in full-time service in the Armed Forces for such period as His Majesty ~~in Council~~ may order.

*The Sultan and B.P.*

(4) Subject as aforesaid a person who apart from this section would be liable to be transferred to the Reserve Regiment may be retained in full-time service in the Armed Forces for such period, ending not later than 12 months after the date on which, apart from this section, he would fall to be transferred to the Reserve Regiment, as the competent authority may order for any period or further period during which men of the Reserve Regiment continue to be called out for full-time service.

(5) If while a soldier is being retained in full-time service in the Armed Forces under this section, it appears to the competent authority that his services can be dispensed with, he shall be entitled to be discharged or transferred to the Reserve Regiment as the case may require.

(6) Where, at the time at which under the foregoing provisions of this section a soldier is entitled to be discharged or transferred to the Reserve Regiment, a state of war exists between Brunei and any foreign power, he may, by declaration made in the prescribed form before his commanding officer, agree to continue in full-time service in the Armed Forces while such a state of war exists; and if the competent authority approves he may continue accordingly as if the period for which his term of service could be prolonged under the foregoing provisions of this section were a period continuing so long as a state of war exists:

Provided that if it be so specified in the declaration he shall be entitled to be discharged or transferred to the Reserve Regiment, as the case may require, at the expiration of 3 months' notice given by him to his commanding officer.

(7) In relation to soldiers serving abroad, references in this section to being entitled to be transferred to the Reserve Regiment shall be construed as references to being entitled to being sent to Brunei with all convenient speed for the purpose of being transferred to the Reserve Regiment.

#### Discharge and transfer to Reserve Regiment

**16.** (1) Subject to the provisions of this Act, every soldier who becomes entitled to be discharged shall be discharged with all convenient speed in the prescribed manner but until discharged shall remain subject to military law. Discharge of soldiers

(2) Where a soldier is, when entitled to be discharged, serving abroad, then —

(a) if he requires to be discharged in Brunei he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within 6 months from his arrival; but

(b) if at his request he is discharged at the place where he is serving he shall have no claim to be sent to Brunei or elsewhere.

(3) Every soldier shall on his discharge be given a certificate of discharge containing such particulars as may be prescribed.

(4) A soldier who is discharged in Brunei shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed at no greater cost.

Transfer to  
the Reserve  
Regiment

**17.** (1) Subject to the provisions of this Act, every soldier falling to be transferred to the Reserve Regiment shall be transferred to the Reserve Regiment but until so transferred shall remain subject to military law.

(2) Where a soldier, when falling to be transferred to the Reserve Regiment, is serving abroad he shall be sent to Brunei free of cost with all convenient speed and shall be transferred to the Reserve Regiment on his arrival there, or if he consents to his transfer being delayed, within 6 months from his arrival:

Provided that if he so requires he may be transferred to the Reserve Regiment without being required to return to Brunei.

(3) A soldier who is transferred to the Reserve Regiment in Brunei shall be entitled to be conveyed free of cost



from the place where he is transferred to the place stated in his attestation paper to be the place where he was attested or to any place at which he intends to reside and to which he can be conveyed at no greater cost:

Provided that he shall not be entitled to be conveyed to any place abroad.

**18.** (1) Notwithstanding anything in this Part, a soldier shall not be entitled to be discharged or transferred to the Reserve Regiment at a time when he has become liable, as a person subject to military law, to be proceeded against for an offence against any of the provisions of this Act: Postponement of discharge or transfer pending proceedings for offences

Provided that if it is determined that the offence shall not be tried by court-martial this subsection shall cease to apply.

(2) Notwithstanding anything in this Part, a soldier who is serving a sentence of imprisonment or detention under this Act shall not be entitled to be discharged or transferred to the Reserve Regiment during the currency of the sentence.

**19.** (1) A recruit may with the permission of His Majesty The Sultan and D. P. (S. 16/86) ~~in Council~~ purchase his discharge at any time within 3 months after the date of his attestation, and if such permission is granted he shall, on payment to the Government of a sum not exceeding \$2,000, be discharged with all convenient speed: Right of recruit to purchase discharge

Provided that permission shall not be given to a recruit to purchase his discharge at a time when a state of war exists between Brunei and any foreign power, or men of the Reserve Regiment are called out for full-time service pursuant to section 25.

(2) In this section "recruit" means a person enlisted in the Armed Forces or the Reserve Regiment in accordance with the provisions of this Act who has not been previously so enlisted.

Right of warrant officer to discharge on reduction to the ranks

**20.** A warrant officer of the Armed Forces or the Reserve Regiment who is reduced to the ranks may thereupon claim to be discharged unless men of the Reserve Regiment are called out for full-time service pursuant to section 25.

Miscellaneous and supplementary provisions

Forfeiture of service for desertion and restoration of forfeited service

**21.** (1) Where a soldier is convicted of desertion by court-martial, the period of his service in regard of which he is convicted of having been a deserter shall be forfeited.

(2) Where any of a soldier's service is forfeited, the provisions of this Part (except those relating to discharge by purchase) shall apply to him and he shall be liable to serve, in like manner as if the appropriate date were the date of his attestation and he had, on the appropriate date, been duly enlisted to serve for the like term (both as respects duration and as respects liability to serve in the Armed Forces and any liability to serve in the Reserve Regiment) as that for which he was in fact serving at the date of his conviction.

(3) In subsection (2) "the appropriate date" means in relation to any person a date earlier than the date of his conviction for desertion by the length of his service which is not forfeited.

c 14/86

(4) His Majesty <sup>the Sultan and VDP</sup> ~~in Council~~ may by regulation make provision for the restoration in whole or in part of any forfeited service to a soldier in consideration of good service or on other grounds justifying the restoration of service forfeited.

(5) Where service of any description is restored to a person under the provisions of this section while such person is in service in the Armed Forces or in the Reserve Regiment, the amount of service so restored shall be credited to the person for the purposes of determining the amount of service which he has served or is liable to serve in the Armed Forces or the Reserve Regiment.

22. (1) Where an eligible person or an eligible young person has signed the declaration contained in the prescribed attestation paper and has thereafter received pay as a soldier or boy soldier of the Armed Forces or man or boy reservist of the Reserve Regiment, as the case may be —

Validity of  
attestation on  
enlistment

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

(b) if within 3 months from the date on which he signed the said declaration he, or any other person whose consent to the enlistment of such eligible person is required under this Act, claims to the Commander or any person authorised by the Commander in that behalf that the enlistment of such eligible person or eligible young person is invalid by reason of any non-compliance with any provision of this Act or any regulation made thereunder as to enlistment or attestation or on any other ground whatsoever (not being error or omission in his attestation paper) on which, apart from this subsection, the validity of such enlistment could have been called in question, the claim shall be investigated by the competent authority, and if the claim is well founded the competent authority shall cause such eligible person or eligible young person to be discharged with all convenient speed.

(c) subject to the provisions of paragraph (b), he shall be deemed as from the expiration of the said 3 months to have been validly enlisted notwithstanding any such non-compliance or other grounds as aforesaid;

(d) notwithstanding any such non-compliance or other grounds as aforesaid or the making of a claim under paragraph (b) he shall be deemed to be a soldier or boy soldier of the Armed Forces or

a man or boy reservist of the Reserve Regiment as the case may be, until his discharge.

(2) Where an eligible person or eligible young person has received pay as a soldier or a boy soldier of the Armed Forces or a man or boy reservist of the Reserve Regiment but has not signed the declaration contained in the prescribed attestation paper, he shall be deemed to be such a soldier or boy soldier or such a man or boy reservist until his discharge:

Provided that he may claim his discharge at any time and, if he does so, the claim shall be submitted as soon as possible to the competent authority who shall cause him to be discharged with all convenient speed.

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

False answers  
in attestation  
paper

**23.** (1) If a person appearing before a magistrate or an Attesting Officer for the purpose of being attested knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the magistrate or the Attesting Officer, as the case may be, he shall be guilty of an offence: Penalty, imprisonment for 6 months and a fine of \$500.

(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to military law.

Uniform

**24.** Members and cadets of the Armed Forces and the Reserve Regiment shall wear uniforms of such patterns as may from time to time be approved by the competent authority; and the competent authority may from time to time

approve different patterns of uniforms in respect of different members or cadets or different categories of members or cadets of the Armed Forces or the Reserve Regiment.

#### PART IV

### SPECIAL PROVISIONS RELATING TO THE RESERVE REGIMENT

#### Call out of Reserve Regiment

**25.** (1) His Majesty may by order authorise the calling out of the Reserve Regiment or any part thereof for full-time service —

Call out of Reserve Regiment for full-time service

(a) where a state of war exists between Brunei and any foreign power;

(b) where it appears to His Majesty that national danger is imminent or that a great emergency has arisen; or

(c) to aid the Government in the preservation of public order.

(2) An order made under subsection (1) shall unless His Majesty otherwise directs, come into force on the day on which it is made.

(3) In any case where an order is in force under subsections (1) and (2), the competent authority may call out the Reserve Regiment or any part thereof for full-time service in accordance with regulations made by His Majesty ~~in Council.~~ *The Sultan and JDP*

(4) An order in force under subsections (1) and (2) may be revoked by an order of His Majesty but the revocation shall not affect the liability for full-time service of any

person called out for such service by virtue of the order at the time of its revocation.

(5) An order made under subsection (1) and any revocation thereof shall be publicly notified as soon as circumstances permit.

#### Extension of service

Postpone-  
ment of dis-  
charge

26. Where at the time at which, apart from this section, a man of the Reserve Regiment would be entitled to be discharged, men of the Reserve Regiment are called out for full-time service pursuant to section 25, he may be retained in full-time service in the Reserve Regiment for such period, not exceeding 12 months, as the competent authority may order and his service may be prolonged accordingly.

#### Release

Release from  
full-time ser-  
vice

27. A member of the Reserve Regiment called out for full-time service by virtue of an order under section 25 (1) shall be released from such service with all convenient speed when the competent authority is satisfied that his service is no longer required by such member shall remain so called out until such release.

#### Training

Call out of  
the Reserve  
Regiment for  
training

S. 16/08.

28. (1) Subject to subsection (2), any member of the Reserve Regiment may in accordance with regulations made by His Majesty <sup>The Sultan of Brunei</sup> ~~in Council~~, be called out in any year for training, in Brunei or abroad —

(a) for one period which shall not exceed 15 days without the consent of such member; and

(b) for such other periods as may be prescribed, none of which shall exceed 72 hours without the consent of such member,

and such member may while so called out to be attached to and trained with any unit of the Armed Forces.

(2) His Majesty <sup>the Sultan and YDP</sup> ~~in Council~~ may by regulations make provisions for relaxing, in such cases as may be prescribed, the liability imposed by subsection (1) on members of the Reserve Regiment.

s 16/82

### Application of Act

29. Without prejudice to any particular provision of this Act and subject to such alterations as may be necessary and to such other alterations as may be prescribed, the provisions of this Act shall apply in relation to members of the Reserve Regiment who are subject to military law as it applies to members of the Armed Forces.

Application of Act to members of Reserve Regiment when subject to military law

### Offences

30. (1) Any man of the Reserve Regiment who, when called out for full-time service or for training, fails without reasonable excuse to appear at the time and place at which he was required by the competent authority to attend may, if he is not tried by court-martial or dealt with summarily under the provisions of this Act for an offence arising from such failure, be tried by a civil court for an offence under this subsection and shall, on conviction by such court, be liable to a fine of \$1,000 and to imprisonment for 2 years.

Offences by men of Reserve Regiment

(2) Any man of the Reserve Regiment who —

(a) fails without reasonable excuse to comply with any regulations made under this Act; or

(b) uses threatening or insulting language or behaves in an insubordinate manner to any officer or soldier who would be his superior officer if such man were subject to military law,

shall commit an offence under this subsection and may be tried by court-martial or dealt with summarily as though he were at all material times subject to military law; and if such man is not so tried or so dealt with, he may be tried by a civil court, and shall on conviction by such court, be liable to a fine of \$500 and to imprisonment for one year.

PART V

DISCIPLINE AND TRIAL AND PUNISHMENT OF  
MILITARY OFFENCES

Interpretation

Interpreta-  
tion of Part V

**31.** (1) In this Part —

“civil prison” means a prison in Brunei in which a person sentenced by a civil court to imprisonment can for the time being be confined;

“convening officer”, in relation to a court-martial, means the officer convening the court-martial and includes his successor or any person for the time being exercising his or his successor’s functions;

“military establishment” means a military prison or any other establishment under the control of the competent authority where persons may be required to serve military sentences of imprisonment or detention;

“military person” means separate premises under the control of the competent authority and primarily allocated for persons serving military sentences of imprisonment;

references to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial;



references to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer;

"prescribed" means prescribed by Rules of Procedure.

(2) References in this Part to warrant officers do not include references to acting warrant officers.

(3) References in this Part to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

Misconduct in action and other offences arising out of  
military service

**32.** Any person subject to military law who without lawful excuse — Misconduct  
in action

(a) when in the presence or vicinity of the enemy, does any act or is responsible for any omission which is liable to or does in fact assist the enemy; or

(b) induces any other person who is in the presence or vicinity of the enemy to do any act or make any omission which is liable to or does in fact assist the enemy.

shall, on conviction by court-martial, be liable, if the offence is committed with intent to assist the enemy, to suffer death or any less punishment provided by this Act, and in any other case, to imprisonment or any less punishment so provided.

**33.** Any person subject to military law who knowingly and without lawful excuse — Assisting the  
enemy

(a) communicates with or gives intelligence to the enemy;

(b) fails to make known to the proper authorities any information received by him from the enemy;

(c) provides the enemy with supplies of any description;

(d) gives any false signal or alters or interferes with any signal or apparatus for giving a signal;

(e) having been captured by the enemy, serves with, or helps the enemy in any other way whatsoever not authorised by international usage; or

(f) harbours or protects an enemy not being a prisoner of war,

shall, on conviction by court-martial, be liable, if the offence is committed with intent to assist the enemy, to suffer death or any less punishment provided by this Act, and in any other case, to imprisonment or any less punishment so provided.

Becoming a prisoner of war through disobedience or wilful neglect

**34.** Any person subject to military law who, through disobedience to orders or wilful neglect in the performance of his duty, is captured by the enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Failure to attend for duty, neglect of duty, etc.

**35.** Any person subject to military law who —

(a) without reasonable excuse fails to attend for any duty of any description, or leaves any such duty before he is permitted to do so; or

(b) neglects to perform, or negligently performs, any duty of any description,

shall be liable, on conviction by court-martial, to imprisonment for 2 years or any less punishment provided by this Act.

36. Any person subject to military law who —

Looting

(a) commits theft from, or with intent to commit theft, searches, the person of any one killed, injured, captured or detained during any operations undertaken by the Armed Forces or the Reserve Regiment;

(b) commits theft of any property which has been left exposed or unprotected in consequence of any such operation; or

(c) takes, otherwise than for the public service, any vehicle, equipment or stores abandoned by the enemy,

shall be guilty of looting and liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

#### Mutiny and insubordination

37. (1) Any person subject to military law who —

Mutiny

(a) takes part in a mutiny having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service; or

(b) incites any person subject to military law to take part in such a mutiny, whether actual or intended,

shall, on conviction by court-martial, be liable to suffer death or any less punishment provided by this Act.

(2) Any person subject to military law who, in a case not falling within subsection (1), takes part in a mutiny or incites any other person subject to military law to take part in a mutiny, whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this Act “mutiny” means a combination between 2 or more persons subject to military law, or between 2 at least of whom are subject to military law —

(a) to overthrow or resist lawful authority in the Armed Forces or the Reserve Regiment or forces co-operating therewith or in any part of the said forces;

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(c) to impede the performance of any duty or service in the Armed Forces or Reserve Regiment or in any forces co-operating therewith or in any part of any of the said forces.

Failure to  
suppress  
mutiny

**38.** Any person subject to military law who, knowing that a mutiny is taking place or is intended, —

(a) fails to use his utmost endeavours to suppress or prevent it; or

(b) fails to report without delay that the mutiny is taking place or is intended,

shall, on conviction by court-martial, —

(i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any less punishment provided by this Act;

(ii) in any other case, be liable to imprisonment or any less punishment provided by this Act.

**39.** (1) Any person subject to military law who —

Insubordinate behaviour

(a) strikes or otherwise uses violence to, or offers violence to his superior officer; or

(b) uses threatening or insubordinate language to his superior officer,

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Provided that it shall be a defence for any person charged under this subsection to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was his superior officer.

(2) In this section “superior officer”, in relation to any person, means an officer, warrant officer or non-commissioned officer of superior rank and includes an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as the said person’s superior.

