LAWS OF BRUNEI

CHAPTER 149

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LAWS OF BRUNEI

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CHAPTER 149

ROYAL BRUNEI ARMED FORCES

ARRANGEMENT OF SECTIONS

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SCHEDULE — ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE CONVICTED BY COURT-MARTIAL

ROYAL BRUNEI ARMED FORCES ACT

An Act to provide for the raising, maintenance and discipline of an armed force in Brunei Darussalam and for purposes incidental thereto

Commencement: 1st January 1984
[S 35/1983]

PART 1

PRELIMINARY

Citation

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

Interpretation

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

"abroad" means out of Brunei Darussalam;

"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 sections 77(1) and 83(2);

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

"arrest" includes open arrest;

"civil court" means a court of ordinary criminal jurisdiction in Brunei Darussalam;

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

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

[S 2/2006]

"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 the Sultan and Yang Di-Pertuan 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);

"commissioned" means the conferring of the rank of an officer in the Armed Forces by His Majesty the Sultan and Yang Di-Pertuan;

[S 87/2013]

"competent authority" means His Majesty the Sultan and Yang Di-Pertuan or any officer or officers for the time being authorised by His Majesty the Sultan Yang Di-Pertuan to exercise or perform all or any of the powers or duties conferred or imposed upon the competent authority under this Act;

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

[S 2/2006]

"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 Darussalam 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 Darussalam and is a subject of His Majesty the Sultan and Yang Di-Pertuan by virtue of any written law relating to nationality;

"eligible young person" means an eligible person who has attained the age of 18 years;

[S 87/2013]

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

"enlist" means enlisted to serve the Armed Forces or the Reserve Regiment pursuant to section 12;

[S 87/2013]

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

"General Orders" means General Orders of His Majesty the Sultan and Yang Di-Pertuan made under section 209;

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

"mandatory training" means the training which an officer cadet or a recruit shall undergo prior to being commissioned as an officer or as a trained soldier;

[S 87/2013]

"member" means an officer or a soldier;

[S 87/2013]

"military establishment" means any establishment under the control of the Commander where persons may be required to serve military sentences of detention;

[S 2/2006]

"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 commissioned into the Armed Forces by His Majesty the Sultan and Yang Di-Pertuan under this Act but does not include any person serving under any loan agreement or contract with the Government;

[S 87/2013]

"officer cadet" means an officer who is undergoing such training course as may be determined by the competent authority;

[S 87/2013]

"place" includes a ship, aircraft or vehicle;

"prescribed" means, except in Parts 5 and 7, prescribed by regulations made by His Majesty the Sultan and Yang Di-Pertuan*;

"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;

"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;

[S 87/2013]

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

"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;

"soldier" means any person other than an officer, enlisted in the Armed Forces under or by virtue of the provision of this Act, but does not, except whereit is expressly provided, include an officer cadet;

[S 87/2013]

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

"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 (Chapter 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 word "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) Except in Part 5, 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 the Sultan and Yang Di-Pertuan is a reference to ships in the service of His Majesty the Sultan and Yang Di-Pertuan, whether belonging to His Majesty the Sultan and Yang Di-Pertuan or not, but does not include a reference to ships of any foreign force other than ships placed at the disposal of His Majesty the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan is a reference to aircraft in the service of His Majesty the Sultan and Yang Di-Pertuan, whether belonging to His Majesty the Sultan and Yang Di-Pertuan or not, but does not include a reference to aircrafts of any foreign force other than aircrafts placed at the disposal of His Majesty the Sultan and Yang Di-Pertuan for service with the Armed Forces or the Reserve Regiment, and any reference to aircraft material shall be construed accordingly.

(6) Any reference in this Act to a military sentence of imprisonment is a reference to a sentence of imprisonment passed by a court-martial.

[S 2/2006]

(7) Any reference in this Act to a military sentence of detention is a reference to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer or an appropriate superior authority.

[S 2/2006]

Military forces

Military forces to be raised in Brunei Darussalam

3. (1) There shall be raised and maintained in Brunei Darussalam military forces consisting of such number of persons as His Majesty the Sultan and Yang Di-Pertuan may determine and as moneys provided for that purpose by the Legislature from time to time may permit, to be styled —

(a) "Angkatan Bersenjata Di-Raja Brunei" or, in English, "Royal Brunei Armed Forces"; and

(b) "Askar Simpanan Melayu Di-Raja Brunei" or in English, "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 the Sultan and Yang Di-Pertuan.

(3) His Majesty the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan may order that any member of the Armed Forces shall be temporarily attached to any foreign force in Brunei Darussalam or abroad under such conditions as His Majesty the Sultan and Yang Di-Pertuan may deem fit.

Composition of Armed Forces and Reserve Regiment

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

[S 87/2013]

(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 enlisted for service in the Reserve Regiment,

[S 87/2013]

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

[S 2/2006]

Personnel and units of Armed Forces and Reserve Regiment

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

[S 87/2013]

(2) The Armed Forces and the Reserve Regiment shall consist of such units capable of operating by land, sea or air as His Majesty the Sultan and Yang Di-Pertuan may from time to time by order published in the *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 the Sultan and Yang Di-Pertuan may in such order direct and any reference in any written law to such name or title is deemed to be a reference to such unit or, as the context may require, to the members of that unit.

(5) His Majesty the Sultan and Yang Di-Pertuan may, by order published in the *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 provision for cadets

6. (1) Regulations made under this Act by His Majesty the Sultan and Yang Di-Pertuan* 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.

(2) 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 the Sultan and Yang Di-Pertuan* to be requisite in relation to such cadets.

Powers to modify provisions relating to females

7. His Majesty the Sultan and Yang Di-Pertuan 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 2

OFFICERS

Commissioning and appointing of officers

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

(2) Every commission shall be in such form as His Majesty the Sultan and Yang Di-Pertuan may approve with such modifications as circumstances may require and may, if His Majesty the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan for such further period or periods as His Majesty the Sultan and Yang Di-Pertuan may deem expedient.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

(4) His Majesty the Sultan and Yang Di-Pertuan may, without assigning any reason therefor, determine that the services of an officer is no longer required and cancel any such commission.

[S 87/2013]

(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 the Sultan and Yang Di-Pertuan may grant an honorary commission to such person and in such rank as His Majesty the Sultan and Yang Di-Pertuan may think fit.

(8) Officers may be promoted or advanced in rank by His Majesty the Sultan and Yang Di-Pertuan at his discretion.

Appointment of Colonel in Chief

9. His Majesty the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan under section 3(2).

PART 3

APPOINTMENT OF WARRANT OFFICERS AND ENLISTMENT INTO 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 the Sultan and Yang Di-Pertuan and shall be issued by His Majesty the Sultan and Yang Di-Pertuan 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 18 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 as the competent authority may determine and generally subject to such terms and conditions of service as may be prescribed.

[S 87/2013]

13. *(Repealed by S 87/2013).*

Proceedings for enlistment 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 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 the Sultan and Yang di-Pertuan* as an Attesting Officer.

[S 87/2013]

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

(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 —

(i) shall read or cause to be read to him the questions set forth in the prescribed attestation paper;

(ii) shall satisfy himself that such person understands each question so read;

(iii) 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

(iv) 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 is deemed to be enlisted as a soldier of the Armed Forces or a man 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 is 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 is thereupon deemed valid as if the matter of the amendment had formed part of the original matter of such paper.

Extension of service

Postponement in certain cases of discharge or transfer to 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 Darussalam, he may be retained in full-time service in the Armed Forces for such period as is in the following provisions of this section 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 the Sultan and Yang Di-Pertuan* may order.

(4) Subject to subsections (2) and (3), 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 provisions of subsection (5) a soldier is entitled to be discharged or transferred to the Reserve Regiment, a state of war exists between Brunei Darussalam 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 provisions of subsections (2) and (4) 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 Darussalam with all convenient speed for the purpose of being transferred to the Reserve Regiment.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

Discharge and transfer to Reserve Regiment

Discharge of soldiers

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.

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

(a) if he requires to be discharged in Brunei Darussalam, 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 Darussalam 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 Darussalam 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 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 Darussalam 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 Darussalam.

(3) A soldier who is transferred to the Reserve Regiment in Brunei Darussalam 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.

Postponement of discharge or transfer pending proceedings for offences

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:

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.

Right of recruit to purchase discharge *[S 87/2013]*

19. Subject to the period of compulsory engagement as provided in regulations made under this Act, a recruit may with the permission of His Majesty the Sultan and Yang Di-Pertuan purchase his discharge at any time during his mandatory training, and if such permission is granted he shall, on payment to the Government of a sum not exceeding $4,000 and in the case of an officer, not exceeding $10,000, be discharged with all convenient speed subject to the conditions as may be determined by the competent authority:

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

Right of warrant officer to discharge on reduction to 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.

Service no longer required *[S 87/2013]*

20A. His Majesty the Sultan and Yang Di-Pertuan may, without assigning any reason therefor, determine that the services of a soldier is no longer required and cancel any enlistment.

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.

(4) His Majesty the Sultan and Yang Di-Pertuan* may by regulations 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.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

Validity of attestation on enlistment

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 of the Armed Forces or a man of the Reserve Regiment, as the case may be —

[S 87/2013]

(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 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 is deemed as from the expiration of the 3 months to have been validly enlisted notwithstanding any such non-compliance or other grounds as referred to in paragraph *(b)*;

(d) notwithstanding any such non-compliance or such other grounds or the making of a claim under paragraph *(b)*, he is deemed to be a soldier of the Armed Forces or a man of the Reserve Regiment, as the case may be, until his discharge.

[S 87/2013]

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

[S 87/2013]

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 provisions of subsections (1) and (2) 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 is guilty of an offence and liable on conviction to a fine of $5,000 and imprisonment for 6 months.

[S 2/2006]

(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 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 4

SPECIAL PROVISIONS RELATING TO RESERVE REGIMENT

Call out of Reserve Regiment

Call out of Reserve Regiment for full-time service

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

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

(b) where it appears to His Majesty the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan*.

(4) An order in force under subsections (1) and (2) may be revoked by an order of His Majesty the Sultan and Yang Di-Pertuan 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

Postponement of discharge

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.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

Release

Release from full-time service

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 but such member shall remain so called out until such release.

[S 2/2006]

Training

Call out of Reserve Regiment for training

28. (1) Subject to subsection (2), any member of the Reserve Regiment may in accordance with regulations made by His Majesty the Sultan and Yang Di-Pertuan* be called out in any year for training, in Brunei Darussalam 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, be attached to and trained with any unit of the Armed Forces.

(2) His Majesty the Sultan and Yang Di-Pertuan* 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.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

Application of Act

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

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 apply in relation to members of the Reserve Regiment who are subject to military law as it applies to members of the Armed Forces.

Offences

Offences by men of Reserve Regiment

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 $10,000 and imprisonment for 2 years.

[S 2/2006]

(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,

is guilty of an offence 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 $5,000 and imprisonment for one year.

[S 2/2006]

PART 5

DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

Interpretation

Interpretation of Part 5

31. (1) In this Part —

"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;

"prescribed" means prescribed by Rules of Procedure.

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

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

(4) References to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial.

(5) 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.

Misconduct in action and other offences arising out of military service

Misconduct in action

32. Any person subject to military law who without lawful excuse —

(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.

Assisting enemy

33. Any person subject to military law who knowingly and without lawful excuse —

(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 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.

Looting

36. Any person subject to military law who —

(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,

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

Mutiny and insubordination

Mutiny

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

(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 two or more persons subject to military law, or between two, 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 those 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 those 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.

Insubordinate behaviour

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

(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:

[S 2/2006]

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 that person's superior.

Disobedience to lawful commands

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.

Obstruction of provost officers

41. Any person subject to military law who —

(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 who deserts —

(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 or any regulations made thereunder to desertion shall be construed accordingly.

[S 87/2013]

Failure to comply with terms of engagement *[S 87/2013]*

43A. Any person subject to military law shall be required to comply with the terms of engagement set out in the regulations and a failure to comply with such requirements shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Absence without leave

44. Any person subject to military law who —

(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.

Failure to report or apprehend deserters or absentees

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 —

(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

Malingering

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

(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,

is 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 the Sultan and Yang Di-Pertuan.

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

Damage to and loss of public or service property etc.

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,

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 material

50. (1) Without prejudice to the generality of section 49, a person subject to military law is guilty of an offence 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 the Sultan and Yang Di-Pertuan;

(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.

Misapplication or waste of public or service property

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.

Offences relating to issues and decorations

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 —

(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

Damage to and loss etc. of ships or naval material

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 the Sultan and Yang Di-Pertuan, shall, on conviction by court-martial, be liable —

(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.

Dangerous flying etc.

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, 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 the Sultan and Yang Di-Pertuan; or

(b) any certificate relating to any aircraft or aircraft material of His Majesty the Sultan and Yang Di-Pertuan,

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 the Sultan and Yang Di-Pertuan, 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.

Annoyance by flying

57. Any person subject to military law who, being the pilot of an aircraft of His Majesty the Sultan and Yang Di-Pertuan, 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 the Sultan and Yang Di-Pertuan 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.

Offences relating to, and by, persons in custody

Permitting escape and unlawful release of prisoners

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.

(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.

Resistance to arrest

59. (1) Any person subject to military law who, being concerned in any quarrel or disorder —

(a) refuses to obey any officer who orders him into arrest; or

(b) strikes or otherwise uses violence to, or offers violence to, any such officer,

is guilty of an offence against this section whether or not the officer is his superior officer.

(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, is 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;

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

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

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

(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 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, or to such a fine, as mentioned in paragraph *(a)*.

Miscellaneous offences

Unauthorised disclosure of information

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, 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 statements on enlistment

63. Any person who, when appearing before a Magistrate or an Attesting Officer for the purpose of being attested in pursuance of Part 3, 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;

(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.

Offences against morale

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.

Scandalous conduct by officers

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 the Sultan and Yang Di-Pertuan with or without disgrace.

Ill-treatment of personnel of inferior rank

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

(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.

Disgraceful conduct

68. Any person subject to military law who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Conduct to 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, 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 (abetment of thing), section 108 (relating to the abetment of an offence) and section 108A (abetment in Brunei Darussalam of an offence outside it) of the Penal Code (Chapter 22) apply with the necessary modifications, 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

Civil offences

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

(2) In this Act, "civil offence" means any act or omission punishable by the law of Brunei Darussalam or which, if committed in Brunei Darussalam, 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 Darussalam 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 Darussalam if the corresponding civil offence is an offence punishable under any provision of Chapter VI (offences against State) of the Penal Code (Chapter 22) 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 (Chapter 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 (Chapter 22), an offence against this section is 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 Darussalam 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 supplementary 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 the Sultan and Yang Di-Pertuan;

(d) dismissal from the service of His Majesty the Sultan and Yang Di-Pertuan;

(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 those 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 is not 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 disgrace from the service of His Majesty the Sultan and Yang Di-Pertuan 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 is deemed to include a sentence of dismissal from the service of His Majesty the Sultan and Yang Di-Pertuan.

(5) A warrant officer or non-commissioned officer sentenced by a court-martial to imprisonment, to dismissal from the service of His Majesty the Sultan and Yang Di-Pertuan (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 is 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 excepted case of an offence against section 72 —

(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 (Chapter 22); and

(ii) where that 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, as regards a person found guilty of an offence, is 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

Power to arrest offenders

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.

(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.

Powers of investigation *[S 2/2006]*

74A. For the purposes of section 74, a provost officer or any member of the Armed Forces legally exercising authority under a provost officer or on his behalf shall have the same powers of investigation of a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Provisions for avoiding delay 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

Investigation of charges by commanding officer

76. Before an allegation against a person subject to military law (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.

Charges to be dealt with summarily or by court-marital

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.

(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 mentioned in subsections (1) and (2) 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 previous 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 —

(a) determining whether the accused is guilty;

(b) dismissing the charge; or

(c) 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;

(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 further 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 excepted case of an offence against section 72 —

(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 two or more such courts by which the said civil offence is punishable) is less than the amount limited by sub-paragraph (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;

(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 accordance 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.

Further proceedings on charges against officers etc.

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).

(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.

Summary proceedings by appropriate superior authority

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:

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

And provided further 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 that 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;

(b) forfeiture of seniority;

(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.

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

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.

(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.

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

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.

(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) 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 following persons may act as appropriate superior authority in relation to a person charged with an offence —

(a) the Colonel in Chief;

(b) the Commander; or

(c) any officer of the rank of Colonel or above in command:

Provided that an officer under such rank as may be specified by regulations shall not act as appropriate superior authority where the accused is above such rank as may be so specified.

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(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 regulations 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

Convening and constitution of courts-martial

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 four other officers.

(2) Any officer who —

(a) is the officer (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 —

(i) has been the commanding officer of the accused;

(ii) who has investigated the charge against the accused; or

(iii) 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 two 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 two 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 such 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 outside Brunei Darussalam) 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

Challenges by accused

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.

(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 allow 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.

Administration of oaths

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.

(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 possesses sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; however 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) *(a)* Nothing in subsection (1) 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.

(b) 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.

Dissolution of courts-martial

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.

(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.

Decisions of court-martial

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.

(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 convict of offence 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 being 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 Darussalam, 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 may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

Evidence relating to bankers' books

94. The provisions of the Bankers' Books (Evidence) Act (Chapter 107), shall have effect with the following modifications —

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

(b) a court-martial is deemed to be a "Court" within the meaning of that expression as used in that Act; and

(c) the powers conferred by section 7 of that Act (which enables orders to be made for the inspection of bankers' books for the purposes of legal proceedings) is 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 Darussalam, 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 Darussalam.

(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 Darussalam.

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-martial 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 Darussalam 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;

(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 —

(a) by using insulting or threatening language;

(b) by causing any interruption or disturbance in its proceedings;

(c) 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.

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 an oath to such a person 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

99. (1) Subject to the provisions of this section, His Majesty the Sultan and Yang Di-Pertuan* 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.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

(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 —

(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; however 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, 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 courts-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 courts-martial all or any of the provisions of paragraphs *(e)*, *(f)*, *(g)* and *(h)*;

(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 Act or the Rules of Procedure 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 provisions —

(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.

Taking of offences into consideration

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.

(2) Where Rules of Procedure make such provisions as mentioned in subsection (1) 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 and 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 the 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-martial 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-martial on the charge before it; and

(b) he is of opinion that the court-martial 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-martial, not being greater than the punishment or greatest of the punishments awarded by the court-martial 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 officers, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purpose as a finding or sentence of the court-martial duly confirmed.

(7) The confirmation of a finding or sentence is not deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as mentioned in subsection (6) 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 —

(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, any officer (other than the Commander or the Colonel in Chief) appointed by His Majesty the Sultan and Yang Di-Pertuan to act as confirming 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 —

(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.

Review of findings and sentences of court-martial

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.

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

(a) His Majesty the Sultan and Yang Di-Pertuan;

(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 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-martial 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 mentioned in subsection (2) may at any time review the finding or award.

(2) The authority referred to in subsection (1) 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 an officer of the rank of Colonel or above in command as appropriate superior authority, the Colonel in Chief or the Commander; or

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(c) where a charge has been dealt with summarily by the Colonel in Chief or the Commander as appropriate superior authority, His Majesty the Sultan and Yang Di-Pertuan.

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(3) Where on review under this section it appears to that 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) *(a)* 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.

(b) 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 that authority that a punishment awarded was invalid, or too severe, or (where the award included two 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 accused 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-martial that the accused is unfit to stand trial, the court-martial 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 the Sultan and Yang Di-Pertuan* until the directions of His Majesty the Sultan and Yang Di-Pertuan 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-martial 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-martial 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 the Sultan and Yang Di-Pertuan* until the directions of His Majesty the Sultan and Yang Di-Pertuan are known.

(4) In the case of any such finding pursuant to subsections (2) or (3), His Majesty the Sultan and Yang Di-Pertuan may give orders for the safe custody of the accused during the pleasure of His Majesty the Sultan and Yang Di-Pertuan in such place and in such manner as His Majesty the Sultan and Yang Di-Pertuan 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-martial, if having regard to the nature of the supposed grounds for the question arising, the court-martial 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-martial 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;

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

(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 office, 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-martial 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

Commencement

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.

(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 purposes 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 Darussalam or of any country or territory abroad authorised by law to detain persons.

Consecutive terms of imprisonment and detention

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 sentence shall begin to run from the expiry of the first-mentioned sentence.

(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 two or more offences against section 72 consisting in the commission of a civil offence for which a civil court in Brunei Darussalam could award imprisonment, the

court-martial may by its sentence, award for any of those 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 two 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

Execution of sentences of death

113. (1) His Majesty the Sultan and Yang Di-Pertuan* may make regulations with respect to the execution of sentences of death under this Act whether passed in Brunei Darussalam or abroad.

(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 —

(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,

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

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.

Imprisonment and Detention Rules

114. (1) Subject to the provisions of this Act, His Majesty the Sultan and Yang Di-Pertuan* may make rules (in this Part referred to as Imprisonment and Detention Rules) with respect to all or any of the following matters —

(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.

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(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 the Sultan and Yang Di-Pertuan* to be requisite for the purposes of the regulations or rules.

Special provisions as to civil prisons in Brunei Darussalam

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 the 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.

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

117. (1) It shall be the duty of the Director 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 the 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.

(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 Director 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:

[S 2/2006]

Provided that no person shall be kept in custody at a police station for a period exceeding 7 days.

[S 2/2006]

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

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

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

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 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, that 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.

Limitation of time for trial of offences under military law

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 disregard any time during which he was a prisoner of war and any time during which he was illegally absent:

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 Darussalam 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 Darussalam and the Attorney General consents to the trial:

Provided that this subsection does not apply to an offence against sections 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 is not 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 is not 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 is 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.

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

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

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

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

(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 is not 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 is not 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 is 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 is 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 is 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) Except 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 the Sultan and Yang Di-Pertuan* under this section (in this Act referred to as board of inquiry rules), His Majesty the Sultan and Yang Di-Pertuan or any such officers as His Majesty the Sultan and Yang Di-Pertuan may appoint in that behalf (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 to do so, express their opinion on any question arising out of such matter.

(3) A board of inquiry shall consist of —

(a) a president, who shall be an officer not below the rank of Captain and be subject to military law; and

(b) not less than two 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 the Sultan and Yang Di-Pertuan.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

(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 (Chapter 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 (Chapter 22).

Inquiries into absence

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.

(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 same effect as a conviction by court-martial for desertion.

Provisions with respect to Office of Judge Advocate General

Judge Advocate General

124. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a person to be the Judge Advocate General of the Armed Forces and the Reserve Regiment.

(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 Darussalam 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 (Chapter 132);

(c) a person who is a practitioner of not less than 5 years standing entitled to practise 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 such court; 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 (Chapter 132) 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 the Sultan and Yang Di-Pertuan and the officers of the Armed Forces and of the Reserved Regiment whenever required to do so 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.

General

Restitution or compensation 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 described in subsection (3), 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 that 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 that 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 that 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.

(8) *(a)* An order under this section made by a court-martial shall not have effect until confirmed by the confirming officer.

(b) The provisions of this Part as to the confirmation and review of the proceedings of courts-martial 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 7 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 is suspended under this section —

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

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

(10) *(Repealed by S 2/2006).*

(11) Notwithstanding anything in subsection (9), 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.

[S 2/2006]

(12) Where the operation of any order under this section is suspended under subsection (9) 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 property or money to be kept in safe custody for any period during which the operation of the order is suspended.

[S 2/2006]

(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 —

"appearing" means appearing to the court, officer or authority making the order;

"cheating" shall have the same meaning as in the Penal Code (Chapter 22);

"criminal breach of trust" shall have the same meaning as in the Penal Code (Chapter 22);

"criminal misappropriation" shall have the same meaning as in the Penal Code (Chapter 22);

"dishonestly receiving or retaining stolen property" shall have the same meaning as in the Penal Code (Chapter 22).

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 accused to copy

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 two 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 6

FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF MAINTENANCE LIABILITIES

Forfeitures and deductions: general provisions

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 the Sultan and Yang Di-Pertuan* under this Act.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

(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) Subsections (1) and (2) shall not prevent the making, by regulation or order of His Majesty the Sultan and Yang Di-Pertuan* 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 mentioned in subsection (4) 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 absence 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;

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/1986]*

(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 that —

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

(b) having been made a prisoner of war he —

(i) failed to take any reasonable steps available to him to rejoin the service of His Majesty the Sultan and Yang Di-Pertuan; and

(ii) 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.

(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 penalties

131. Where a person sentenced or ordered by a civil court (whether within Brunei Darussalam 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.

Compensation for loss occasioned by wrongful act or negligence

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 the Sultan and Yang Di-Pertuan* 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 (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 except 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).

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Deductions for barrack damage

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 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.

(2) Subsection (1) extends 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.

Remission of forfeitures and deductions

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.

Enforcement of dependants' maintenance orders by deduction from pay

135. (1) Where any court in Brunei Darussalam has made a dependants' maintenance order against any person (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 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 Darussalam 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 (Chapter 77) 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;

(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 Darussalam include references to an order registered in or confirmed by a court under the provisions of the Maintenance Orders Reciprocal Enforcement Act (Chapter 175).

Deductions from pay for maintenance of wife or child

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.

(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);

(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 Darussalam 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 —

"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 (Chapter 123);

"child" includes any child of that person's wife and any illegitimate or adopted child of that person or his wife;

"wife" means any woman whose marriage to that person is registered in accordance with any written law and has not been dissolved.

Limit of deductions under sections 135 and 136 and effect on forfeiture

137. (1) The sums deducted from a person's pay under sections 135 and 136 shall not together exceed one half of his pay.

(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 7

APPEALS FROM COURTS-MARTIAL

Interpretation

Interpretation of Part 7

138. In this Part —

"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 prescribed by rules of court;

"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.

(5) If no appointment of Colonel in Chief has been made under section 9, then any person convicted by court-martial may, with the leave of the Court of Appeal and notwithstanding the provisions of subsections (2) and (3), appeal direct to that court against his conviction.

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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) Except 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.

Consideration of application by Court of Appeal

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.

(2) Where the Court of Appeal dismiss an application for leave to appeal, the Court may, if the Court considers 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 the Court think that —

(a) the finding of the court-martial under all the circumstances of the case is unsafe or unsatisfactory;

(b) the finding involves a wrong decision of a question of law; or

(c) 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 conviction of two 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.

Substitution of conviction on different charge

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.

(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.

Variation of conviction so as to attract different sentence

145. (1) Where —

(a) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment; and

(b) 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.

(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 that —

(a) the proper finding would have been a finding of not guilty by reason of insanity; or

(b) 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 the same 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 is deemed for purposes of this Act to be a sentence passed by a court-martial, being a sentence that has been confirmed.