**40.** Any person subject to military law who, whether wilfully or through neglect, disobeys any lawful command, by whatever means communicated to him, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Disobedience to lawful commands

**41.** Any person subject to military law who —

Obstruction of provost officers

(a) obstructs, or

(b) when called on, refuses to assist,

any provost officer, or any person (whether subject to military law or not) legally exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act:

Provided that it shall be a defence for any person charged under this section to prove that he neither knew nor had reasonable cause to believe that the person in relation to whom the offence is alleged to have been committed was a provost officer or, as the case may be, a person legally exercising authority under or on behalf of a provost officer.

Disobedience  
to standing  
orders

**42.** (1) Any person subject to military law who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature made for, or applying to persons including, all or any members of the Armed Forces or the Reserve Regiment.

Desertion, absence without leave, etc.

Desertion

**43.** (1) Any person subject to military law who deserts shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) For the purposes of this Act a person deserts who —

(a) leaves or fails to attend his place of duty with the intention of remaining permanently absent from duty without lawful authority, or, having left or failed to attend his place of duty, thereafter forms the like intention; or

(b) absents himself without leave with intent to avoid serving at any place abroad or to avoid service or any particular service when in the presence or vicinity of the enemy,

and references in this Act to desertion shall be construed accordingly.

**44.** Any person subject to military law who —

Absence  
without leave

(a) absents himself without leave; or

(b) improperly leaves his place of duty,

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

**45.** Any person subject to military law who, knowing that any other person so subject has committed an offence, or is attempting to commit an offence, under section 43 (1) or 44 —

Failure to re-  
port or  
apprehend  
deserters or  
absentees

(a) fails to report the fact without delay; or

(b) fails to take steps within his power to cause that other person to be arrested,

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

#### Malingering and drunkenness

**46.** (1) Any person subject to military law who —

Malingering

(a) falsely pretends to be suffering from sickness or disability;

(b) injures himself with intent thereby to render himself unfit for service, or cause himself to be injured by any person with that intent;

(c) injures another person subject to military law, at the instance of that person, with intent thereby to render that person unfit for service; or

(d) with intent to render or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces or prolongs or aggravates any sickness or disability,

shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

(2) In this section “unfit” includes temporarily unfit.

**Drunkenness** **47.** (1) Any person subject to military law who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

(2) For the purposes of this section a person is guilty of drunkenness if, owing to the effect of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he might reasonably expect to be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on the services of His Majesty.

#### Disorderly conduct

Fighting,  
threatening  
words, etc.

**48.** Any person subject to military law who, without reasonable excuse —



(a) fights with any other person, whether subject to military law or not; or

(b) uses threatening, abusive, insulting or provocative words, or behaviour likely to cause a disturbance,

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

#### Offences relating to property

**49.** (1) Any person subject to military law who —

(a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of, any public or service property, or any property belonging to another person so subject; or

(b) by wilful neglect causes or allows damage to, or the loss of, any public or service property or property so belonging,

Damage to and loss of, public or service property, etc.

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law who —

(a) by any negligent act or omission causes or allows damage to, or the loss of any public or service property; or

(b) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of, any such property,

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Damage to  
and loss of  
aircraft or  
aircraft mate-  
rial

**50.** (1) Without prejudice to the generality of section 49, a person subject to military law shall be guilty of an offence against this section if he —

(a) wilfully damages or causes the loss of, or is concerned in the wilful damage or loss of any aircraft or aircraft material of His Majesty;

(b) by wilful neglect causes or allows damage to, or the loss of any such aircraft or aircraft material;

(c) without lawful authority disposes of any such aircraft or aircraft material;

(d) by any negligent act or omission causes or allows damage to, or the loss of, any such aircraft or aircraft material; or

(e) is guilty of any wilful or negligent act or omission which is likely to cause damage to, or the loss of any such aircraft or aircraft material.

(2) A person guilty of an offence against this section shall, on conviction by court-martial, be liable —

(a) if his offence consisted in an act or omission falling within subsection (1) (a), (b) or (c), to imprisonment or any less punishment provided by this Act;

(b) in any other case, to imprisonment for 2 years or any less punishment provided by this Act.

Misapplica-  
tion or waste  
of public or  
service prop-  
erty

**51.** Any person subject to military law who misapplies or wastefully expends public or service property shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

**52.** (1) Any person subject to military law who makes away with (whether by pawning, selling, destroying or in any other way), or loses or by negligence damages or allows to be damaged —

Offences relating to issues and decorations

(a) any clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or

(b) any military decoration granted to him,

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

(2) It shall be a defence for a person charged under this section with losing any property, that he took reasonable steps for its care and preservation.

#### Navigation and flying, etc. offence

**53.** Without prejudice to the generality of section 49, any person subject to military law who, either wilfully or by negligence, causes or allows to be damaged, lost, stranded or hazarded any ship or naval material of His Majesty shall, on conviction by court-martial, be liable —

Damage to and loss, etc. of ships or naval material

(a) if he acts wilfully or with wilful neglect, to imprisonment or any less punishment provided by this Act;

(b) in any other case, to imprisonment for 2 years or any less punishment provided by this Act.

**54.** Any person subject to military law who is guilty of any act or neglect in flying, or in the use of any aircraft or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person,

Dangerous flying, etc.

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than 2 years.

Inaccurate  
certification  
of ships and  
aircraft

**55.** Any person subject to military law who makes or signs, without having ensured its accuracy —

(a) a certificate relating to any matter affecting the seagoing or fighting efficiency of any ship or naval material of His Majesty; or

(b) any certificate relating to any aircraft or aircraft material of His Majesty,

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Low flying

**56.** Any person subject to military law who, being the pilot of an aircraft of His Majesty, flies it at a height less than such height as may be provided under or by virtue of any regulations made under this Act; except —

(a) while taking off or alighting; or

(b) in such other circumstances as may be so provided,

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act:

Provided that where a pilot flies an aircraft in contravention of this section on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying, the aircraft at the material time.

**57.** Any person subject to military law who, being the pilot of an aircraft of His Majesty, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court-martial, be liable to dismissal from the service of His Majesty or any less punishment provided by this Act:

Annoyance  
by flying

Provided that where a pilot flies an aircraft in contravention of this section, on the orders of some other person who is in command of the aircraft, that other person shall be treated for the purposes of this section as having been the pilot of, and flying the aircraft at the material time.

Offences relating to, and by, persons in custody

**58.** (1) Any person subject to military law who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Permitting  
escape and  
unlawful re-  
lease of pris-  
oners

(2) Any person subject to military law who —

(a) without proper authority releases any person who is committed to his charge; or

(b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

**59.** (1) Any person subject to military law who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.

Resistance to  
arrest

(2) Any person subject to military law who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to military law or not, whose duty it is to arrest him or in whose custody he is, shall be guilty of an offence against this Act.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Escape from  
confinement

**60.** Any person subject to military law who escapes from arrest, prison or other lawful custody (whether military or not), shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Offences in relation to courts-martial

Offences in  
relation to  
courts-  
martial

**61.** (1) Any person subject to military law who —

(a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or

(b) refuses to swear on oath when duly required by a court-martial to do so; or

(c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or

(d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court

while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

(f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall, on conviction by a court-martial, other than the court in relation to which the offence was committed, be liable to imprisonment for 2 years or any less punishment provided by this Act.

(2) Notwithstanding anything in subsection (1), where an offence against that subsection is committed in relation to any court-martial held in pursuance of this Act that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the president sentence the offender—

(a) if he is an officer, to imprisonment for a term not exceeding 21 days, or to a fine not exceeding the amount of his pay for 28 days (a day's pay being taken for this purpose as the gross amount which is, or would apart from any forfeiture be, issuable to the offender in respect of the day on which the order is made);

(b) in any other case, to imprisonment or detention for such a term as aforesaid, or to such a fine as aforesaid.

### Miscellaneous Offences

**62.** (1) Any person subject to military law who without lawful authority discloses or purports to disclose, whether orally, in writing, by signal or any other means whatsoever,

Unauthorised  
disclosure of  
information

information relating to any matter upon which information would or might be useful to an enemy shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

(2) It shall be a defence for a person charged with an offence under this section that he did not know and had no reasonable cause to believe that the information would or might be directly or indirectly useful to an enemy.

Making of  
false state-  
ments on en-  
listment

**63.** Any person who, when appearing before a magistrate or an Attesting Officer for the purpose of being attested in pursuance of Part III, has knowingly made a false answer to any question contained in the attestation paper and put to him by or by the direction of the magistrate or the Attesting Officer, as the case may be, shall if he has since become and remains subject to military law be liable, on conviction by court-martial, to imprisonment for 3 months or any less punishment provided by this Act.

Falsification  
of document

**64.** Any person subject to military law who —

(a) makes, signs or makes an entry in any report, return, pay list or certificate or other official document, being a document, or entry which is to his knowledge false in a material particular; or

(b) alters any report, return, pay list or certificate or other official document, or alters any entry in such a document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce; or

(c) with the intent to deceive, fails to make any entry in any such document,



shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

**65.** Any person subject to military law who spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of the Armed Forces or the Reserve Regiment or of any part thereof, or of any forces co-operating therewith, or of any part of those forces, being reports likely to create despondency or unnecessary alarm shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Offences  
against  
morale

**66.** Any officer subject to military law who behaves in a scandalous manner unbecoming the character of an officer shall, on conviction by court-martial, be liable to dismissal from the service of His Majesty with or without disgrace.

Scandalous  
conduct by  
officers

**67.** If —

(a) any officer subject to military law strikes or otherwise ill-treats any officer subject thereto of inferior rank or less seniority or any warrant officer, non-commissioned officer or soldier subject to military law; or

Ill-treatment  
of personnel  
of inferior  
rank

(b) any warrant officer or non-commissioned officer subject to military law strikes or otherwise ill-treats any person subject to military law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or a soldier,

he shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

**68.** Any person subject to military law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind

Disgraceful  
conduct

shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Conduct to the prejudice of good order and military discipline

**69.** Any person subject to military law who is guilty of any conduct or neglect to the prejudice of good order and military discipline shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Attempts to commit military offences

**70.** Any person subject to military law who attempts to commit an offence against any of the foregoing provisions of this Part shall, on conviction by court-martial, be liable to the like punishment as for that offence:

Provided that if the offence is one punishable by death, he shall not be liable to any greater punishment than imprisonment.

Aiding and abetting, etc., or inciting the commission of military offences

**71.** (1) Any person subject to military law who abets an offence against any of the foregoing provisions of this Part shall himself be guilty of the offence in question, and shall be liable to be charged, tried and punished accordingly.

(2) A person may be guilty by virtue of subsection (1) of an offence against section 64 whether or not he knows the nature of the document in question.

(3) Section 107 (relating to the abetment of a thing), section 108 (relating to the abetment of an offence) and section 108A (relating to the abetment in Brunei of an offence outside it) of the Penal Code shall apply mutatis mutandis in relation to an offence against any of the foregoing provisions of this Part as if such an offence were an offence under the Penal Code.

## Civil Offences

72. (1) Any person subject to military law who commits a civil offence, whether in Brunei or elsewhere, shall be guilty of an offence against this section. Civil offences

(2) In this Act "civil offence" means any act or omission punishable by the law of Brunei or which, if committed in Brunei, would be punishable by that law; and in this Act "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.

(3) A person convicted by court-martial of an offence against this section shall be liable to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in Brunei being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided.

(4) A person shall not be charged with an offence against this section committed in Brunei if the corresponding civil offence is an offence punishable under any provision of Chapter VI (offences against Brunei) of the Penal Code or under section 302 (murder), section 304 (culpable homicide not amounting to murder), section 306 (abetment of suicide) or section 376 (rape) of the Penal Code. Cap. 22

(5) Where the corresponding civil offence is punishable under section 302 (murder) or section 304 (culpable homicide not amounting to murder) of the Penal Code, an offence against this section shall be deemed, for the purpose of subsection (4), to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of death.

(6) A person shall not without the consent in writing of the Attorney General be charged with an offence against

this section committed in Brunei if the offence affects the person or property of a person who was not subject to military law at the time the offence was committed.

(7) A person subject to military law may be charged with an offence against this section notwithstanding that he could on the same facts be charged with an offence against any other provision of this Part.

Punishments available to courts-martial

Scale of  
punishment  
and sup-  
plementary  
provisions

73. (1) The punishments which may be awarded by sentence of a court-martial under this Act are, subject to the following provisions of this section, as follows —

- (a) death;
- (b) imprisonment;
- (c) dismissal with disgrace from the service of His Majesty;
- (d) dismissal from the service of His Majesty;
- (e) detention for a term not exceeding 2 years;
- (f) forfeiture of seniority for a specified term or otherwise;
- (g) reduction to the ranks or any less reduction in rank;
- (h) fine;
- (i) severe reprimand;
- (j) reprimand;

(k) in the case of an offence which has occasioned any expense, loss or damage, stoppages; and

(l) such minor punishments as may from time to time be prescribed,

and references in this Act to any punishment provided by this Act are, subject to the limitation imposed in any particular case by the addition of the word "less", references to any one or more of the said punishments.

(2) For the purposes of this Part a punishment specified in any paragraph of subsection (1) shall be treated as less than the punishments specified in the paragraphs preceding that paragraph and greater than those specified in the paragraphs following it:

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(3) Subsection (1) shall have effect in relation to a convicted person who is —

(a) an officer, with the omission of paragraphs (e), (g) and (l);

(b) a warrant officer, with the omission of paragraphs (f) and (l);

(c) a non-commissioned officer, with the omission of paragraph (f); and

(d) a soldier, with the omission of paragraphs (f), (g), (i) and (j).

(4) A person sentenced by a court-martial to imprisonment shall also be sentenced either to dismissal with dis-

grace from the service of His Majesty or to dismissal from such service:

Provided that if the court-martial fails to give effect to this subsection their sentence shall not be invalid, but shall be deemed to include a sentence of dismissal from the service of His Majesty.

(5) A warrant officer or non-commissioned officer sentenced by a court-martial to imprisonment, to dismissal from the service of His Majesty (whether or not with disgrace), or to detention, shall also be reduced to the ranks:

Provided that, if the court-martial fails to give effect to this subsection, their sentence shall not be invalid, but shall be deemed to include a sentence of reduction to the ranks.

(6) The amount of a fine that may be awarded by a court-martial —

(a) except in the case of an offence against section 72, shall not exceed the amount of the offender's pay for 28 days or, where the offence was committed on active service, 56 days; and

(b) in the said excepted case —

- (i) where the civil offence constituting an offence against that section is punishable by a fine, shall not exceed the maximum amount of the fine which the magistrate is authorised to award by virtue of any written law other than a notification by the Chief Justice conferring special jurisdiction upon the magistrate pursuant to section 11 (1) (a) of the Criminal Procedure Code; and
- (ii) where the said civil offence is punishable only by the High Court and is so punishable by a fine, shall not exceed the maximum amount of the fine;

and for the purposes of this subsection a day's pay shall, as regards a person found guilty of an offence, be deemed to be the gross pay that is, or would (apart from any forfeiture or deduction) be, issuable to that person in respect of the day on which punishment is awarded in respect of the offence.

### Arrest

74. (1) Any person subject to military law found committing an offence against any provision of this Act, or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested in accordance with the following provisions of this section.

Power to  
arrest offend-  
ers

(2) An officer may be arrested by an officer of superior rank, or, if engaged in a quarrel or disorder, by an officer of any rank.

(3) A warrant officer, non-commissioned officer or soldier may be arrested by an officer, warrant officer or non-commissioned officer:

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any member of the Armed Forces legally exercising authority under a provost officer or on his behalf, may arrest any member of the Armed Forces:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this section may (subject to the provisions of General Orders) be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

(6) Any person making an arrest personally shall actually touch or confine the body of the person being arrested unless there is a submission to the arrest by word or action.

(7) Every person authorised to make an arrest under this section may use such force as is reasonably necessary for that purpose.

(8) Where a person forcibly resists an attempt to arrest him or attempts to evade the arrest, the person arresting him or any other person assisting him may use all means necessary to make the arrest.

Provisions for  
avoiding de-  
lay after  
arrest

**75.** (1) The allegations against any person subject to military law who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be practicable either proceedings shall be taken for punishing his offence or he shall be released from arrest.

(2) Wherever any person subject to military law, having been taken into military custody, remains under arrest for a longer period than 8 days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report shall be made to the like authority and in the like manner every 8 days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that in the case of a person on active service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.



## Investigation of, and summary dealing with, charges

**76.** Before an allegation against a person subject to military law (hereinafter in this Act referred to as “the accused”) that he has committed an offence against any provision of this Part is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused’s commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

Investigation of charges by commanding officer

**77.** (1) After investigation, a charge against an officer below the rank of colonel or against a warrant officer or non-commissioned officer of the rank of staff-sergeant may, if an authority has power under the following provisions of this Part to deal with it summarily, be so dealt with by that authority (in this Act referred to as “the appropriate superior authority”) in accordance with those provisions.