Retrial

Retrial generally excluded

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.

Power to authorise retrial in certain cases

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 —

(a) 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

(b) it appears to the court that the interests of justice require that an order under this section should be made.

(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.

Implementation of authority for retrial and supplementary 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, does 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, applies, 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.

Consequences 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 same powers of sentencing the appellant, and other powers, as the court-martial which tried him would have had on the same finding of guilty; and section 147 applies 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.

Power of Court of Appeal to order continued detention

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.

(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

Appeal against finding of unfitness

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.

(2) In relation to an appeal under this section, this Part, except sections 143 to 146, applies (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 such 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 that 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 the same 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 proceedings 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.

Evidence

159. (1) The Court of Appeal may —

(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

Costs of successful appeal

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.

(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.

Costs against appellant

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 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 62 or 63, 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 provisions of this section 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.

Order for costs of defence on reference under section 165

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.

(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.

Supplemental provisions

Determination 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.

Judgment

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 judgment in open court.

(2) The Court of Appeal shall ordinarily give only one judgment which may be pronounced by the president or by such other member of the court as the president may direct but separate judgments shall be delivered if the president so directs.

(3) The judgment of any member of the Court of Appeal who is absent may be read by any other member.

Powers under Part 7 which are exercisable by single Judge or Commissioner

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.

Documents relating to trial to be furnished for appeal

170. 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.

Defence of appeals

171. It shall be the duty of the Colonel in Chief or the Commander to undertake the defence of any appeal to the Court of Appeal under this Part.

[S 2/2006]

Capital cases

Appeals in capital cases

172. (1) In the case of a conviction involving sentence of death, the right of appeal against conviction conferred by section 139(1) on the person convicted shall be exercisable without his being required to present a petition to the Colonel in Chief or the Commander; and accordingly in such a case subsection (2) of that section does not apply.

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(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, subsection (2) applies 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) *(Repealed by S 2/2006).*

Summary execution of sentence of death

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 does not apply to the sentence.

General

Rules of court

175. (1) Rules of court made by the President with the approval of His Majesty the Sultan and Yang Di-Pertuan 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.

(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.

Duties of Registrar with respect to appeals etc.

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.

(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 such 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 —

(a) any place at which he is entitled to be present for purposes of this Part; or

(b) 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 the Sultan and Yang Di-Pertuan under the Constitution.

PART 8

GENERAL

Personnel engaged under agreement

Personnel engaged under agreement

179. (1) Notwithstanding anything contained in any of the foregoing provisions of this Act, the Government may with the approval of His Majesty the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan pursuant to section 8;

(b) a warrant officer, is deemed to have been duly enlisted under Part 3 and shall be appointed and issued with a warrant of appointment by His Majesty the Sultan and Yang Di-Pertuan pursuant to section 11;

(c) a member of the Armed Forces or the Reserve Regiment, other than an officer or warrant officer, is deemed to have been duly enlisted under Part 3,

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 subsections (1) and (2) or of things done thereunder.

Redress of complaints

Complaints by officer

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.

(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 the Sultan and Yang Di-Pertuan in order to receive the directions of His Majesty the Sultan and Yang Di-Pertuan thereon.

Complaints by soldier

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 the Commander, as the case may be, 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 Darussalam, or for passing over any road, ferry or bridge in Brunei Darussalam 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 Darussalam;

(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.

Exemption from taking in execution of property used for military purposes

183. No judgment, decree or order given or made against a member of the Armed Forces or the Reserve Regiment by any court in Brunei Darussalam 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.

Deserters and absentees without leave

Arrest of 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 (Chapter 7), 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.

(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 (Chapter 7) and discharged by the court by virtue of section 185(3) —

(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;

(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 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 if it appears to the court reasonably necessary to do so for such purpose.

(3) If he does not admit that he is illegally absent, 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 —

(a) if satisfied that he is subject to military law; and

(b) 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 mentioned in subsection (2), 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.

Deserters and absentees without leave surrendering to police

186. (1) Where in Brunei Darussalam 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.

(2) The police officer in charge of a police station at which a person has surrendered himself as mentioned in subsection (1), 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 person is illegally absent, 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.

Duties of Director of Prisons and others to receive deserters and absentees

188. (1) It shall be the duty of the Director or other person in charge of a civil prison in Brunei Darussalam 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.

(2) Subsection (1) applies 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 Darussalam, as it applies to the Director of a Prison.

Further powers of arrest of civil authorities

Arrest under warrant of commander

189. (1) A warrant for the arrest of a person suspected of any offence under Part 5 may be issued by the 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 two 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 the Sultan and Yang Di-Pertuan.

(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.

Arrest of persons unlawfully at large

190. A police officer may arrest without warrant any person who, having been sentenced under Part 5 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. (1) 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 —

[S 2/2006]

(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.

(2) Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

[S 2/2006]

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:

[S 2/2006]

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.

Evidence

General 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.

(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, 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 that —

(a) a decoration of a description specified in or annexed to the certificate is a military decoration; or

(b) a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by His Majesty the Sultan and Yang Di-Pertuan,

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;

(b) any command or other area, garrison or place; or

(c) any ship, train, vehicle or aircraft,

shall in proceedings against that person be evidence of the matters stated in the certificate.

Proof of outcome of civil trial

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 —

(a) that the person has been tried before the court for an offence specified in the certificate;

(b) the result of the trial;

(c) what judgment 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, is 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 Darussalam, whether civil or criminal.

MIscellaneous provisions

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

197. (1) A warrant officer or non-commissioned officer 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.

(2) For the purposes of subsection (1), reduction in rank does not include reversion from acting rank.

Temporary reception in civil custody of persons under escort

198. Where a person is in military custody when charged with, or with a view to his being charged with, an offence under Part 5, it shall be the duty of the Director 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:

[S 2/2006]

Provided that no person shall be kept in custody at a police station for a period exceeding 7 days.

[S 2/2006]

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

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.

(2) Except 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 the 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 (in this section referred to as an authorised officer) may, at a place abroad, take affidavits and declarations from persons subject to military law.

(2) A declaration taken pursuant to subsection (1) from any of such persons by an authorised officer, if taken as nearly as circumstances permit in the manner provided by the Statutory Declarations Act (Chapter 12), is deemed for the purposes of that Act, to have been made and taken in Brunei Darussalam by such officer with the authority of His Majesty the Sultan and Yang Di-Pertuan by virtue of the provisions of that 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 9

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 the Sultan and Yang Di-Pertuan, other than an honorary commission, 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 the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan

203. Part 5, to such extent and subject to such modifications as may be prescribed, applies to persons embarked as passengers on board ships or aircraft of His Majesty the Sultan and Yang Di-Pertuan (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 to civilians

204. (1) Subject to the modifications specified in subsection (2), where any body of the Armed Forces or the Reserve Regiment is on active service, Part 5 applies 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 that body, or accompanies that body or any part thereof, and is not subject to military law, apart from this section, as Part 5 applies to persons subject to military law.

(2) The modifications referred to in subsection (1) 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)* does 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 sections 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 5 applies, and section 118(3) does 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 Darussalam 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 —

"conditions of loan service" means, in relation to a loaned person who is ordered under subsection (2), to serve in the Armed Forces, the conditions of his service in the Armed Forces contained in directions given under subsection (3);

"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 Darussalam;

"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.

(2) His Majesty the Sultan and Yang Di-Pertuan 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), to serve in the Armed Forces, His Majesty the Sultan and Yang Di-Pertuan 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 is deemed to be a member of the Armed Forces (of equivalent or higher rank) to the extent permitted under those conditions.

Execution of orders, instruments etc.

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, unless the contrary is proved, is deemed to be signed by an officer so authorised.

Provisions as to active service

207. (1) In this Act, "on active service" —

(a) 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 Darussalam 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;

(b) 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.

(2) Where it appears to His Majesty the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan may declare that such 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 the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan 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 the Sultan and Yang Di-Pertuan 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.

Power of His Majesty the Sultan and Yang Di-Pertuan* to make regulations

208. (1) His Majesty the Sultan and Yang Di-Pertuan* may make regulations not inconsistent with the provisions of this Act in respect of all or any of the following matters —

(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;

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/86]*

(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 5 or 7; and

(k) any other matter which His Majesty the Sultan and Yang Di-Pertuan* may consider necessary or expedient for the purposes of this Act.

(2) Notwithstanding anything contained in the Interpretation and General Clauses Act (Chapter 4), the powers conferred upon His Majesty the Sultan and Yang Di-Pertuan* 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 31st December 1961) as from which any of such regulations shall have or be deemed to have had effect.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/86]*

(3) Regulations made under subsection (1)*(d)* may provide that —

(a) 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

(b) 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,

then such pensionable military service may, if His Majesty the Sultan and Yang Di-Pertuan* 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 (Chapter 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 (Chapter 38).

General Orders

209. (1) His Majesty the Sultan and Yang Di-Pertuan may make such orders not inconsistent with the provisions of this Act and the regulations or rules made thereunder to be called "General Orders of His Majesty the Sultan and Yang Di-Pertuan" as His Majesty the Sultan and Yang Di-Pertuan may consider necessary or expedient for the purposes of this Act.

* Transferred from His Majesty in Council to His Majesty the Sultan and Yang Di-Pertuan — *[S 16/86]*

(2) Without prejudice to the generality of subsection (1), His Majesty the Sultan and Yang Di-Pertuan 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.

(3) General Orders of His Majesty the Sultan and Yang Di-Pertuan shall be published in such form or manner as His Majesty the Sultan and Yang Di-Pertuan shall direct and shall not be required to be published in the *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 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.

Application of Queen's Regulations

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 Darussalam.

SCHEDULE

(section 93(6))

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)*(b)*)	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)

SCHEDULE — *(continued)*

Offence charged	*Alternative offences*
9. Any offence against section 58(1)	9. Any offence against section 58(2)
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

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ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES (PENSIONS) REGULATIONS

S 17/1986
Amended by
S 46/1989
S 82/2012

REVISED EDITION 2018

B.L.R.O. 1/2018

SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES (PENSIONS) REGULATIONS

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ROYAL BRUNEI ARMED FORCES (PENSIONS) REGULATIONS

Commencement: 20th December 1986

PART 1

PRELIMINARY

Citation

1. These Regulations may be cited as the Royal Brunei Armed Forces (Pensions) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires —

"competent authority" means the Commander or such other officer or officers as His Majesty the Sultan and Yang Di-Pertuan may from time to time appoint to exercise all or any of the functions conferred or imposed upon the competent authority under these Regulations;

"discharge from military service" includes —

(a) the discharge of a soldier from the Armed Forces;

(b) the transfer of a soldier to the Reserve Regiment;

(c) the retirement of an officer;

(d) the resignation of an officer;

"members" means an officer or soldier of the Armed Forces;

"military service" means service as an officer or soldier with the Armed Forces, and includes any full time service of such officer or soldier with the Reserve Regiment;

"officer" means a male or female person commissioned in the Armed Forces by His Majesty the Sultan and Yang Di-Pertuan including a short service commission officer but does not include an officer serving under agreement with the Government;

"pensionable emoluments" means, in respect of the military service of a member, the basic pay for his substantive rank, and includes trade pay, qualification pay and technical pay, but does not include entertainment allowance or any other emoluments whatsoever;

"pensionable military service" means military service which may be taken into account in computing pension under these Regulations;

"qualifying military service" means military service which may be taken into account in determining whether a member is eligible by length of military service for pension, gratuity or other allowance;

"soldier" means any male or female person, other than an officer, enlisted in the Armed Forces under or by virtue of the provisions of the Act, but does not include a soldier serving under agreement with the Government.

Authority for grant of pensions etc.

3. (1) Subject to the provisions of these Regulations, His Majesty the Sultan and Yang Di-Pertuan may grant pensions, gratuities and other allowances to members who have been in military service or to their legal personal representatives or to such of their dependants as are mentioned in these Regulations.

(2) These Regulations shall apply to a member on his discharge from military service or upon his death while in military service on or after 31st May 1986 in respect of military service after 31st May 1961.

(3) Any pension or gratuity granted under these Regulations shall be computed in accordance with the provisions of these Regulations in force at the actual date of a member's discharge from military service or death, as the case may be.

(4) Whenever His Majesty the Sultan and Yang Di-Pertuan is satisfied that it is equitable that any provision of these Regulations should have retrospective effect from any date after 1st December 1960 in order to confer a benefit upon or remove a disability attaching to any person, that provision may be given retrospective effect for that purpose.

PART 2

GENERAL

Pensions etc. not of right

4. (1) No person shall have an absolute right to compensation for past military service or to pension, gratuity or other allowance, nor shall anything in any provision of these Regulations affect the right of His Majesty the Sultan and Yang Di-Pertuan to cancel the commission of any officer, or of the competent authority to discharge from

military service or require the discharge from military service of any member, at any time and without compensation.

(2) Where it is established to the satisfaction of His Majesty the Sultan and Yang Di-Pertuan that a member have been guilty of negligence, irregularity or misconduct, His Majesty the Sultan and Yang Di-Pertuan may reduce or withhold altogether the pension, gratuity or other allowance for which such member or any other person would have become eligible but for the provisions of these Regulations.

(3) If a member is discharged from military service for any such negligence, irregularity or misconduct, no pension, gratuity or other allowance shall be granted, unless in any special case His Majesty the Sultan and Yang Di-Pertuan otherwise directs, and any such direction may, irrespective of the wishes of the member or other person concerned, also determine whether any pension or gratuity shall be in the form of a reduced pension or gratuity.

Maximum pension

5. (1) Subject to sub-regulation (2), a pension granted to a member under these Regulations shall not exceed three-fourths of the highest pensionable emoluments drawn by him at any time in the course of his military service.

(2) For the purposes of this regulation, an additional pension granted in respect of injury shall not be taken into account; but where the member is granted, such an additional pension under these Regulations, the amount thereof together with the remainder of his pension shall not exceed five-sixths of his highest pensionable emoluments at any time in the course of his military service.

Pensions etc. not to be assignable

6. (1) A pension, gratuity or other allowance granted under these Regulations shall not be assignable or transferable except for the purpose of satisfying —

(a) a debt due to the Government; or

(b) an order of any court for the payment of periodical sums of money towards the maintenance of the wife, former wife or minor child, whether legitimate or not, of the member to whom the pension, gratuity or other allowance has been granted,

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatever except a debt due to the Government.

(2) Where it is proved to the satisfaction of His Majesty the Sultan and Yang Di-Pertuan that —

(a) a debt is due to the Government from a member to or in respect of whom a pension, gratuity or other allowance may be or has been granted; or

(b) an overpayment of such pension, gratuity or other allowance has been made,

such debt or overpayment may be recovered from such member by deducting the amount from any such pension, gratuity or other allowance.

Pensions etc. to cease on bankruptcy

7. (1) If any person to whom a pension or other allowance has been granted under these Regulations is adjudicated bankrupt or is declared insolvent by judgment of any competent court, then such pension or allowance shall forthwith cease.

(2) If any member is adjudicated bankrupt or declared insolvent as mentioned in sub-regulation (1) either —

(a) after discharge from military service in circumstances in which he is eligible for pension or allowance under these Regulations but before such pension or allowance is granted; or

(b) before such discharge from military service, and he shall not have obtained his discharge from bankruptcy or insolvency at the date of discharge from military service,

then in the former case, any pension or allowance eventually granted to him shall cease as from the date of adjudication or declaration as the case may be and, in the latter case, the pension or allowance may be granted but shall cease forthwith and not become payable.

(3) Where a pension or allowance ceases by reason of this regulation, His Majesty the Sultan and Yang Di-Pertuan may during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, as His Majesty the Sultan and Yang Di-Pertuan shall think fit, direct all or any part of the moneys to which such person would have been entitled by way of pension or allowance, had he not become bankrupt or insolvent, to be paid to, or applied for the maintenance or benefit of, all or any to the exclusion of the other or others, of such person and any wife, child or children of his, in such proportions and manner as His Majesty the Sultan and Yang Di-Pertuan thinks proper, and such moneys shall be paid or applied accordingly.

(4) Moneys applied for the discharge of the debts of the person whose pension or allowance has so ceased shall, for the purposes of this regulation, be regarded as applied for his benefit.

(5) When a person whose pension or allowance has so ceased obtains his discharge from bankruptcy or insolvency, His Majesty the Sultan and Yang Di-Pertuan may direct that the pension or allowance shall be restored as from the date of such discharge or any later date, and the pension or allowance shall be restored accordingly.

Pensions etc. may cease on conviction

8. (1) If any person to whom a pension or other allowance has been granted under these Regulations is sentenced to death or a term of imprisonment by any competent court for any offence, such pension or allowance shall, if His Majesty the Sultan and Yang Di-Pertuan so directs, cease from such date as His Majesty the Sultan and Yang Di-Pertuan determines.

(2) If any person is sentenced as mentioned in sub-regulation (1) after his discharge from military service in circumstances in which he is eligible for pension or allowance under these Regulations but before the pension or allowance is granted, then the provisions of sub-regulation (1) applies as respects any pension or allowance which may be granted to him.

(3) Where a pension or allowance ceases by reason of this regulation, His Majesty the Sultan and Yang Di-Pertuan may direct all or any part of the moneys to which such person would have been entitled by way of pension or allowance had he not been sentenced as mentioned in sub-regulation (1) to be paid, or applied in the same manner in all respects as prescribed in regulation 7, and such moneys shall be paid or applied accordingly.

(4) If such person after conviction at any time receives a free pardon, the pension or allowance shall be restored with retrospective effect; but, in determining whether arrears of such pension or allowance are payable to such person and in computing the amount thereof, account shall be taken of all moneys paid or applied under sub-regulation (3).

PART 3

PENSIONS, GRATUITIES AND ALLOWANCES FOR MEMBERS

Circumstances in which pension may be granted

9. (1) Subject to the provisions of these Regulations, no pension, gratuity or other allowance shall be granted under these Regulations to any member except on his discharge from military service in any one of the following instances —

(a) on completion of 15 years' military service for a member commissioned or enlisted before 1st August 2011;

[S 82/2012]

(b) on completion of 18 years military service for a member commissioned or enlisted on or after 1st August 2011 or for a soldier who has opted to be engaged under the revised terms of engagement;

[S 82/2012]

(c) on medical evidence to the satisfaction of His Majesty the Sultan and Yang Di-Pertuan as respects an officer, or of the competent authority as respects a soldier, that the member is incapable, by reason of any infirmity of mind or body, of discharging his duties as such member and that such infirmity is likely to be permanent;

(d) if the member is discharged from military service in the public interest as provided by regulation 10.

(2) Where a female member is discharged from military service for the reason that she has married or is about to marry, a gratuity may be granted to her, in accordance with the provisions of these Regulations, notwithstanding that she is not otherwise eligible under this regulation for the grant of any pension, gratuity or other allowance.

Discharge from military service of member in public interest

10. Where a member is discharged from military service on the ground that, having regard to the conditions of the Armed Forces and the Reserve Regiment, the usefulness of the member thereto and all the other circumstances of the case, such discharge military service is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of these Regulations, His Majesty the Sultan and Yang Di-Pertuan may, if His Majesty the Sultan and Yang Di-Pertuan thinks fit, grant such pension, gratuity or other allowance as His Majesty the Sultan and Yang Di-Pertuan thinks just and proper not exceeding in amount that for which the member would be eligible if he is discharged from military service in the circumstances described in regulation 9(1)*(c)*.

Pension etc. for soldier who is not efficient

11. Where a soldier is discharged from military service by the competent authority on the ground that he is unlikely to become, or has ceased to be, an efficient soldier, and a pension, gratuity or other allowance cannot otherwise he granted to him in accordance with these Regulations, His Majesty the Sultan and Yang Di-Pertuan may, if His Majesty the Sultan and Yang Di-Pertuan considers it justifiable in all the circumstances of the case, grant such pension, gratuity or other allowance as he thinks just and proper.

To whom and at what rates pension to be granted *[S 82/2012]*

12. (1) Subject to the provisions of these Regulations, every officer —

(a) commissioned before 1st August 2011 and who has completed 15 years or more military service; or

(b) commissioned on or after 1st August 2011 and who has completed 18 years or more military service,

may be granted, on discharge from military service, a pension at the annual rate of one four hundred and fiftieth of his pensionable emoluments for each complete month of his pensionable military service up to a maximum of 300 months:

Provided that the officer may, if he has completed more than 25 years military service, be granted an additional pension at the annual rate of one sixtieth of his pensionable emoluments for each year of military service he has completed in excess of 25 years.

(2) Subject to the provisions of these Regulations, every soldier enlisted before 1st August 2011 and who has completed 15 years or more military service, may be granted on discharge from military service, a pension at the annual rate of one three hundred and sixtieth of his pensionable emoluments for each complete month of his pensionable military service up to a maximum of 240 months:

Provided that the soldier may, if he has completed more than 20 years military service, be granted an additional pension at the annual rate of one sixtieth of his pensionable emoluments for each year of military service he has completed in excess of 20 years.

(3) Subject to the provisions of these Regulations, every soldier —

(a) enlisted on or after 1st August 2011; or

(b) who has opted to be engaged under the revised terms of engagement has completed 18 years or more military service,

may be granted on discharge from military service, a pension at the annual rate of one three hundred and sixtieth of his pensionable emoluments for each complete month of his pensionable military service up to a maximum of 276 months:

Provided that the soldier may, if he has completed more than 23 years military service, be granted an additional pension at the annual rate of one thirty-sixth of his pensionable emoluments for each year of military service he has completed in excess of 23 years.

Gratuities where length of military service does not qualify for pension *[S 82/2012]*

13. Every member, otherwise qualified for a pension, who has been in military service for not less than 5 years but has not completed —

(a) 15 years for a member commissioned or enlisted before 1st August 2011; or

(b) 18 years for a member commissioned or enlisted on and after 1st August 2011 or for a soldier who has opted to be engaged under the revised terms of engagement,

may be granted on discharge from military service gratuity not exceeding five times the annual amount of the pension which, if there had been no qualifying period, might have been granted to him under regulation 12.

Marriage gratuities

14. Where a female member is discharged from military service or is required to be discharged from military service for the reason that she is about to marry or has married, and she is not eligible for the grant to any pension or otherwise eligible for gratuity under these Regulations, she may be granted on production within 6 months after her discharge from military service, or such longer period as His Majesty the Sultan and Yang Di-Pertuan may in any particular case allow, of satisfactory evidence of her marriage, a gratuity of an amount not exceeding —

(a) one year's pensionable emoluments; or

(b) five times the annual amount of the pension which might have been granted to her under regulation 12 had there been no qualifying period and had that regulation been applicable to her;

whichever amount shall be the less.

[S 46/1989]

Members discharged from military service on medical grounds

15. If a member is discharged from military service pursuant to regulation 9(1)*(c)* —

(a) he may, if he has been in military service for more than 5 years but less than 15 years, be granted *in lieu* of any gratuity under regulation 13, a pension under regulation 12 as if the words "15 years or more" or "18 years or more" were omitted from regulation 12;

[S 82/2012]

(b) he may be granted an additional pension at the annual rate of one sixtieth of his pensionable emoluments for each complete period of 3 years' pensionable military service.

Members discharged from military service on account of injuries

16. (1) If a member is permanently injured —

(a) in the actual discharge of his duty;

(b) without his own default; and

(c) on account of circumstances specifically attributable to the nature of his duty,

while in military service, then —

(i) he may, if his discharge from military service is thereby necessitated or materially accelerated and he has been in military service —

(A) in the case of a member commissioned or enlisted before 1st August 2011, for less than 15 years; or

(B) in the case of a member commissioned or enlisted on or after 1st August 2011 or for a soldier who has opted to be engaged under the revised terms of engagement, for less than 18 years,

be granted, *in lieu* of any gratuity under regulation 13, a pension under regulation 12 as if the words "15 years or more military service" or "18 years or more military service" were omitted from regulation 12;

[S 82/2012]

(ii) subject to regulation 5, he may be granted on discharge from military service an additional pension at the annual rate of the proportion of his actual pensionable emoluments at the date of his injury appropriate to his case as show in the following table —

When his capacity to contribute to his own support is —	
slightly impaired	five sixtieths;
impaired	ten sixtieths;
materially impaired	fifteen sixtieths;
totally destroyed	twenty sixtieths;

Provided that the amount of the additional pension may be reduced to such an extent as His Majesty the Sultan and Yang Di-Pertuan shall think reasonable where the injury is not the cause or the sole cause of his discharge from military service.

(2) If a member proceeding by a route approved by the competent authority to or from Brunei Darussalam at the commencement or termination of his military service therein, or of a period of leave therefrom, is permanently injured as a result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against such vessel, aircraft or vehicle, and the competent authority is satisfied that such damage or act is attributable to circumstances arising out of any war in which Brunei Darussalam may be engaged, such member is deemed for the purposes of this regulation to have been injured in the circumstances described in sub-regulation (1).

(3) In this regulation —

(a) save for the purposes of sub-regulation (1)(i), the word "member" and the expression "military service" shall be construed, wherever they occur, as if the word "officer" included an officer serving under agreement with the Government and the word "soldier" included a soldier serving under agreement with the Government;

(b) in relation to a person who, for the purposes of this regulation, is a member by virtue of sub-paragraph *(a)* only, the word "a" is deemed to have been substituted for the expression "an additional" occurring in sub-regulation (1)(ii) and in sub-regulation (1)(ii), the expression "pensionable emoluments" shall mean the emoluments enjoyed by such person which would have been pensionable emoluments if he had been a member for all the purposes of these Regulations.

Gratuity and reduced pension

17. (1) Subject to sub-regulation (6), any member to whom a pension is granted under these Regulations may, at his option exercisable as in this regulation provided, be

paid *in lieu* of such pension a pension at the rate of three fourths of such pension together with a gratuity equal to fifteen times the amount of the reduction so made in the pension.

(2) An option exercisable in accordance with this regulation —

(a) shall be exercisable or revoked by notice in writing addressed to the competent authority;

(b) is deemed to have been exercised or revoked on the date on which such notice is received;

(c) shall be exercisable, and if exercised, may be revoked on or before the date of the member's discharge from military service:

Provided that His Majesty the Sultan and Yang Di-Pertuan may, if His Majesty the Sultan and Yang Di-Pertuan thinks fit, permit a member to exercise the option at any time between that date and the date on which a pension is granted to him.

(3) For the purposes of this regulation, the date of the final award shall be the date on which a member's pension is granted to him.

(4) If a member who has not exercised the option dies after he has been discharged from military service but before a pension has been finally awarded under these Regulations, His Majesty the Sultan and Yang Di-Pertuan may grant a gratuity and a reduced pension as provided in sub-regulation (1), as if the member before his death had exercised the option.

(5) A member who is paid a reduced pension under sub-regulation (1) shall, if living after the expiration of 15 years from the date of his discharge from military service, be eligible for the full pension as if there had been no reduction.