Charges to be dealt with summarily or by court-martial

(2) After investigation, a charge against a non-commissioned officer below the rank of staff-sergeant or against a soldier may, if his commanding officer of the appropriate superior authority has power in that behalf under the following provisions of this Part, be dealt with summarily by such commanding officer or the appropriate superior authority, as the case may be, subject to and in accordance with those provisions.

(3) Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court-martial or otherwise proceeded with in accordance with the following provisions of this Part.

(4) Notwithstanding anything in the foregoing provisions of this section, where —

(a) the commanding officer has investigated a charge against an officer, warrant officer or non-commissioned officer of the rank of staff-sergeant; or

(b) the commanding officer has investigated a charge against a non-commissioned officer below the rank of staff-sergeant or against a soldier which is not a charge which can be dealt with summarily,

the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may be required, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

Further proceedings on charges against non-commissioned officers below the rank of staff-sergeant and soldiers

**78.** (1) The following provisions of this section shall have effect when the commanding officer has investigated a charge against a non-commissioned officer below the rank of staff-sergeant or against a soldier.

(2) If the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it, he shall take the prescribed steps with a view to the charge being tried by court-martial.

(3) If the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with by him, he shall submit it in the prescribed manner to the appropriate superior authority, and thereupon such authority shall determine how the charge is to be proceeded with in accordance with subsection (4).

(4) Any appropriate superior authority to whom the charge is submitted pursuant to subsection (3) shall —

(a) determine that the prescribed steps shall be taken with a view to the charge being tried by court-martial; or

(b) deal with the charge summarily in accordance with section 80; or

(c) refer the charge back to the commanding officer to be dealt with summarily by him:

Provided that a charge shall not be referred back without the written consent of the accused.

(5) If the charge is one which can be dealt summarily and the commanding officer has not dismissed it and is of the opinion that it should be dealt with summarily by him, or it has been referred back to be so dealt with by him pursuant to subsection (4) (c), he shall proceed to deal with the charge summarily; and if he records a finding of guilty he may award one or more of the following punishments —

(a) if the accused is a soldier, detention for a period not exceeding 28 days;

(b) if the accused is a non-commissioned officer below the rank of sergeant, reduction to the ranks or any less reduction in rank;

(c) fine;

(d) if the accused is a non-commissioned officer, a severe reprimand or reprimand;

(e) where the offence has occasioned any expense, loss or damage, stoppages; and

(f) any minor punishment for the time being prescribed:

Provided that no fine or minor punishment shall be awarded for an offence for which detention is awarded:

And provided also that the amount of a fine that may be awarded for —

(a) except in the case of an offence against section 72, shall not exceed the amount of the offender's pay for 28 days; and

(b) in the said excepted case —

(i) in any case, shall not exceed the amount of the offender's pay for 28 days; and

(ii) where the maximum amount of any fine by which the civil offence constituting the offence against section 72 is punishable by a civil court (or by the most subordinate of any 2 or more such courts by which the said civil offence is punishable) is less than the amount limited by subparagraph (i) shall not exceed that maximum,

a day's pay being taken for the purposes of this proviso, as respects a person found guilty of any offence, as the gross pay that is, or would (apart from any forfeiture or deduction) be, issuable to that person in respect of the day on which punishment is awarded in respect of the offence.

(6) Notwithstanding anything in subsection (5), where the commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award any of the following punishments —

(a) reduction to the ranks or any less reduction in rank; or

(b) a fine of an amount exceeding 14 days pay; or

(c) stoppages for a period exceeding 14 days,

he shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently in accord-

ance with General Orders withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

**79.** (1) After investigating a charge against an officer, warrant officer or non-commissioned officer of the rank of staff-sergeant, the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to an appropriate superior authority and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with subsections (2) and (3).

Further proceedings on charges against officers, etc.

(2) If the charge is one which can be dealt with summarily by an appropriate superior authority, it may be so dealt with in accordance with section 80.

(3) If the charge is not one that can be dealt with summarily, the prescribed steps shall be taken with a view to its being tried by court-martial.

**80.** (1) Where a charge falls to be dealt with by an appropriate superior authority pursuant to section 78 (4) (b) or 79 (2) that authority shall investigate the charge in the prescribed manner and shall then proceed to deal summarily with it:

Summary proceedings by an appropriate superior authority

Provided that an appropriate superior authority may at any time before dismissing the charge or recording a finding of guilty thereon take the prescribed steps with a view to the charge being tried by court-martial.

(2) If the appropriate superior authority records a finding of guilty the authority may award one or more of the following punishments —

(a) if the accused is a soldier, detention for a period not exceeding 42 days;

(b) forfeiting of seniority for a specified term or otherwise;

(c) if the accused is a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;

(d) fine;

(e) if the accused is an officer, warrant officer or non-commissioned officer, severe reprimand or reprimand;

(f) where the offence has occasioned any expense, loss or damage, stoppages;

(g) any minor punishment for the time being prescribed:

Provided that the appropriate superior authority may not award a fine for an offence for which the authority awards any reduction in rank or forfeiture or seniority:

And provided also that the appropriate superior authority may not award a fine or minor punishment for an offence for which the authority awards detention:

And provided also that the second proviso to section 78 (5) shall have effect as respects fines awarded by virtue of this section as it has effect as respects fines awarded by virtue of section 78 but with the substitution of the figures "42" for the figures "28" where they occur in paragraphs (a) and (b) (i) of the said proviso.

(3) Notwithstanding anything in this section, where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award any of the following punishments —

- (a) detention for a period exceeding 14 days; or
- (b) forfeiture of seniority; or
- (c) reduction to the ranks or any less reduction in rank; or
- (d) a fine of an amount exceeding 14 days' pay;

the authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

**81.** (1) Notwithstanding anything in section 78 or 79, where a charge has been referred to higher authority with a view to it being tried by court-martial, or has been submitted to an appropriate superior authority for determination how it is to be proceeded with, that authority may refer the charge back to the commanding officer of the accused with a direction to dismiss the charge or a direction to stay all further proceedings therein; and the commanding officer shall deal with the charge accordingly.

Directions by higher authority or appropriate superior authority for dismissal of charges or stay of proceedings

(2) The reference back of a charge under subsection (1) shall be without prejudice to the preferring of another charge if the authority concerned has so directed or the commanding officer thinks fit.

**82.** (1) Where in accordance with General Orders a warrant officer, non-commissioned officer or soldier signs a written confession that he has been guilty of desertion, his commanding officer may notwithstanding anything in the foregoing provisions of this Part, submit the confession for the consideration of the Commander.

Confession of desertion by warrant officer, non-commissioned officer or soldier

(2) After considering any such confession the Commander may direct that the offence shall not be tried by

court-martial or dealt with summarily, and if such a direction is given the period of his service as respects which he confesses to have been a deserter shall be forfeited.

(3) Section 21 (2) to (5) shall apply in relation to the forfeiture of service by virtue of this section but with the substitution of references to the date on which the direction was given for the references in section 21 (2) and (3) to the date on which the offender was convicted.

Officers who are to act as commanding officers and appropriate superior authorities

**83.** (1) In this Act “commanding officer”, in relation to a person charged with an offence, means such officer having powers of command over that person as may be determined by or under regulations made by His Majesty in Council.

(2) The Colonel in Chief or the Commander may act as appropriate superior authority in relation to a person charged with an offence.

(3) Regulations under this section may confer on officers, or any class of officers, who by or under the regulations are authorised to exercise the functions of commanding officers, power to delegate those functions, in such cases and to such extent as may be specified in the regulations, to officers of a class so specified.

Limitation of powers of summary dealing with charges

**84.** (1) The charges which may be dealt with summarily by a commanding officer and by an appropriate superior authority shall be such as may be specified by regulations made by His Majesty in Council.

(2) In such cases as may be specified in that behalf by regulation made under this section the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.



## Courts-martial: general provisions

**85.** (1) A court-martial shall be convened by order of the competent authority and, subject to the provisions of this section, shall consist of the president and not less than 4 other officers.

Convening  
and constitu-  
tion of  
courts-  
martial

(2) Any officer who —

(a) is the officer (hereinafter in this Act referred to as “the convening officer”) who convenes a court-martial;

(b) has held a commission for less than 2 years;

(c) at any time between the date on which the accused was charged with the offence and the date of the trial has been the commanding officer of the accused or who has investigated the charge against the accused or who under this Act has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject matter of the charge against the accused; or

(d) where the accused is an officer of or above the rank of captain, is an officer below that rank,

shall not be a member of a court-martial; and shall not, if he is an officer to whom any provisions of paragraph (c) applies, act as judge advocate at a court-martial.

(3) The president of a court-martial shall be appointed by order of the convening officer and shall not be below the rank of major unless in the opinion of the convening officer an officer of or above the rank of major having suitable qualifications is not available and cannot be made available with due regard to the public service, and in any event the president of a court-martial shall not be below the rank of captain.

(4) The members of a court-martial, other than the president, shall be appointed by the convening officer or in such other manner as may be prescribed.

(5) Where the convening officer is of opinion that it is not possible without serious detriment to the public service to convene a court-martial constituted as provided in subsection (1), he may convene a court-martial consisting of the president and not less than 2 other officers.

(6) Where the convening officer —

(a) appoints a captain as president of a court-martial, being of opinion that an officer of or above the rank of major having suitable qualifications is not available and cannot be made available with due regard to the public service; or

(b) convenes a court-martial consisting of the president and not less than 2 other officers, being of opinion that it is not possible without serious detriment to the public service to convene a court-martial constituted as provided in subsection (1),

the order convening the court-martial shall contain a statement of the said opinion, and that statement shall be conclusive.

Place for sitting of court-martial and adjournment to other places

**86.** (1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without Brunei) as may be specified in the order convening the court.

(2) A court-martial sitting at any place shall, if the convening officer directs it to sit at some other place, and may without any such direction if it appears to the court necessary in the interest of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

## Courts-martial: provisions relating to trial

**87.** (1) An accused about to be tried by court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or instead of another officer. Challenges by accused

(2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1), the names of the members of the court shall be read over in the presence of the accused before they are sworn and he shall be asked whether he objects to any of these officers.

(3) Every objection made by the accused to any officer shall be considered by the other officers appointed members of the court.

(4) If objection is made to the president and not less than one-third of the other members of the court allows it, the court shall adjourn and the convening officer shall appoint another president.

(5) If the objection is made to a member of the court other than the president and not less than one-half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced below the legal minimum shall, be filled in the prescribed manner by another officer.

**88.** (1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter. Administration of oaths

(2) Every witness before a court-martial shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the

nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that where the evidence is given on behalf of the prosecution the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.

(3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

Courts-  
martial to sit  
in open court

**89.** (1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused.

(2) Nothing in the last subsection shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interest of the administration of justice to do so; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.

(4) A court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.

90. (1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.

Dissolution  
of courts-  
martial

(2) Without prejudice to the generality of subsection (1), if after the commencement of the trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

(3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then —

(a) if the senior member of the court is not below the rank of captain, the convening officer may appoint him president and the trial shall proceed accordingly; but

(b) in any other case, the court shall be dissolved.

(4) Without prejudice to the generality of subsection (1), if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

(5) Where a court-martial is dissolved under the previous provisions of this section the accused may be tried by another court.

91. (1) Subject to the provisions of this section, every question to be determined on a trial by court-martial shall be determined by a majority of the votes of the members of the court.

Decisions of  
court-martial

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and where on such a finding being come to by a majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.

(4) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

(5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial except the finding, the president shall have a second or casting vote.

Finding and  
sentence

**92.** (1) Without prejudice to the provisions of section 89, the finding of a court-martial on each charge shall be announced in open court.

(2) Any finding of guilty shall be, and be announced as being, subject to confirmation.

(3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court, and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

Power to con-  
vict of off-  
ence other  
than that  
charged

**93.** (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of an offence as having been committed under circumstances involving a lesser degree of punishment.

(2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.

(4) Where an accused is charged before a court-martial under section 72 in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court-martial with an offence against section 72, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Brunei, he might have been found guilty of another civil offence, then if the court finds that he has committed that other civil offence he may be convicted of an offence against section 72 in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence specified in the first column of Schedule 1 may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

**94.** The provisions of the Bankers' Books (Evidence) Act, shall have effect with the following modifications, namely —

Evidence re-  
lating to  
bankers'  
books  
Cap. 107

(a) a trial by court-martial and any proceedings leading up to such a trial after the convening and constitution of the court-martial shall be deemed to be a "legal proceeding" within the meaning of that expression as used in the said Act;

(b) a court-martial shall be deemed to be a “Court” within the meaning of that expression as used in the said Act; and

(c) the powers conferred by section 7 of the said Act (which enables orders to be made for the inspection of bankers’ books for the purposes of legal proceedings) shall be deemed to be exercisable for the purposes of a court-martial by the convening officer as well as by the court-martial.

Rules of evidence

**95.** (1) Save as otherwise expressly provided in this Act or in any regulations made thereunder, the rules of evidence to be observed in proceedings before a court-martial shall be the same as those observed in criminal proceedings in civil courts in Brunei, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in criminal proceedings before a civil court in Brunei.

(2) A court-martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in Brunei.

Privileges of witnesses and others at courts-martial

**96.** A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court.

Offences in relation to courts-martial by civilians

**97.** (1) Where in Brunei any person who is not subject to military law —

(a) on being duly summoned to attend as a witness before a court-martial and after payment or tender of the reasonable expenses of his attendance, makes default in attending; or



- (b) being in attendance as a witness —
- (i) refuses to take an oath when duly required by a court-martial to do so; or
  - (ii) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
  - (iii) refuses to answer any question which a court-martial has lawfully required him to answer,

the president of the court-martial may certify the offence of such person under his hand to a Court of a Magistrate and that court may thereupon inquire into the alleged offence, and after examining any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, if it seems just, punish or take steps for the punishment of such person in the like manner as if he had committed such offence in a proceeding in the court.

(2) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify the offence of such person under his hand to a Court of a Magistrate and that court may thereupon inquire into the alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, if it seems just, punish or take steps for the punishment of such person in the like manner as if he had been guilty of contempt of that court.

LAWS OF BRUNEI

82

CAP. 149

*Royal Brunei Armed Forces*

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Affirmations **98.** If —

(a) a person required by virtue of this Act to take an oath for the purpose of proceedings before a court-martial objects to being sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or

(b) it is not reasonably practicable without inconvenience or delay to administer on oath to such a person as aforesaid in the manner appropriate to his religious belief,

he shall be permitted, and may also be required to make a solemn affirmation in the prescribed form instead of taking an oath.

Offences procedure

Rules of Procedure  
14/88

**99.** (1) Subject to the provisions of this section, His Majesty <sup>the Sultan and YDP</sup> ~~in Council~~ may make rules (hereinafter in this Act referred to as “Rules of Procedure”) with respect to the investigation and trial of, and awarding of punishment for, offences cognisable by courts-martial, commanding officers and appropriate superior authorities and with respect to the confirmation and revision of findings and sentences of courts-martial.

(2) Without prejudice to the generality of subsection (1), Rules of Procedure may make provisions with respect to all or any of the following matters, that is to say —

(a) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;

(b) the manner in which charges so brought are to be investigated and the taking of evidence

(whether orally or in writing, whether or not on oath and whether in full or in summary form) for the purpose of investigating or dealing summarily with such charges or otherwise as preliminary to the trial thereof by court-martial, so however that the Rules shall make provision for the application of section 88 in any case where the accused requires that evidence shall be taken on oath;

(c) in addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;

(d) the convening and constitution of courts-martial;

(e) the sittings, adjournment and dissolution of courts-martial;

(f) the procedure to be observed in trials by court-martial;

(g) the representation of the accused at such trials;

(h) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of rules made under paragraph (b);

(i) applying in relation to proceedings before commanding officers and appropriate superior authorities prior to trial by court-martial all or any of the provisions of the four last foregoing sections;

(j) empowering a court-martial or the convening officer, in such cases and to such extent as may

be prescribed, to amend a charge which is being tried by the court;

(*k*) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;

(*l*) the forms of orders and other documents to be made for the purposes of any provision of this Order or the Rules relating to the investigation or trial of, or award of punishment for, offences cognisable by courts-martial, commanding officers or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts-martial; and

(*m*) any matter which is required or authorised to be prescribed by this Part.

(3) Rules of Procedure shall not make provision with respect to the carrying out of sentences passed by courts-martial or of other punishments awarded under this Part.