(6) This regulation does not apply to a person who, for the purposes of regulation 16 is a member by virtue only of sub-regulation (3)*(a)* of that regulation.

PART 4

DEATH BENEFITS

Gratuity where member dies in military service or after his discharge from military service

18. (1) Where a member dies while in military service, His Majesty the Sultan and Yang Di-Pertuan may grant to —

(a) a widow of such member;

(b) a widow and children of such member;

(c) his children; or

(d) if there is no widow or child of such member, his legal personal representatives,

a gratuity of an amount not exceeding such member's annual pensionable emoluments, or his commuted pension gratuity, if any, whichever is the greater.

(2) Where a member is killed in action while in military service, or dies within 7 years as a result of injuries received in action while in military service, His Majesty the Sultan and Yang Di-Pertuan may grant to a widow of such member or to a widow and children of such member or to his children such lump sum payment in accordance with such rate appropriate to the rank of the member as may be determined by His Majesty the Sultan and Yang Di-Pertuan.

(3) Where a former member, who has been granted a pension, gratuity or other allowance under these Regulations, dies after his discharge from military service and the sums paid or payable to him at his death on account of pension, gratuity or other allowance in respect of any military service are less than the amount of the annual pensionable emoluments enjoyed by him at the date of his discharge from military service, His Majesty the Sultan and Yang Di-Pertuan may grant a gratuity equal to the deficiency to —

(a) a widow of such member;

(b) a widow and children of such member;

(c) his children; or,

(d) if there is no widow or child of such member, to his legal personal representatives.

(4) A widow of a deceased member or a widow and children of such member or his children shall receive such proportion of the total amount of any gratuity which may be granted under this regulation as His Majesty the Sultan and Yang Di-Pertuan may direct, either in a particular case or generally.

(5) For the purposes of this regulation —

"annual pensionable emoluments" means the emoluments which would be taken for the purposes of computing any pension or gratuity granted to a member if he had been discharged from military service at the date of his death in the circumstances described in regulation 9(1)*(c)*;

"child" means a child of any age and includes —

(a) a posthumous child;

(b) a step-child or illegitimate child born before the date of the death of a member and wholly or mainly dependent upon him for support; and

(c) an adopted child, adopted in manner recoginsed by law before the date of the death of a member, and dependent upon him for support;

"commuted pension gratuity" means the gratuity, if any, which might have been granted to a member under regulation 17 if he had exercised his option under that regulation and had been discharged from military service on the date of his death;

"widow" means, in the case of a deceased member who was a Muslim, all his lawful wives living at the date of his death.

Derivative pension or gratuity where member dies in military service or after his discharge from military service

19. (1) Where a member dies while in military service, His Majesty the Sultan and Yang Di-Pertuan may, in addition to any grant made under regulation 18, grant to a widow of such member or to a widow and children of such member or to his children, a derivative pension or gratuity appropriate to his case; and where a derivative pension is granted it may be paid for a period not exceeding 15 years with effect from the date immediately following the date of the death of such member.

(2) Where a former member, who has been granted a pension, gratuity or other allowance under these Regulations, dies within a period of 15 years of the date of his discharge from military service, His Majesty the Sultan and Yang Di-Pertuan may grant to a widow of such member or to a widow of such member and his children or to his children, a derivative pension of the same amount as the pension or annual allowance which was paid or payable to such former member on account of his discharge from military service, with effect from the date immediately following the death of such former member, for a period not exceeding the difference between that period of 15

years and the period during which such pension or annual allowance was paid or payable to the former member before the date of his death.

(3) A widow of a deceased member or a widow and children of such member or his children shall receive such proportion of the total derivative pension or gratuity which may be granted under this regulation as His Majesty the Sultan and Yang Di-Pertuan may direct, either in a particular case or generally:

Provided that —

(a) a widow in respect of whom a derivative pension has been granted under this regulation shall cease to be eligible for such a pension upon her re-marriage;

(b) a child in respect of whom a derivative pension has been granted under this regulation shall cease to be eligible for such derivative pension upon attaining the age of 21 years or upon marriage below the age.

(4) For the purposes of this regulation —

"child" means a child who has not attained the age of 21 years, and includes the persons referred to in regulation 18(5)*(b)*(i), (ii) and (iii) who have not attained that age and have not married before attaining that age;

"widow" has the meaning assigned to that word in regulation 18(5)*(d)*.

Pension to dependents when member is killed on duty

20. (1) Where a member dies as a result of injuries received —

(a) in the actual discharge of his duty;

(b) without his own default; and

(c) on account of circumstances specifically attributable to the nature of his duty,

while in military service, His Majesty the Sultan and Yang Di-Pertuan may, in addition to any grant made under regulation 18, grant —

(i) if the deceased member leaves a widow, a pension to her, while unmarried and of good character, at a rate not exceeding ten-sixtieths of his annual pensionable emoluments at the date of the injury or $240 a year whichever is the greater;

(ii) if the deceased member leaves a widow to whom a pension is granted under sub-paragraph (i) and a child or children, a pension in respect of each child, until such child attains the age of 21 years, of an amount not exceeding one-eighth of the pension prescribed under sub-paragraph (i);

(iii) if the deceased member leaves a child or children, but does not leave a widow or no pension is granted to the widow, a pension in respect of each child, until such child attains the age of 21 years, of double the amount prescribed by sub-paragraph (ii);

(iv) if the deceased member leaves a child or children and a widow to whom a pension is granted under sub-paragraph (i), and the widow subsequently dies, a pension in respect of each child as from the death of the widow until such child attains the age of 21 years, of double the amount prescribed in sub-paragraph (ii);

(v) if the deceased member does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or mainly dependent on him for her support, a pension to the mother, while of good character and without adequate means of support, of an amount not exceeding the pension which might have been granted to his widow;

(vi) if the deceased member does not leave a widow or mother, or if no pension is granted to his widow or mother, and if his father was wholly or mainly dependent on him for his support, a pension to the father, while of good character, of an amount not exceeding the pension which might have been granted to his widow;

(vii) if the deceased member does not leave a child or children who is or are eligible for a pension under the provisions of this regulation, and if any brother or sister was wholly or mainly dependent on him for support, a pension in respect of any such brother or sister of the same amount and subject to the same conditions as the pension which might have been granted in respect of a child under sub-paragraph (ii), (iii) or (iv):

Provided that —

(a) a pension shall not be payable under this paragraph at any time in respect of more than six children;

(b) in the case of a pension granted under sub-paragraph (v), if the mother is a widow at the time of the grant of the pension and subsequently remarries, such pension shall cease as from the date of re-marriage;

(c) a pension granted to a female child under this regulation shall cease upon the marriage of such child under the age of 21 years;

(d) in the case of a pension granted under sub-paragraph (v), (vi) or (vii), if it appears to His Majesty the Sultan and Yang Di-Pertuan at any time that the mother or father, or any brother or sister, is adequately provided with other means of support, such pension shall cease as from such date as His Majesty the Sultan and Yang Di-Pertuan may determine.

(2) For the purposes of this regulation, in relation to a member —

(a) "brother" includes every male child of his father or of his mother;

(b) "child" includes —

(i) a posthumous child ;

(ii) a step-child or illegitimate child born before the date of the injury and wholly or mainly dependent upon him for support; and

(iii) an adopted child, adopted in manner recognised by law, before the date of the injury, and dependent upon him for support;

(c) "father" includes his step-father and a male person by whom he has been adopted;

(d) "mother" includes his step-mother and a female person by whom he has been adopted;

(e) "sister" includes every female child of his father or of his mother:

Provided that each of such widows shall receive only a proportionate part, the amount of which to be decided by the Syariah Courts, of the total pension payable under this regulation to an only widow.

(3) If a member proceeding by a route approved by the competent authority to or from Brunei Darussalam at the commencement or termination of his military service therein, or of a period of leave therefrom, dies as the result of damage to the vessel, aircraft or vehicle in which he is travelling, or of any act of violence directed against such vessel, aircraft or vehicle, and the competent authority is satisfied that such damage or act is attributable to circumstances arising out of any war in which Brunei Darussalam may be engaged, such member is deemed, for the purpose of this regulation, to have died in the circumstances described in sub-regulation (1).

(4) This regulation does not apply in the case of the death of any member whose widow or widow and children or children are eligible to receive an award under regulation 19.

(5) For the purposes of this regulation —

(a) the word "member" and the expression "military service" shall be construed, wherever they occur, as if the word "officer" included an officer serving under agreement with the Government and the word "soldier" included a soldier serving under agreement with the Government;

(b) in relation to a person who, for the purposes of this regulation, is a member by virtue of paragraph *(a)*, the expression "pensionable emoluments" in sub-regulation (1) shall mean the emoluments enjoyed by such person which would have been pensionable emoluments if he had been a member for all the purposes of these Regulations.

PART 5

COMPUTATION OF PENSIONS AND GRATUITIES

General rules as to qualifying military service and pensionable military service

21. (1) Subject to the provisions of these Regulations, qualifying military service shall be the inclusive period between the date on which a member begins to draw pay after attaining the age of 18 years in respect of military service and the date of his leaving military service, without deduction of any period during which he is absent on leave.

(2) Except as provided in regulation 25, no period which is not qualifying military service by virtue of sub-regulation (1) shall be taken into account as pensionable military service.

Continuity of military service

22. (1) Except as otherwise provided in these Regulations, only continuous military service shall be taken into account as qualifying military service or as pensionable military service:

Provided that —

(a) any break in military service caused by temporary suspension of employment not arising from misconduct or voluntary discharge from military service shall be disregarded for the purposes of this paragraph;

(b) any period during which a soldier has been absent from duty while in military service by reason of his —

(i) imprisonment or detention for more than 7 days for any cause, except that of detention while awaiting any trial by a civil court or court-martial which results in his acquittal or discharge;

(ii) desertion;

(iii) absence without leave exceeding 5 days,

shall be taken into account as qualifying military service but such period shall not be taken into account as pensionable military service.

(2) A member —

(a) who was discharged from military service without pension, and has subsequently been re-employed in military service; or

(b) who has completed without pension any period of military service confirmed by the competent authority to be qualifying military service and who has subsequently been re-employed in military service,

may, if His Majesty the Sultan and Yang Di- Pertuan thinks fit, be granted the pension or gratuity for which he would have been eligible if any break in his military service immediately prior to such re-employment had not occurred, such pension to be *in lieu* of —

(i) any pension previously granted to him in respect of previous military service; and

(ii) any gratuity so granted which is required to be refunded as a condition of the application to the member of this regulation,

but additional to any gratuity so granted which is not required to be refunded as mentioned in sub-paragraph (ii).

Leave without pay

23. No period during which a member shall have been absent from duty on leave without pay shall be taken into account as pensionable military service unless such leave shall have been granted on grounds of public policy with the approval of His Majesty the Sultan and Yang Di-Pertuan.

Emoluments to be taken for computing pension or gratuity

24. (1) For the purposes of computing the amount of the pension or gratuity of a member who has had a period of not less than one year's pensionable military service

before his discharge from military service, there shall be taken into account the full annual pensionable emoluments enjoyed by him in respect of the last substantive rank held by him for a period of not less than 12 months at the date of his discharge from military service.

(2) If a soldier is granted a commission and is discharged from military service before completing 5 years service from the date of his commissioning, his pension shall be assessed by taking into account the full annual pensionable emoluments enjoyed by him in the highest substantive non-commissioned rank which he held immediately before such commissioning as if he is discharged from military service as a soldier:

Provided that this service as an officer shall be taken into account as qualifying military service.

(3) For the purposes of computing the amount of the pension or gratuity of a member who has had a period of less than one year's pensionable military service before his discharge from military service —

(a) the average annual pensionable emoluments enjoyed by him in respect of the substantive rank or ranks held by him during such period shall be taken into account;

(b) he is deemed to have been on full pensionable emoluments throughout such period; and

(c) he is deemed to have enjoyed the benefit of any increase due to a revision of pay in the pensionable emoluments of any substantive rank held by him as if such increase had been payable throughout such period.

Pensions as Corporal or Sergeant *[S 46/1989]*

24A. Notwithstanding the provisions of regulation 24, the pension, gratuity or allowance of a member who at the date of his discharge has completed 20 years or more military service shall be calculated as if the member is discharged from military service as —

(a) a Corporal, if on the date of such discharge he holds the rank of a Private or a Lance Corporal;

(b) a Sergeant, if on the date of such discharge he holds the rank of a Corporal, notwithstanding that he holds such rank for less than 12 months;

(c) a Sergeant, if on the date of such discharge he holds the rank of a Sergeant, notwithstanding that he holds such rank for less than 12 months,

and in computing the amount of such pension, gratuity or allowance, there shall be taken into account the full annual emoluments which such member is deemed to have received as Corporal or Sergeant, as the case may be, in the trade or class appropriate to his case.

Previous pensionable civil public service

25. (1) Where any member or other person in respect of such member has become eligible for payment of any award under any provision of these Regulations and the pensionable military service of such member is required to be taken into account in computing such award, then such pensionable military service may, if His Majesty the Sultan and Yang Di-Pertuan thinks fit, be deemed to include any previous pensionable civil public service of such member in respect of which no award has been made to such member or any other person, in respect of such member under the Pensions Act (Chapter 38):

Provided that no previous pensionable civil public service of such member shall be taken into account unless such member has completed not less than 10 years pensionable military service.

(2) In this regulation, "previous pensionable civil public service" means, in relation to a member, the previous service of such member which was, when completed, and continues to be, at the time of such eligibility of such member or other person in respect of such member, qualifying and pensionable service of such member in a pensionable office for the purposes of the Pensions Act (Chapter 38).

PART 6

FEMALE GRADUATE MEMBER

Optional award for female graduate member

26. (1) The provisions of these Regulations do not apply to a female graduate member who gives notice in writing to the competent authority of her desire that the provisions of the Pensions Act (Chapter 38) shall apply to her.

(2) If a female graduate member, who has not given the notice under sub-regulation (1), dies after she has been discharged but before a pension, gratuity or allowance has been awarded, it shall be lawful for His Majesty the Sultan and Yang Di-Pertuan to grant a pension, gratuity or allowance under whichever provisions of these Regulations or the Pensions Act (Chapter 38) as shall confer the greater benefits.

(3) In this regulation, a "female graduate member" means a female member who holds a degree qualification from a university or educational institution recognised by the Government.

PART 7

GENERAL

Award of resettlement grant

27. His Majesty the Sultan and Yang Di-Pertuan may give directions for the award of a resettlement grant to any member who is being discharged from military service.

Gratuities and other allowances for persons not otherwise eligible

28. His Majesty the Sultan and Yang Di-Pertuan may give directions for the payment of gratuities or other allowances to any member on his discharge from military service or upon his death while in military service in respect of such service in the Armed Forces or the Reserve Regiment and who is not eligible for the award of any pension, gratuity or other allowance under the provisions of these Regulations:

Provided that this regulation does not apply to a member serving under agreement with the Government.

Compensation

29. Where any member serving in the Armed Forces or the Reserve Regiment is injured on duty, without negligence on his part, he shall be entitled to reclaim from the Government all hospital charges incurred and may, in addition, be awarded such compensation as His Majesty the Sultan and Yang Di-Pertuan may determine on the recommendations of the Commander based on the findings of a medical board consisting of not less than two registered medical practitioners who shall be appointed by the competent authority.

Delegation

30. His Majesty the Sultan and Yang Di-Pertuan may delegate to any public officer or public body the exercise, subject to such limitations as may be prescribed, of any power or discretion or the discharge of any duty which is required by the provisions of these Regulations to be exercised or discharged by His Majesty the Sultan and Yang Di-Pertuan.

Muslim law

31. The grant or award of a pension, gratuity or other allowance made under these Regulations to the widow, children and other dependents of a deceased member, or of a deceased person who was a member for the purposes of regulation 20, is deemed for the purposes of Muslim law to be gifts from the Government and not *waris* nor shall they be deemed to form any part of the estate of such deceased member or deceased person.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES (MILITARY CADETS) REGULATIONS

S 27/1998

REVISED EDITION 2018

B.L.R.O. 1/2018

SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES (MILITARY CADETS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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2. Establishment of Military Cadets

3. Appointment of Honorary Commandant

4. Appointment of officers

5. General Orders

SUBSIDIARY LEGISLATION

Regulations made under sections 6 and 208(1)

ROYAL BRUNEI ARMED FORCES (MILITARY CADETS) REGULATIONS

Commencement: 24th September 1998

Citation

1. These Regulations may be cited as the Royal Brunei Armed Forces (Military Cadets) Regulations.

Establishment of Military Cadets

2. (1) There is hereby established a unit of military cadets to be styled "Kadet Tentera Angkatan Bersenjata Diraja Brunei" or, in English, "the Royal Brunei Armed Forces Military Cadets".

(2) Branches of the Military Cadets may be established in any single or group of secondary schools, colleges or other learning institutions.

Appointment of Honorary Commandant

3. His Majesty the Sultan and Yang Di-Pertuan may appoint any suitable person to be the Honorary Commandant of the Military Cadets.

Appointment of officers

4. Eligible persons may be commissioned by His Majesty the Sultan and Yang Di-Pertuan to be officers of the Military Cadets.

General Orders

5. The Commander may make General Orders to be called "General Orders (Military Cadets)" not inconsistent with the provisions of the Act and the regulations or rules made thereunder concerning any matter relating to the administration of the Military Cadets.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES (INVESTIGATION) (LOST OR DAMAGED PROPERTY) REGULATIONS

S 53/2004

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SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES (INVESTIGATION) (LOST OR DAMAGED PROPERTY) REGULATIONS

ARRANGEMENT OF REGULATIONS

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3. Form of investigation

SUBSIDIARY LEGISLATION

Regulations made under section 208(1)

ROYAL BRUNEI ARMED FORCES (INVESTIGATION) (LOST OR DAMAGED PROPERTY) REGULATIONS

Commencement: 18th September 2004

Citation

1. These Regulations may be cited as the Royal Brunei Armed Forces (Investigation) (Lost or Damaged Property) Regulations.

Interpretation

2. In these Regulations, "competent authority" means any officer authorised by His Majesty the Sultan and Yang Di-Pertuan to act for the purposes of sections 132 and 134.

Form of investigation

3. (1) Subject to sub-regulation (2), an investigation for the purposes of section 132(1) or 133 into the cause of any loss of, or damage to, public or service property shall be —

(a) a board of inquiry convened under section 122; or

(b) an examination by the competent authority of evidence, whether oral or written, relating to the cause of such loss or damage.

(2) Where in the course of an examination of evidence under sub-regulation (1)*(b)*, it appears to the competent authority that a person may have been responsible for such loss or damage, he shall be given an opportunity of making a statement, if he so desires, for consideration by the competent authority:

Provided that where, in proceedings before a court-martial or appropriate superior authority, a person has been convicted in circumstances involving a finding that he was guilty of any wrongful act or negligence which occasioned such loss or damage, he shall not be given an opportunity of making any such statement.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES (SUMMARY JURISDICTION) REGULATIONS

S 7/2006
Amended by
S 41/2013

REVISED EDITION 2018

B.L.R.O. 1/2018

SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES (SUMMARY JURISDICTION) REGULATIONS

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13. Charges with which appropriate superior authority may deal summarily

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SUBSIDIARY LEGISLATION

Regulations made under sections 83 and 84

ROYAL BRUNEI ARMED FORCES (SUMMARY JURISDICTION) REGULATIONS

Commencement: 28th January 2006

Citation

1. These Regulations may be cited as the Royal Brunei Armed Forces (Summary Jurisdiction) Regulations.

Interpretation

2. In these Regulations —

"competent authority" means the Commander or such other officer or officers as His Majesty the Sultan and Yang Di-Pertuan may from time to time appoint to exercise all or any of the functions conferred or imposed upon the competent authority under these Regulations;

"detachment" means a part of a unit which is so separated from the unit to which it belongs that the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it;

"subordinate commander", except where otherwise expressly provided, means the officer who, for the time being, commands a squadron, company, ship or an equivalent body which forms part of a unit and who is for the time being responsible for disciplinary matters to the commanding officer of the unit, and includes any officer appointed to be a subordinate commander by an officer in command not below the rank of colonel;

"unit", except where otherwise expressly provided, means either any independent portion of the Royal Brunei Armed Forces which is not higher in the organisation than a battalion or its equivalent or any equivalent body of troops.

Appointment of commanding officers and subordinate commanders

3. Any appointment under these Regulations of an officer to be a commanding officer or a subordinate commander —

(a) may be made subject to restrictions, reservations, exceptions or conditions;

(b) may designate the officer appointed by name, by reference to any appointment or office held by him, or by reference to a class of officers of which the officer appointed is a member, and shall, unless otherwise specified, extend to any officer for the time being performing the duties of the officer so named, or holding, or acting in the place of the holder of, that appointment or office, or acting in the place of a member of that class;

(c) may be made in relation to a particular person or to any class or group of persons, or a particular case or for a class of case;

(d) may be varied or revoked, either wholly or in part, by the authority by whom it was made by his successors or by any authority superior in command.

General definition of commanding officer

4. Except where otherwise expressly provided in these Regulations, the commanding officer of a person subject to military law who is charged with an offence is either —

(a) the officer who has been appointed by the competent authority to be commanding officer while able to effectively exercise his powers as such; or

(b) where no appointment has been made under paragraph *(a)*, the officer who is, for the time being, in immediate command of the unit or detachment to which the accused belongs.

Commanding officer of a unit or detachment place under command of another commanding officer

5. Where a unit or detachment is placed for disciplinary purposes under command of the commanding officer of another unit or detachment, that officer is the commanding officer of a member of the unit or detachment so placed under his command who is charged with the offence, and the officer commanding the latter unit or detachment is subordinate commander for the purposes of these Regulations.

Delegation of powers by commanding officers

6. (1) Subject to regulation 11, an officer who is a commanding officer within the meaning of regulation 4 or 5 may delegate to a subordinate commander of the rank of Captain or who is under his command and directly responsible to him for disciplinary matters, the power to investigate and deal summarily with charges with which he himself may so deal under regulation 9:

Provided that such delegation shall not include —

(a) the power to remand the accused for trial by court-martial; and

(b) the power to stay further proceedings on a charge.

(2) When a commanding officer delegates the power to investigate and deal summarily with charges in accordance with sub-regulation (1), he may, in addition to the restrictions imposed by regulation 11, impose such further restrictions as seem to be proper upon the exercise of that power by the officer to whom it is delegated.

(3) When a subordinate commander is dealing with a charge against a non-commissioned officer or a soldier and the accused elects to be tried by court-martial in accordance with section 78(6), the subordinate commander shall not deal further with the charge himself, but shall order that the accused be brought before the commanding officer who delegated to him the power to investigate the charge.

Delegated status of commanding officer

7. An officer who has had delegated to him by his commanding officer in accordance with regulation 6(1) power to investigate and deal summarily with charges is, while exercising such power in respect of any person, the commanding officer of that person for the purposes of the Act.

Commanding officer of civilian

8. The commanding officer of a civilian who is charged with an offence and to whom Part 5 of the Act applies by virtue of section 204 is the commanding officer, not below the rank of Lieutenant Colonel, as may be appointed for the purpose by an officer, not below the rank of Colonel commanding the unit in or with which the civilian is for the time being.

Charges with which commanding officer may deal summarily

9. A commanding officer may deal summarily with a charge under any of sections 35, 36, 39 to 42, 44 to 49, 51, 52, 55, 58 to 60, 62 to 64, 67, 69, 70, 71, and under section 72 (where the civil offence is one which is specified in the Schedule to these Regulations).

[S 41/2013]

Restrictions on powers of punishment of commanding officers

10. A commanding officer shall not award —

(a) the punishment of detention where the charge is under section 72 where the maximum punishment for the civil offence constituting an offence against that section is punishable by a fine;

(b) the punishment of stoppages exceeding the amount of 14 days without permission for the competent authority.

Powers of subordinate commanders

11. (1) A subordinate commander to whom power to investigate and deal summarily with charges has been delegated under sub-regulation 6(1) shall not award a punishment against a non-commissioned officer above the rank of Corporal.

(2) Subject to any restriction which may be imposed by the commanding officer under regulation 6(2) or (3), a subordinate commander may award one or more of the following punishments —

(a) a fine not exceeding the amount of 7 days' pay;

(b) in the case of a non-commissioned officer, a reprimand;

(c) where the offence has occasioned any expense, loss or damage, stoppages not exceeding the amount of 7 days' pay; or

(d) such minor punishment as may be prescribed.

Appropriate superior authorities

12. The following persons may act as appropriate superior authorities in relation to a person subject to military law charged with an offence —

(a) in the case of officers of the rank of Lieutenant Colonel or below, the Commander; and

(b) in the case of officers of the rank of Captain and below, any officer not below the rank of Colonel in command.

Charges with which appropriate superior authority may deal summarily

13. An appropriate superior authority may deal summarily with a charge under any of sections 35, 36, 39 to 42, 44 to 49, 51, 52, 55, 58 to 60, 62 to 64, 67, 69, 70, 71 and under section 72 (where the civil offence is one which is specified in the Schedule to these Regulations).

[S 41/2013]

SCHEDULE

(regulations 9 and 13)

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Driving without due care and attention or without reasonable consideration for other persons using the road contrary to section 29 of the Road Traffic Act (Chapter 68).

Mischief contrary to sections 426 and 427 of the Penal Code (Chapter 22).

Possession or consumption of a controlled drug contrary to section 6 of the Misuse of Drugs Act (Chapter 27).

Theft contrary to section 379 of the Penal Code (Chapter 22).

Use of intoxicating substance contrary to section 3(2) of the Intoxicating Substances Act (Chapter 161).

Using mobile phone while driving contrary to section 29A of the Road Traffic Act (Chapter 68).

Voluntarily causing hurt contrary to section 323 of the Penal Code (Chapter 22).

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES REGULATIONS

S 88/2013

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SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES REGULATIONS

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ROYAL BRUNEI ARMED FORCES REGULATIONS

Commencement:1st August 2011

PART 1

PRELIMINARY

Citation

1. These Regulations may be cited as the Royal Brunei Armed Forces Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires —

"adopted" in reference to any child means any child whose adoption has been registered under any written law for the time being in force in Brunei Darussalam;

"child" means a child whether legitimate or illegitimate, a step-child or an adopted child, being in all cases a child under the child's age limit, and in the case of a female child, not being married;

"child's age limit", in relation to a child, means in all cases the age of 17 years, except when the child is receiving full-time educational instruction, when the age limit may be extended to the age of 21 years;

"period of compulsory engagement" means the period of compulsory engagement prescribed in regulation 3(3)*(b)*;

"injury" includes wound or disease;

"living-out allowance" means an allowance granted to a member who has been given permission to reside outside his duty station as a means to compensate him provided that there are no suitable married quarters available to him;

"medical board" means a medical board consisting of such number of registered medical practitioners and other persons appointed by the competent authority;

"medical officer" means any medical practitioner registered under the Medical Practitioners and Dentists Act (Chapter 112);

"month" means a calendar month; for the purpose of aggregating broken periods, each broken period will be calculated in complete calendar months, any odd days being converted on the basis that 30 days as one month, 61 days as 2 months, 91 days as 3 months etc;

"professional" means an officer who possesses such professional qualifications or their equivalent as may be determined by the competent authority;

"relative" means husband, wife, father, mother, step-father, step-mother, father-in-law, brother, sister, step-brother, step-sister, brother-in-law, sister-in-law, son, daughter, uncle, auntie, nephew and niece;

"service" means service as a member with the Armed Forces;

"spouse" means a member, whose marriage has been registered in accordance with any written law for the time being in force in Brunei Darussalam or recognised as a valid marriage by the competent authority, and includes the surviving spouse of such member;

"unit" means any independent portion of the Armed Forces which is not higher in the organisation than a battalion or its equivalent, or any equivalent body of troops.

PART 2

TERMS OF ENGAGEMENT

Terms of engagement

3. (1) The term of engagement of an officer cadet enlisted before 1st August 2011 shall be 25 years and may be further extended for such period as may be determined by His Majesty the Sultan and Yang Di-Pertuan.

(2) The term of engagement of a soldier enlisted before 1st August 2011 shall be 20 years, being four terms of engagements each of 5 years period, and with the approval of the competent authority may be further extended for a term of 5 years, which means a total period of 25 years of service:

Provided that such soldier may opt for a term of engagement for a total period of 26 years of service or such period as may be extended by the competent authority.

(3) *(a)* The term of engagement of a member enlisted, on or after 1st August 2011 shall be —

(i) in the case of an officer, 30 years or until he reaches 55 years of age, whichever comes first; and

(ii) in the case of a soldier, 26 years,

or until such period as may be extended by the competent authority.

(b) Any officer cadet or soldier enlisted on or after 1st August 2011 shall complete a period of compulsory engagement for a duration of at least 5 years immediately after his completion of the mandatory training within which period such member shall not be entitled to apply to be discharged or to apply to resign his commission under regulation 18.

(c) Any member who fails to comply or contravenes with sub-regulation (3)*(b)* is deemed to have committed an offence under section 43A.

PART 3

TERMS AND CONDITIONS OF SERVICE

Chapter 1

General

Medical standards

4. (1) Any person who applies to be commissioned or offers to be enlisted in the Armed Forces shall be required to undergo a medical examination to assess his medical standard.

(2) Any person whose medical condition is lower than the standard determined by the competent authority shall not be commissioned or enlisted in the Armed Forces.

(3) An officer may be required to retire and a soldier may be discharged, if at any time during his service, he is certified to be of a lower medical condition than the standard determined by the competent authority for the retention of officers or soldiers.

Entry requirements

5. The entry requirements required of applicants for commissioning or enlistment in the Armed Forces shall be determined by the competent authority.

Military standards

6. Upon satisfying the medical standards and entry requirements referred to in regulations 4 and 5, the applicants shall undergo such assessments as may be determined by the recruiting officer.

Ranks in Armed Forces

7. There shall be the following ranks in the Armed Forces —

(a) Commissioned Officers —

Field Marshal;
General;
Lieutenant General;
Major General;
Brigadier General;
Colonel;
Lieutenant Colonel;
Major;
Captain;
Lieutenant;
Second Lieutenant;

(b) Warrant Officers —

Warrant Officer Class I;
Warrant Officer Class II;

(c) Non-commissioned Officers —

Officer Cadet;
Staff Sergeant;
Sergeant;
Corporal;
Lance Corporal;

(d) Privates;

(e) Recruits.

Seniority

8. (1) The seniority of an officer shall be reckoned from the date of his appointment as an officer cadet; except that where any officer has been granted an antedate of seniority, his seniority date shall be reckoned from the date of such antedate according to the competent authority.

(2) The seniority of a soldier between those of the same rank is to be determined in accordance with their dates of promotion to that rank, except where provided to the contrary.

(3) The seniority of soldiers promoted on the same date is to be determined by the competent authority.

Precedence

9. An officer or soldier shall take precedence in accordance with his substantive rank and his seniority in that rank.

Appointments

10. Appointments and the ranks appropriate thereto in the Armed Forces shall be determined by His Majesty the Sultan and Yang Di-Pertuan.

Promotion

11. A member may be promoted under such conditions as may be prescribed.

Liability for service abroad

12. Subject to the provisions of the Act or any other written law, any member shall be liable to serve abroad.

Courses of instruction

13. Any member may be required to undergo such courses of instruction, either in Brunei Darussalam or elsewhere, as may be deemed necessary by the competent authority.

Person dismissed or discharged with ignominy not to be commissioned or enlisted in Armed Forces

14. Subject to the provisions of any written law provided for compulsory service in the Armed Forces, no person shall be commissioned or enlisted therein who has been dismissed with disgrace, dismissed, discharged with disgrace or discharged with ignominy, as the case may be, from the Armed Forces or from any Commonwealth force.

Chapter 2

Officers

Minimum age for commissioning

15. No person shall be commissioned in the Armed Forces until he has attained the age of 18 years.

Qualifications required for commission

16. The qualifications required of a person applying for a commission in the Armed Forces shall be determined by the competent authority.

Types of commission

17. The types of commission which may be granted by His Majesty the Sultan and Yang Di-Pertuan under section 8(2) to such persons as His Majesty the Sultan and Yang Di-Pertuan may think fit are as follows —

(a) honorary commission;

(b) regular commission;

(c) special commission.

Resignation

18. (1) An officer who has been commissioned prior to 1st August 2011 may apply to resign his commission under such conditions as may be determined by the competent authority.

(2) An officer who has been commissioned on or after the 1st August 2011 shall not be entitled to apply to resign from his service anytime during the compulsory engagement period set out in regulation 3(3).

(3) After the completion of the period of compulsory engagement, an officer may be entitled to apply to resign his commission by submitting an 18 months' notice of his intention to do so to his Commanding Officer and such receipt of the notice shall not in any way be deemed to imply an acceptance thereof. An officer who has applied under this sub-regulation shall only resign upon approval of His Majesty the Sultan and Yang Di-Pertuan.

(4) Any application made shall be considered by the Commander who shall advise His Majesty the Sultan and Yang Di-Pertuan:

Provided that such consideration by the Commander of an application shall not in any way be deemed to imply an acceptance thereof.

Extension of commission

19. An officer may apply for an extension of the commission granted to him in accordance with the instructions which shall be issued by the competent authority.

Chapter 3

Soldiers

Maximum age for enlistment

20. (1) No person, except for a graduate or a professional, shall be enlisted or re-enlisted in the Armed Forces after he has attained the age of 25 years unless it is considered by the competent authority to be in the interest of the Armed Forces to do so.

(2) If a person who is permitted to enlist or re-enlist after he has attained the age of 25 years has any previous service with the Armed Forces which is acknowledged on such enlistment or re-enlistment and duly confirmed, all or any part of such previous service may be allowed to count towards assessment of pay, allowances, pension or service gratuity in accordance with the provisions of Parts 4 and 5, but shall not be allowed to count as part of his current engagement.

(3) In this regulation, "graduate" means a member who holds a degree or higher qualification from a university or educational institution recognised by the competent authority.

Recruit

21. A person enlisted in the Armed Forces in accordance with the provisions of the Act is, until the completion of either of a period of 6 months' satisfactory service from the date of his attestation or of the period of his mandatory training, whichever is the greater, deemed to be a recruit unless —

(a) he is permitted to count any previous service with the Armed Forces towards the assessment of pay, allowances, pension or service gratuity; or

(b) he is enlisted as an officer cadet.

Resignation

22. (1) A soldier who has been enlisted prior to 1st August 2011 may apply to resign from his service subject to such requirements as may be determined by the competent authority.

(2) A soldier who has been enlisted on or after the 1st August 2011 shall not be entitled to apply to resign from his service anytime during the compulsory engagement period set out in regulation 3(3).

(3) After the completion of the period of compulsory engagement, a soldier may apply to retire from his service by submitting an 18 months' notice of his intention to do so to his Commanding Officer and such receipt of the notice shall not in any way be deemed to imply an acceptance thereof. A soldier who has applied under this sub-regulation shall only be discharged upon approval of His Majesty the Sultan and Yang Di-Pertuan.

PART 4

PAY AND ALLOWANCES

Chapter 1

General

Public or service claims

23. (1) The competent authority may, subject to the provisions of any written law, after due investigation, order a deduction from the pay of a member of the Armed Forces to meet any public or service claim that there may be against him.

(2) In this regulation —

"public claim" means any public debt or disallowance including any over issue or advance of pay made through an error as to the facts or any sum required to make good any loss, deficiency or irregular expenditure of public money, rations or stores of which no explanation satisfactory to the competent authority is given by the member who is responsible therefor;

"service claim" means any debt due to any such organisation as may be determined by the competent authority or any sum required to make good any loss or deficiency in any property of any such organisation of which no explanation satisfactory to the competent authority is given by a member who is responsible therefor.

Periods for forfeiture of pay

24. (1) A member is not deemed to be absent without leave for the purpose of these Regulations unless the absence is in excess of 6 consecutive hours.

(2) The number of days in any period of absence without leave shall be reckoned from the time when the absence commences, 24 hours being reckoned as one day, and any period of absence of less than 24 hours and more than 6 hours being also reckoned as one day.

(3) *(a)* Where a member has been imprisoned or otherwise detained or is hospitalised as specified in section 130(1)*(b)* and *(c)* for more than 6 consecutive hours or has, by reason of being so imprisoned or detained or admitted to hospital, been prevented from performing some duty which has thereby to be performed by some other person, such member is, for the purpose of forfeiture of pay, deemed to have been imprisoned or detained or is hospitalised for one day.

(b) Where a member thereafter remains imprisoned or detained or is hospitalised, every period of 24 hours or part thereof shall make up one day, such period being calculated from the time the imprisonment or detention or hospitalisation began.

Cessation of pay

25. (1) Except as provided in Chapter 5 of this Part, a member shall not be permitted to remain on full pay after attaining the age fixed for his retirement, unless he so remains in accordance with the provisions of any written law authorising his retention in the Armed Forces.

(2) A member who is dismissed or discharged from the Armed Forces, or whose commission is cancelled, shall be paid to the date preceding that on or from which he is so dismissed or discharged from his service.

(3) Except as provided in Chapter 5 of this Part, a member who retires or resigns from his service shall not receive full pay after the date preceding that on which he retires or resigns from his service.

Technical pay

26. A member in possession of such technical qualification as may be approved by His Majesty the Sultan and Yang Di-Pertuan may be granted technical pay at such rate as may be determined by the competent authority.

Qualification allowance

27. A member in possession of such qualification as may be approved by His Majesty the Sultan and Yang Di-Pertuan may be granted qualification allowance at such rate as may be determined by the competent authority.

No pay or allowance for local rank

28. A member who is granted a local rank which is higher than his substantive rank shall not be entitled to any increase in pay or allowances by reason only of the grant of such local rank; and service in such local rank shall not be reckoned as service in the higher rank for the purposes of increments in pay, allowances, retired pay, gratuity or for any other purpose whatsoever.

No quartering charges for accommodation in messes

29. (1) A single officer or senior rank, or an unaccompanied married officer or senior rank who accommodates in an officer's mess or senior rank's mess of the Armed Forces shall not be required to pay quartering charges in respect of such accommodation.

(2) In this regulation, "senior rank" means a soldier of the rank of Sergeant and above.

No occupation of private accommodation without authority

30. No member shall occupy any private accommodation without the authority of the competent authority.

Married quarters

31. (1) A married member who fulfills the requirements determined by the competent authority shall be eligible to occupy married quarters subject to such conditions determined by the competent authority.

(2) A member expelled from married quarters on account of the misconduct of himself or the spouse may be deprived by his competent authority of the privilege of further occupation of married quarters.

(3) *(a)* If a spouse of a member in married quarters dies or is separated from such member by reason of prolonged disability or absents from quarters beyond the period of approved leave and is not absent owing to prolonged disability, the member shall, if he has no child, be required to vacate the married quarters.

(b) Where the member has any children, the Commanding Officer may at his discretion permit him to remain in the quarters.

(4) Only one wife of a member shall be admitted to the privilege of occupying married quarters.

(5) Where a member who has been allotted married quarters subsequently fails to fulfill any conditions governing married quarters, he shall be required to vacate the married quarters from the date on which he failed to fulfill such conditions. The competent authority shall have the discretion whether to permit the member to remain in the quarters in such circumstances.

Quartering charges for married quarters

32. (1) When quarters are allotted to a married member, quartering charges (which may include charges for conservancy, scavenging and furniture) as may be determined by the competent authority, may be recoverable by deduction from the member's pay.

(2) The class of quarters allotted to a member shall, whenever possible, be in accordance with scales of accommodation as may be determined by the competent authority.

Electricity charges

33. Charges for the supply of electricity to a member's married quarters may be recovered from the member's pay at rates determined by the competent authority.

Living-out allowance

34. A married member who has been authorised to live outside the married quarters may be granted a living-out allowance at such rate and under such conditions as may be determined by the competent authority.

Clothing and necessaries

35. (1) A member shall receive free issues of clothing and necessaries on the scale approved by the competent authority.

(2) Except in cases of unfair wear and tear or negligence, unserviceable items of clothing and necessaries shall be replaced or repaired at Government expense.

(3) A member ordered to attend courses of instruction in any country or territory where the wearing of warm clothing is essential shall receive a free issue of warm clothing and may be granted such clothing allowances at rates and under such conditions as may be determined by the competent authority.

Overseas allowance

36. A member serving abroad may be granted an overseas allowance at such rate as may be determined by the competent authority for the country or territory in which he is serving.

Entertainment allowance

37. A member of the rank of Major or above in command of the Armed Forces or of any unit thereof may be granted an entertainment allowance appropriate to his rank and appointment at such rate as may be determined by the competent authority.

Flying allowance

38. A member may be granted flying allowance at a rate and under such conditions as may be determined by the competent authority.

Allotment of pay

39. The competent authority may order an allotment to be made from the pay granted under these Regulations to a member who has been officially declared a prisoner of war or missing, to or for the benefit of any person:

Provided that —

(a) the authority is satisfied that the member would contribute to or for the support of any such person if he were not a prisoner of war or missing;

(b) any allotment so ordered shall, subject to any other provisions of these Regulations governing allotments from the pay of members, be regarded as if it had been authorised by the member;

(c) any receipt given by the person to whom payment has been made shall be sufficient discharge.

Recall from Reserve Regiment

40. (1) On rejoining the Armed Forces from the Reserve Regiment, a member shall be paid according to the classification held at the date of his transfer to the Reserve Regiment and to the rank in which he rejoins.

(2) A reservist called up for annual training shall be paid at such rate as may be determined by the competent authority.

Publication

41. Any circumstance which affects a member's pay and allowances set out as an entry in the Unit Part II Orders shall be published by the Armed Forces.

Other allowances and benefits

42. A member may be granted other allowances or benefits at rates and under such conditions as may be determined by the competent authority.

Chapter 2

Officers

Rates of pay

43. (1) The rates of pay of rank for officers shall be determined by His Majesty the Sultan and Yang Di-Pertuan.

(2) The pay of an officer shall be issued monthly in arrears.

Date of commencement of entitlement to pay and allowances

44. Notwithstanding anything contained in these Regulations, where an officer who is commissioned as a Second Lieutenant commences, his service as such upon a date later than that specified in his commission, he shall only be entitled to his pay and allowances from the date of such commencement.

Honorary commissions

45. Officers holding honorary commissions in the Armed Forces granted under section 8(7) shall not be entitled to any pay or other emoluments authorised in these Regulations.

Payment on appointment or promotion

46. (1) The pay of an appointment or of the higher rank to which an officer is promoted shall be issued to him from the date of the vacancy to which he succeeds or from the date of assuming the duties of the appointment, whichever is later.

(2) When an officer is dismissed or imprisoned by sentence of court-martial, the vacancy in establishment shall be held to occur on the day on which the proceedings of the court-martial are signed by the president, subject to confirmation of the sentence by the confirming officer.

Acting rank

47. (1) Where the competent authority considers it necessary that an officer shall act in an appointment within an establishment, and such appointment carries a rank higher than the officer's substantive rank, the officer may be granted by the competent authority the acting rank appropriate to the appointment, and he shall receive the pay and allowances appropriate thereto for so long as he acts in the appointment:

Provided that he may only be granted an acting higher rank and shall only be paid the emoluments appropriate thereto if he acts in the appointment for a period of 28 consecutive days or more and there is no other officer holding the acting rank or in receipt of the emoluments appropriate thereto, at the same time.

(2) The period during which an officer holds the acting higher rank or receives the emoluments appropriate thereto shall not be reckoned as service in the higher rank for the purposes of seniority therein or of assessing entitlement to increments of pay or allowances in respect thereof.

(3) Where an officer has been granted acting rank in accordance with sub-regulation (1), he shall continue to be paid the emoluments appropriate thereto, notwithstanding his temporary absence from duty on account of sickness, attendance at

courses of instruction or authorised leave unless determined otherwise by the competent authority.

House keeping allowance

48. An officer may be granted a housekeeping allowance at a rate and under such conditions as may be determined by the competent authority.

Chapter 3

Officer cadets and recruits

Rates of pay and allowances for officer cadets and recruits

49. (1) The rates of pay and allowances for an officer cadet and a recruit shall be at such rate as may be determined by His Majesty the Sultan and Yang Di-Pertuan.

(2) The pay of an officer cadet and a recruit shall be issued monthly in arrears.

Chapter 4

Soldiers

Rates of pay and allowances for soldiers

50. (1) A soldier shall receive pay with effect from the date on which he is attested.

(2) The rates of pay and allowances for a soldier shall be at such rate as may be determined by His Majesty the Sultan and Yang Di-Pertuan.

(3) The pay of a soldier shall be issued monthly in arrears.

Reckonable service

51. Reckonable service shall be service rendered as a soldier on a current engagement, after attaining the age of 18 years, together with any reckonable former service with the Armed Forces, except for any periods which are not to be included as may be determined by the competent authority.

Special commission

52. A soldier holding special commission in the Armed Forces granted under section 8(2) may be granted antedates of seniority in recognition of his former service with the Armed Forces or for any qualification he holds, and may also receive a rate of pay to be determined by the competent authority.

Classification for pay

53. All soldiers and professionals below the rank of Sergeant shall, with the exception of those who have not completed 6 months' satisfactory service, be classified for pay in accordance with such conditions as may be determined by the competent authority.

Rates of pay according to vocation

54. The rates of pay according to vocation as may be determined by His Majesty the Sultan and Yang Di-Pertuan shall be paid to a soldier who has qualified in the tests laid down for soldiers by the competent authority subject to such conditions imposed by the competent authority.

Re-enlistment

55. (1) A soldier who re-enlists shall be paid at the minimum rate appropriate to his rank pending confirmation of his previous service and qualifications acknowledged on re-enlistment.

(2) When any previous service or qualifications are acknowledged and confirmed, the soldier shall receive such pay and allowance as are appropriate to his qualification and his total period of reckonable service, with effect from the date of re-enlistment.

Pay on reversion or reduction

56. (1) A soldier of the rank of Sergeant or above who is reduced, reverts to a rank below that of Sergeant, shall be classified for pay appropriate to such rank from the date of such reduction or reversion.

(2) A soldier who is reduced in rank for misconduct or inefficiency shall be reclassified for purposes of pay.

Payment on appointment or promotion

57. (1) The pay of an appointment or of the higher rank to which a soldier is promoted shall be issued to him from the date of the vacancy to which he succeeds or from the date of assuming the duties of the appointment, whichever is later.

(2) When a soldier is reduced in rank by sentence of court-martial, the vacancy in establishment shall be held to occur on the day on which the proceedings of the court-martial are signed by the president, subject to confirmation of the sentence by the confirming officer.

Acting rank

58. (1) Paid acting rank may be granted to a soldier who is posted into or has filled for 28 consecutive days or more, a vacancy in an establishment which carries a higher rank than his substantive rank.

(2) Paid acting rank shall entitle the holder to the appropriate pay and allowance with effect from the date of appointment.

(3) A soldier holding an acting rank shall revert to his substantive rank on ceasing to fill the vacancy on the establishment of his unit for which the acting rank was granted, unless retention of such rank or appointment is authorised under such conditions as may be imposed by the competent authority.

Pay on acquittal

59. (1) A soldier who is subsequently acquitted of any charge shall receive full pay from the date on which he was first placed in confinement in respect of such conviction.

(2) A soldier whose trial has been dispensed with on his signed confession that he has been guilty of desertion or fraudulent enlistment may suffer such forfeitures of, and deductions from, pay as the competent authority may direct.

Pay under sentence of discharge

60. A soldier sent home from abroad under sentence of imprisonment or detention and to be discharged in Brunei Darussalam shall receive no pay either while waiting to embark or during the voyage, even though he may not be in close confinement:

Provided that if the period of imprisonment or detention to which he has been sentenced expires before his arrival in Brunei Darussalam, he shall be entitled to full pay from the date of such expiry.

Chapter 5

Pay during absence from duty owing to sickness, wounds or injury

Full pay for temporary absence from duty not exceeding 18 months

61. (1) Subject to any conditions as may be determined by the competent authority, a member shall be entitled to his pay and allowances for any period of temporary absence from duty because of sickness which is certified by a medical officer to the satisfaction of the competent authority.

(2) A member shall be entitled to his pay and allowances while on sick leave granted on the recommendation of a medical board with a view to ultimate return to duty:

Provided that no pay and allowances may be drawn for any period of sick leave so granted in excess of 18 months subject to the competent authority's recommendation.

(3) For the purpose of calculating the period of 18 months referred to in sub-regulation (2) —

(a) periods of absence due to the same disability;

(b) periods of absence separated by a continuous period of duty of less than 6 months duration; and

(c) periods of absence due to other disability not separated by a period of duty of any duration,

shall be aggregated.

Member unfit for duty to be retired, discharged or transferred

62. (1) Except as provided in regulation 63, a member who is unfit for duty shall not be retained in the Armed Forces beyond the date of termination of his commission or service, as the case may be, but shall be retired or discharged from the Armed Forces, or transferred to the Reserve Regiment in the normal way.

(2) If not later than 5 months before the termination of his commission or service, as the case may be, a member falls ill or sustains an injury which causes him to be absent from duty to the day preceding that on which he is due to begin leave prior to retirement or discharge, he shall be retired or discharged from the Armed Forces, or transferred to the Reserve Regiment in the normal way.

(3) Where a member who still has an appreciable period to serve is declared by a medical board to be unfit for further military service due to some disability, he may be discharged from the Armed Forces forthwith.

Hospital treatment

63. (1) Where a member who is receiving in-patient hospital treatment continues to require such treatment on the date on which he would normally complete his service, he shall be retained on full pay until the findings of a medical board are known.

(2) For the purposes of sub-regulation (1), the medical board shall be held either when the in-patient hospital treatment ceases to be required or when 5 months have elapsed from the date when the member was first absent from duty, whichever is earlier.

Temporary suspension of service

64. (1) If at any stage a medical board forms the opinion that there is no reasonable prospect that a member will become fit for duty within 18 months, an action may be taken forthwith to suspend his service temporarily; and he may be discharged from the Armed Forces.

(2) If a member is undergoing in-patient hospital treatment, his service shall not be suspended under sub-regulation (1) from the Armed Forces until the opinion of a medical board after the member's 5 months' absence from duty is available.

(3) If contrary to the earlier expectations of a member who has been retained in the Armed Forces under regulation 61 is not likely to be fit for duty on the expiration of 18 months, action may be taken to suspend his service temporarily; and he may be discharged from the Armed Forces.

Re-employment of member discharged or suspended from service temporarily

65. The competent authority may authorise the re-employment of a member who has been discharged from the Armed Forces under regulations 62 and 64 if such member subsequently becomes fit for duty and his services are required.

Chapter 6

Conveyance at Government expense, travelling and subsistence allowance

Travelling on duty

66. A member shall be entitled to conveyance at Government expense when travelling on military duty.

When travelling expenses to be paid

67. (1) Travelling expenses shall be paid to a member to meet his expenses while travelling on duty.

(2) No travelling expenses shall be payable to a member when —

(a) troops are moved on change of station;

(b) troops are on operations, training or on the line of march; or

(c) a member is temporarily attached to a unit other than his own.

Subsistence allowance

68. A member while being on duty abroad shall be eligible for subsistence allowance at a rate to be determined by the competent authority.

Rates of travelling allowance

69. The rates of travelling allowance for a member shall be at such rate as may be determined by the competent authority.

Claims for allowances

70. Claims for allowances shall be submitted to the Commanding Officer or his nominee.

Subsistence allowance for families

71. Subsistence allowance may be payable when the spouse and children of a member are eligible for conveyance at public expense and have to make their own arrangements for food and accommodation, at such rate as may be determined by the competent authority.

Instructions

72. The competent authority may issue detailed instructions governing the circumstances in which allowances authorised by this Chapter may be claimed.

Leave travel

73. (1) *(a)* A member who travels on annual leave within Brunei Darussalam shall be entitled to conveyance at Government expense to and from his station or place of duty twice a year for himself, spouse and children.

(b) A member who is on sick leave which was granted on the recommendation of a medical board or in the case of a soldier, on leave after completing training or on leave granted after extension of service, shall be entitled to conveyance at Government expense to and from his station or place of duty for himself, spouse and children:

Provided that the spouse or children of such member is occupying married quarters or living in private accommodation at the station or place of duty.

(c) The total distance travelled in any one year chargeable under this sub-regulation to Government shall not exceed the limit stipulated in respect of such travel by the competent authority.

(2) *(a)* A member who is temporarily resident on duty in a country or territory outside Brunei Darussalam shall be entitled to conveyance at public expense within that country or territory to and from his station or place of duty in accordance with the provisions of sub-regulation (1).

(b) The total distance for the return journey chargeable to Government shall not exceed the limit stipulated in respect of that country or territory by the competent authority.

Change of station

74. (1) On change of station or place of duty, the spouse, children and baggage of a member occupying married quarters or living in private accommodation at such station or place of duty may be conveyed at Government expense to the new station or place of duty if suitable married quarters or private accommodation are available for them in that place.

(2) When suitable married quarters or private accommodation are not available in the station or place of duty, the spouse and children of a member who are living with him at his old station or place of duty may be conveyed at Government expense to a selected place of residence in Brunei Darussalam.