(4) A Rule of Procedure which is inconsistent with the provisions of this Act shall to the extent of the inconsistency be void.

Rules as to  
exercise of  
functions of  
judge advocate

**100.** (1) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial.

(2) Without prejudice to the generality of subsection (1), Rules of Procedure may make provision —

(a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law;

(b) for requiring or authorising the president of a court-martial, in such cases as may be specified in the Rules to direct that questions of law or of law and fact mixed shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.

(3) In subsection (2) references to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately.

**101.** (1) Rules of Procedure may be made for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him.

Taking of offences into consideration

(2) Where Rules of Procedure make such provision as aforesaid they may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offences of which he was in fact found guilty.

Confirmation and review of proceedings of courts-martial

Confirmation of proceedings of courts-martial

**102.** (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be sent to a confirming officer for confirmation of the finding and sentence of the court on the charge.

(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed.

Provided that this subsection shall not affect the keeping of the accused on custody pending confirmation or the operation of section 103 or the provisions of this Act as to confirmation.

Petitions against finding or sentence

**103.** At any time after court-martial has sentenced the accused, or has found the accused to be unfit to stand his trial or to be not guilty by reason of insanity, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both.

Powers of confirming officers

**104.** (1) Subject to the provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial by —

(a) withholding confirmation, if of opinion that the finding of the court is under all the circumstances of the case unsafe or unsatisfactory or involves a wrong decision on a question of law or that there was a material irregularity in the course of the trial; or

(b) confirming the finding or sentence:

Provided that the confirming officer may, notwithstanding that he is of opinion that he would apart from this proviso withhold confirmation of the finding, confirm the finding if

he considers that no miscarriage of justice has actually occurred.

(2) Instead of withholding confirmation of the finding of a court-martial, a confirming officer may, if —

(a) some other finding of guilty could have been validly made by the court on the charge before it; and

(b) he is of opinion that the court must have been satisfied of the facts necessary to justify that other finding,

substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised, or a confirming officer may, if he is of opinion that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial, substitute a finding that the accused was unfit to stand his trial.

(3) Where it appears to a confirming officer that a sentence of a court-martial is invalid, he may, instead of withholding confirmation of the sentence substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

(4) In confirming the sentence of a court-martial, a confirming officer may —

(a) remit in whole or in part any punishment awarded by the court; or

(b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

(5) In confirming any sentence, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this subsection.

(6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(7) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(8) Where the confirming officer determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

Confirming  
officers

**105.** (1) Subject to the provisions of this section, the following may act as a confirming officer in relation to the finding and sentence of a court-martial, that is to say —

(a) the officer who convened the court-martial;

(b) the successor of any such officer or any person for the time being exercising the functions of any such officer; or

(c) failing any such officer as aforesaid, any officer (other than the Commander or the Colonel in Chief) appointed by His Majesty to act as con-



firming officer, whether for the particular case or for a specified class of cases.

(2) The following shall not act as a confirming officer in relation to the finding and sentence of a court-martial, that is to say —

(a) any officer who was a member of the court-martial; or

(b) any person who as commanding officer of the accused investigated the allegations against him or who is for the time being the commanding officer of the accused.

**106.** (1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence a petition is duly presented under section 103 against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

Review of findings and sentences of court-martial

(2) The reviewing authorities for the purposes of this Act are the following —

(a) His Majesty;

(b) the Colonel in Chief;

(c) the Commander; or

(d) any officer other than and superior in rank to the confirming officer.

(3) If an application for leave to appeal against conviction is received by the registrar of the Court of Appeal or the said registrar receives particulars of such an application

furnished in pursuance of section 140 (4) (b), so much of subsection (1) as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence passed in consequence of that finding.

(4) On a review under this section the reviewing authority may —

(a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence;

(b) in so far as the review is of a sentence, quash the sentence;

(c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting punishments as are conferred on a confirming officer by section 104 (2) to (4),

and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(5) Where a reviewing authority exercises any of the powers conferred by subsection (4) the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

#### Review of summary findings and awards

Review of  
summary  
findings and  
awards

**107.** (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding or award.

(2) The said authority is —

(a) where a charge has been dealt with summarily by a commanding officer, the appropriate superior authority;

(b) where a charge has been dealt with summarily by the Commander as appropriate superior authority, His Majesty or the Colonel in Chief; or

(c) where a charge has been dealt with summarily by the Colonel in Chief as appropriate superior authority, His Majesty.

(3) Where on review under this section it appears to the said authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding.

(4) If a finding in any proceedings is quashed under subsection (3) and the award made in those proceedings relates only to the finding quashed the authority shall also quash the award; and if the award relates also to any other finding and it appears to the authority that the award was not warranted by this Act in respect of that other finding, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

(5) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included 2 or more

punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

#### Findings of insanity, etc.

Provisions  
where ac-  
cused unfit to  
stand trial

**108.** (1) For the purposes of this section “unfit to stand his trial” means, in relation to the accused on trial by court-martial, that the accused —

(a) is of unsound mind and consequently incapable of making his defence; or

(b) though not insane, cannot be made to understand the proceedings.

(2) Where, on the trial of a person by court-martial, it appears to the court that the accused is unfit to stand trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations made by His Majesty in Council until the directions of His Majesty are known or until any earlier time at which the accused is fit to stand trial.

(3) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts or omissions constituting that offence the accused was insane and consequently incapable at that time of knowing the nature of such acts or omissions or that such acts or

omissions were either wrong or contrary to law, the court shall find that the accused was not guilty of that offence by reason of insanity, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations made by His Majesty ~~in Council~~ until the directions of His Majesty are known. *the Sultan and YDP*

(4) In the case of any such finding pursuant to subsection (2) or (3) His Majesty may give orders for the safe custody of the accused during the pleasure of His Majesty in such place and in such manner as His Majesty thinks fit.

(5) A finding under subsection (2) shall not have effect unless and until the finding has been confirmed by an officer who would have had power to confirm a finding of guilty come to by the court-martial in question and has been confirmed.

(6) Where on the trial of a person by court-martial the question arises (at the instance of the defence or otherwise) whether the accused is unfit to stand his trial, the following provisions shall have effect —

(a) the court, if having regard to the nature of the supposed grounds for the question arising the court is of opinion that it is expedient to do so and in the interests of the accused, may postpone consideration of the question until any time up to the opening of the case for the defence, and if before the question fails to be determined the court finds the accused not guilty of the charge or each of the charges on which he is being tried, the question shall not be determined;

(b) subject to paragraph (a), the question shall be determined as soon as it arises;

(c) where the accused is found unfit to stand his trial, the trial shall not proceed or further proceed, but if the question is determined at a time later than on arraignment, the confirming officer, or reviewing authority may substitute a finding of not guilty (other than a finding of not guilty by reason of insanity), if of opinion that the court should before that time have come to such a finding.

(7) The provisions of this Act as to confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have come to by the court-martial in question) apply in relation to such findings as are provided for by subsection (3) as those provisions apply in relation to findings of guilty.

(8) Where the confirming officer or reviewing authority substitute for a finding of not guilty by reason of insanity a finding of guilty of an offence, the confirming officer or reviewing authority shall have the like powers of sentencing the accused and other powers as the court-martial would have had on the like findings of guilty, and any sentence imposed shall be promulgated and have effect as would a sentence duly substituted by the confirming officer or reviewing authority for a sentence of the court-martial:

Provided that the confirming officer or reviewing authority shall not have power by virtue of this subsection to impose a sentence of death apart from this proviso a sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

#### Saving for functions of Judge Advocate General

Saving for  
functions of  
Judge Advocate  
General

**109.** Nothing in the foregoing provisions of this Part shall prejudice the exercise of the functions conferred (whether by General Orders or otherwise) on the Judge Advocate

General of considering and reporting on the proceedings of court-martial or any other functions so conferred on him in relation to such courts.

#### Commencement and duration of sentences

**110.** (1) Except where otherwise expressly provided by any written law, a military sentence of imprisonment or detention shall begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer or by an appropriate superior authority. Commence-  
ment

(2) Where any person serving a military sentence of imprisonment or detention becomes illegally at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of any time spent unlawfully at large.

(3) For the purpose of subsection (2) a person shall not be held to be unlawfully at large during any period in respect of which he satisfies the Commander that he was in the custody of any civil or military authority of Brunei or of any country or territory abroad authorised by law to detain persons.

**111.** (1) Where any person who is serving a sentence of imprisonment, whether passed under this Act or otherwise is awarded a military sentence of imprisonment, or where a person who is awarded a military sentence of imprisonment is further sentenced to imprisonment under section 61 (2), the court-martial by whom the subsequent or further sentence is awarded may order that that sentence shall begin to run from the expiry of the first-mentioned sentence. Consecutive  
terms of im-  
prisonment  
and detention

(2) Where any person who is serving a military sentence of detention is found guilty under this Act of another

offence for which he is awarded a military sentence of detention, or where a person who is awarded a military sentence of detention is further sentenced to detention under section 61 (2), the court-martial or officer by whom the subsequent or further sentence is awarded may order that the sentence shall begin to run from the expiry of the first-mentioned sentence.

(3) Where a person is convicted by a court-martial of 2 or more offences against section 72 consisting in the commission of a civil offence for which a civil court in Brunei could award imprisonment, the court-martial may by its sentence award, for any of the said offences, a term of imprisonment which is to run from the expiry of a term awarded by that sentence for any other of those offences.

Limitation of total period of sentences of detention

**112.** (1) Notwithstanding anything in this Part, no offender shall be kept continuously in detention for a period exceeding 2 years in pursuance of 2 or more sentences of detention.

(2) Subsection (1) shall not affect the validity of any order of direction under this Part that a sentence of detention shall begin to run from the expiry of another such sentence, but so much of any term of detention to which any such order or direction relates as would prolong the total term of detention beyond 2 years shall be remitted by virtue of the order or direction.

(3) Where any person who has been sentenced by a court-martial under this Act to detention is subsequently sentenced by a court-martial under this Act to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.



Execution of sentences of death, imprisonment and detention

<sup>The Sultan and UOP</sup>  
**113.** (1) His Majesty ~~in Council~~ may make regulations with respect to the execution of sentences of death under this Act whether passed in Brunei or abroad. Execution of sentences of death

(2) Without prejudice to the generality of subsection (1) regulations under this section may make provision with respect to all or any of the following matters, that is to say —

(a) the manner in which, the person by whom and the country or territory, place and kind of establishment (whether military or not) where any such sentence is to be executed; and

(b) the custody and treatment of the person under sentence and his removal from one place or establishment to another between the passing and execution of the sentence,

or may authorise such persons as may be specified in or determined by or under the regulations to give directions with respect to all or any of those matters.

(3) Such officer not below the rank of major as may be specified in or determined under regulations under this section shall be responsible for the due execution of any sentence of death passed under this Act.

<sup>The Sultan and UOP</sup>  
**114.** (1) Subject to the provisions of this Act, His Majesty ~~in Council~~ may make rules (in this Part referred to as “Imprisonment and Detention Rules”) with respect to all or any of the following matters, that is to say — Imprisonment and Detention Rules  
S 16/86

(a) the places in which and the establishments or forms of custody (whether military or not) in which persons may be required to serve the whole

or any part of military sentences of imprisonment and detention passed on them;

(b) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and their release on the coming to an end of any term of imprisonment or detention;

(c) the provision, classification, regulation and management of military establishments;

(d) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody;

(e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence for good conduct and industry;

(f) the appointment, powers and duties of inspectors, visitors, officers and other members of the staff of military establishments.

(2) Imprisonment and Detention Rules shall not authorise the infliction of corporal punishment.

Supplementary provisions relating to regulations and rules under sections 113 and 114

**115.** Regulations made under section 113 or Imprisonment and Detention Rules may contain such incidental and supplementary provisions as appear to His Majesty <sup>The Sultan and</sup> ~~in Council~~ <sup>and</sup> to be requisite for the purposes of the regulations or rules.

116. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations under section 113 or of Imprisonment and Detention Rules shall while in that prison be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

Special provisions as to civil prisons in Brunei

117. (1) It shall be the duty of the superintendent or officer in charge of a civil prison to receive any person duly sent to that prison in pursuance of regulations under section 113 or of Imprisonment and Detention Rules and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

Duties of superintendents or officers in charge of civil prisons to receive prisoners

(2) Where a person is in military custody in pursuance of a military sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer it shall be the duty of any such superintendent or officer in charge as aforesaid, or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding 7 days unless the said person is earlier discharged or delivered over in due course of law.

#### Trial of persons ceasing to be subject to military law and time limits for trials

118. (1) Subject to the provisions of section 119, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person while subject to military law, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by court-martial (including confirmation and review) and execution of sentences as continuing subject to military law

Trial and punishment of offences under military law notwithstanding offender ceasing to be subject to military law

notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in subsection (1) and the provisions thereof as to the summary dealing with charges, as having been subject to military law when the offence was committed or is suspected of having been committed and as continuing subject to military law thereafter.

(3) Where by virtue of either subsection (1) or (2) a person is treated as being at any time subject to military law for the purpose of any provision of this Act, that provision shall apply to him —

(a) if he holds any military rank, as to a person having that rank;

(b) otherwise as to a person having the rank which he had when last actually subject to military law:

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to a soldier.

(4) Where apart from this subsection any provision of this Act would under subsection (3) apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

**119.** (1) No person shall be tried by court-martial for any offence, other than one against section 37, 38 or 43, unless the trial is begun within 3 years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent:

Limitation of time for trial of offences under military law

Provided that —

(a) in the case of offence against section 72 where proceedings for the corresponding civil offence must, by virtue of any written law, be brought within a limited time, that limit of time shall apply to the trial of the offence under section 72 in substitution for the foregoing provisions of this subsection;

(b) subject to any such limit of time as is mentioned in paragraph (a), a person may be tried by court-martial for a civil offence committed outside Brunei notwithstanding that it was committed more than 3 years before the beginning of the trial, if the Attorney General consents to the trial.

(2) A person shall not be triable under section 118 (1) unless his trial is begun within 3 months after he ceases to be subject to military law, or the trial is for a civil offence committed outside Brunei and the Attorney General consents to the trial:

Provided that this subsection shall not apply to an offence against section 37, 38 and 43.

(3) A person shall not be arrested or kept in custody by virtue of section 118 (1) for an offence at any time after he has ceased to be triable for the offence.

Relations between military law and civil courts and finality of trials

Jurisdiction of civil courts

**120.** (1) Where a person subject to military law —

(a) has been tried for an offence by a court-martial or has had an offence committed by him taken into consideration by a court-martial in sentencing him; or

(b) has been charged with an offence under this Act and has had the charge dealt with summarily by his commanding officer or the appropriate superior authority,

a civil court shall be debarred from trying him subsequently for an offence substantially the same as that offence; but except as aforesaid nothing in this Act shall be construed as restricting the jurisdiction of any civil court to try a person subject to this Act for an offence.

(2) For the purposes of this section —

(a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence, or of a finding by the court-martial that he is not guilty of the offence by reason of insanity;

(b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence is withheld or the sentence is quashed;

(c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been

quashed, or the award of that officer or authority quashed or varied, on the review thereof.

121. (1) Where a person subject to military law —

Persons not to be tried under this Act for offences already disposed of

(a) has been tried for an offence by a competent civil court, wherever situated, or a court-martial held under this Act; or

(b) has had an offence committed by him taken into consideration when being sentenced by a competent civil court in Brunei or a court-martial held under this Act; or

(c) has been charged with an offence under this Act and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority; or

(d) has had an offence condoned by his commanding officer,

he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the appropriate superior authority.

(2) For the purposes of this section —

(a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence, or of a finding by the court-martial that he is not guilty of the offence by reason of insanity;

(b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed;

(c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;

(d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;

(e) a person ordered under section 61 (2) to be imprisoned or to undergo detention for an offence against that section shall be deemed to have been tried by court-martial for the offence.

(3) Where confirmation of a finding of guilty of an offence or of a finding of not guilty of an offence by reason of insanity is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than 28 days after the promulgation of the decision to withhold confirmation.

(4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the ground of condonation.

#### Inquiries

Boards of inquiry

**122.** (1) Subject to and in accordance with the provision of rules made by His Majesty ~~in Council~~ under this section (hereinafter in this Act referred to as “board of inquiry rules”). His Majesty or any such officers as His Majesty may



appoint in that behalf (hereinafter in this section referred to as “the convening authority”) may convene a board of inquiry and refer to them any matter connected with the government, discipline, administration or functions of the Armed Forces or the Reserve Regiment or affecting any person subject to military law.

(2) A board of inquiry shall investigate and report on the facts relating to any matter referred to it and, if directed by the convening authority so to do, express their opinion on any question arising out of such matter.