(3) If suitable married quarters or private accommodation subsequently becomes available in the new station or place of duty, the spouse and children and baggage may be conveyed thereto at Government expense.

(4) Where the spouse and children of a member who are required to vacate married quarters or private accommodation at a station or place of duty as a result of the member being absent without leave or having been sentenced to a term of imprisonment, they shall not be entitled to conveyance at Government expense either for themselves or for their baggage.

Death of member's spouse

75. (1) A member whose spouse dies whilst she is living with him in married quarters or in private accommodation at his station or place of duty, shall be entitled to arrange for his children and baggage to be conveyed at Government expense to his home or the home of a guardian appointed by him and he may, at the discretion of the competent authority, be allowed to accompany them and to return to his station or place of duty at Government expense.

(2) In this regulation, "guardian", in relation to a child, means any person other than his natural parents who has legal custody of the child.

Death of member

76. (1) The spouse of a member who dies in service while living with him in married quarters or private accommodation at his station or place of duty, shall together with the children and baggage be conveyed at Government expense to a selected place of residence.

(2) Where a member dies and whose spouse was not living with the member at his station or place of duty, the spouse may be conveyed at Government expense to and from the place at which the funeral is to take place.

(3) Where an unmarried member dies, not more than two of his relatives may be conveyed at Government expense to and from the place at which the funeral is to take place.

Member dangerously ill

77. (1) Where a member is certified as dangerously ill, not more than two of his relatives may be conveyed at Government expense to and from the hospital or other place at which the member is located.

(2) The conveyance of relatives authorised by sub-regulation (1) may be repeated every 2 weeks if the member remains certified as dangerously ill for a prolonged period.

(3) If the death of a member appears imminent, the interval imposed by sub-regulation (2) may be reduced by the competent authority or by the medical officer responsible for the case.

Member ill in hospital for prolonged periods

78. Where, owing to sickness or injury, a member has been confined continuously in a hospital, sanatorium or similar establishment in or outside Brunei Darussalam —

(a) for 6 months or more; or

(b) where, at any time before the expiration of 6 months from the date of admission to such hospital, sanatorium or similar establishment, the appropriate medical authority certifies that the confinement of a member in such circumstances is likely to be for not less than 6 consecutive months,

not more than two relatives of the member may be conveyed at Government expense to and from the hospital, sanitorium or similar establishment once in every 6 months for the purpose of visiting the member.

Attendance at investitures

79. (1) When a member residing in Brunei Darussalam is summoned to attend an investiture to receive an award, he shall be conveyed to and from the place of investiture at Government expense.

(2) Where a posthumous award is made, the surviving spouse or a relative shall be conveyed to and from the place of investiture at Government expense to receive the award:

Provided that where the member leaves the surviving spouse, only the surviving spouse shall be entitled to such conveyance.

(3) For the purposes of sub-regulations (1) and (2), two relatives of the recipient may, if the recipient so desires and if they are residing in Brunei Darussalam at that time, be conveyed to and from the place of investiture at Government expense.

Termination of service

80. A member shall on termination of his service or engagement or on transfer to the Reserve Regiment be entitled to conveyance at Government expense for himself, his spouse and children residing with him at the time, and his baggage, to his home or to a selected place of residence in Brunei Darussalam, unless the service or engagement has been terminated for misconduct or by sentence of a court-martial.

Reservists

81. (1) An officer of the Reserve Regiment, an army reservist or an army pensioner recalled for further service or summoned to a medical board shall be conveyed at Government expense from his home to the place of reporting and back.

(2) An officer or a soldier of the Reserve Regiment who volunteers and is accepted for re-employment shall not be conveyed at Government expense to the place at which he is ordered to report for duty.

Hospital treatment

82. A member and any member of his family living with him at his station or place of duty either in married quarters or private accommodation, shall be conveyed at the Government expense to and from the hospital if they are entitled to hospital treatment, the cost of which is chargeable in whole or in part to the Government.

Examination

83. A member attending an examination approved by the competent authority shall be conveyed to and from the place of examination at Government expense and shall be entitled to such travelling allowances as may be determined by the competent authority.

Funeral

84. A member ordered to attend a funeral may be conveyed to and from the place of burial at Government expense and shall be entitled to such travelling and subsistence allowances as may be determined by the competent authority.

Court-martial

85. A member attending a court-martial, court of inquiry or of the taking of a summary or abstract of evidence as a witness shall be conveyed at Government expense and shall be entitled to such travelling and subsistence allowances as may be determined by the competent authority.

Attendance at civil and criminal courts

86. (1) Where a member attends a civil or criminal court as a witness on matters connected with him in his official capacity, he shall be entitled to conveyance at Government expense and to such travelling and subsistence allowances as may be determined by the competent authority.

(2) Where an officer attends a criminal court when any soldier is charged with having committed an offence, he shall be entitled to conveyance at Government expense and to such travelling and subsistence as may be determined by the competent authority.

(3) Where a member, during or after his service, is a party to an action in a civil or criminal court and is represented therein by counsel provided at Government expense, he and any witnesses whom the Government may call shall be entitled to conveyance at Government expense, and to such travelling and subsistence allowance as may be determined by the competent authority.

(4) Except as provided in sub-regulations (1), (2) and (3), a member attending a civil or criminal court in any other capacity shall not be entitled to conveyance at Government expense or to travelling and subsistence allowance.

(5) All court fees, legal costs and allowances in cases covered in this regulation shall be refunded to Government.

Social function

87. A member who attends a private social function shall not be entitled to travelling and subsistence allowances or conveyance at Government expense.

Scales of baggage conveyed at Government expense

88. The weight, dimensions and cubic capacity of baggage which under this Chapter may be conveyed at Government expense shall be at such rate as may be determined by the competent authority.

Class of travel

89. (1) The class of travel to which an officer, officer cadet and a soldier shall be entitled when travelling by air, sea or rail shall be determined by the competent authority.

(2) Where the spouse, child or other relatives of an officer, officer cadet or a soldier is entitled under this Chapter to conveyance at Government expense, they shall be entitled to the same class of accommodation as the officer, officer cadet or soldier.

Chapter 7

Rations and ration allowance

Entitlement to rations and ration allowance

90. An officer, officer cadet or a soldier of the Armed Forces shall be entitled to receive free rations or an allowance *in lieu* thereof for every day on which he is entitled to full pay subject to such conditions as may be imposed by the competent authority.

Circumstances in which ration allowance issuable

91. Ration allowance *in lieu* of rations shall be issued to an officer, officer cadet or a soldier in receipt of full pay when —

(a) he is on leave for any period in excess of 24 hours;

(b) with the approval of the Commanding Officer, he is living with his family at or near his station either in married quarters or in private accommodation;

(c) he is in receipt of subsistence allowance under regulation 68 or travelling allowance under regulation 69;

(d) he is authorised to be absent from his normal duty or to be employed otherwise than with the Armed Forces:

Provided that he is not fed at Government expense whilst so absent or employed; or

(e) when the Commanding Officer certifies that for medical or other reasons it is essential that he should not be a dining member of a mess.

Rates and periods of issue of ration allowance

92. (1) Ration allowance shall be payable at such daily rate or rates to be determined by the competent authority.

(2) Ration allowance shall be payable for complete periods of 24 hours commencing at midnight.

Circumstances in which ration allowance is not payable

93. Ration allowance shall not be payable —

(a) for periods of absence without leave;

(b) when a member is fed at Government expense in, military or civil hospitals, or military or civil prisons; or

(c) for periods spent travelling by sea, air or rail when all meals are provided at Government expense.

Ration allowance overseas

94. Officers or soldiers serving overseas shall be entitled to ration allowance in the circumstances described in regulation 91 at such rate or rates as may be determined by the competent authority, for the country or territory in which they are serving.

PART 5

SAVING

No claim as of right to benefits if regulations amended or repealed

95. Except where provision is or may hereinafter be expressly made to the contrary in any written law, no person shall be entitled to claim as of right any promotion, emolument or other benefit conferred by any provision of these Regulations in the event of such provision being at any time amended or repealed.

PART 6

DISCHARGE BY PURCHASE

Discharge by purchase

96. His Majesty the Sultan and Yang Di-Pertuan may issue instructions setting out the circumstances in which and the conditions under which a recruit or an officer cadet may be permitted to purchase his discharge under section 19.

PART 7

GENERAL

Administrative instructions

97. The competent authority may make administrative instructions not inconsistent with the provisions of the Act or any regulations, rule or General Orders made thereunder as it may consider necessary or expedient for the purpose of these Regulations.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES (BOARD OF INQUIRY) RULES

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SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES (BOARD OF INQUIRY) RULES

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Rules made under section 122

ROYAL BRUNEI ARMED FORCES (BOARD OF INQUIRY) RULES

Commencement: 18th September 2004

Citation

1. These Rules may be cited as the Royal Brunei Armed Forces (Board of Inquiry) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires —

"authority" means His Majesty the Sultan and Yang Di-Pertuan or such officers as His Majesty the Sultan and Yang Di-Pertuan may appoint;

"board" means a board of inquiry convened under rule 3;

"president" means the president of the board, appointed under rule 4(2);

"record of proceedings", in relation to a board, includes the report of the board and any opinion expressed by it in accordance with any directions given by the authority;

"security classification" has the meaning ascribed to it by the relevant security instructions in force in the Royal Brunei Armed Forces.

Convening of board

3. (1) A board may be convened by order of —

(a) the Commander; or

(b) an officer not below the rank of Lieutenant Colonel in command authorised by the Commander.

(2) In the case of a board inquiring into absence without leave, the board may be convened by a commanding officer, subordinate commander or commander of an independent unit of the rank of Major if so authorised by either of the officers referred to in subrule (1).

(3) The following provisions apply in relation to an order convening a board —

(a) the order shall specify the composition of the board and the place and time at which it shall assemble;

(b) the order may specify the terms of reference of the board and shall be published in military orders;

(c) the order may direct the board to express its opinion on any question arising out of any matter referred to it;

(d) the authority may at any time revoke, vary or suspend the order.

Constitution

4. (1) A board 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 two other members each of whom shall either be a person so subject or a person not so subject who is in the service of His Majesty the Sultan and Yang Di-Pertuan.

(2) The authority shall appoint the president by name and each other member of the board by name or, in the case of a person subject to military law, by detailing a person in command to appoint from persons under his command.

Assembly and procedure

5. (1) A board shall assemble at the place and time specified in the order convening it.

(2) The president shall lay the terms of reference before the board and it shall proceed to hear evidence in accordance with the provisions of these Rules.

Matters of reference to boards

6. (1) Subject to subrule (2), a board shall be convened with reference to —

(a) the absence without leave of any person subject to military law who has been continuously absent without leave for a period of not less than 21 days;

(b) the unnatural death of any person in a military establishment or when undertaking military training or other activities;

(c) the escape of any person from military detention, or from military custody when under arrest;

(d) the loss of public or service property due to theft, fraud, damage, negligence, arson or sabotage, whether proved or suspected, where the financial loss exceeds $500;

(e) the loss or damage, including barrack damage, due to any other cause where the financial loss exceeds $1,000;

(f) the loss of, or compromise of, whether proved or suspected, of documents, equipment or information having a security classification of 'CONFIDENTIAL' or higher;

(g) any accident involving a military aircraft or boat;

(h) any accident involving a military vehicle where the financial loss exceeds $5,000;

(i) any accident or premature involving ammunition or explosives, including negligent discharge.

(2) The requirement to convene a board pursuant to subrule (1) maybe dispensed with on the authority of an officer of the rank of Colonel or above in command, having the authority to convene a board.

(3) A board may be convened with reference to any matter which the authority decides to refer to a board.

Duty of board

7. It shall be the duty of a board to investigate and report on the facts relating to any matter referred to it under these Rules and, if directed, to express its opinion on any question arising out of any such matter.

Power to defer

8. Where any matter is the subject of any other investigation by the military or civil police or of proceedings under military law and a board has not been convened with reference thereto, the authority may defer the convening of a board until the completion of such further investigation or proceedings.

Stay of proceedings

9. Where any matter is the subject of any other investigation by the military or civil police or of proceedings under military law and a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such other investigation or proceedings have been completed and shall then dissolve the board, if satisfied that a board is not necessary.

Adjournment and re-assembly

10. (1) The president may adjourn the board which shall sit on such occasions, and in such places and at such times as he may direct.

(2) Without prejudice to subrule (1), the authority may at any time, if it appears necessary or desirable, direct that the board shall re-assemble for such purpose as may be specified.

Witnesses

11. (1) A board shall hear the evidence of the witnesses who have been made available by the authority and may hear the evidence of such other person as it may think fit.

(2) In the course of giving evidence, a civilian witness may be represented but, subject to the provisions of rule 12, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive reasonable expenses incurred as a result of his attendance and a reasonable allowance in respect of his loss of time.

Persons who may be affected by findings of board

12. (1) Where it appears to the authority or, where a board has been convened, either to the authority or to the president, that any witness or other person to whom this rule applies may be affected by the findings of the board, the authority or the president, as the case may be, shall take such measures as are in his view reasonable and necessary to secure that such witness or other person has notice of the proceedings and, if he so desires, has an opportunity of being present and represented at the sittings of the board, or at such part thereof as the authority or the president, as the case may be, may specify.

(2) Any such witness or other person referred to in subrule (1) may give evidence, question any witnesses or produce any witness to give evidence on the matters which may affect him and, if he is represented, his representative may question witnesses, but a representative shall not address the board except with the permission of the president.

(3) This rule, so far as it applies to persons other than witnesses who may be affected by the findings, applies only to —

(a) person subject to military law; and

(b) persons who, though not so subject, are in the service of His Majesty the Sultan and Yang Di-Pertuan and may be so affected in character or professional reputation.

Evidence

13. A board may receive any evidence which it considers relevant to the matter referred to it, whether oral or written, and whether or not it would be admissible in a civil court.

Oaths and affirmations

14. Every witness before a board shall be examined on oath or, if applicable, may be permitted by the president to make an affirmation.

Record of proceedings

15. (1) The president shall record, or cause to be recorded, in writing the proceedings of a board in sufficient detail to enable the authority to follow the course of the proceedings.

(2) Where there is no shorthand writer present, the evidence shall be recorded in narrative form and such recording shall as nearly as possible follow the words used in the proceedings.

(3) Where the board considers it necessary, any particular question and answer shall be recorded verbatim.

(4) The evidence of each witness, as soon as it has been recorded in accordance with subrule (1), shall be read over to him and shall be signed by him.

(5) A record of the proceedings shall be signed by the president and other members of the board and shall be forwarded forthwith to the authority.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES (IMPRISONMENT AND DETENTION) RULES

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ROYAL BRUNEI ARMED FORCES (IMPRISONMENT AND DETENTION) RULES

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SUBSIDIARY LEGISLATION

Rules made under sections 114 and 115

ROYAL BRUNEI ARMED FORCES (IMPRISONMENT AND DETENTION) RULES

Commencement: 12th January 2006

PART 1

PRELIMINARY

Citation

1. These Rules may be cited as the Royal Brunei Armed Forces (Imprisonment and Detention) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires —

"commandant" means —

(a) in relation to a military establishment, the officer appointed as commandant thereof, or any officer acting in his place;

(b) in relation to unit detention rooms, the colonel in command or commanding officer of the unit providing rooms under these Rules or any officer acting in his place;

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

"legal adviser" means, in relation to a soldier under sentence —

(a) an advocate and solicitor who is in possession of a practising certificate issued under the Legal Profession Act (Chapter 132);

(b) any officer representing or assisting a prisoner for the purposes of his defence or in connection with a petition or appeal;

"room" means any cell or room or other place of confinement within any premises, vessel, hut or tent, or any part of a hut or tent;

"soldier" includes any man or woman under military sentence of imprisonment or detention;

"unit" means either any independent portion of the Royal Brunei Armed Forces which is not higher in the corps organisation than a battalion or its equivalent or an equivalent body of troops.

PART 2

CONTROL AND INSPECTION OF MILITARY ESTABLISHMENTS

Control of military establishments

3. All military establishments shall be under the control of the Commander.

Inspectors of Military Establishments

4. The Commander may appoint one or more Inspectors of Military Establishments.

Inspection of military establishments

5. It shall be the duty of an Inspector of Military Establishments to inspect military establishments and to report to the Commander on all military establishments at least once in every year.

PART 3

PROVISION, CLASSIFICATION AND USE OF MILITARY ESTABLISHMENTS

Places in which persons may be required to serve military sentences of imprisonment or detention

6. Subject to and in accordance with the provisions of these Rules, the places in which persons may be required to serve the whole or any part of military sentences of imprisonment or detention passed upon them shall be military establishments and civil prisons.

Classification of military establishments

7. Military establishments shall consist of the following classes of establishments —

(a) military detention centres; and

(b) unit detention rooms.

Provision of unit detention rooms

8. (1) Unit detention rooms may be provided by the commanding officer of any unit, being an officer not below the rank of Lieutenant Colonel.

(2) Such rooms shall also be provided by the commanding officer of any unit, whatever his rank, or by an officer commanding part of a unit if ordered to do so by a superior officer not below the rank of Lieutenant Colonel.

Places in which officers, soldiers and certain civilians shall serve military sentences of imprisonment

9. (1) An officer, soldier or person to whom Part 5 of the Act applies by virtue of section 203 or 204, upon whom a military sentence of imprisonment has been passed, shall be required to serve that sentence in a civil prison.

(2) Such officer, soldier or person serving sentence in a civil prison shall, unless otherwise provided for in these Rules, be for all purposes subject to the Prisons Act (Chapter 51) and any regulations made thereunder.

Soldiers sentenced in or outside Brunei Darussalam

10. A soldier upon whom a military sentence of imprisonment or detention has been passed in or outside Brunei Darussalam shall be required to serve that sentence in Brunei Darussalam.

Places in which military sentences of detention shall be served in Brunei Darussalam

11. A soldier shall serve the whole or any part of a military sentence of detention either in a civil prison or a military establishment.

Places in which women shall serve military sentences of imprisonment or detention

12. Women under arrest and women serving imprisonment or detention shall be detained in such places as the Commander may, with strict regard to decency and the special position of women, direct.

Temporary place of custody

13. Any officer upon whom a military sentence of imprisonment has been passed and any soldier upon whom a military sentence of imprisonment or detention has been passed who cannot be immediately delivered to a civil prison or a military establishment, as the case may be, to serve his sentence of imprisonment or detention, or to be placed under close arrest, as the case may be, by reason of the fact that the officer or soldier is —

(a) in a unit that is engaged in operations;

(b) in a vessel at sea; or

(c) outside Brunei Darussalam,

may be kept in custody in such place as his unit commander may direct.

Committal to or removal from prisons and military establishments

14. Subject to the provisions of the Act, no soldier under sentence shall be committed to a civil prison, or to a military establishment, or from one prison or establishment to another, or from one country or place to another, except in accordance with an order made on the form specified in Schedule 1 as is appropriate to the case.

Release from military sentences of imprisonment or detention

15. (1) Except as provided for in rules 16 and 17, no soldier under sentence shall be released from a prison or a military establishment otherwise than —

(a) by an order of the Court of Appeal or other civil court of competent jurisdiction;

(b) by an order made in the form specified in Schedule 2 and signed by an officer of such rank and appointment as is specified therein; or

(c) on the expiration of his sentence:

Provided that where a sentence is due to expire on a weekly or public holiday, the soldier shall be released on the preceding day.

(2) Before his discharge, a soldier under sentence shall be examined by a medical officer for any fresh marks, injuries or tattoos on any part of his body which were not previously recorded upon his admission or during his detention.

(3) The medical officer shall immediately inform the commandant of the military establishment if he finds any fresh marks, injuries or tattoos on any part of the body of the soldier under sentence.

(4) Every soldier under sentence shall be released from a military establishment in his official working dress.

(5) The commandant of a military establishment shall inform the commanding officer of the soldier under sentence in writing of the date of release of that soldier one week prior to the date of his release.

(6) On the day of release, the commanding officer shall appoint a representative of the rank of Corporal or above to take custody of the soldier under sentence and of any relevant documents from the military establishment.

(7) At no time shall the soldier under sentence be released from the military establishment to his family or any other party.

Temporary release on medical grounds

16. A soldier under sentence may be released from a military establishment for the purpose of medical examination, observation or treatment for such period and under such conditions as the commandant of the military establishment or an officer authorised by him, acting on the advice of the medical officer, may impose.

Temporary release

17. (1) The commandant or an officer authorised by him may order, in the form specified in Schedule 3, the temporary release from a military establishment on compassionate grounds of a soldier under sentence in the cases and under the conditions set out in this rule.

(2) The conditions under which the commandant may authorise the temporary release of a soldier under sentence are that —

(a) the soldier under sentence shall comply with any conditions laid down by the commandant which apply during the period of his temporary release, including any conditions as to custody and as to places where the soldier may not go during that period;

(b) if the soldier under sentence fails to comply with any condition under which he was temporarily released, such release will immediately be terminated, and it shall be the duty of the soldier under sentence to return forthwith to the military establishment.

(3) The period of temporary release shall not count as part of the sentence served by the soldier.

Detention of soldiers in safe custody

18. (1) On receiving an order in writing made by the commanding officer of a person subject to military law or subject to Part 5 of the Act by virtue of section 203 or 204 —

(a) who has been remanded for trial by court-martial or has been tried; and

(b) is awaiting promulgation of the finding and sentence of a court-martial, or is awaiting investigation and disposal of a charge against him,

the commandant of a military establishment may detain him in safe custody in that military establishment:

Provided that —

(a) there is accommodation available in the military establishment in which such a person can be segregated from soldiers under sentence; and

(b) the commandant can make arrangements for such a person to be supplied with the ordinary rations of a soldier who is not under sentence.

(2) For the purposes of this rule, the commanding officer of a person subject to Part 5 of the Act by virtue of section 203 or 204 thereof shall be the officer appointed to be his commanding officer under regulation 8 of the Royal Brunei Armed Forces (Summary Jurisdiction) Regulations (Rg 4).

PART 4

TREATMENT, EMPLOYMENT, DISCIPLINE AND CONTROL OF SOLDIERS UNDER SENTENCE

Application of this Part

19. Except as otherwise stated or required by the context, this Part applies to all soldiers under sentence in military establishments.

Rules to be brought to notice of soldiers under sentence

20. A copy of this Part or a suitable extract of it in a form approved by the Commander shall be displayed conspicuously in every military establishment in such places where it can be seen from time to time by every soldier under sentence.

Aim of training and treatment

21. The aim of the training and treatment of soldiers under sentence is to train them, and to give them the will, to become more efficient members of Royal Brunei Armed Forces and to become better citizens.

Corporal punishment and use of force

22. (1) Corporal punishment is not to be inflicted on a soldier under sentence.

(2) Force is not to be used unnecessarily in the treatment of a soldier under sentence; but if the use of force is necessary, only the minimum shall be used.

Admission to military establishments

23. (1) The following procedure is to be adopted when a soldier under sentence is admitted to a military establishment —

(a) the committal order shall be examined and the attention of the commandant drawn to any omission or irregularity;

(b) except for the amount of clothing and those articles which a soldier under sentence is authorised to have in his possession, his equipment and any other article which arrives with the soldier on admission shall be taken from him, whether they are his own property or not. Removal of property shall be dealt with as follows —

(i) clothing, equipment and any other service or public property shall be withdrawn under current regulations, such items being struck off the soldier's charge;

(ii) private property of the soldier shall be retained in safe custody by the commandant, a record of such property being made and signed by the soldier concerned and a member of the staff of the military establishment;

(iii) a soldier's property (other than perishable articles) shall be returned to him on his release provided he signs a receipt acknowledging its return;

(iv) money is to be kept in a safe place or paid into a bank and the equivalent amount returned to the soldier on his release or, with the agreement of the commandant, it may be sent to any person at the request of the soldier;

(v) perishable articles are to be disposed of at the discretion of the commandant or an officer authorised by him who will take into account the soldier's wishes where practicable;

(vi) any other property which is held in safe custody on behalf of a soldier under sentence may be sent, with the commandant's consent, to a relative or friend of the soldier;

(c) the soldier under sentence shall be searched in accordance with these Rules to ensure he does not retain any unauthorised articles;

(d) the soldier under sentence shall be weighed and his weight recorded;

(e) the soldier under sentence shall be medically examined by a medical officer within 24 hours of his admission:

Provided that —

(i) this period may be extended to 48 hours where the soldier has been medically examined and certified as fit to undergo sentence on the day of his admission or the day before;

(ii) in computing such periods of 24 or 48 hours, weekly and public holidays shall be excluded;

(f) the religion of a soldier under sentence is to be recorded and a religious officer informed as soon as is practicable;

(g) within 24 hours of admission, the commandant, or a member of the staff of the military establishment, shall satisfy himself that the soldier under sentence has read or had explained to him this Part and the procedure for bringing any complaint to the notice of his commanding officer in accordance with the Act and these Rules.

(2) Any reference to the commandant in this rule includes a reference to a member of staff of the military establishment not below the rank of Captain who is authorised by him to act on his behalf.

Daily routine of soldiers under sentence

24. (1) The daily routine of soldiers under sentence shall be laid down by the commandant of the military establishment in accordance with any instructions issued at any time by or under the authority of the Commander.

(2) Such daily routine shall be subject to the provisions of these Rules where they refer to the number of hours of work or training which may be done by soldiers under sentence.

Work and training of soldiers under sentence

25. (1) *(a)* Except under subrule (2) and rule 26, throughout his sentence a soldier shall carry out work or training for not less than 6 hours and not more than 9 hours each day (excluding time for meals).

(b) He shall not, however, carry out work or training until he has been examined by the medical officer and certified in the form specified in Schedule 4 as fit for such work or training.

(2) A soldier under sentence shall not be required to carry out work or training at any time when he is —

(a) in close confinement;

(b) excused work or training on medical grounds on the advice of a medical officer; or

(c) excused work by the commandant or an officer authorised by him or is engaged in some other activity authorised by these Rules.

Weekly and public holidays

26. On weekly and public holidays, a soldier under sentence shall not carry out work or training except work which is necessary for the service of the military establishment.

Work in association

27. (1) A soldier under sentence in a military establishment shall carry out work or training in association with other soldiers under sentence, except when it appears to be the commandant that it is desirable in the interests of the soldier under sentence or for the maintenance of good order and discipline for a soldier not to work in association with others, in which case the commandant or an officer authorised by him may arrange for that soldier to work apart from other soldiers for a period of not more than 7 days.

(2) In deciding when a soldier under sentence should work apart from others or should rejoin them, the commandant shall take into consideration any advice he may be given by a medical officer.

Unauthorised work

28. A soldier under sentence shall not be employed directly or indirectly for the private benefit or advantage of any person, nor in any way contrary to these Rules or the orders of the commandant or an officer authorised by him.

Rations for soldiers under sentence

29. (1) *(a)* The food provided for soldiers under sentence in a military establishment shall be of a nutritional value adequate for health and strength.

(b) It shall be of wholesome quality, well prepared and served, and be reasonably varied.

(2) *(a)* The commandant and members of the staff of a military establishment shall endeavour to ensure that every soldier under sentence receives the rations to which he is entitled.

(b) A soldier under sentence may complain if he believes that he is not getting the rations to which he is entitled but he shall have no right to have them weighed.

Letters

30. (1) *(a)* A soldier under sentence in a military establishment shall be permitted to write and send two letters each week.

(b) Writing materials and stamps for such letters shall be at the expense of the soldier.

(2) A soldier in a military establishment may receive —

(a) any number of letters; and

(b) newspapers, periodicals and journals,

at the discretion of the commandant.

Censorship

31. (1) The commandant of a military establishment or any officer authorised by him may scrutinise letters written by or addressed to any person to whom this rule applies.

(2) The commandant may withhold from any person to whom this rule applies the whole or part of a letter addressed to that person, but he shall communicate to that person any part of the letter which is not objectionable.

(3) The commandant may withhold a letter written by any person to whom this rule applies, in which case he shall give such person an opportunity to write another in its place not containing the material to which the commandant objects.

(4) A letter written by any person to whom this rule applies may not be delayed by the commandant unless it contains matter relating to the security of the military establishment in which case he shall refer it to a higher authority.

(5) In every case where the commandant withholds a letter written by or addressed to any person to whom this rule applies, he shall record the fact and his reasons for doing so.

(6) Any reference to the commandant in this rule includes a reference to any officer not below the rank of Captain who is authorised by him to act on his behalf.

Parcels

32. (1) A parcel addressed to a soldier under sentence shall be opened by or under the authority of the commandant in the presence of that soldier.

(2) Any article which he is prohibited from receiving or which he is not authorised to receive shall be retained in accordance with rule 23(1)*(b)*.

Visits by relatives

33. (1) *(a)* A soldier under sentence may receive visits from his relatives at the discretion of the commandant.

(b) Such visits shall take place in the military establishment at times and places decided by the commandant.

(2) Any visit authorised by this rule shall be within the sight and hearing of the commandant or a member of the staff of the military establishment.

Visits for purpose of investigating offences

34. (1) The commandant may permit a soldier under sentence to be visited by a police officer or provost officer or by any officer or other person whose duty it is to investigate the commission, or suspected commission, of an offence.

(2) The commandant shall permit any person to visit a soldier under sentence if that person is authorised to visit him by a warrant or an order of a court.

Visits by legal advisers

35. (1) Any written communication between a soldier under sentence and his legal adviser shall be confidential and exempt from censorship, except that when the commandant has reason to believe that any such communication may contain material unrelated to the purpose of an investigation, trial or appeal, it may be subject to censorship in accordance with rule 31.

(2) The commandant shall provide reasonable facilities for a soldier under sentence to be visited by his legal adviser in connection with any investigation, trial or appeal.

(3) Any visit authorised by this rule shall be within the sight, but not within the hearing, of the commandant or a member of the staff of the military establishment.

Medical attention

36. (1) The commandant shall ensure that every soldier under sentence shall be examined by a medical officer at least once every day on the occasions when he is —

(a) in close confinement;

(b) subject to any form of mechanical restraint; or

(c) sick or complains of sickness.

(2) The medical officer shall also examine daily every soldier under sentence to whom his attention is directed by the commandant.

Functions of medical officer

37. (1) The medical officer shall have the care of the mental and physical health of soldiers under sentence in a military establishment.

(2) The commandant shall take into account his advice in these matters unless to do so would be contrary to any written law or these Rules.

Attendance by medical officer

38. A medical officer shall attend immediately or as soon as practicable to any soldier under sentence on receiving from the commandant information regarding his illness.

Appeals

39. A person on whom a military sentence of imprisonment or detention has been passed and which is to be served in a military establishment or who is temporarily detained in such a military establishment whilst awaiting reception into a civil prison in pursuance of a committal order —

(a) who has appealed or desires to appeal to the Court of Appeal against his conviction by the court-martial; or

(b) whose conviction or acquittal is the subject of an appeal,

may be taken to, kept in custody at, or brought back from any place at which he is entitled or ordered by that Court to be present for the purposes of any proceedings of that Court, as follows —

(i) he may be taken to, kept in custody at, and brought back from any such place as is stated above in military custody; or

(ii) he may be kept in custody at any such place in such manner as may be directed by the Court or, in the absence of any such direction in a —

(A) military establishment;

(B) civil prison; or

(C) police station:

Provided that he shall not be kept in a police station for periods exceeding 7 days at any one time.

Complaints

40. (1) A soldier under sentence who considers himself wronged in any matter may complain to the commandant of the military establishment in which he is serving his sentence to a visiting officer on the occasion of his visit or to the Board of Visitors on the occasion of that Board's visit.

(2) Where the soldier under sentence has a sub-unit commander, he shall forward any complaint he wishes to make to the commandant through his sub-unit commander.

(3) The commandant of a military establishment shall investigate any complaint made to him under this rule and shall take any steps he considers necessary for redressing the matter.

(4) A soldier under sentence may complain to his commanding officer under section 181 and it shall be the duty of the commandant to forward that complaint to the commanding officer of the soldier.

Searching soldiers under sentence

41. (1) On admission to a military establishment, a soldier under sentence shall be searched in accordance with rule 42.

(2) The commandant of a military establishment may order that a soldier under sentence shall be searched at any time while serving his sentence.

Method of searching

42. For the searching of any person in a military establishment in accordance with these Rules, the following conditions apply —

(a) no person shall be present at any search except the commandant or members of the staff of the military establishment, and in particular no soldier under sentence shall be present at the search of any other soldier under sentence;

(b) no person shall be searched by or in the presence of a person of the opposite sex other than a medical officer.

Escapes

43. (1) Any member of the staff of a military establishment who discovers that a soldier under sentence has escaped shall immediately report the fact to the commandant.

(2) If a soldier under sentence in a military establishment escapes, the commandant shall immediately inform —

(a) the Officer-in-Charge of the police district in which the military establishment is situated;

(b) the Military Police Unit;

(c) the Staff Officer for Security, Directorate of Intelligence and Security; and

(d) the Staff Officer for Personnel of the Directorate of Personnel and Administration.

Deaths in military establishment

44. (1) If a soldier under sentence in a military establishment dies, the commandant shall immediately report the fact to the coroner having jurisdiction in the place where the military establishment is situated.

(2) Nothing in this rule shall affect the duty of the commandant, or higher military authority, to record or report the death to meet the requirements of any other rules, regulations or instructions.

Offences against discipline by soldiers under sentence

45. A soldier under sentence commits an offence against these Rules if he —

(a) commits an offence of a nature which might be dealt with summarily by the commanding officer of a soldier of the regular forces;

(b) treats with disrespect any member of the staff of a military establishment, any visitor to the military establishment or any person employed in it;

(c) is lazy, negligent or careless;

(d) uses any abusive, insolent, threatening or improper language;

(e) is indecent in any act or gesture;

(f) leaves his room or place of work or any other appointed place without permission;

(g) has in his room or possession any unauthorised article or attempts to obtain such an article;

(h) gives to or receives from any person any unauthorised article;

(i) makes repeated and groundless complaints;

(j) attempts to commit any of the offences in paragraphs *(b)*, *(e)*, *(f)*, *(g)* and *(h)*.

Jurisdiction of commandant and sub-unit commander of military establishment

46. (1) The commandant of a military establishment shall have jurisdiction to punish a soldier under sentence who commits an offence against these Rules.

(2) The commandant of a military establishment may delegate jurisdiction to a sub-unit commander under his command to punish a soldier under sentence who commits an offence against these Rules.

Procedure for dealing with offences

47. (1) A soldier who, while under sentence, commits any offence against the Act or these Rules shall be dealt with in accordance with the following provisions of this rule.

(2) When it is reported to the commandant that a soldier under sentence has committed an offence as is described in subrule (1), the commandant shall deal with it as follows —

(a) if the alleged offence is one which the commandant has jurisdiction to deal with and if he believes his powers of punishment are adequate, he may deal with the matter in accordance with the Act and regulations made thereunder. In addition to the punishments authorised by the Act, he may also impose the punishments referred to in rule 48;

(b) if the alleged offence is one which the commandant has no jurisdiction to deal with or, even if he did have jurisdiction, he considers the punishment he might award would be inadequate, he shall report the case to his higher authority with a request that the soldier be dealt with under military law;

(c) in all other cases, the procedure laid down in subrule (3) shall be observed.

(3) *(a)* The commandant shall ensure that the soldier is informed of the offence or offences he is alleged to have committed against these Rules, and the soldier shall then be brought before him.

(b) The evidence in support of the allegations shall be given by each witness in person in the presence of the soldier, except that where the soldier has been supplied in advance with a written statement of the evidence of a witness and does not dispute any of its contents, the evidence of that witness need not be given in person provided the soldier agrees and the statement is read aloud in his presence.

(c) The soldier shall then be given an opportunity to question the evidence against him and to present his own case, and the commandant shall finally inform the soldier whether he finds him guilty or not guilty of each offence alleged.

Punishments which may be awarded by a commandant

48. (1) The commandant of a military establishment may award any one or more of the punishments set out in subrule (2) to a soldier under sentence who has been found by him to have committed an offence against these Rules.

(2) The punishments referred to in subrule (1) are —

(a) close confinement for a period not exceeding 3 days;

(b) deprivation of a mattress for a period not exceeding 3 days;

(c) extra military instruction;

(d) admonition.

Punishments which may be awarded by sub-unit commander

49. The commandant of a military establishment may delegate to a sub-unit commander under his command, jurisdiction to award any one or more of the following punishments to a soldier under sentence who has been found by the sub-unit commander to have committed an offence against these Rules —

(a) extra military instruction not exceeding 3 periods of 45 minutes each;

(b) admonition.

Close confinement

50. (1) No soldier under sentence shall be placed in close confinement unless he has been certified as specified in Schedule 5 by a medical officer as fit to undergo that punishment.

(2) A soldier under sentence in close confinement shall not be permitted any exercise except on the recommendation of the medical officer.

(3) A soldier under sentence who is in close confinement shall not be deprived of his room furniture or books nor be subjected to any form of discipline which has not been lawfully ordered under these Rules.

(4) A soldier under sentence who is in close confinement shall be visited at least once every day by the commandant or an officer authorised by him not below the rank of Captain and the medical officer, and he shall be visited at least once every 3 hours by a member of the staff of the military establishment.

Mechanical restraint

51. (1) The commandant of a military establishment may issue an order in writing for the mechanical restraint of a soldier in custody or under sentence to prevent him from —

(a) inflicting any bodily injury to himself or others;

(b) damaging any property;

(c) creating any disturbance; or

(d) escaping from custody.

(2) A mechanical restraint shall not be ordered for the purpose of punishment.

(3) A mechanical restraint shall only be by means of handcuffs or a straitjacket.

(4) Where the mechanical restraint is by means of handcuffs, the handcuffs —

(a) shall be designed in the figure of 8, and be of the swivel or curb chain type; and

(b) shall not exceed 567 grams in weight.

(5) The commandant of a military establishment may, when handcuffs or a straitjacket cannot efficiently secure the soldier in custody or under sentence, order other means or manner of restraint with the approval, and subject to the conditions laid down by a medical officer, in the form set out in Part II of Schedule 6.

(6) Where a soldier in custody or under sentence is restrained by means of handcuffs, the handcuffs shall not be attached to any object.

(7) Soldier in custody or under sentence may be handcuffed to one another in transit.

(8) An order made under subrule (1) shall be in the form set out in Part I of Schedule 6 and shall state —

(a) the type and manner of restraint that is to be applied; and

(b) the period during which it shall be applied.

(9) No soldier in custody or under sentence shall be mechanically restrained by means of handcuffs for more than 12 hours, except that the Director of Personnel and Administration may by order in the form set out in Part I of Schedule 6 authorise the use of handcuffs to be continued for a further period not exceeding 24 hours.

(10) A mechanical restraint may be applied to a soldier in custody or under sentence before an order under subrule (1) has been issued in a case of extreme urgency when an order in writing cannot be obtained.

Use of special clothing

52. When a soldier under sentence destroys, or attempts to destroy, his clothing or refuses to wear uniform, the commandant of the military establishment may order him to wear special clothing of a type approved by the Commander.

Isolation of soldiers under sentence

53. (1) A soldier under sentence may be isolated from other soldiers under sentence for the following reasons —

(a) he has been found to be infected, or he is suspected to be infected, with a communicable disease; or

(b) his behaviour and conduct is detrimental to the well-being of others and to the security of the military establishment in which he is detained.

(2) A soldier under sentence referred to in subrule (1) shall be kept in a single cell.

(3) An order for the isolation of a soldier under sentence shall be in the form set out in Schedule 7.

PART 5

UNIT DETENTION ROOMS

Application of this Part

54. (1) *(a)* This Part applies only to unit detention rooms.

(b) All these Rules, however, apply to unit detention rooms except those rules referred to in subrule (2) and those which are modified by subrule (3).

(2) The following rules do not apply to unit detention rooms —

(i) rules 37 and 38 (which relate to the functions and attendance of a medical officer);

(ii) rule 46(2) (which relates to the delegation of jurisdiction to a sub-unit commander);

(iii) rule 49 (which relates to punishments which may be awarded by a sub-unit commander);

(iv) rules 61 and 62 (which relate to education and welfare);

(v) rules 65 to 68 (which relate to visiting officers);

(vi) rules 69 to 71 (which relate to the Board of Visitors);

(vii) rules 72 and 73 (which relate to staff).

(3) The provisions of the rules specified below apply to unit detention rooms but subject to the following modifications —

(a) in rule 40 (which relates to complaints), the reference in this rule to a sub-unit commander, a visiting officer or the Board of Visitors do not apply to unit detention rooms;

(b) rules 51 and 52 (which relates to the use of mechanical restraint and special clothing) apply to unit detention rooms only where reference is made to mechanical restraints by means of handcuffs.

Setting up unit detention rooms

55. Unit detention rooms shall be under the control of the Commander or by the officer by whom they are provided in accordance with these Rules.

Segregation in unit detention rooms

56. Soldiers under sentence in unit detention rooms shall be segregated from any soldiers confined in such rooms awaiting trial by court-martial, disposal by a commanding officer or appropriate superior authority, or awaiting promulgation of sentence.

PART 6

RELIGION, EDUCATION AND WELFARE

Books of religious instruction

57. As far as practicable, the commandant shall make available for the use of every soldier under sentence such books of religious observation or instruction as are recognised for the use of his religion.

Religious officers

58. (1) When religious officers are present in a military establishment for the purposes of their duties, they shall abide by these Rules and the standing or other orders made for the running of the military establishment and they shall consult the commandant concerning their duties.

(2) The commandant shall afford facilities to religious officers to have access to soldiers under sentence at times approved by him for the purpose of visiting or giving them religious instruction.

Duties of religious officers

59. (1) Wherever possible, a religious officer of the same religion as a soldier under sentence shall visit him as soon as practicable after the soldier's admission to a military establishment, and thereafter at reasonable times and shortly before his release.

(2) The commandant shall make available to religious officers on the occasion of their visit a list of soldiers under sentence who are sick or undergoing punishment under these Rules and he shall afford facilities for such soldiers to be visited, if requested, either by a religious officer or the soldier.

(3) A religious officer shall officiate as appropriate at the burial of a soldier under sentence who dies in a military establishment.

Religious services

60. (1) Whenever possible, religious officers shall conduct religious services in military establishments on Fridays, other customary days and on such other convenient occasions approved by the commandant as the religious officer may propose.

(2) *(a)* A soldier under sentence shall be allowed to attend a religious service of his own religion.

(b) Any soldier undergoing punishment under these Rules may attend religious service unless he is in close confinement or is excluded from attending because of his disorderly conduct or because it is considered his conduct would be disorderly.

Education of soldiers under sentence

61. The commandant of a military establishment shall —

(a) where radios or television sets are provided, make use of them as he considers fit for broadcasting news and educational matters to soldiers under sentence;

(b) encourage soldiers under sentence to assist in the education of other soldiers under sentence;

(c) take a special interest in providing the rudiments of education to any illiterate soldiers under sentence;

(d) encourage other educational activities when circumstances permit;

(e) encourage soldiers under sentence to study any special subjects in which they are interested and, at his discretion, allow them to be provided with any necessary text-books or reference books.

Welfare

62. (1) A unit counsellor or welfare officer shall be appointed in each military establishment, and the commandant shall afford facilities to soldiers under sentence to consult the unit counsellor or welfare officer as is required.

(2) *(a)* The unit counsellor or welfare officer shall keep written records of the matters on which he is consulted by soldiers under sentence.

(b) If he has not completed any action or correspondence in connection with such matters before a soldier under sentence is released from the military

establishment to return to his unit, he shall send to that soldier's commanding officer a report on those matters and any relevant correspondence or papers.

PART 7

MISCELLANEOUS RULES AND OFFENCES RELATING TO MILITARY ESTABLISHMENTS

Unlawful introduction of articles

63. (1) No person shall without lawful authority convey or attempt to convey any article into or out of a military establishment or to a soldier under sentence.

(2) No person shall place such an article anywhere outside the military establishment with intent that it shall come into the possession of a soldier under sentence.

Admission of visitors and others to military establishments

64. (1) *(a)* No unauthorised person shall enter a military establishment, make any sketch, take any photograph, or communicate with any person in it under sentence.

(b) No such person shall remain in an establishment after being requested to leave by the commandant or other person acting under his authority.

(c) In deciding whether to grant permission, grant permission subject to certain conditions, or refuse permission to enter a military establishment, the commandant shall have regard to the orders of any court of competent jurisdiction, the provisions of these Rules and the directions or instructions of any higher military authority.

(2) The commandant of a military establishment may grant permission to any person to enter a military establishment subject to any conditions, and he may make it a condition of granting permission to a person to enter or do anything within a military establishment that such person agrees to being examined or searched if so requested.

(3) The commandant may order the removal from a military establishment of any person who, without authority, enters the military establishment, makes any sketch, takes any photograph, refuses to be examined or searched or fails to comply with any condition imposed by the commandant under this rule.

PART 8

VISITING OFFICERS AND BOARD OF VISITORS

Appointment of visiting officers

65. (1) The Director Personnel shall ensure that an officer not below field rank, or corresponding rank, (referred to in these Rules as a "visiting officer") visits each military establishment (other than unit detention rooms) once every month.

(2) A written order of appointment shall be given to each visiting officer.

Duties of visiting officer

66. (1) A visiting officer who has been appointed to visit a military establishment shall attend in accordance with the instructions of the order appointing him.

(2) On arrival at a military establishment the visiting officer shall, if required, produce to the commandant or anyone acting on his behalf the order appointing him.

(3) The visiting officer shall not inspect the staff, buildings or premises of the military establishment.

(4) *(a)* Except under the conditions of subrule (7), on each visit, the visiting officer shall see all the soldiers under sentence in the military establishment either on parade or in their rooms.

(b) Soldiers in close confinement or in a medical detention room shall be seen in those rooms.

(5) *(a)* Except under the conditions of subrule (7), the visiting officer shall ask all soldiers under sentence if they have any complaints to bring to his notice.

(b) This question is to be asked by the visiting officer himself and not by any member of the staff on his behalf.

(c) This question is not to be qualified in any way, nor is a soldier's right to complain to be made subject to any conditions.

(6) *(a)* A soldier under sentence who wishes to complain shall be asked by the visiting officer whether he wishes to make his complaint then or privately.

(b) If the soldier wishes to make his complaint privately, the commandant shall make a suitable room available for the visiting officer.

(c) If the commandant considers it necessary, a member of the staff may be present to ensure there is no breach of discipline by the soldier but, at the discretion of the visiting officer, that member of the staff shall remain within sight but out of hearing.

(7) A visiting officer shall satisfy himself that he has seen all the soldiers under sentence in the military establishment, except any whom he is specifically requested not to see on medical grounds on the advice of the medical officer.

Investigation of complaints by visiting officer

67. (1) *(a)* A visiting officer is to make full inquiries into any complaint made to him and the commandant shall place at his disposal any witness or evidence required.

(b) The visiting officer is to ascertain whether the complaint had previously been made to the commandant or other officer on the staff of the military establishment and, if so, any action taken as a result of it.

(2) After completing the investigation into any complaint made by a soldier under sentence, the visiting officer shall proceed as follows —

(a) if in his opinion the complaint was not justified, he shall inform the soldier under sentence accordingly;

(b) if in his opinion the complaint was justified, he shall inform the soldier under sentence that he will report the matter to the Director Personnel.

(3) A visiting officer shall not under any circumstances to offer any redress to the soldier under sentence.

(4) After each visit, a visiting officer shall make a report to the Director Personnel, including a full report of every complaint made to him and his subsequent investigation.

Redress of complaints made to visiting officer

68. On receipt of a complaint reported to him by a visiting officer, the Director Personnel shall investigate it and take any necessary steps for redressing the matter.

Board of Visitors

69. (1) The Minister shall for each year appoint a Board to be called the Board of Visitors.

(2) Each military establishment, other than unit detention rooms, shall be visited by the Board of Visitors in accordance with rules 70 and 71.

General duties of Board of Visitors

70. (1) The Board of Visitors shall carry out the following general duties with regard to the military establishment to which their appointment relates —

(a) inspect the military establishment in accordance with rule 71 on at least two occasions in a year;

(b) whether in the course of their inspection under paragraph *(a)* or not, inquire into any matter into which the Ministry or any officer authorised by the Minister directs them to inquire or into any alleged abuses or shortcomings which may come to their notice,

and shall report the results of each inspection or inquiry to the Minister.

(2) The Board of Visitors shall record each visit made by them to a military establishment in the journal kept by the establishment for that purpose, and they may note in the journal any observations they wish to make.

Duties of Board of Visitors on inspection

71. (1) On an inspection, the Board of Visitors shall satisfy themselves as to the state of the premises of the military establishment, the administration of the establishment, and the treatment of the soldiers under sentence.

(2) Without affecting the generality of subrule (1), the Board of Visitors shall in particular on each inspection —

(a) see all soldiers under sentence and hear, in private, if the Board thinks fit, any complaint or request which any such soldier may wish to make to them;

(b) inspect the food prepared and provided for the soldiers under sentence;

(c) inspect such of the Armed Forces forms and books maintained in connection with these Rules as they think fit.

(3) The Board of Visitors shall, if they consider necessary, report to the Minister, as specified in rule 70(1), any complaint or request made to them under subrule (2)*(a)*, or upon any food which they have inspected under subrule (2)*(b)* and found to be unsatisfactory.

(4) Where the Board of Visitors make a report about the food under subrule (3), the commandant of the military establishment shall take immediate steps to redress the matter.

PART 9

STAFF OF MILITARY ESTABLISHMENTS

Duties of commandant of military establishments

72. The commandant of a military establishment shall —

(a) exercise a close and constant supervision of the military establishment and, if practicable, visit and inspect daily all parts of the establishment in which soldiers under sentence are working or training. He shall also visit the military establishment during the night at least once a week. He shall make frequent inspections of the rooms occupied or used by soldiers under sentence and shall satisfy himself that the food intended for them is properly stored, cooked and served;

(b) supervise and control the duties of the staff of the military establishment and satisfy himself that the details and rosters of duties are prepared and maintained in accordance with any directions of the Commander and in a manner to ensure the efficiency of the establishment;

(c) issue at any time standing orders for the staff and examine such orders periodically so that they may be revised and maintained in line with current requirements;

(d) instruct the staff of the military establishment to maintain discipline with firmness but without more repression or restriction than is required for the safe custody of soldiers under sentence in a well-ordered community;

(e) encourage members of the staff to enlist the willing cooperation of soldiers under sentence by leadership and example;

(f) interview every soldier under sentence as soon as possible after his admission to the military establishment and shortly before his release;

(g) arrange for any soldier under sentence who is to be dismissed or discharged from the Armed Forces to be interviewed shortly before his release from a military establishment in Brunei Darussalam with reference to his future civil employment.

Duties of members of staff of military establishment

73. Members of the staff of a military establishment shall —

(a) carry out their duties in accordance with these Rules, the standing orders of the military establishment and the orders of the commandant;

(b) preserve an attitude of firmness tempered with understanding towards soldiers under sentence and avoid any form of harsh treatment, set an example of integrity and fairness, try to create a feeling of respect and confidence among the soldiers in their charge, and study their respective characteristics to bring out the best in them;

(c) draw the attention of the commandant to any soldier under sentence who may appear not to be in good health, even though he may not complain, or whose mental state warrants special notice so that such a soldier can be sent to the medical officer for examination;

(d) prevent prohibited articles from being hidden for the purpose of being conveyed to soldiers under sentence and immediately report any such occurrence;

(e) ensure no ladders, planks, ropes, chains, clothing or articles of any kind likely to facilitate escape are left in any place where they would be accessible to soldiers under sentence;

(f) take the utmost care to guard against fires and report any danger of fire, and not carry any naked light within the establishment;

(g) call attention to any defect in the sanitation or ventilation which they may notice;

(h) when on night duty, satisfy themselves as to the correctness of the number of soldiers in their charge and that the rooms are securely locked for the night;

(i) periodically examine the state of the rooms, bedding, locks and bolts under their charge and report when any action is required;

(j) seize all prohibited articles and hand them over immediately to the commandant.

SCHEDULE 1

(rule 14)

COMMITTAL ORDER TO MILITARY ESTABLISHMENT/CIVIL PRISON[1]

To

The Director of Prisons[2]

The Commandant of .....[3]

Whereas.....[4]

was on the ..... day of ..... 20 .....

at .....

awarded detention/imprisonment for a period of ..... days

by.....[5]

In pursuance of the Royal Brunei Armed Forces Act, this is to authorise and require you to receive the above-named.....[4] into your custody and for so doing, this shall be your warrant.

Dated this ..... day of ..... 20 .....

.....

(Signature of commanding officer to be committed/President of Court-Martial)

1 Delete where inapplicable.
2 Insert the name of the establishment.
3 Insert name of unit.
4 Insert number, rank and name of soldier to be committed.
5 Court, ASA or CO awarding sentence.

SCHEDULE 2

(rule 15(1)*(b)*)

ORDER FOR RELEASE FROM PRISON OR MILITARY ESTABLISHMENT

To The Director of Prisons/commandant or other person in charge of

.....[1],

Whereas.....

..... of the .....[2]

is now in your custody undergoing a sentence of imprisonment/detention passed by court-martial / awarded by his/her commanding officer.[3]

Now, therefore, in pursuance of the Royal Brunei Armed Forces (Imprisonment and Detention) Rules (R 2), I hereby order you to release.....[2] from custody.