(3) A board of inquiry shall consist of a president, who shall be an officer not below the rank of captain and be subject to military law, and not less than 2 other members each of whom shall either be a person so subject or be a person not so subject who is in the service of His Majesty.

(4) A board of inquiry may —

(a) summon any person to give evidence on oath or affirmation, except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with;

(b) summon any person to produce any document or material necessary for the purpose of the inquiry;

(c) visit any place in order to inquire into any matter which may arise in the course of the inquiry;

(d) save as otherwise provided in this Act or in board of inquiry rules, act in such manner as they consider most expedient and receive any evidence which they consider relevant to the matter referred to them, whether oral or written and whether or not it would be admissible in a civil court.

(5) Where it appears to a board of inquiry that any witness or other person subject to military law may be affected by its findings they shall notify him thereof and give him an opportunity of being present, and represented, at the sittings of the board or such part thereof as the president may specify.

(6) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section 72 where the corresponding civil offence is an offence under section 193 of the Penal Code.

Cap. 22

(7) A board of inquiry shall not sit in public and no person shall be allowed to attend an inquiry or address the board except with the permission of the president or upon the direction of the convening authority.

(8) The president shall —

(a) record or cause to be recorded in writing the proceedings of the board of inquiry;

(b) read or cause to be read over to each witness the evidence given by the witness before the board of inquiry, and the witness shall sign the record thereof;

(c) forward to the convening authority a record of the proceedings of the board of inquiry which shall be signed by the president and the other members of the board.

(9) For the removal of doubt it is hereby declared that the proceedings of a board of inquiry are a judicial proceeding for the purposes of section 193 of the Penal Code.

**123.** (1) Where a board of inquiry inquiring into the absence of an officer, warrant officer, non-commissioned officer or soldier reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than 21 days, a record of the report shall in accordance with General Orders be entered in the service books. Inquiries into absence

(2) A record entered in pursuance of subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Commander or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

#### Provisions with respect to the Office of Judge Advocate General

**124.** (1) His Majesty may appoint a person to be the Judge Advocate General of the Armed Forces and the Reserve Regiment. Judge Advocate General

(2) No person shall be qualified for appointment as Judge Advocate General under subsection (1) unless he is —

(a) a member of the judicial or legal service of Brunei or of any part of the Commonwealth of not less than 5 years' service;

(b) an advocate of not less than 5 years standing under the Legal Profession Act; Cap. 132

(c) a person who is a practitioner of not less than 5 years standing entitled to practice as a barrister, advocate, solicitor, attorney or by whatever name called, in a court having unlimited jurisdiction in civil and criminal matters in any part of the Commonwealth or in any court having appellate jurisdiction from any court as aforesaid; or

(d) a person who holds and has held for a period of not less than 5 years any professional qualification required under the Legal Profession Act for an advocate or under any other written law in any part of the Commonwealth for any practitioner referred to in paragraph (c).

(3) The Judge Advocate General shall —

(a) advise His Majesty and the officers of the Armed Forces and of the Reserved Regiment whenever required so to do pursuant to General Orders or otherwise on the validity of the findings and sentences of courts-martial and on any other matters concerning courts-martial and military law which may be referred to him;

(b) appoint such persons having judicial or legal experience as may from time to time be required to act as judge advocates at courts-martial.

#### Miscellaneous Provisions

Restitution  
or compensa-  
tion for theft,  
etc.

**125.** (1) The following provisions shall have effect where a person has been convicted by court-martial of any offence, however described, involving the unlawful obtaining of property, whether by theft, criminal misappropriation, criminal breach of trust, dishonestly receiving or retaining stolen property, cheating or otherwise.

(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may

be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(7) An order under this section may be made by court-martial by whom the offender is convicted, by the confirming officer, or by any reviewing authority; and in this section "appearing" means appearing to the court, officer or authority making the order.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming officer; and the provisions of this Part as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.

(9) The operation of any order under this section shall be suspended —

(a) in any case, until the expiration of the period prescribed under Part VII as the period within which an application for leave to appeal to the Court to Appeal 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 such an order as aforesaid is suspended under this action, —

(c) it shall not take effect if the conviction is quashed on appeal;

(d) the Court of Appeal may by order annul or vary the order although the conviction is not quashed.

(10) If the conviction is not quashed on appeal, the operation of such an order as aforesaid shall continue to be suspended —

(a) in any case, until the expiration of the time within which an application for leave to appeal to Her Britannic Majesty in Council may be made (disregarding any extension of time which may be granted) in accordance with any order of Her Bri-

tannic Majesty in Council or any other law or rule for the time being in force relating to appeals to Her Britannic Majesty in Council from the Court of Appeal; and

(b) if such an application is duly made within that time, so long as that application, and any appeal for which leave is granted thereon is pending,

and where the operation of such an order as aforesaid is suspended under this subsection it shall not take effect if the conviction is quashed on appeal to Her Britannic Majesty in Council.

(11) Notwithstanding anything in subsection (9) or (10), an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, officer or authority making the order directs to the contrary in any case in which, in the opinion of the court, officer or authority, the title to the property is not in dispute.

(12) Where the operation of any order under this section is suspended under subsection (9) or further suspended under subsection (10) then, unless the property ordered to be restored or handed over or the money to which the order relates is in the custody of the registrar of the Court of Appeal, the court, officer or authority which made the order shall cause the said property or money to be kept in safe custody for any period during which the operation of the order is suspended.

(13) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

(14) In this section the expression “criminal misappropriation”, “criminal breach of trust”, “dishonestly receiving or retaining stolen property” and “cheating” shall have the same meanings as in the Penal Code.

Appointment  
of judge  
advocate

**126.** Without prejudice to the powers and duties of the Judge Advocate General under this Act, the appointment of a judge advocate to act at any court-martial may, failing the making thereof by or on behalf of the Judge Advocate General, be made by the convening officer.

Promulgation

**127.** Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be specified by General Orders or as the confirming officer or reviewing authority, as the case may be, may direct.

Custody of  
proceedings  
of courts-  
martial and  
right of ac-  
cused to a  
copy thereof

**128.** (1) The record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) shall be capable of being exercised.

(2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Judge Advocate General on demand at any time within the relevant period without charge a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Judge Advocate General ought to be treated for the purpose of this subsection as his personal representative shall subject to the provisions of this section be entitled to obtain from the Judge Advocate General on demand at any time within the period of 12 months from the death and without charge a copy of the record of the proceedings of the court.



(4) If, on an application under either subsection (2) or (3) for a copy of the record of any proceedings, the Minister certifies that it is necessary for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section "the relevant period" in relation to any person tried by court-martial, means the period of 5 years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings relate to 2 or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of 5 years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

(6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to the record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

## PART VI

### FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF MAINTENANCE LIABILITIES

**129.** (1) No forfeiture of the pay of an officer or soldier shall be imposed unless authorised by this Act or any other written law, and no deduction from such pay shall be made unless so authorised or authorised by regulations made by His Majesty ~~in Council~~ under this Act.

*The Sultan and JDI'*

Forfeitures  
and deduc-  
tions: general  
provisions

(2) Regulations made under this Act shall not authorise the making of any penal deduction, that is to say a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.

(3) The foregoing provisions of this section shall not prevent the making, by regulation or other of His Majesty ~~in~~ Council or by any General Order, of provision for the imposition of any forfeiture authorised by any written law or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised deductions or in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of provision for the determination of questions relating to forfeitures or deductions.

(4) Notwithstanding any deduction from the pay of an officer or soldier he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed.

(5) Notwithstanding that forfeiture of a person's pay for any period has been ordered under this Act, he may remain in receipt of pay at such minimum rate as aforesaid but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorised to be deducted from the pay of an officer or soldier may be deducted from any balance (whether or not representing pay) which may be due to him and references in this Act to the making of deductions from pay shall be construed accordingly.

Forfeiture of  
pay for abs-  
ence from  
duty

**130.** (1) The pay of an officer or soldier may be forfeited —

(a) for any day of absence in such circumstances as to constitute an offence under section 43 or 44, if the competent authority so directs, of other absence without leave;

(b) for any day of imprisonment or detention awarded under this Act by a court-martial, an appropriate superior authority or commanding officer, or of imprisonment or detention of any other description to which he is liable in consequence of an order or sentence of a civil court;

(c) where he is found guilty (whether by court-martial, the appropriate superior authority or his commanding officer) of an offence under this Act, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer or soldier may be forfeited for any day of absence by reason of his having been made a prisoner of war if the competent authority is satisfied —

(a) that he was made a prisoner of war through disobedience to orders or wilful neglect in the performance of his duty; or

(b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the service of His Majesty; and

(c) that having been made a prisoner of war he served with or helped the enemy in any other manner whatsoever not authorised by international usage,

and nothing in subsection (1) (a) shall apply to absence by reason of having been made a prisoner of war.

LAWS OF BRUNEI

116

CAP. 149

Royal Brunei Armed Forces

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(3) Regulations made by His Majesty in Council may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of part of days.

Deductions  
for payment  
of civil penal-  
ties

**131.** Where a person sentenced or ordered by a civil court (whether within Brunei or abroad) to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes, a member of the Armed Forces, then if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay.

Compensa-  
tion for loss  
occasioned  
by wrongful  
act or negli-  
gence

S 16/86

**132.** (1) Without prejudice to the provisions of this Act dealing with stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations made by His Majesty <sup>the Sultan and Dep</sup> ~~in Council~~, it appears to the competent authority that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or soldier (hereinafter in this section referred to as "the person responsible").

(2) The competent authority may order the person responsible (whether or not he is a member of the Armed Forces at the time when the order is made) to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under subsection (2) if, in proceedings under this Act before a court-martial, the appropriate superior authority or the commanding officer of the person responsible, that person —

(a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or

(b) has been awarded stoppages in respect of the same loss or damage,

but save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2).

**133.** (1) Where damage occurs to any premises in which one or more units of the Armed Forces or the Reserve Regiment or parts of such units are quartered or billeted, or any fixtures or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with the provisions of General Orders, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units in occupation of the premises and was so caused at a time when they were in occupation thereof, but that the said persons cannot be identified, any person belonging to any of the said units or parts of units may be required to contribute toward compensation for the damage or loss, such amount as may in accordance with General Orders be determined to be just, and the amount may be deducted from his pay.

Deductions  
for barrack  
damage

(2) Subsection (1) shall extend to ships, trains, vehicles and aircraft in which units or parts of units of the Armed Forces or Reserve Regiment are being transported, and references to premises, quartering and occupation shall be construed accordingly.

**134.** Any forfeiture of or deduction from the pay of any officer or soldier imposed under the provisions of any written law may be remitted by the competent authority.

Remission of  
forfeitures  
and deduc-  
tions

Enforcement  
of depen-  
dants'  
maintenance  
orders by de-  
duction from  
pay

**135.** (1) Where any court in Brunei has made a dependants' maintenance order against any person (hereinafter in this section referred to as "the defendant") and the defendant is a member of the Armed Forces, then (whether or not he was a member of the Armed Forces when the said order was made) the Commander may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order as the Commander thinks fit.

(2) Where to the knowledge of any court in Brunei making a dependants' maintenance order, or an order varying, revoking or reviving any such order, the defendant is a member of the Armed Forces the court shall send a copy of the order to the Commander.

(3) The Commander may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in section 130 (1) (a).

(4) In this section and in section 136 "dependants' maintenance order" means an order made by the Court of a Kadi under Part VII of the Religious Council and Kadis Courts Act or by a Court of a Magistrate under Chapter XXXIII of the Criminal Procedure Code, or by any court exercising appellate jurisdiction in respect of any such order of either of such first and second mentioned courts, against any person for the payment of —

(a) any periodical or other sum specified in the order to or for the benefit of another person; or

(b) any costs incurred in obtaining the order; or

(c) any costs incurred in proceedings on appeal against or for the variation, revocation or revival of any such order;

and references to a dependants' maintenance order made by a court in Brunei include references to an order registered in or confirmed by a local court under the provisions of the Maintenance Orders (Reciprocal Enforcement) Enactment.

Cap. 10 of  
1951

**136.** (1) Where the Commander is satisfied that an officer or soldier is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of 16 years the Commander may order such sum to be deducted from his pay and applied towards the maintenance of his wife or child as the Commander thinks fit.

Deductions  
from pay for  
maintenance  
of wife or  
child

(2) On an application made to the Commander for an order under subsection (1) the Commander, if satisfied that a prima facie case has been made out for the making of such an order, may make an interim order for such deduction and appropriation as is mentioned in subsection (1) to take effect pending the further examination of the case.

(3) Where an order is in force under section 135 (1) for the making of deductions in favour of any person from the pay of any member of the Armed Forces, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the member of the Armed Forces is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under section 135 was made.

(4) The Commander may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in section 130 (1) (a).

(5) The power to make an order under this section for the deduction of any sum and its appropriation towards the maintenance of a child shall include power —

(a) subject to the provisions of subsection (3), to make such an order after the child has attained the age of 16 years, if an order in favour of the child is in force under section 135 (1); or

(b) to make such an order after the child has attained the age of 16 years if —

- (i) a dependants' maintenance order made by a court in Brunei was in force in favour of the child at the time when the child attained that age; and
- (ii) the person from whose pay the deductions are ordered is in such a place as is mentioned in subsection (3); and
- (iii) the child is for the time being engaged in a course of education or training; or

(c) to continue such an order from time to time after the child has attained the age of 16 years, if the child is for the time being engaged in a course of education or training;

but no order so made or continued shall remain in force after the child attains the age of 21 years or shall, unless continued under paragraph (c), remain in force for more than 2 years.

(6) In this section the following expressions have the following meanings in relation to a person, that is to say —

“wife” means any woman whose marriage to that person is registered in accordance with any written law and has not been dissolved;

“child” includes any child of that person's wife and any illegitimate or adopted child of that person or his wife; and



“adopted child” includes a person whose “de facto” adoption by that person (whether alone or jointly with another) is for the time being registered under the provisions of the Registration of Adoptions Act.

Cap. 123

**137.** (1) The sums deducted from a person’s pay under sections 135 and 136 shall not together exceed one half of his pay.

Limit of deductions under sections 135 and 136 and effect on forfeiture

(2) Where any deductions have been ordered under section 135 or 136 from a person’s pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay in consequence of the finding or sentence of a court-martial or the finding or award of the appropriate superior authority or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

## PART VII

### APPEALS FROM COURTS-MARTIAL

#### Interpretation

**138.** In this Part —

Interpretation of Part VII

“appellant” includes a person who has been tried by court-martial and wishes to appeal under this Part to the Court of Appeal;

“prescribed” means by rules of court;

“the registrar” means the registrar of the Court of Appeal;

“rules of court” means rules of court made by the President under section 175.

Right of appeal and initiating procedure

Right of  
appeal

**139.** (1) Subject to the provisions of this Part, a person convicted by court-martial may, with the leave of the Court of Appeal, appeal to that court against his conviction.

(2) Subject as aforesaid, the person's right of appeal shall not be exercisable —

(a) unless, within such period as may be prescribed, he presents to the Colonel in Chief 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 the Colonel in Chief that the petition has not been granted, whichever event first occurs.

(3) If a person presents a petition for the purposes of subsection (2) (a), but fails to do so within the period prescribed for those purposes and subsequently applies for leave to appeal, the Court of Appeal may direct that he be treated as not having thereby lost his right of appeal if they think that there is a reasonable explanation of the failure and that it is in the interests of justice that he should be so treated.

(4) Rules of court may provide that, in such circumstances as may be specified in the rules, a petition for the purposes of subsection (2) which is presented to such person as may be specified in the rules shall be treated, for the purposes of that subsection, as having been presented to the Colonel in Chief.

Application  
for leave to  
appeal

**140.** (1) Leave to appeal to the Court of Appeal shall not be given except on an application on that behalf made by or on behalf of the appellant and lodged, within the prescribed period with the registrar.

(2) The application must be in the prescribed form and specify the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

(3) Save as provided in section 172 (2) the Court of Appeal may extend the period within which an application for leave to appeal must be lodged, whether the period has expired or not.

(4) Rules of court may provide that, in such circumstances as may be specified in rules, and application which is lodged with a person (other than the registrar) specified in the rules shall be treated for purposes of subsection (1) as having been lodged with the registrar; and it shall be the duty of the specified person, if an application is lodged with him in accordance with the rules, to act as follows —

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

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

**141.** (1) In considering whether or not to give leave to appeal the Court of Appeal shall have regard to any expression of opinion made by the Judge Advocate General that the case is a fit one for appeal, and if any such expression is so made they may, without more ado, give leave to appeal.

Consideration of application by Court of Appeal

(2) Where the Court of Appeal 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 of Appeal dismiss the application.