Dated this ..... day of ..... 20 .....

.....[4]
(Signature)

.....
(Rank and appointment)

Dated this ..... day of ..... 20 .....

1 Insert the name and address of the military establishment.
2 Insert number, rank, name and unit of soldier to be released.
3 Delete as applicable.
4 This form must be signed by the reviewing or reconsidering authority or an officer authorised to do so by His Majesty the Sultan and Yang Di-Pertuan. In the case of a soldier serving a sentence of detention awarded by his commanding officer, only by his commanding officer.

SCHEDULE 3

(rule 17(1))

TEMPORARY RELEASE FROM MILITARY DETENTION
ON COMPASSIONATE GROUNDS

In pursuance of the Royal Brunei Armed Forces (Imprisonment and Detention) Rules (R 2), I hereby authorise the temporary release of .....[1]

a soldier under sentence for a period of ..... hours/days.

The reasons for release are as follows —

.....

.....[2]

The following conditions shall apply —

.....

.....

.....[3]

The abovenamed soldier shall be released from ..... hours on ..... until ..... hours on .....

Dated this ..... day of ..... 20 .....

.....
(Signature of Commandant)

.....
(Signature of soldier)

Note: This temporary release is subject to the condition that if the abovenamed soldier fails to return on the due date, he shall be liable to arrest and disciplinary charges under the Royal Brunei Armed Forces Act and the Rules made thereunder. The period of release will not count towards sentence.

1 Insert number, rank, name and unit of soldier to be released.
2 Insert the compassionate reasons for release.
3 Insert any conditions which shall apply e.g. "To reside at ....."; "To reside at ..... between the hours of ..... And ....."; "The report to ..... police station at ..... hours daily".

SCHEDULE 4

(rule 25(1))

MEDICAL CERTIFICATE OF FITNESS

I[1] ..... after the examination of .....[2] hereby certify him to be medically fit to be kept in custody under a sentence of detention or imprisonment.

I further certify that[2]

.....

is/is not[3] medically fit to be engaged in authorised work and training subject to the following conditions[4] —

.....

.....

.....

.....

.....

Dated this ..... day of ..... 20 .....

.....

(Signature of Medical Officer)

1 Insert number, rank and name of medical officer.
2 Insert number, rank and name of soldier.
3 Delete where inapplicable.
4 To be completed where the medical officer considers that there should be conditions on work and training. If there are none then the words "subject to the following conditions should be deleted and initialled by the medical officer".

SCHEDULE 5

(rule 50(1))

MEDICAL CERTIFICATE OF FITNESS FOR CLOSE CONFINEMENT

I[1] ..... after the examination of .....[2] hereby certify him to be medically fit to be kept in custody under a sentence of detention or imprisonment.

I further certify that[2]

.....

is/is not[3] medically fit to be kept in close confinement subject to the following conditions[4] —

.....

.....

.....

.....

.....

Dated this ..... day of ..... 20 .....

.....

(Signature of Medical Officer)

1 Insert number, rank and name of medical officer.
2 Insert number, rank and name of soldier.
3 Delete where inapplicable.
4 To be completed where the medical officer considers that there should be conditions on work and training. If there are none then the words "subject to the following conditions should be deleted and initialled by the medical officer".

SCHEDULE 6

(rules 51(5), (8) and (9))

ORDER FOR RESTRAINT OF PERSON IN CUSTODY AND APPROVAL OF MEDICAL OFFICER

PART I

ORDER FOR RESTRAINT OF PERSON IN CUSTODY[1]

I, [2]..... hereby order
(Number, rank, name)

[3] .....
(Number, rank, name and unit)

to be restrained by means of [4] .....
.....
.....

in the following manner [5] .....
.....
.....

from [6] ..... to .....
(date/time) *(date/time)*

This order is given for the following reasons —

[7].....
.....
.....

Dated this ..... day of ..... 20 .....

.....
(Signature of Commandant)

1 To be filled by the commandant.
2 Particulars of the commandant.
3 Particulars of arrested person or person serving detention.
4 State instrument of restraint.
5 State position of the hands of arrested person or person serving detention and other particulars relating to manner of restraint.
6 The period shall not exceed 12 hours in the case of restraint with the hands to the rear or 24 hours in any other case.
7 State reasons for the order.

SCHEDULE 6 — *(continued)*

PART II

APPROVAL OF MEDICAL OFFICER[8]

I,[9] ..... hereby approve
(Number, rank, name, appointment)

the following means and manner of restraints [10] .....

.....

.....

to be applied to [11] .....
(Number, rank, name, unit)

from ..... to ..... provided that[12] .....
(date/time) *(date/time)*

Made at ..... hours this ..... day of ..... 20.....

.....
(Signature of Medical Officer)

8 To be filled by a medical officer when the instrument of restraint is other than handcuffs or when soldier in custody or under sentence is restrained in a manner other than with his hands handcuffed at the front or rear.
9 Particulars of medical officer.
10 State the instrument and manner of restraint.
11 Particulars of soldier in custody or under sentence.
12 State any condition relevant to the application of restraint.

SCHEDULE 7

(rule 53(3))

ORDER FOR ISOLATION OF SOLDIER UNDER SENTENCE

I, [1] ..... hereby approve
(Number, rank, name, appointment)

[2] .....
(Number, rank, name and unit)

to be isolated in a[3] normal/single cell for the period from[4] .....
(date/time)

This order is given for the following reasons —

[5] .....

.....

.....

The conditions of the isolation shall be as follows —

[6] .....

.....

.....

Dated this ..... day of ..... 20 .....

.....
(Signature of Commandant)

1 Particulars of commandant.
2 Particulars of the soldier under sentence to be isolated.
3 Delete as applicable the types of cell.
4 State the period of the isolation.
5 State the reasons for the isolation.
6 State the conditions of the isolation.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES RULES OF PROCEDURE

S 4/2006
Amended by
S 107/2008

REVISED EDITION 2018

B.L.R.O. 1/2018

SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES RULES OF PROCEDURE

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SUBSIDIARY LEGISLATION

Rules made under section 99

ROYAL BRUNEI ARMED FORCES RULES OF PROCEDURE

Commencement: 12th January 2006

PART 1

PRELIMINARY

Citation

1. These Rules may be cited as the Royal Brunei Armed Forces Rules of Procedure.

Interpretation

2. (1) In these Rules, unless the context otherwise requires —

"convening a fresh court" includes dissolving the existing court;

"member" when used in relation to a court-martial does not include the president;

"special finding" means, when used in relation to —

(a) section 93, any finding which a court-martial may make in accordance with that section;

(b) section 108, a finding in accordance with subsection (3) of that section that the accused is not guilty by reason of insanity;

[S 107/2008]

(c) rule 64(3), a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

(2) Unless there is intention to the contrary, other expressions in these Rules have the same meanings as if these Rules form part of the Act.

Avoidance of delay by commanding officers in investigating charges

3. (1) Where a person subject to military law under the Act has been arrested and detained by military authority, his commanding officer shall, unless it is impracticable, within 48 hours of becoming aware of the person's detention, have such person brought before him and inform him of the allegations against him.

(2) Upon the arrest of a person under subrule (1), his commanding officer shall duly investigate the allegations against such person without unnecessary delay pursuant to section 75(1).

(3) Every case of such a person being arrested and detained beyond the period of 48 hours referred to in this rule without such investigation required under subrule (2) being commenced and the reason therefore shall be reported by his commanding officer to a higher authority.

8 days delay report

4. (1) The report required by section 75(2) with regard to the necessity for further delay bringing an accused to trial shall be in the form set out in Schedule 1 and shall be signed by his commanding officer.

(2) The report shall be sent to the officer who is responsible for convening a court-martial for the trial of the accused.

Arrest not to exceed 72 days without permission from higher authority

5. (1) An accused shall not be held under arrest for more than 72 consecutive days without a court-martial being convened for his trial and there is a direction in writing that he shall not be released from arrest.

(2) When giving such a direction, such officer shall state his reasons for giving it.

PART 2

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

Methods of investigating charges

6. (1) Subject to subrule (3), when a commanding officer investigates a charge, he shall first read and, if necessary, explain the charge to the accused and shall then —

(a) hear the evidence himself in accordance with rule 7; or

(b) cause the evidence to be reduced to writing, in accordance with subrule (2), and read and consider it:

Provided that —

(i) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;

(ii) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7;

(iii) at any time in the course of investigating a charge, he may stay further proceedings in accordance with the provisions of section 81;

(iv) before he submits to higher authority a charge against an officer or warrant officer, or remands a non-commissioned officer or soldier for trial by court-martial, he shall cause the evidence to be reduced to writing.

(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9:

Provided that a summary of evidence must be taken if —

(a) the maximum punishment for the offence with which the accused is charged is death;

(b) the accused, at any time before the charge against him is referred to higher authority in accordance with rule 11, requires in writing that a summary of evidence be taken; or

(c) the commanding officer is of the opinion that the interests of justice require a summary of evidence be taken.

(3) Where the evidence taken in accordance with subrule (1) discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these Rules, as the investigation of the added or substituted charge.

Hearing of evidence by commanding officer

7. When a commanding officer investigates a charge by hearing the evidence himself —

(a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness;

(b) the accused shall be allowed to cross-examine any prosecution witness;

(c) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;

(d) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;

(e) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;

(f) if the evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 32.

Summary of evidence

8. A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in Schedule 1 —

(a) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;

(b) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if a person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him, may be read to the accused and included in the summary of evidence, but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

(c) after all the evidence against the accused has been given, the accused shall be asked —

"Do you wish to say anything in answer to the summary of evidence? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you fail to do so before your trial, the court may draw such inferences, adverse to you, as it may think proper. If you wish to mention any fact now, and you would like it written down this will be done.";

(d) the accused may call witnesses in his defence, who shall give their evidence orally:

Provided that, if a person cannot be compelled to attend as a defence witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any defence witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in this summary of evidence;

(e) neither the accused nor the witness for the defence shall be subject to cross-examination;

(f) the evidence of each witness (other than the accused) who gives evidence orally shall be recorded in writing and immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him;

(g) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;

(h) the oath shall be administered in accordance with rule 32 by the officer taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter:

Provided that where, a child called as a witness, does not, in the opinion of the officer taking the summary of evidence, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the officer taking the summary of evidence, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

(i) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with the provisions of this rule.

Abstract of evidence

9. (1) An abstract of evidence shall be made in the following way and shall be in accordance with the form set out in Schedule 1 —

(a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;

(b) the accused should not be present while the abstract of the evidence is being made;

(c) it shall consist of a signed statement by, or a precis of the evidence of, each witness whose evidence is necessary to prove the charge; and

(d) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with subrule (1), a copy of it shall be handed to the accused and he shall be cautioned in the following terms —

"This is the abstract of evidence in your case. Do you wish to say anything in answer to it? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you fail to do so before your trial, the court may draw such inferences, adverse to you, as it may think proper. If you wish to mention any fact now, and you would like it written down, this will be done.".

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it.

(3) After the accused has been given an opportunity of making a statement in accordance with subrule (2), and after his statement (if any) has been recorded, he may submit to the officer making the abstract the statements of any witness he wishes to be attached to the abstract of evidence and such statements shall be attached to the abstract of evidence and shall thereafter form part of the abstract of evidence.

(4) Any statement made by the accused in accordance with subrule (2) and any statements of witnesses submitted by him in accordance with subrule (3) shall be attached to the abstract of evidence and shall thereafter form part of it.

(5) A certificate made by the person who complied with subrule (2), stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall thereafter form part of it and this certificate shall be in the form set out in Schedule 1.

Investigation before summary dealing by commanding officer

10. Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing —

(a) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and

(b) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

Reference of charges to higher authority

11. When a commanding officer submits to a higher authority a charge against an officer or warrant officer or has remanded a non-commissioned officer or soldier for trial by court-martial, he shall send to higher authority —

(a) a copy of the charge on which the accused is held;

(b) a draft charge sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial;

(c) the summary or abstract of evidence;

(d) a statement of the character and service record of the accused; and

(e) a recommendation as to how the charge should be proceeded with.

Commanding officer not to dismiss charge

12. After a commanding officer has referred a charge to a higher authority in accordance with rule 11 he shall not dismiss it unless it has been referred back to him with a direction to dismiss it.

PREPARATION OF CHARGE SHEETS AND FRAMING OF CHARGES

Charge sheets

13. A charge sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character:

Provided that charges under section 43(1), 44, 52(1) (where that charge is connected with a charge under either of the before-mentioned provisions) or 60 may be included in any charge sheet, notwithstanding the other charges in that charge sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

Contents of charge sheet

14. The commencement of each charge sheet shall state the numbers, rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to military law or otherwise liable to trial by court-martial.

Charges

15. The provisions of Chapter XVIII of the Criminal Procedure Code (Chapter 7) shall *mutatis mutandis* apply to charges under these Rules.

Action by higher authority on receipt of charge

16. When a higher authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that the authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send the appropriate superior authority or other officer concerned the documents mentioned in rule 11 together with his own recommendation as to how the case should be proceeded with.

INVESTIGATION OF, AND SUMMARY DEALINGS WITH, CHARGES BY APPROPRIATE SUPERIOR AUTHORITY

Documents to be given to officers, warrant officers and civilians dealt with summarily

17. An appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than 24 hours before the charge is so investigated and dealt with, a copy of the charge sheet containing the charge upon which he will be so dealt with and a copy of the summary or abstract of evidence.

Investigation of, and summary dealings with, charges against officers, warrant officers and civilians

18. When an appropriate superior authority investigates and deals summarily with a charge —

(a) he shall first read the charge to the accused;

(b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them and if the witnesses against the accused do not give their

evidence orally the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;

(c) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;

(d) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;

(e) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 28;

(f) when an appropriate superior authority awards the punishment of forfeiture of seniority the award shall be in the form set out in Schedule 4;

(g) a record shall be made of the proceedings in accordance with the form set out in Schedule 2.

CONVENING OF COURTS-MARTIAL

Duties of convening officer when convening courts-martial

19. (1) Subject to subrule (2), when an officer convenes a court-martial he shall —

(a) issue a convening order in the form set out in Schedule 3;

(b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them;

(c) if he is of the opinion that charges should be put in separate charge sheets, so direct and direct the order in which they are to be tried;

(d) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;

(e) appoint the president and members of the court and any waiting members in accordance with rule 20;

(f) if convening a court-martial at which he considers there should be a Judge Advocate, take the necessary steps to procure the appointment of a Judge Advocate by or on behalf of the Judge Advocate General, and failing such appointment, he shall himself appoint a suitable person so to act;

(g) appoint an officer subject to military law or counsel assisted by such an officer to prosecute or detail a commanding officer to appoint an officer subject to military law to prosecute:

Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;

(h) appoint the date, time and place for the trial;

(i) send to the president the charge sheet, the convening order and, in any case in which a Judge Advocate has not been appointed, a copy of the summary or abstract of evidence from which any evidence, which in his opinion would be inadmissible under the Act at the court-martial has been expurgated;

(j) send to each member of the court and to each waiting member a copy of the charge sheet;

(k) send to the prosecutor copies of the charge sheet and convening order and the original summary or abstract of evidence;

(l) send to the Judge Advocate (if any) copies of the charge sheet and convening order and a copy of the summary or abstract of evidence;

(m) ensure that the accused is given a proper opportunity to prepare his defence in accordance with rule 22; and

(n) take steps in accordance with rule 88 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 22:

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has reasonably requested and if the accused refuses to defray or to undertake to defray, as the case may be, such cost, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

(2) When an officer convenes a court-martial consequent on an order authorising a retrial made under section 149 —

(a) subrule (1)*(b)* shall not apply but the convening officer shall direct that a charge sheet shall be prepared in accordance with the provisions of section 149(4) and with any directions which may have been given by the Court of Appeal and that the accused shall be tried on the charge in that charge sheet;

(b) when it is proposed to tender any evidence given by any witness at the original trial as evidence at the retrial in accordance with the provisions of section 151, the convening officer shall send to the accused as soon as practicable and in any case not less than 24 hours before his trial and also to the president, the Judge Advocate (if any) and the prosecutor, a copy of any such evidence.

Appointment of president and members

20. The convening officer shall —

(a) appoint the president of a court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint an officer of a specified rank; and

(b) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of a specified rank.

Officer under instruction

21. (1) Subject to rule 78, any officer subject to military law may, by direction of the convening officer or at the discretion of the president, remain with court-martial throughout the proceedings as an officer under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

Preparation of defence

22. (1) An accused who has been remanded for trial by a court-martial shall be afforded a proper opportunity for preparing his defence and shall be allowed proper communication with his witnesses.

(2) A defending officer or counsel shall be appointed to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an appointment to be made.

(3) If the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him.

(4) As soon as practicable after an accused has been remanded for trial by court-martial and in any case not less than 24 hours before his trial, he shall be given —

(a) a copy of the charge sheet;

(b) a copy of the summary or abstract of evidence;

(c) notice of any additional evidence which the prosecution intends to adduce; and

(d) a copy of the convening order and, if the accused so requires, the names of any member or waiting member not appointed by name.

(5) When an accused is given a copy of the charge sheet and of the summary or abstract of evidence in accordance with this rule, he shall —

(a) if necessary, have the charge explained to him; and

(b) be informed that, upon his making a written request to his commanding officer not less than 24 hours before his trial requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these Rules to procure the attendance of any such witness at his trial.

(6) When it is intended to try two or more accused jointly, notice of this fact shall be given to each such accused when he is given a copy of the charge sheet and any such accused may, before trial, by written notice to the convening officer claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately.

(7) When a charge sheet contains more than one charge, the accused may, before trial, by written notice to the convening officer claim to be tried separately on any charge in that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

ASSEMBLY AND SWEARING IN OF COURT

Preliminary matters to be considered by court and commencement of trial

23. (1) Upon a court-martial assembling, the court shall, before opening, satisfy itself that —

(a) the court has been convened in accordance with the Act and these Rules;

(b) the court consists of not less than the legal minimum number of officers;

(c) the president and members are of the required rank;

(d) the president and members have been duly appointed and are not disqualified under the Act;

(e) if there is a Judge Advocate, he has been duly appointed;

(f) the accused appears from the charge sheet to be subject to military law or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and

(g) each charge is on its face correct in law and framed in accordance with these Rules.

(2) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may appoint a duly qualified waiting member to fill that vacancy.

(3) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(4) If the court is not satisfied on any of the matters mentioned in subrule (1), and is not competent to rectify such matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereof.

(5) When the court has complied with this rule and is ready to proceed with the trial, the president shall open the court and the trial shall begin.

Objections to Court

24. (1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section 87.

(2) When a court is convened to try more than one accused whether separately or jointly, each accused shall be given an opportunity to object to any officer of the court in accordance with the preceding subrule and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to, the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers of the court including any officer who has been appointed by the president in accordance with subrule (9) in place of an officer who has retired.

(8) When an objection to an officer is allowed, that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to (other than the president) retires and there is a duly qualified waiting member in attendance, the president should immediately appoint him to take the place of the officer who has retired.

(10) The court shall satisfy itself that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this rule.

(11) If an objection to the president is allowed, the court shall report to the convening officer without proceeding further with the trial.

(12) If as the result of the allowance of an objection to a member there are insufficient officers available to form a court in compliance with the Act, the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

Swearing in of Court

25. (1) Immediately after rule 24 has been complied with, an oath shall be administered to the president and each member of the court in accordance with rule 32 and in the presence of the accused.

(2) If there is a Judge Advocate, the oath shall be administered by him to the president first and afterwards to each member of the court and if there is no Judge Advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn.

(3) A court may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if it thinks fit, proceed to determine that objection in accordance with rule 24, or postpone the trial of that accused and swear the court for the trial of the other accused only.

Swearing in of Judge Advocate

26. After the court has been sworn, an oath shall be administered to the Judge Advocate (if any) in accordance with rule 32 and in the presence of the accused.

Swearing in of officers under instruction

27. After rule 25 and, where necessary, rule 26 have been complied with, an oath shall be administered to any officer under instruction in accordance with rule 32 and in the presence of the accused.

Appointment and swearing in of, and objections to, interpreters

28. (1) A competent and impartial person may be appointed at any time to act as an interpreter at a trial by court-martial, and before he so acts, an oath shall be administered to him in accordance with rule 32 and in the presence of the accused.

(2) Before a person is sworn as an interpreter, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court thinks that the objection is reasonable, that person shall not act as interpreter.

Verbatim record

29. (1) A competent and impartial person may be appointed at any time to record verbatim, by whatever means, the proceedings of a court-martial.

(2) Before such a person so acts, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court thinks that the objection is reasonable, that person shall not so act.

No right of objection to Judge Advocate, prosecutor and officer under instruction

30. The accused shall have no right to object to a Judge Advocate, prosecutor or any officer under instruction.

Order of trials

31. (1) When a court has been convened to try two or more accused separately and have been sworn in accordance with rule 25(3), the court shall try them in the order indicated by the convening officer or, where he has given no such indication, then in such order as the court thinks fit.

(2) When a court has been convened to try an accused on charges which are included in more than one charge sheet, the court shall take the charge sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as the president thinks fit.

Oaths and solemn affirmations

32. (1) An oath which is required to be administered under these Rules shall be administered in the form and in the manner set out in Schedule 5:

Provided that —

(a) if any person desires to swear with uplifted hand, he shall be permitted to do so;

(b) the opening words of the oath may be varied to such words and oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 25(2), every oath shall be administered at a court-martial by the president, a member of the court or the Judge Advocate.

(3) Where a person is a child, the oath shall be in appropriate form set out in Schedule 5.

(4) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the form set out in Schedule 5.

ARRAIGNMENT OF ACCUSED

Arraignment of accused

33. (1) After rule 25 and, where necessary, rules 26 and 27 have been complied with, the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court, he shall be required to plead separately to each charge.

(3) If there is more than one charge sheet against the accused before the court, the court shall arraign and try the accused upon the charge in the first of such charge sheets and shall announce its finding thereon and if the accused has pleaded guilty, the court may either proceed to comply with rule 43(1) and (2) before it arraigns him upon the charge in any subsequent charge sheet or it may defer compliance with those subrules until after the accused has been arraigned and tried upon such charge.

Offer of plea

34. (1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court and where he does so —

(a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allows the plea, it shall adjourn and report to the convening officer.

(3) When a court reports to the convening officer under this rule, the convening officer shall —

(a) if he approves the decision of the court to allow the plea, dissolve the court;

(b) if he disapproves the decision of the court —

(i) refer the matter back to the court and direct the court to proceed with the trial; or

(ii) convene a fresh court to try the accused.

Objection to charge

35. (1) An accused, before pleading to a charge, may object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules, and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the court upholds the objection, they shall either amend the charge, if permissible under rule 81, or adjourn and report to the convening officer:

Provided that if there is another charge or another charge sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall —

(a) if he approves the decision of the court to allow the objection —

(i) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(ii) amend the charge to which the objection relates if permissible under rule 81, and direct the court to try it as amended;

(b) if he disapproves the decision of the court to allow the objection —

(i) direct the court to try the charge;

(ii) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(iii) convene a fresh court to try the accused.

Plea in bar of trial

36. (1) Where an accused, before pleading to a charge, offers a plea in bar of trial in reliance upon section 120 or 121 —

(a) he may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allows the plea, it shall adjourn and report to the convening officer:

Provided that if there is another charge or another charge sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall —

(a) if he approves the decision of the court to allow the plea —

(i) dissolve the court; or

(ii) where there is another charge or another charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only;

(b) if he disapproves the decision of the court to allow the plea —

(i) direct the court to try the charge;

(ii) where there is another charge or another charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(iii) convene a fresh court to try the accused.

Application by accused at joint trial to be tried separately

37. (1) Where two or more accused are charged jointly or are charged in the same charge sheet with offences alleged to have been committed by them separately, any one of the accused may, before pleading to the charge or charges, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately.

(2) If the accused makes an application under subrule (1), the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) Where an application to be tried separately is made under subrule (1) and the court is of the opinion that the interests of justice so require, it shall allow the application and try separately the accused who made it.

Application by accused at trial to have charge tried separately

38. (1) Where a charge sheet contains more than one charge, the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge.

(2) If the accused makes an application under subrule (1), the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) If the court is of the opinion that the interests of justice so require, it shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge sheet.

Pleas to charge

39. (1) After any pleas under rules 34 and 36, any objection under rule 35, and any applications under rules 37 and 38, have been dealt with, the accused shall be required (subject to subrule (2)) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 93 to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a lesser degree of punishment or where it could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 64, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

Acceptance of guilty plea

40. (1) If an accused pleads guilty to a charge under either subrule (1) or (2) of rule 39, the president or Judge Advocate shall, before the court decides to accept the plea, explain to the accused the nature of the charge and general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either subrule (1) or (2) of rule 39 if —

(a) the court is not satisfied that the accused understands the nature of the charge or the effect of his plea;

(b) the president having regard to all circumstances, considers that the accused should plead not guilty; or

(c) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under rule 39(2), a court shall not accept the plea unless the convening officer concurs and the court is satisfied of the justice of such course and the concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under either subrule (1) or (2) of rule 39 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When a court is satisfied that it can properly accept a plea of guilty under either subrule (1) or (2) of rule 39, it shall record a finding of guilty in respect thereof.

Pleas on alternative charges

41. (1) When an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the court may —

(a) proceed as if the accused had pleaded not guilty to all the charges; or

(b) with the concurrence of the convening officer (which may be signified by the prosecutor), record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge sheet.

(3) Where the court records such findings under subrule (2)*(b)*, the prosecutor shall, before the accused is arraigned on it, withdraw any charge which is alternative to the charge of which the court has found the accused guilty and which is placed after it in the charge sheet.

Order of trial

42. (1) After the court has recorded a finding of guilty, if there is no other charge in the same charge sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge sheet, it shall proceed with the trial as directed by rule 43.

(2) If there is another charge in the charge sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge sheet, the court shall not comply with rule 45 until after it has dealt with such other charge or tried such other accused and has announced and recorded its finding in respect thereof.

Procedure on finding of guilty after plea of guilty

43. (1) After the court has recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to rule 42, read the summary or abstract of evidence to the court or inform the court of the facts contained therein:

Provided that if the summary or abstract of evidence contains evidence which, in the opinion of the convening officer is inadmissible under the Act, the prosecutor shall not read to the court those parts of the summary or abstract which are inadmissible or inform the court of the facts contained in those parts and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules, sufficient evidence to enable it to determine the sentence.

(3) After subrules (1) and (2) have been complied with, the accused may —

(a) adduce evidence of character and in mitigation of punishment; and

(b) address the court in mitigation of punishment.