Disposal of appeal

Power to  
quash conviction as wrong  
in law, etc.

**142.** (1) The Court of Appeal shall allow an appeal against conviction by court-martial if they think —

(a) that the finding of the court-martial under all the circumstances of the case is unsafe or unsatisfactory; or

(b) that the finding involves a wrong decision of a question of law; or

(c) that there was a material irregularity in the course of the trial,

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 miscarriage of justice has actually occurred.

(2) If the Court of Appeal allow an appeal against conviction, they shall quash the conviction.

Adjustment  
of sentence in  
case of con-  
viction of 2 or  
more charges

**143.** Where —

(a) it appears to the Court of Appeal on an appeal against conviction 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; and

(b) the sentence passed by the court-martial on the appellant was not warranted by this 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.

**144.** (1) This section applies 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 of Appeal on an appeal against conviction that the court-martial must have been satisfied of facts which proved him guilty of that other offence.

Substitution  
of conviction  
on different  
charge

(2) The Court of Appeal 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 may 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 this Act for that other offence, but not a sentence of greater severity.

**145.** (1) Where 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 of Appeal on an appeal against conviction 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, 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.

Variation of  
conviction so  
as to attract  
different  
sentence

(2) Where an appellant has been convicted of an offence and it appears to the Court of Appeal on an appeal

against conviction 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 subject to exceptions or variations.

(3) Where the Court of Appeal exercise the power conferred by subsection (1) or (2), they may 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 this Act for the offence specified or involved in the substituted finding, but not a sentence of greater severity.

Substitution  
of finding of  
insanity or  
unfitness to  
plead

**146.** Where, on appeal, the Court of Appeal are of the opinion —

(a) that the proper finding would have been a finding of not guilty by reason of insanity; or

(b) that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial,

the court shall order the appellant to be kept in custody under section 108 in like manner as on a finding of not guilty by reason of insanity or a finding of unfitness to stand trial by the court-martial by which the appellant was convicted.

Term of sentence passed under section 143, 144 or 145

**147.** (1) The term of any sentence passed by the Court of Appeal under section 143, 144 or 145 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 was brought.

(2) A sentence passed by the Court of Appeal under any of those sections shall be deemed for purposes of this

Act to be a sentence passed by a court-martial, being a sentence that has been confirmed.

### Retrial

**148.** Except as provided by this Act, where the conviction of a person by court-martial for an offence has been quashed under this Act, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

Retrial generally excluded

**149.** (1) The Court of Appeal shall have the power, on quashing a conviction, to make an order authorising the appellant to be retried by court-martial, but shall not exercise this power where the appeal against conviction is allowed by reason only of evidence received or available to be received by the court under sections 159 to 161 and it appears to the court that the interest of justice require that an order under this section should be made.

Power to authorise retrial in certain cases

(2) This section has effect notwithstanding the restrictions on retrial imposed by section 121.

(3) An appellant shall not be retried under this section for an offence other than —

(a) the offence of which he was convicted by the original court-martial and in respect of which his appeal is allowed as mentioned in subsection (1);

(b) any offence of which he could have been convicted at the original court-martial on a charge of the first-mentioned offence; or

(c) any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting him of the first-mentioned offence.

(4) A person who is to be retried under this section for an offence shall, if the Court of Appeal so directs, be retried on a fresh charge or charges specified in the direction; but whether he is so tried or is retried on one or more of the original charges, no fresh investigation or other steps shall be taken under sections 76 to 79 in relation to the charge or charges on which he is to be retried.

Implementa-  
tion of au-  
thority for re-  
trial, and sup-  
plementary  
orders of  
Court of  
Appeal

**150.** (1) The limitation imposed by section 119, with respect to the time within which a trial for any offence may be begun, shall not apply in the case of a retrial authorised by an order of the Court of Appeal under section 149, but a person to whom such an order applies shall not be retried unless the order convening the court-martial is issued within the period of 3 months beginning with the date of the order under section 149.

(2) The Court of Appeal may, where they authorise a retrial, make such orders as appear to them, to be necessary or expedient for the retention until the relevant time of property or money which has been restored, delivered or paid in pursuance of an order made on or in consequence of the original conviction or has been placed in safe custody while the operation of any such order is suspended.

(3) In subsection (2) the reference to “the relevant time” is a reference to the expiration of the period of 3 months mentioned in subsection (1) or, if during that period a court-martial has been convened for the retrial of an appellant, the time when his case is finally disposed of:

Provided that the relevant time, in a case where the appellant is found guilty on his retrial, is the expiration of the period of 28 days beginning with the date of the finding.

Provisions as  
to retrial

**151.** (1) On the retrial of a person under section 149, the record of the evidence given by any witness at the original trial may, with the leave of the court-martial, be read as evidence —



(a) by agreement between the prosecution and the defence; or

(b) if the court-martial is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or secure his attendance have been made without success or that owing to the exigencies of the service it is not practicable for him to attend as aforesaid,

and may be so read without further proof if it forms part of the original proceedings of the original court-martial or a copy thereof and those proceedings are, or that copy is, admissible as evidence under section 196.

(2) Where a person authorised to be retried is again convicted on the retrial, the court-martial by which he is convicted may pass in respect of the offence any sentence authorised by this Act, not being a sentence of greater severity than that passed on the original conviction.

(3) Where a person authorised under section 149 to be retried is convicted on retrial and sentenced to imprisonment or detention, there shall be taken into account in calculating the period for which he is liable to imprisonment or to be detained in pursuance of the sentence —

(a) any time before the original conviction was quashed which would have been taken into account in calculating the period for which he would have been liable to be imprisoned or detained in pursuance of a sentence of imprisonment or detention imposed at the original trial; and

(b) any time after the quashing of his original conviction which he has spent under close arrest awaiting retrial.

Insanity

Appeal  
against  
finding of  
not guilty by  
reason of  
insanity

**152.** (1) A person who has been tried by court-martial for an offence and been found not guilty by reason of insanity may, with the leave of the Court of Appeal, appeal to the court against the finding; and in relation to any such appeal this Part, except sections 143 to 148, shall apply, subject to this section and section 153, as it applies in relation to an appeal by a person convicted against his conviction (with the necessary adaptation of references to a person convicted or to conviction).

(2) Where apart from this subsection —

(a) an appeal against a finding of not guilty by reason of insanity would fall to be allowed; and

(b) none of the grounds for allowing it relates to the question of the insanity of the appellant,

the Court of Appeal may dismiss the appeal if they are of opinion that for the insanity of the appellant the proper finding would have been that he was guilty of an offence other than the offence charged.

Consequ-  
ences where  
appeal under  
section 152  
allowed

**153.** (1) The following provisions shall have effect where an appeal against a finding of not guilty by reason of insanity is allowed by the Court of Appeal.

(2) If the ground, or one of the grounds, for allowing the appeal is that the finding as to the appellant's insanity ought not to stand and the Court of Appeal are of the opinion that the proper finding would have been a finding of guilty of an offence (whether the offence charged or any other offence of which the court-martial could have found him guilty), the court shall substitute for the finding of the court-martial a finding of guilty of that offence.

(3) Subject to subsection (4), on substituting a finding of guilty of an offence, the Court of Appeal shall have the like powers of sentencing the appellant, and other powers, as the court-martial which tried him would have had on the like finding of guilty; and section 147 shall apply as in the case of a sentence passed by the court under section 143, 144 or 145.

(4) The Court of Appeal shall not have power, by virtue of subsection (3), to impose sentence of death; and where apart from this subsection a sentence of death would be required by law, the sentence imposed by virtue of subsection (3) shall (whatever the circumstances) be one of imprisonment for life.

(5) In any case where subsection (2) does not apply, the Court of Appeal shall substitute for the finding appealed against a finding of not guilty.

**154.** (1) The following provisions shall have effect in the case of an appeal by a person who, in pursuance of a finding of not guilty by reason of insanity, is kept in custody under section 108 where the Court of Appeal under section 153 substitute a finding of not guilty.

Power of  
Court of  
Appeal  
to order  
continued de-  
tention

(2) If the Court of Appeal are of opinion that the person is of unsound mind and that he ought to continue to be detained in the interest of his own health or safety or with a view to the protection of other persons, they shall make an order for his continued detention under section 108 in like manner as on a finding of not guilty by reason of insanity by a court-martial.

#### Unfitness to stand trial

**155.** (1) A person found by a court-martial to be unfit to stand his trial may, with the leave of the Court of Appeal appeal to the court against the finding.

Appeal  
against  
finding of  
unfitness

(2) In relation to an appeal under this section, this Part, except sections 143 to 146, shall apply (subject to section 156) as it applies in relation to an appeal by a person convicted against his conviction (with the necessary adaptations of references to a person convicted or to conviction).

Disposal of  
appeal under  
section 155

**156.** (1) The following provisions of this section apply with respect to an appeal under section 155.

(2) Where the question whether the accused was unfit to stand his trial was determined by the court-martial at a time later than on arraignment, the appeal may be allowed (notwithstanding that the finding was properly come to) if the Court of Appeal are of opinion that the case is one in which the court-martial should before that time have come to a finding of not guilty.

(3) If the Court of Appeal are of the said opinion, they shall substitute a finding of not guilty (but not a finding of not guilty by reason of insanity) and the appellant shall then not be liable to be tried by a court-martial or by any other court for the offence with which he was charged.

(4) Where the appeal is allowed and the Court of Appeal do not substitute a finding of not guilty, the appellant may be tried accordingly for the said offence; and if he is for the time being kept in custody under section 108, the court shall order him to remain in such custody under that section in like manner as on a finding of unfitness to stand trial by a court-martial.

#### General procedural provisions

Presentation  
of appellant's  
case

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

Presence of  
appellant at  
hearing

**158.** An appellant shall not be entitled to be present at the hearing of an appeal to the Court of Appeal or at any pro-

ceedings preliminary or incidental to such an appeal, except where the court give him leave to be so; and accordingly any power of the court to pass a sentence may be exercised notwithstanding the absence of the appellant.

**159.** (1) The Court of Appeal may —

Evidence

(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 any witness who would have been a compellable witness at the trial to attend for examination and be examined before the court, whether or not he was called at the trial; and

(c) receive the evidence, if tendered, of any witness.

(2) Without prejudice to the generality of subsection (1), where evidence is tendered to the Court of Appeal under that subsection the court shall, unless they are satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise their power under that subsection of receiving it if —

(a) it appears to them that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and

(b) they are satisfied that it was not adduced at the trial, but that there is a reasonable explanation of the failure to adduce it.

(3) Subsection (1) (c) applies to any witness (including the appellant) who is competent but not compellable, and applies also to the appellant's husband or wife where

the appellant makes an application for that purpose and the evidence of the husband or wife could not have been given at the trial except on such an application.

(4) The Court of Appeal may order the examination of any witness whose attendance may be required under subsection (1) (b) to be conducted in the prescribed manner before any judge of the court or before any other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court.

Power to call for report by member of trial court

**160.** (1) The Court of Appeal may 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 on the case or on any point arising in it, or containing a statement as to any facts of which the ascertainment appears to the court to be material for the purpose of determining the case.

(2) The court shall not make an order under this section for the purpose of obtaining a report from a member of a court-martial other than the president of it unless they also make such 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.

Other powers for facilitating disposal of appeal

**161.** (1) Where any question arising on an appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court of Appeal conveniently be conducted before them, the court may order the reference of the question in the prescribed manner for inquiry and report to a special commissioner so far as they think fit to adopt it.

(2) The Court of Appeal may appoint a person with special expert knowledge to act as assessor to the court in

any case where it appears to them that such knowledge is required for the proper determination of the case.

(3) There may be paid out of public funds to a special commissioner not being a Government officer to whom a question is referred under this section for inquiry and report, and to a person not being a Government officer appointed as assessor to the Court of Appeal, such remuneration and such travelling and subsistence allowances as may be prescribed by regulations made by the President of the Court of Appeal with the approval of His Majesty in Council.

### Costs

**162.** (1) Where the Court of Appeal allow an appeal they may if they think fit, direct the payment by Government of costs to the appellant. Costs of successful appeal

(2) The costs which may under this section be directed to be paid are such sums as appear to the Court of Appeal reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the case that is to say —

(a) in the prosecution of his appeal (including any proceedings preliminary or incidental thereto); or

(b) in carrying on his defence before the court-martial from which the appeal lies, or before any other court-martial before which were begun, but not concluded, proceedings for the offence with which he was charged before the first-mentioned court-martial.

**163.** (1) Where the Court of Appeal dismiss an appeal or an application for leave to appeal they may, if they think fit, order the appellant or applicant (as the case may be) to pay Costs against appellant

to the Government 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 of Appeal.

(2) An order under this section 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 appellant or applicant, as the case may be,

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

(3) Any sums which by virtue of subsection (2) (a) are recovered from a person by Government shall be paid into the Consolidated Fund.

Witnesses' expenses

**164.** (1) The Court of Appeal may, whether or not they exercise their powers under section 162 or 163, order the payment out of public funds of such sums as appear to the court reasonably sufficient to compensate any person properly attending to give evidence on an appeal under this Part or any proceedings preliminary or incidental thereto (whether or not he gives evidence) for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

(2) The amount of any costs ordered to be paid under this section shall be ascertained as soon as practicable by the registrar.

#### Special references to Court of Appeal

Reference of cases by Judge Advocate General or Minister

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



(a) it appears to 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 of Appeal; or

(b) it appears to the Minister upon consideration of matter appearing to 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 of Appeal,

the Judge Advocate General or the Minister, as the case may be, may refer the finding to the court.

(2) A reference to the Court of Appeal under subsection (1) shall, for all purposes other than those of sections 162 and 163, be treated as an appeal by the person convicted against his conviction.

(3) The foregoing provisions of this section shall apply in the case of a finding by a court-martial of not guilty by reason of insanity as they apply in the case of the conviction of a person by court-martial.

**166.** (1) Where on a reference under section 165 the person who was tried by court-martial appears before the Court of Appeal the court shall direct the payment by Government of such sums as appear to them reasonably sufficient to compensate that person for any expenses properly incurred by him for the purposes of his appearance.

Order for costs of defence on reference under section 165

(2) In any such case the Court of Appeal may, if they think fit, also direct the payment by Government of such sums as appear to them reasonably sufficient to compensate the person who was tried by court-martial for any expenses properly incurred by him in carrying on his defence before the court-martial 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 tried.

Supplementary

Determina-  
tion by  
majority of  
Court of  
Appeal

**167.** The determination of any question before the Court of Appeal shall be according to the opinion of the majority of the judges of the court hearing the case.

Judgement

**168.** (1) On the termination of the hearing of any appeal the Court of Appeal shall, either at once or on some future date which shall either then be appointed for the purpose or of which notice shall subsequently be given to the parties, deliver judgement in open court.

(2) The Court of Appeal shall ordinarily give only one judgement which may be pronounced by the President or by such other member of the court as the President may direct but separate judgements shall be delivered if the President so directs.

(3) The judgement of any member of the Court of Appeal who is absent may be read by any other member.

Powers under  
Part VII  
which are ex-  
ercisable by  
single judge  
or commis-  
sioner

**169.** (1) The following powers of the Court of Appeal under this Part, that is to say the power —

(a) to give a direction under section 139 (3) that a person be treated as not having lost his right of appeal;

(b) to give leave to appeal;

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

(d) to make orders under section 150 (2) and discharge or revoke such orders;

(e) to allow an appellant to be present at any proceedings;

(f) to order witness to attend for examination; and

(g) to make an order under section 163 for the payment of costs,

may be exercised by any judge or commissioner of the Supreme Court in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions.

(2) If the judge or commissioner refuses an application on the part of an appellant to exercise in his favour any of the powers mentioned in subsection (1) (other than the power to make an order for the payment of costs), 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 of Appeal duly constituted for the hearing and determination of appeals.

**170.** (1) In the case of every appeal or application for leave to appeal from 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, the proceedings with respect to the confirmation of the finding and sentence of the court-martial and any petition presented by the person tried thereby.

Documents relating to trial to be furnished for appeal

**171.** It shall be the duty of the Colonel in Chief to undertake the defence of any appeal to the Court of Appeal under this Part.

Defence of appeals

#### Provisions in relation to capital cases

**172.** In the case of a conviction involving sentence of death, the right of appeal against conviction conferred by

Appeals in capital cases

section 139 (1) on the person convicted shall be exercisable without his being required to present a petition to the Colonel in Chief; and accordingly in such a case subsection (2) of that section shall not apply.

(2) In the case of such a conviction, the power of the Court of Appeal under section 140 (3) to extend the period within which an application for leave to appeal must be lodged shall not be exercisable.

Deferment of  
execution of  
sentences of  
death

**173.** (1) Subject to section 174, the following shall apply where a conviction by court-martial involves sentence of death.

(2) The sentence shall not be executed —

(a) in any case, until expiration of the period prescribed under section 140 as the period within which an application for leave to appeal must be lodged; and

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

(3) Where an appeal to the Court of Appeal is dismissed, the sentence shall not be executed —

(a) in any case, until after the expiration of the time within which an application for leave to appeal to Her Britannic Majesty in Council may be made (disregarding any extension of time which the Court of Appeal may have power to grant) in accordance with any order of Her Britannic Majesty in Council or any other law or rule for the time being in force relating to appeals to Her Britannic Majesty in Council from the Court of Appeal; and

(b) if such an application is duly made within that time, while that application, and any appeal for which leave is granted thereon, is pending.

**174.** Where sentence of death passed by a court-martial on a person on active service is confirmed, and the authority confirming the sentence certifies that it is essential in the interest 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, section 173 shall not apply to the sentence.

Summary execution of sentence of death

#### Miscellaneous and General

**175.** (1) Rules of court made by the President with the approval of His Majesty may provide for regulating the procedure and practice to be followed in the Court of Appeal in proceedings under this Part and for any other matters which by this Part are expressed to be subjects for rules of court or are required or authorised to be prescribed.

Rules of court

(2) Rules of court made for the purposes of any provision of this Part 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 President to be necessary or expedient for the purposes of that provision to provide.

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

Duties of registrar with respect to appeals, etc.

(2) The registrar shall furnish the necessary forms and instructions relating to applications for leave to appeal

under this Part 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.

(3) Every person in charge of such a place as is referred to in subsection (2) shall cause the said forms and instructions to be placed at the disposal of persons confined in that place who wish to apply for leave to appeal to the Court of Appeal.

Removal of  
prisoners

**177.** Regulations or rules made under section 113 or 114 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 purposes of this Part or any place to which the Court of Appeal or a judge or commissioner of the Supreme Court may order him to be taken for the purpose of any proceedings of the Court of Appeal.

Saving for  
prerogative

**178.** Nothing in this Act is to be taken as affecting the prerogative of mercy of His Majesty under the Constitution.

## PART VIII

### MISCELLANEOUS AND GENERAL PROVISIONS

#### Provisions relating to personnel engaged under agreement

Personnel en-  
gaged under  
agreement

**179.** (1) Notwithstanding anything contained in any of the foregoing provisions of this Act, Government may with the approval of His Majesty engage any person not being an eligible person to serve under a written agreement as a member of the Armed Forces or the Reserve Regiment in such rank and for such period or periods and generally subject to such terms and conditions or service as may be prescribed under or by virtue of regulations made by His Majesty in Council.

(2) Any person engaged by virtue of subsection (1) to serve as —

(a) an officer, shall be commissioned by His Majesty pursuant to section 8;

(b) a warrant officer, shall be deemed to have been duly enlisted under Part III and shall be appointed and issued with a warrant of appointment by His Majesty pursuant to section 11;

(c) a member of the Armed Forces or the Reserve Regiment, other than an officer or warrant officer, shall be deemed to have been duly enlisted under Part III,

as if such person were at all material times an eligible person.

(3) Regulations made under subsection (1) may include provision for adaptation and modifications of any provision of this Act (other than this section or section 202 (d)) or of any other written law appearing to His Majesty in Council to be requisite in consequence of the foregoing provisions of this section or of things done thereunder.

#### Redress of complaints

**180.** (1) If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Commander

Complaints  
by officer

(2) On receiving any such complaint it shall be the duty of the Commander to investigate the complaint and to grant any redress which appears to him to be necessary or, if the complainant so requires, the Commander shall make his report on the complaint to His Majesty in order to receive the directions of His Majesty thereon.

Complaints  
by soldiers

**181.** (1) If a soldier thinks himself wronged in any matter by an officer other than his commanding officer or by any soldier, he may make a complaint with respect to that matter to his commanding officer.

(2) If a soldier thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint with respect thereto to the Commander.

(3) It shall be the duty of the commanding officer or, as the case may be, the Commander to have any complaint received by him under this section investigated and to take any steps for redressing the matter complained of which appear to him to be necessary.

#### Exemptions

Exemptions  
from tolls,  
etc.

**182.** (1) Duties or tolls for embarking from or disembarking on any pier, wharf, jetty, quay or landing place in Brunei, or for passing over any road, ferry or bridge in Brunei shall not be payable in respect of —

(a) members of the Armed Forces or the Reserve Regiment on duty;

(b) vehicles in military service, being vehicles belonging to Government or other vehicles driven by persons (whether or not members of the Armed Forces or Reserve Regiment) in the public service of Brunei;

(c) goods carried in such vehicles;

(d) horses or other animals in military service.

(2) In subsection (1) “in military service” means employed under proper military authority for the purposes of



any unit or accompanying any body of the Armed Forces or the Reserve Regiment.

**183.** No judgement, decree or order given or made against a member of the Armed Forces or the Reserve Regiment by any court in Brunei shall be enforced by the levying of execution on any property of the person against whom it is given or made, being arms, ammunition, equipment, instruments or clothing used by him for military purposes.

Exemption from taking in execution of property used for military purposes

Provisions relating to deserters and absentees without leave

**184.** (1) Where no police officer or District Officer is available (to exercise the powers of arrest conferred by section 28 (1) (f) of the Criminal Procedure Code), any member of the Armed Forces or the Reserve Regiment or any other person, may arrest any person whom he has reasonable cause to suspect of being a member of the Armed Forces or the Reserve Regiment who has deserted or is absent without leave.

Arrest of deserters and absentees without leave Cap. 7

(2) Any person having authority under any written law to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being within his jurisdiction a member of the Armed Forces or the Reserve Regiment who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(3) Any person in custody in pursuance of this section shall as soon as practicable be brought before a Court of a Magistrate.

(4) A person shall also be brought before a Court of a Magistrate if having been brought before such a court by virtue of subsection (3) or of section 33 of the Criminal Procedure Code and discharged by the court by virtue of section 185 (3) —

Cap. 7

(a) he is subsequently arrested as an alleged or suspected deserter or absentee without leave under section 74, or under a warrant issued under section 189; and

(b) the question whether he is in fact in desertion or absent without leave raises any issue which was investigated by the court discharging him; and

(c) he does not admit that he is in desertion or absent without leave to the person arresting him under section 74 or, as the case may be, to the person into whose custody he is delivered pursuant to section 189.

Proceedings  
before a civil  
court where  
persons  
suspected of  
illegal  
absence

**185.** (1) Where a person who is brought before a Court of a Magistrate is alleged to be a member of the Armed Forces or the Reserve Regiment who has deserted or is absent without leave, the following provisions shall have effect.

(2) If he admits that he is illegally absent from the Armed Forces or the Reserve Regiment and the court is satisfied of the truth of the admission then —

(a) unless he is in custody for some other cause the court shall, and

(b) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into military custody) or until sooner delivered into such custody.

Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

(3) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to military law and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

(4) For the purposes of any proceedings under this section a certificate which states that a person is a member, and illegally absent from the Armed Forces or the Reserve Regiment and purports to be signed by the officer who, if that person were charged with an offence, would be either his commanding officer or authorised to act as his appropriate superior authority, shall be evidence of the matters so stated.

**186.** (1) Where in Brunei a person surrenders himself to a police officer as being illegally absent from the Armed Forces or the Reserve Regiment, the police officer shall (unless he surrenders himself at a police station) bring him to a police station.

Deserters  
and absen-  
tees without  
leave sur-  
rendering to  
police

(2) The police officer in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid he

may cause him to be delivered into military custody without bringing him before a Court of a Magistrate or may bring him before such a court.

Certificates  
of arrest or  
surrender of  
deserters and  
absentees

**187.** (1) Where a Court of a Magistrate in pursuance of section 185 deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by a magistrate, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court.

(2) Where under section 186 a person is delivered into military custody without being brought before a court, there shall be handed over with him a certificate in the prescribed form, signed by the police officer who causes him to be delivered into military custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence under section 43 or 44 —

(a) a document purporting to be a certificate under either subsection (1) or (2) and to be signed as thereby required, shall be evidence of the matters stated in the documents;

(b) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate purporting to be signed by a provost officer or any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

**188.** (1) It shall be the duty of the superintendent or other person in charge of a civil prison in Brunei to receive any person duly committed to that prison by a Court of a Magistrate as illegally absent from the Armed Forces or the Reserve Regiment and to detain him until in accordance with the directions of the court he is delivered into military custody.

Duties of superintendents of prisons and others to receive deserters and absentees

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody in Brunei, as it applies to the superintendent of a prison.

#### Further powers of arrest of civil authorities

**189.** (1) A warrant for the arrest of a person suspected of any offence under Part V may be issued by the Commander.

Arrest under warrant of commander

(2) A warrant issued under this section shall be addressed to an officer or officers of police, and shall specify the name of the person for whose arrest it is issued and the offences which he is alleged to have committed; and any such warrant may be issued in respect of 2 or more persons alleged to have committed the same offence, or offences of the same class.

(3) A person arrested under a warrant under this section shall as soon as practicable be delivered into military custody; and there shall be handed over with him a certificate signed by the police officer who causes him to be delivered into military custody stating the fact, date, time and place of arrest, and whether or not the person arrested was at the time of arrest wearing the uniform of any military force of His Majesty.

(4) A certificate under subsection (3) shall be in such form as may be prescribed and shall for the purposes of this Act be evidence of the matters stated therein.

LAWS OF BRUNEI

150

CAP. 149

*Royal Brunei Armed Forces*

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Arrest of persons unlawfully at large

**190.** A police officer may arrest without warrant any person who, having been sentenced under Part V to imprisonment or detention, is unlawfully at large during the currency of the sentence, and may take him to any place in which he may be required in accordance with law to be detained.

Searches

Search of place entered by person sought to be arrested

**191.** Any person empowered under or by virtue of this Act to make an arrest may enter (if need be, by force) and search any place where the person to be arrested is or where the person empowered to make the arrest, with reasonable cause, suspects him to be.

Search of person arrested

**192.** A person making an arrest under or by virtue of this Act may search the person arrested if there are reasonable grounds for believing that the person arrested has on his person —

(a) any implement with which he might do himself or others an injury;

(b) any implement with which he might effect an escape; or

(c) any evidence which is material to any offence with which he is charged or alleged to have committed,

and if any of such things are found upon him the person making the arrest shall place or retain them in military custody until the conclusion of any proceedings in respect of any such offence.

General power to search military places and personnel

**193.** Subject to General Orders, an officer may without warrant make (or authorise to be made by an officer of inferior rank or a warrant officer or non-commissioned officer) a search of —

(a) any camp, barracks, married or other quarters, or of any other military premises or place within his command; and

(b) the person of any member of the Armed Forces or the Reserve Regiment within his command and any kit-bag, box or other receptacle or any vehicle belonging to such member;

Provided that the quarters, belonging or person of such a member shall not be searched except by a member of the Armed Forces or the Reserve Regiment of superior rank.

#### Provisions as to evidence

**194.** (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

General provisions as to evidence

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person enlisted.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person —

(a) was or was not serving at any specified time or during any specified period in the Armed Forces or the Reserve Regiment or was discharged from the Armed Forces or the Reserve Regiment at or before any specified time; or

(b) held or did not hold at any specified time rank or appointment in the Armed Forces or the Reserve Regiment or had at or before any specified time been attached, posted or transferred to any unit of the Armed Forces or the Reserve Regiment, or at any specified time or duration any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or

(c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by the commander, be evidence of the matters stated in the document.

(5) A record made in any service book or other document prescribed by General Orders for the purposes of this subsection, being a record made in pursuance of any written law or of General Orders, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document as aforesaid, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

(6) A document purporting to be issued by order of the competent authority and to contain instructions, directions or regulations given or made by His Majesty in Council or the competent authority shall be evidence of the giving of the instructions or directions or making of the regulations and of their contents.

(7) A certificate purporting to be issued by the Commander and stating —



(a) that a decoration of a description specified in or annexed to the certificate is a military decoration; or

(b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by His Majesty,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for —

(a) any formation or unit or body of troops; or

(b) any command or other area, garrison or place; or

(c) any ship, train, vehicle or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate.

**195.** (1) Where a person subject to military law has been tried before a civil court (whether at the time of the trial he was subject to military law or not), a certificate signed by a competent official of the court and stating all or any of the following matters —

Proof of outcome of civil trial

(a) that the said person has been tried before the court for an offence specified in the certificate;

(b) the result of the trial;

(c) what judgement or order was given or made by the court;

(d) that other offences specified in the certificate were taken into consideration at the trial,

shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) A competent official of the court shall, if required by the commanding officer of the person in question or any other officer, furnish a certificate under this section.

(3) A document purporting to be a certificate under this section and to be signed by a competent official of the court shall, unless the contrary is shown, be deemed to be such a certificate.

(4) References in this section to a competent official of the court are references to any official of the court authorised for the purposes of this section having the lawful custody of the records of the court.

Evidence of  
proceedings  
of court-  
martial

**196.** (1) The original proceedings of a court-martial purporting to be signed by the president of the court and being in the custody of the Judge Advocate General or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the original proceedings of a court-martial or any part thereof and to be certified by the Judge Advocate General or any person authorised by him, or by any other person having the lawful custody of the proceedings, to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court in Brunei, whether civil or criminal.

## Miscellaneous Provisions

**197.** (1) A warrant officer or non-commissioned officers of the Armed Forces or the Reserve Regiment (other than a lance-corporal) shall not be reduced in rank except by lawful punishment awarded under this Act or by order of the Commander.

Restrictions on reduction in rank of warrant and non-commissioned officers

(2) For the purposes of subsection (1) reduction in rank does not include reversion from acting rank.

**198.** Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part V, it shall be the duty of the superintendent or other person in charge of a civil prison, or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding 7 days.

Temporary reception in civil custody of persons under escort

**199.** (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, military award, grant, pension, gratuity or allowance payable to any person in respect of his or any other person's service in the Armed Forces or the Reserve Regiment shall be void.

Avoidance of assignment of or charge on military pay, pensions, etc.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall be binding on government or prejudice the provisions of any written law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

Power of certain officers to take affidavits and declarations

**200.** (1) An officer of a rank not below that of major (hereinafter in this section referred to as an “authorised officer”) may, at a place abroad, take affidavits and declarations from persons subject to military law.

Cap. 12

(2) A declaration taken pursuant to subsection (1) from any of such persons by an authorised officer shall, if taken as nearly as circumstances permit in the manner provided by the Statutory Declarations Act, be deemed for the purposes of the said Act, to have been made and taken in Brunei by such officer with the authority of His Majesty by virtue of the provisions of the said Act.

(3) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of an affidavit or declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the affidavit or declaration was taken and of the full name and rank of that officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

Exclusion of requirement of Attorney General's consent for proceedings

**201.** With the exception of sections 72 (6) and 119 (1) and (2), no written law requiring the fiat of consent of the Attorney General or the Public Prosecutor in connection with any proceedings shall have effect in relation to proceedings under this Act.

## PART IX

### APPLICATION OF MILITARY LAW AND SUPPLEMENTAL PROVISIONS

#### Persons subject to military law

Persons subject to military law: general provisions

**202.** The following persons are subject to military law —

(a) every officer holding a commission granted by His Majesty, other than an honorary commis-

sion, who is appointed to serve and is for the time being serving in full-time service with the Armed Forces or full-time service with the Reserve Regiment;

(b) every officer holding such a commission and appointed to serve as aforesaid who for the time being is not employed in any such service as is mentioned in paragraph (a) but is liable (otherwise than in specified circumstances only) to be recalled to such service;

(c) every officer, not subject to military law under paragraph (a) or (b), being the holder of such a commission as aforesaid, who is appointed to the Reserve Regiment and is for the time being called out on full-time service pursuant to section 25 or is otherwise serving (whether in pursuance of an application or not) with any body of troops for the time being subject to military law;

(d) every person not otherwise subject to military law who is engaged to serve under a written agreement as a member of the Armed Forces or the Reserve Regiment by virtue of section 179 (1);

(e) every soldier not otherwise subject to military law;

(f) every man of the Reserve Regiment when called out on full-time service pursuant to section 25 or when undergoing training whether in pursuance of an obligation or not;

(g) every person, not otherwise subject to military law, being —

(i) a member of the Armed Forces or the Reserve Regiment; or

- (ii) in receipt of a pension in respect of service in the Armed Forces or the Reserve Regiment or of such service and other service,

who is employed in the service of His Majesty in employment of which it is an express condition that while employed therein he is to be subject to military law.

Application of Act to passengers in ships and aircraft of His Majesty

**203.** Part V shall to such extent and subject to such modifications as may be prescribed apply to persons embarked as passengers on board ships or aircraft of His Majesty (not being persons who are subject to military law by virtue of any of the foregoing provisions of this Act) as it applies to persons subject to military law.

Application of Act of civilians

**204.** (1) Subject to the modifications hereinafter specified, where any body of the Armed Forces or the Reserve Regiment is on active service, Part V shall apply to any person who is employed in the service of that body of the Armed Forces or the Reserve Regiment or any part or member of the said body, or accompanies the said body or any part thereof, and is not subject to military law, apart from this section, as Part V applies to persons subject to military law.

(2) The said modifications are the following —

(a) the punishment that may be awarded by a court-martial shall not include any punishment less than imprisonment, except a fine (to the amount of which section 73 (6) (a) shall not apply);

(b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding \$200, but no other punishment;

(c) the following provision shall have effect in substitution for section 74 (2) and (3), that is to

say that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the Armed Forces or the Reserve Regiment;

(d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure;

(e) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall save as otherwise expressly provided apply as they apply to officers, warrant officers and non-commissioned officers of the rank of staff-sergeant;

(f) for the purpose of the provisions of this Act relating to the investigation of offences, the commanding officer shall be such officer as may be determined by or under regulations made by His Majesty in Council for the purposes of this section;

(g) for references in section 118 and 119 to being, continuing or ceasing to be subject to military law there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that Part V applies, and section 118 (3) shall not apply.

(3) Any fine awarded by virtue of this section, whether by court-martial or the appropriate superior

authority, shall be recoverable in Brunei as a debt due to Government.

(4) This section does not apply to any person to whom section 203 applies.

### Supplemental Provisions

Loaned  
personnel

**205.** (1) In this section —

“loan agreement” means any agreement made (either before or after the coming into operation of this Act) between the Government and the government of any foreign country for the loan to the Government of personnel of any of the armed forces of the government of that foreign country for service in the armed forces of Brunei;

“loaned person” means any person who is for the time being loaned to the Government by the government of any foreign country under a loan agreement;

“conditions of loan service” means, in relation to a loaned person who is ordered under subsection (2), or required by paragraph 4 (2) of Schedule 2, to serve in the Armed Forces, the conditions of his service in the Armed Forces contained in directions given under subsection (3).

(2) His Majesty may order any loaned person to serve in the Armed Forces in accordance with the provisions of the loan agreement affecting such loaned person.

(3) Where a loaned person is ordered under subsection (2), or required by paragraph 4 (2) of Schedule 2, to serve in the Armed Forces, His Majesty shall give or cause to be given to such loaned person and to the Commander (if he is not the loaned person) directions in writing containing the conditions of service of such loaned



person in the Armed Forces in accordance with the provisions of the loan agreement affecting such loaned person.

(4) Directions given under subsection (3) shall have the effect of written law and, to the extent that such directions may conflict with any other provisions of this Act or with any provision of any other written law, such directions shall prevail.

(5) For the purposes of this Act a loaned person who is for the time being serving in the Armed Forces under conditions of loan service shall be deemed to be a member of the Armed Forces (of equivalent or higher rank) to the extent permitted under those conditions.

**206.** Save as expressly provided by any rules or regulations under this Act, any order or determination required or authorised to be made under this Act by any officer or authority, may be signified under the hand of any officer authorised in that behalf; and any instrument signifying such an order or determination and purporting to be signed by an officer stated therein to be so authorised shall unless the contrary is proved be deemed to be signed by an officer so authorised.

Execution  
of orders, in-  
struments,  
etc.

**207.** (1) In this Act "on active service" in relation to the Armed Forces or the Reserve Regiment means that the Armed Forces or the Reserve Regiment is engaged in operations against an enemy or is engaged elsewhere than in Brunei in operation for the protection of life or property or (subject to the provisions of this section) is in military occupation of a foreign country; and in relation to a person means that he is serving with the Armed Forces or the Reserve Regiment when the Armed Forces or the Reserve Regiment is on active service.

Provisions as  
to active  
service

(2) Where it appears to His Majesty that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the public service that

the Armed Forces or the Reserve Regiment or both such forces should be deemed to be on active service, His Majesty may declare that for such period not exceeding 3 months, beginning with the coming into operation of the declaration as may be specified therein, the Armed Forces or the Reserve Regiment or both such forces, as the case may be, shall be deemed to be on active service.

(3) Where it appears to His Majesty that it is necessary for the public service that the period specified in a declaration under subsection (2) should be prolonged or, if previously prolonged under this subsection, should be further prolonged, His Majesty may declare that the said period shall be prolonged by such time, not exceeding 3 months, as may be specified in the declaration under this subsection.

(4) If at any time while the Armed Forces or the Reserve Regiment or both such forces —

(a) is or are on active service by reason only of being in military occupation of a foreign country;  
or

(b) is or are deemed to be on active service of any declaration under subsection (2) or (3),

it appears to His Majesty that there is no necessity for the Armed Forces or the Reserve Regiment or both such forces to continue to be treated as being on active service, His Majesty may declare that as from the coming into operation of the declaration the Armed Forces or the Reserve Regiment or both such forces, as the case may be, shall cease to be, or to be deemed to be on active service.

(5) A declaration under this section shall have effect not only as respects the members of the force or any part thereof to which it relates but also as respects other persons the application to whom of any provisions of this Act depends on whether that force or any part thereof is on active service.

(6) Any declaration under this section shall unless His Majesty otherwise directs, come into operation on the day on which it is made; and such a declaration shall be publicly notified as soon as circumstances permit.

208. (1) His Majesty <sup>the Sultan and JDP</sup> ~~in Council~~ may make regulations not inconsistent with the provisions of this Act in respect of all or any of the following matters —

Power of His Majesty in Council to make regulations S. 16/86  
M. H. Low  
Reg. S. 14/98

(a) the government, administration and organisation of the Armed Forces and the Reserve Regiment;

(b) appointment, enlistment and attestation of members of the Armed Forces and the Reserve Regiment;

(c) ranks of members of the Armed Forces and the Reserve Regiment;

(d) conditions for the acceptance of eligible persons and eligible young persons as members of the Armed Forces and the Reserve Regiment and the conditions of service of such members including conditions as to pay, compensation, pensions, gratuities and allowances payable in respect of the service or death or permanent injury of such members;

(e) the Reserve of Officers and the Retired List;

(f) powers and duties of provost officers and members of the Armed Forces or the Reserve Regiment legally exercising authority under a provost officer or on his behalf;

(g) military decorations;

(h) military funerals and burials at sea;

(i) any matter which is expressed by any provision of this Act to be a subject for regulations;

(j) any matter which is required or authorised to be prescribed by any Part of this Act other than Part V or VII; and

(k) any other matter which His Majesty in Council may consider necessary or expedient for the purposes of this Act.

(2) Notwithstanding anything contained in the Interpretation and General Clauses Act, the powers conferred upon His Majesty <sup>the Sultan and Yang Di-Pertuan</sup> ~~in Council~~ by subsection (1) (d) to make regulations shall include the power of declaring the date (including a date prior to that upon which it is declared and subsequent to the 31st day of December 1961) as from which any of such regulations shall have or be deemed to have had effect.

Cap. 4  
S 16/86

(3) Regulations made under subsection (1) (d) may provide that where any member of the Armed Forces or the Reserve Regiment or any other person has become eligible for the award of any pension, gratuity or other allowance under any provision of such regulations and the pensionable military service of such member, or any other member as respects such other person, is required to be taken into account in computing such award, <sup>The Sultan and Yang Di-Pertuan</sup> then such pensionable military service may, if His Majesty ~~in Council~~ thinks fit, be deemed to include any previous pensionable civil public service of such member or other member, as the case may be, in respect of which no award has been made to such member or other member or any other person under the Pensions Act.

S 16/86

Cap. 38

(4) For the purposes of subsection (1) (d) 'injury' includes wound or disease.

(5) For the purposes of subsection (3) —

“pensionable military service” means military service which may be taken into account in computing pension under regulations made under subsection (1) (d);

“previous pensionable civil public service” means, in relation to a member of the Armed Forces or the Reserve Regiment, the previous service of such member which was, when completed, and continues to be at the time of the eligibility of such member or any other person for the award mentioned in subsection (3), qualifying and pensionable service of such member in a pensionable office for the purposes of the Pensions Act.

**209.** (1) His Majesty may from time to time make such orders not inconsistent with the provisions of this Act and the regulations or rules made thereunder to be called <sup>General Orders</sup> “General Orders of His Majesty the Sultan and Yang Di-Pertuan” as His Majesty may consider necessary or expedient for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), His Majesty may make orders relating to —

(a) conduct and discipline and the regulation and carrying out of punishment;

(b) classification and promotion;

(c) instructions and examinations;

(d) inspection, drill, parades, training and exercises;

(e) the institution and maintenance of common rooms and canteens;

(f) the manner and form of reports, correspondence and other records; and

(g) any other matter which is expressed by any provision of this Act to be a subject for such orders as aforesaid.

(3) General Orders of His Majesty shall be published in such form or manner as His Majesty shall direct and shall not be required to be published in the *Government Gazette*.

Powers exercisable by subsidiary legislation

**210.** (1) Any power conferred by this Act to make regulations, Rules of Procedure, board of inquiry rules, General Orders, orders or other instruments shall include power —

(a) to make provision for specified cases or classes of cases; and

(b) to make different provisions for different classes of cases,

and for the purposes of any such instruments “classes of cases” may be defined by reference to any circumstances specified in the instruments.

(2) Any such regulations, Rules of Procedure, board of inquiry rules, General Orders, orders or other instruments as aforesaid may —

(a) impose conditions;

(b) require acts or things to be performed or done to the satisfaction of any persons named therein whether or not such persons are members of the Armed Forces or the Reserve Regiment;

(c) empower such persons as aforesaid to issue orders, either orally or in writing, requiring acts or

things to be performed or done, or prohibiting acts or things to be performed or done and prescribing periods or dates upon, within or before which such acts of things shall be performed or done or such conditions as aforesaid shall be fulfilled; and

(d) provide for appeal against any such order, or any act or omission or thing required, prohibited or prescribed thereunder.

**211.** The Queen's Regulations for the Army of the United Kingdom shall, in so far as they are not inconsistent with the provisions of this Act or any regulations, rules or General Orders made thereunder and do not relate to matters which are for the time being the subject of such provisions, apply to the Armed Forces subject to such alterations and amendments as may be necessary to make such Regulations applicable to the circumstances of Brunei.

Application  
of Queen's  
Regulations

**212.** (1) The Brunei Malay Regiment Enactment 1961 (hereinafter in this Act referred to as "the repealed Enactment") is hereby repealed.

Repeal and  
transitional  
provisions.  
1 of 1961

(2) Without prejudice to the provisions of section 12 (2) of the Interpretation and General Clauses Act (which relates to the effect of repeals) any reference in any written law to the repealed Enactment or to any provisions of that Enactment shall be construed as, or as including, a reference to this Act or the corresponding provision of this Act.

Cap. 4

(3) The transitional provisions contained in Schedule 2 shall have effect in connection with the repeal of the repealed Enactment.

Section  
93 (6)

## SCHEDULE 1

ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE  
CONVICTED BY COURT-MARTIAL

Offence charged	Alternative offences
1. Communications with or giving intelligence to the enemy (section 33 (a)).	1. Disclosing information without authority (section 62).
2. Striking his superior officer (section 39 (1) (a)).	2. (a) Using violence to his superior officer otherwise than by striking him (section 39 (1) (a)). (b) Offering violence to his superior officer (section 39 (1) (a)).
3. Using violence to his superior officer otherwise than by striking him (section 39 (1) (a)).	3. Offering violence to his superior officer (section 39 (1) (a)).
4. Using threatening language to his superior officer (section 39 (1) (a)).	4. Using insubordinate language to his superior officer (section 39 (1) (b)).
5. Desertion (section 43).	5. (a) Absence without leave (section 44 (a)). (b) Improperly leaving place of duty (section 44 (b)).
6. Absence without leave (section 44 (a)).	6. Improperly leaving place of duty (section 44 (b)).
7. Misapplying public or service property (section 51).	7. Wastefully expending public or service property (section 51).
8. Wastefully expending public or service property (section 51).	8. Misapplying public or service property (section 51).
9. Any offence against section 58 (1).	9. Any offence against section 58 (2).



Offence charged	Alternative offences
10. Any offence against section 59 involving striking.	10. (a) The corresponding offence involving the use of violence other than striking.  (b) The corresponding offence involving the offering of violence.
11. Any offence against section 59 involving the use of violence other than striking.	11. The corresponding offence involving the offering of violence.
12. Any offence against section 67 involving striking.	12. The corresponding offence involving ill-treatment other than striking.

## SCHEDULE 2

Section  
212 (3)

### TRANSITIONAL PROVISIONS

1. Such of the units of the regiment and the reserve that were or purported to be raised and maintained under the repealed Enactment before the date (hereinafter in this Schedule referred to as "the appointed day") of the coming into operation of this Act as shall be continuing in existence immediately before the appointed day shall on and after that day constitute, and be deemed to have been raised and continue to be maintained under this Act as units of, the Armed Forces and the Reserve Regiment respectively.

2. A commission or warrant granted by His Majesty under the provisions of the repealed Enactment and held immediately before the appointed day shall on and after that day be deemed to have been granted and shall continue to be held under the corresponding provisions of this Act.

3. Every person who enlisted under the provisions of the repealed Enactment and shall be continuing in service and holding any rank under that Enactment immediately before the appointed day shall on and after that day be deemed to have been enlisted under the corresponding provisions of the terms and conditions of service provided under this Act:

Provided that —

(a) nothing in this paragraph shall operate, without the consent of such person, to defer the date when, under the terms and conditions of service applicable to him under the repealed Enactment, he would have become entitled to be discharged or transferred to the reserve; and

(b) any liability of such person under the terms and conditions of service applicable to him under the repealed Enactment to serve for any period in the reserve shall be deemed to be a liability to serve for the same period in the Reserve Regiment.

4. (1) In this paragraph “agreement” means an agreement, made between the Government and any person, providing for the engagement of such person for service in or with the said regiment for a period remaining unexpired on the appointed day, and “person serving under agreement” shall be construed accordingly.

(2) With effect from the appointed day, every person serving under agreement immediately before that day shall be a member of the Armed Forces and his agreement shall continue to have effect until its expiration date as if such agreement had been made by virtue of section 179; and, where appropriate, paragraph 2 or 3 or both such paragraphs shall apply to such person.

5. (1) In this paragraph “loan agreement” and “loaned person” have the meaning respectively assigned to those expression in section 205 (1).

(2) Every person who shall immediately before the appointed day be a loaned person serving in the said regiment in the course of a period of service not due to expire on that day, shall, with effect from that day, be a loaned person for the purposes of this Act and shall, with effect from that day, serve in the Armed Forces as a loaned person for the unexpired part of such period of service in accordance with the loan agreement affecting him.

6. Where on or after the appointed day a person is alleged to have committed an offence under the repealed Enactment before the appointed day and the offence would be an offence against this Act if this Act had been in force before the appointed day, he may be proceeded against as if this Act had so been in force.

7. Any order convening a court-martial issued under the repealed Enactment before the appointed day shall, if in force immediately before that day, continue in force on and after that day as if issued under this Act, and may be varied or revoked accordingly.

8. Notwithstanding anything in paragraph 6, where before the appointed day any court-martial has been convened, ordered to be convened or court-martial or other proceedings been begun in respect of an offence under the repealed Enactment, any step in the court-martial or other proceedings taken on or after that day shall be deemed to be validly taken if taken in accordance with the repealed Enactment and any orders and regulations made thereunder:

Provided that where any such proceedings are court-martial proceedings, the court-martial concerned shall, for the purposes of the provisions of this Act relating to confirmation, review, petitions and appeals, be deemed to be a court-martial convened under this Act.

9. Any punishment awarded and any forfeiture of or deduction from pay ordered under the provisions of the repealed Enactment and not wholly carried out before the appointed day shall be carried out on and after that day as if awarded or ordered, as the case may be, under the corresponding provisions of this Act.

10. Any investigation or inquiry being conducted under the repealed Enactment immediately before the appointed day shall on and after that day be deemed to be an investigation or inquiry held under this Act.

11. A person in military custody under the repealed Enactment shall remain in military custody and be dealt with in accordance with this Act unless lawfully released.

12. Any regulations made or purporting to be made under the repealed Enactment shall, so far as such regulations are not inconsistent with any provisions of this Act and subject to any necessary modifications, continue in force and have effect as if made under and for the purposes of this Act and may be varied or revoked accordingly pursuant to the appropriate provisions of this Act conferring powers to make regulations, rules of General Orders.

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