(4) After subrule (3) has been complied with, the court shall proceed as directed in rule 69(1), (2), (3) and (4).

Change of plea

44. (1) An accused who has pleaded not guilty may, at any time before the court closes to deliberate on its finding, withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 39(2)) and in such case the court shall, if it is satisfied that it can accept the accused's change of plea under these Rules, record a finding in accordance with the accused's change of plea and so far as is necessary proceed as directed by rule 43.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under subrule (2), it shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 41, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

PROCEDURE ON PLEAS OF NOT GUILTY

Application for adjournment of trial

45. After a plea of not guilty to any charge has been entered —

(a) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that —

(i) any of these Rules relating to procedure before trial has not been complied with and that he has been prejudiced thereby; or

(ii) he has not had sufficient opportunity for preparing his defence;

(b) if the accused applies for an adjournment —

(i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;

(c) the court may grant an adjournment if it thinks that the interests of justice so require.

Case for prosecution

46. (1) The prosecutor may, if he desires, and shall, if required by the court, make an opening address explaining the prosecution charge, where necessary, and the nature and general effect of the evidence which he propose to adduce.

(2) The witnesses for the prosecution shall then be called to give their evidence.

Calling of witnesses whose evidence is not contained in summary or abstract of evidence

47. (1) If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused, notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused at a reasonable time before the evidence is adduced.

(2) In the absence of the notice and particulars of the evidence as required under subrule (1), the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

Notice to accused that witness will not be called by prosecutor

48. (1) The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the summary or abstract of evidence nor a witness whom he has notified the accused that he intends to call under rule 47.

(2) If the prosecutor does not intend to call such a witness to give evidence, he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

CALLING AND EXAMINATION OF WITNESS

Swearing in of witnesses

49. Save as is otherwise provided by the Act, an oath shall be administered to each witness in accordance with rule 32 before he gives evidence and in the presence of the accused.

Exclusion of witnesses from court

50. During a trial, a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence, the court may direct the witness to withdraw during such discussion.

Examination of witness

51. (1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness he shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

Examination of witnesses by court

52. (1) The president, the Judge Advocate and, with permission of the president, any member of the court, may put questions to a witness.

(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

Reading back of evidence to witnesses

53. (1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done, he may ask for the record to be corrected or explain the evidence which he has given and where any such correction is made or explanation given, the prosecutor and the accused may put such questions to the witness in respect of the correction or explanation as seem proper to the court.

(2) When a person has been appointed under rule 29, it shall not be necessary to comply with subrule (1), if, in the opinion of the court and the Judge Advocate (if any), it is unnecessary to do so:

Provided that if any witness so demands, subrule (1) shall be complied with.

Calling of witnesses by court and recalling of witnesses

54. (1) The court may, at any time before it closes to deliberate on its finding or if there is a Judge Advocate before he begins to sum up, call a witness or recall a witness, if the court is of the opinion that the interests of justice so require and where the court calls a witness or recalls a witness, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the court closes to deliberate on its finding or if there is a Judge Advocate before he begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

Written statements and formal admissions

55. (1) The provisions of section 117B of the Criminal Procedure Code (Chapter 7) shall *mutatis mutandis* apply to any written statement which would be admissible in accordance with the provisions of that Code.

(2) The provisions of section 117C of the Criminal Procedure Code (Chapter 7) shall *mutatis mutandis* apply to the admission of any fact of which oral evidence may be given in the proceedings.

Submission of no case to answer and power of court to stop case

56. (1) At the close of the case for the prosecution, the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge and where the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless it is satisfied that —

(a) the prosecution has not established a *prima facie* case on the charge as laid; and

(b) it is not open to it on the evidence adduced to make a special finding under either section 93 or rule 64 (3).

(3) If the court allows the submission, it shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith but if the court disallows the submission, it shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if it does so it shall also announce such finding in open court forthwith.

Explanation to accused of his right when making his defence

57. (1) Where the accused is not represented by a person qualified to appear as counsel at a court-martial, after the close of the case for the prosecution, the president or Judge Advocate (if any) should explain to the accused that —

(a) if he wishes, he may give evidence on oath as a witness;

(b) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the Judge Advocate (if any); and

(c) whether he gives evidence, or remains silent, he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the president or Judge Advocate has, if necessary, complied with subrule (1), he shall ask the accused if he intends to give evidence on oath and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself, he may make an opening address outlining the case for the defence before the evidence for the defence is given.

Evidence for defence

58. (1) After rule 57 has been complied with, witnesses for the defence (if any) shall be called to give their evidence.

(2) If the defence intends to call two or more witnesses to the facts of the case, and those witnesses include the accused, the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

(3) Rules 49 to 54 and rule 56 apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

Evidence in rebuttal

59. After the witnesses for the defence have given their evidence, the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

Closing address

60. (1) After all the evidence has been given, the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor.

(3) Where two or more accused are represented by the same defending officer or counsel, he may make one closing address only.

(4) Where the accused is not represented by a defending officer or counsel, then, whether or not he himself has given evidence, the prosecutor shall not make a closing address unless the accused has called witnesses as to the facts of the case.

Handing in of written statement by accused

61. For the purposes of rule 57, the handing in by the accused of a written statement shall be treated as the calling of a witness by him.

Summing up by Judge Advocate

62. After the closing addresses, if there is a Judge Advocate, he shall sum up the evidence and advise the court on the law relating to the case in open court.

DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON CHARGE

Deliberation on finding on charge

63. (1) After the closing addresses, or if there is a Judge Advocate, after his summing up, the court shall close to deliberate on its finding on the charge.

(2) While the court is deliberating on its finding on the charge, no person shall be present except the president and members of the court and any officer under instruction.

(3) If there is a Judge Advocate and the court, while deliberating on its finding on the charge require further advice from him, the court shall suspend its deliberation and ask to be given such advice in open court.

Expression of opinions on, and form of, finding

64. (1) The opinion of the president and each member as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank.

(2) Save as is otherwise provided in subrule (4), the court shall record on every charge on which a plea of not guilty has been recorded —

(a) a finding of guilty or a special finding under either section 93 or subrule (3); or

(b) a finding of not guilty, or of not guilty and honourably acquitted, of the charge.

(3) Where the court is of the opinion, as regards any charge, that the facts which it finds to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused

is guilty of the charge subject to any exception or variation which it shall specify in the finding.

(4) Where the court has recorded a finding of guilty on a charge which is laid in the alternative, it shall find the accused not guilty of any charge alternative thereto which is placed before it in the charge sheet and record no finding on any charge alternative thereto which is placed after it in the charge sheet.

Announcement of finding

65. (1) The finding on each charge shall be announced in open court forthwith.

(2) Every finding which requires confirmation shall be announced as being subject to confirmation.

(3) The findings shall be in the form set out in Schedule 3.

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

Completion of procedure on plea of guilty before deliberation on sentence

66. After the court has announced its finding on any charge on which the court has entered a plea of not guilty, if there is another charge in the same charge sheet on which the court has accepted a plea of guilty, the court shall comply with rule 43(1) and (2) in respect of that charge before proceeding with the trial.

All charges in any charge sheets to be dealt with

67. Where there is another charge sheet against the accused before the court, the court shall not comply with rules 68 to 70 until it has arraigned and tried the accused and has complied with rule 65 and, if necessary, with rule 66, in respect of each charge in such other charge sheet unless that charge sheet is withdrawn under rule 79.

Release of accused

68. If the findings on all charges against the accused are not guilty —

(a) the court shall order the accused to be released; and

(b) the president and Judge Advocate (if any) shall date and sign the record of the proceedings and the president or the Judge Advocate shall then forward it as directed in the convening order.

Accused's record and plea in mitigation

69. (1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 93 or rule 64(3), the court before deliberating on its sentence shall whenever possible take evidence of his age, rank and service record and such service record shall include —

(a) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled; and

(b) particulars of any offence of which the accused has been found guilty during his service and which is contained in the service record relating to the accused and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in subrule (1) may be given by a witness who produces to the court a written statement made in the form set out in Schedule 3 which contains a summary of the entries in the service record relating to the accused, after the witness has in court verified such statement and identified the accused as the person to whom it relates.

(3) In addition to the evidence contained in the statement referred to in subrule (2), it shall be the duty of the prosecutor whenever possible to call an officer as a witness to give to the court any information in the possession of the military authorities regarding —

(a) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;

(b) his general conduct in the service; and

(c) particulars of offences which do not appear in the statement referred to above of which the accused has been found guilty by a civil court not being offences of which he was found guilty while under the age of 14 years:

Provided that the court shall not be informed of any such civil offence unless the findings is proved in accordance with section 195, or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with subrules (2) and (3) and if the accused so requires the service record, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service record or such certified copy, the court shall cause the form to be corrected accordingly.

(5) After subrules (1) to (4) have been complied with, the accused may —

(a) give evidence on oath and call witnesses in mitigation of punishment and to his character; and

(b) address the court in mitigation of punishment.

Request by accused for other offences to be taken into consideration

70. (1) Before the court closes to deliberate on its sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

(2) A list of the offences which the court agrees to take into consideration shall be read to the accused by the president or Judge Advocate, who shall ask the accused if he admits having committed them and the accused shall then sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration.

(3) The list made pursuant to subrule (2) shall be signed by the president or Judge Advocate and be attached to the record of the proceedings as an exhibit.

(4) Where offences are taken into consideration by the court then, in addition to any other sentence the court may impose, the court shall have the power to make deductions from the pay of the accused as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration.

DELIBERATION ON SENTENCE

Persons entitled to be present during deliberation on sentence

71. While the court is deliberating on its sentence, no person shall be present except the president, members, Judge Advocate (if any) and any officer under instruction.

Sentence and recommendation for mercy

72. (1) Subject to subrule (2), the court shall award one sentence in respect of all the offences of which the accused is found guilty.

(2) Where the accused is found guilty by a court-martial of two or more offences against section 72, consisting in the commission of offences for which a civil court in Brunei Darussalam could award imprisonment, the court-martial may by its

sentence award, for any of such 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.

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(3) The sentences awarded pursuant to subrules (1) and (2) shall be in the form set out in Schedule 4.

(4) Where the court orders that a sentence of imprisonment or detention is to begin to run from the expiry of some other sentence of imprisonment or detention, the order shall be in the form set out in Schedule 4.

(5) The opinion of the president and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

(6) When the court has agreed to take into consideration an offence which is not included in the charge sheet, the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which it is taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty, save that the court may include in its sentence a direction that such deductions shall be made from the pay of the accused as it would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he had been found guilty.

(7) The court may make a recommendation for mercy and if it does so, shall record in the proceedings its reasons for making it.

Postponement of deliberation on sentence

73. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if it thinks that the interests of justice so require, postpone its deliberation upon the sentence to be awarded to any one or more of such accused until it has recorded and announced its findings in respect of all of such accused.

ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

Announcement of sentence and conclusion of trial

74. (1) The sentence, and any recommendation for mercy together with the reasons for making it, shall be announced in open court and the sentence shall also be announced as being subject to confirmation.

(2) When subrule (1) has been complied with, the president shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial, the president and Judge Advocate (if any) shall date and sign the record of the proceedings and it shall then be forwarded by the president or the Judge Advocate as directed in the convening order.

General duties of prosecutor and defending officer or counsel

75. (1) It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular —

(a) to conform with these Rules and the practice of the civil courts in Brunei Darussalam relating to the examination, cross-examination and re-examination of witnesses;

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(b) not to refer to any matter not relevant to the charge before the court; and

(c) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of any of the provisions of subrule (1), it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

Counsel

76. (1) Subject to these Rules, the following persons shall be allowed to appear as counsel at a court-martial —

(a) an advocate and solicitor who is in possession of a practising certificate and issued under the Legal Profession Act (Chapter 132);

(b) any person who is deemed to be an advocate and solicitor by virtue of section 17(2) of the Legal Profession Act (Chapter 132).

(2) *(a)* Any —

(i) right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court,

(ii) right of the accused to object to the admissibility of evidence at a court-martial; and

(iii) right granted to the accused by rules 22(5), (6) and (7) and rules 24, 25, 28, 29, 34 to 38, 45, 56, 70, 77(2), 89 and 91(2) may be exercised by his defending officer or his counsel on his behalf; and

(b) reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer, the accused shall give the convening officer notice of this fact not less than 24 hours before his trial.

POWERS AND DUTIES OF JUDGE ADVOCATE

General duties of Judge Advocate

77. (1) The Judge Advocate shall be responsible for the proper discharge of his functions to the Judge Advocate General.

(2) The prosecutor and accused respectively are at all times after the Judge Advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(3) On the assembly of the court, the Judge Advocate shall advise the court of any defect in the constitution of the court or in the charge sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise.

(4) The court shall accept the advice of the Judge Advocate on all such matters provided in this rule unless it has weighty reasons for not doing so, and if the court does not accept it, its reasons for not doing so shall be recorded in the proceedings.

(5) After the closing addresses, the Judge Advocate shall sum up the evidence and advise the court upon the law relating to the case before the court closes to deliberate on its finding.

(6) If in the course of deliberating on its finding the court requires further advice from the Judge Advocate, it shall suspend its deliberation and ask, and shall be given, such advice in open court.

(7) If, when the court announces a finding of guilty or a special finding under either section 93 or rule 64(3), the Judge Advocate is of the opinion that such finding or special finding is contrary to the law relating to the case, he shall once more, advise the court what findings are, in his opinion, open to it and the court shall then reconsider its finding in closed court and the record of the proceedings relating to such reconsideration shall be in the form set out in Schedule 3.

(8) The Judge Advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(9) The Judge Advocate has equally with the president the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses, or to make his sworn evidence clear and intelligible, or otherwise.

(10) The Judge Advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 89 and responsible for the safe custody of the record of the proceedings under rule 91.

Judge Advocate sitting alone

78. (1) Where there is a Judge Advocate and —

(a) an accused offers a plea to the jurisdiction of the court;

(b) an accused, before pleading to a charge, offers a plea in bar of trial;

(c) during the course of a trial any question as to the admissibility of evidence arises;

(d) during a joint trial, an application is made by any of the accused for a separate trial;

(e) an application is made by an accused that a charge should be tried separately; or

(f) a submission is made to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer,

the president may direct that the point at issue shall be determined by the Judge Advocate in the absence of the president and the members of the court and of any officer under instruction and where the president so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The Judge Advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with subrule (1), hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefore as he may consider necessary.

(3) After the Judge Advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court room and the Judge Advocate shall announce his ruling to them and the court shall follow his ruling.

(4) When a Judge Advocate sits alone, the proceedings before him shall form part of the proceedings of the court, and sections 61(1), 88, 89(1) and (2), sections 90, 95 to 98 and rules 32, 49, 50 to 55, 75, 76, 82 to 84, 88 to 91, 93, 94 and 100 apply to proceedings before the Judge Advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorised by those sections and those rules to be done by the court or by the president may be done by the Judge Advocate when sitting alone.

(5) When a Judge Advocate is presiding alone and a person subject to military law commits an offence under section 61(1), the Judge Advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(6) The Judge Advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the Judge Advocate when sitting alone until after the court has announced its finding.

WITHDRAWAL AND AMENDMENT OF CHARGE SHEETS AND CHARGES

Withdrawal of charge sheets and charges

79. A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge sheet before the accused is arraigned on any charge therein.

Amendment of charge sheets and charges by court

80. (1) At any time during a trial if it appears to the court that there is in the charge sheet —

(a) a mistake in the name or description of the accused;

(b) a mistake which is attributable to a clerical error or omission,

the court may amend the charge sheet so as to correct the mistake.

(2) If at any time during a trial at which there is a Judge Advocate it appears to the court, before it closes to deliberate on its finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under subrule (1), it may, if such addition, omission, or alteration can be made without unfairness to the accused, so amend the charge if the Judge Advocate concurs.

(3) If at any time during a trial at which there is no Judge Advocate it appears to the court, before it closes to deliberate on its finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in a charge which cannot be made under subrule (1), it may adjourn and report its opinion to the convening officer, who may —

(a) amend the charge if permissible under rule 81 and direct the court to try it as amended after due notice of the amendment has been given to the accused;

(b) direct the court to proceed with the trial of the charge without amending it; or

(c) convene a fresh court to try the accused.

Amendment of charges by convening officer

81. When a court reports to the convening officer under either rule 35(2) or rule 80(3), he may amend the charge in respect of which it has reported to him by making any addition to, omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

SITTINGS AND ADJOURNMENT OF COURT

Sittings of court

82. (1) Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day and the court shall sit for such each day as may be reasonable in the circumstances:

Provided that the court shall not sit on Friday and any other public holidays, unless in the opinion of the court or of the convening officer, the exigencies of the service make it necessary to do so.

(2) No proceedings of any court shall be invalid by reason of its happening on a Friday, a Sunday or a public holiday.

Adjournment

83. (1) During a trial the court may adjourn at any time and from place to place as the interests of justice require.

(2) A court may adjourn at any time to consult the convening officer on a point of law.

(3) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening officer.

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

View by court

84. (1) If at any time during a trial before the court closes to deliberate on its finding, it appears to the court that it should, in the interests of justice, view any place or thing, it may adjourn for this purpose.

(2) When the court views any place or thing, the president, members of the court, Judge Advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

Absence of president, members or Judge Advocate

85. (1) If after the commencement of a trial, the president dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening officer.

(2) If after the commencement of a trial, any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum, the court shall adjourn and the president shall report to the convening officer.

(3) If a Judge Advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court shall adjourn and report to the convening officer.

(4) If the president or a member of the court is absent during any part of a trial, he shall take no further part in it and the like steps shall be taken as if the president or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

UNFITNESS TO STAND TRIAL AND INSANITY

Unfit to stand trial and insanity

86. (1) *(a)* Where on the trial of a person, the question of his fitness to be tried falls to be determined in accordance with the provisions of section 108, the court shall take evidence as to his condition. If after considering the evidence, it is of the opinion that the accused is fit to stand trial, it shall proceed with the trial;

(b) If it is of the opinion that the accused is unfit to stand trial, it shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of its deliberation on its finding on a charge finds pursuant to section 108(3) that the accused was not guilty of the offence by reason of insanity its finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under either subrule (1) or (2), the president shall announce in open court that the proceedings are terminated and thereupon the president and the Judge Advocate (if any) shall date and sign the record of the proceedings.

(4) The president or Judge Advocate shall forward the record of proceedings made under subrule (3) as directed in the convening order.

Interview with consent of witness

87. (1) The prosecution shall not without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the defence at the taking of the summary of evidence, whose statement of evidence was included in the summary or abstract of evidence pursuant to rule 22(5), or who has made a written statement, a copy of which the accused has served on the prosecution.

(2) Except as provided in rule 48, neither the accused nor any person on his behalf shall without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness —

(a) who was called for the prosecution at the taking of the summary of evidence;

(b) whose statement of evidence was included in the summary of evidence;

(c) whose evidence is included in the abstract of evidence; or

(d) in respect of whom the prosecution has given the accused notice under rule 47 that it intends to call him as a witness at the trial.

Procuring attendance of witnesses

88. (1) A witness who is subject to military law may be ordered by the proper military authority to attend at the taking of a summary of evidence or a trial by court-martial.

(2) A witness who is not subject to military law may be summoned to attend —

(a) the taking of a summary of evidence by an order under the hand of the commanding officer of the accused; or

(b) a trial by court-martial by an order under the hand of an officer authorised to convene a court-martial or of a staff officer on his behalf or, after the assembly of the court, of the president.

(3) The summons referred to in subrule (2) shall, when it relates to the taking of a summary of evidence be in the form set out in Schedule 1, and, when it relates to a trial by court-martial be in the form set out in Schedule 3, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

(4) The rates or scales of payment of the expenses of witnesses shall be the same as those provided by rules made by His Majesty the Sultan and Yang Di-Pertuan in Council under section 384 of the Criminal Procedure Code (Chapter 7).

Proceedings to be recorded

89. (1) The proceedings of courts-martial shall be recorded in accordance with the following provisions —

(a) the proceedings of a court-martial shall be recorded in writing in accordance with the appropriate form set out in Schedule 3 and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge the merits of the case;

(b) when no person is employed under rule 29, the evidence should be taken down in narrative form as nearly as possible in the words used:

Provided that if the court, Judge Advocate, prosecutor or accused considers it necessary, any particular question and answer shall be taken down verbatim;

(c) when an objection, submission or application is made during a trial at which no person is employed under rule 29, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or Judge Advocate thinks fit:

Provided that if the prosecutor or accused so requests, a note shall be made of the objection, submission or application, the grounds therefore, the advice of the Judge Advocate (if any) thereon and the decision of the court;

(d) when any address by the prosecutor or the accused or summing up of the Judge Advocate is not in writing and no person is employed under rule 29, it shall only be necessary to record so much of such address or summing up as the court or Judge Advocate thinks proper:

Provided that if the prosecutor or accused so requests, a note shall be made of any particular point in such address or summing up;

(e) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but if any comment or report seems to the court to be necessary, the president may forward it to the proper military authority in a separate document.

(2) When a person has been employed under rule 29, a transcript of his record of the proceedings need be made only of that part which relates to a charge of which the accused has been found guilty:

Provided that —

(a) where there is a Judge Advocate he may, where a plea of guilty (including a plea of guilty under rule 39) has been accepted and he has himself made a record sufficient to comply with the requirements of subrule (1), before or after the conclusion of the trial, direct that the verbatim record need not be transcribed;

(b) where there is a Judge Advocate and a finding of guilty has been made as provided by rule 44(1), the Judge Advocate may, before or after the conclusion of the trial, direct that no transcript need be made of any part of the verbatim record relating to that charge which has in his opinion become no longer material to the confirming officer's consideration of the merits of the case;

(c) the confirming officer, any reviewing authority or the Court of Appeal, the Judge Advocate General may, notwithstanding any acquittal or application of subrule (2)*(a)* or *(b)*, require the transcription of the verbatim record of the proceedings or any part of them.

The references in paragraph *(c)* to the confirming authority or a reviewing authority refer also to any officer or authority who would have been the confirming officer or a reviewing authority if the accused had been found guilty of any charge.

Exhibits

90. (1) Subject to subrule (2), any document or thing admitted in evidence shall be made an exhibit.

(2) When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after it has satisfied itself that such copy or extract is correct and the president or the Judge Advocate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall —

(a) be marked with a number or letter and be signed by the president or Judge Advocate or have a label bearing a number or letter and the signature of the president or Judge Advocate affixed to it;

(b) be attached to or kept with the record of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under subrule 3*(b)*, the president shall ensure that proper steps are taken for its safe custody.

Custody and inspection of record of proceedings during trial

91. (1) *(a)* During a trial at which there is no Judge Advocate, the record of the proceedings and the exhibits are deemed to be in the custody of the president.

(b) During a trial at which there is a Judge Advocate, the record and the exhibits are deemed to be in the custody of the Judge Advocate, save when he is not present in closed court when they are deemed to be in the custody of the president.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him, and, if proper precautions are taken for its safety, inspect any exhibit.

CONFIRMATION, REVISION AND PROMULGATION

Confirmation and promulgation

92. (1) When a confirming officer receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision thereon and on any sentence and any order which the court may have made under section 125, on the record of the proceedings in the form set out in Schedule 3, and such record of his decision shall form part of the record of the proceedings.

(2) When a court has accepted a plea of guilty made under rule 39(2), the confirming officer may confirm its finding notwithstanding that the court has accepted the plea without the concurrence of the convening officer if, in the opinion of the confirming officer, it is in the interests of justice to do so.

(3) *(a)* When a court has rejected a plea to the jurisdiction of the court or a plea in bar of trial or has overruled an objection to a charge, it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates.

(b) If he disapproves the decision of the court to reject the plea or to overrule the objection, he shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(4) A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court has rejected a plea to the jurisdiction or a plea in bar of trial or has overruled an objection to the charge, because he disapproves this decision of the court, he shall when recording his decision under subrule (1) state that he has withheld confirmation for this reason.

(5) If the sentence of a court-martial is informally expressed, the confirming officer may, in confirming the sentence, vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears that there is sufficient evidence or a plea of guilty under either subrule (1) or (2) of rule 41 to justify the finding of the court, such findings and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7) When a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof, he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be. The fact of promulgation shall be recorded on the record of the proceedings in the form set out in Schedule 3.

(8) If confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

Lost or missing original record of proceedings

93. (1) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy exists, such copy may, if the president or the Judge Advocate certifies it to be correct, be accepted and used *in lieu* of the original.

(2) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and no copy thereof exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming officer to follow the course of the proceedings and to judge the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used *in lieu* of the original:

Provided that where part only of the original record of the proceeding of a court-martial has been lost, and the part which remains is sufficient to enable the confirming officer to follow the course of the proceedings and judge the merits of the case, such remaining part may, with the consent of the accused, be accepted and used as if it were the complete record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation, the whole or any part of the original record of the proceedings of a court-martial is lost and such loss cannot be made good under either subrule (1) or (2), the confirming officer shall withhold confirmation and shall record his decision in the form set out in Schedule 3.

Loss of original record of proceedings after confirmation

94. If after confirmation, the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the president or the Judge Advocate to be correct, or a sufficient record of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used *in lieu* of the original.

CUSTODY OF RECORD AFTER CONFIRMATION

Custody and preservation of record of proceedings after confirmation

95. For the purposes of section 128(1), the prescribed period during which the record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General shall be 6 years from the conclusion of the trial.

Petitions

96. (1) If an accused who has been —

(a) sentenced by a court-martial; or

(b) found by a court-martial to be unfit to stand his trial or to be not guilty by reason of insanity,

wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming officer in the form set out in Schedule 6.

(2) If an accused who has been —

(a) sentenced by court-martial; or

(b) found by a court-martial to be unfit to stand his trial or to be not guilty by reason of insanity,

wishes to petition after promulgation against the finding otherwise than by means of an appeal petition, he shall present a petition to a reviewing authority at any time within 6 months of promulgation in the form set out in Schedule 6.

(3) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to a reviewing authority at any time within 6 months of promulgation in the form set out in Schedule 6.

GENERAL

Retrospectively of Rules

97. These Rules also apply to offences committed before the date of commencement.

Language of court-martial

98. All proceedings in a court-martial shall be in the English Language:

Provided that a court-martial may in the interests of justice allow the giving of evidence by a witness in any other language.

Exceptions from rules on account of exigencies of service

99. (1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in subrule (3) impracticable, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the form set out in Schedule 3.

(2) Any declaration made under subrule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) The provisions of these Rules in respect of which a declaration may be made under subrule (1) are —

(a) rule 6(2)*(a)* and *(b)*;

(b) rule 8*(b)* insofar as it relates to the accused's right to insist that a witness shall be compelled to attend the taking of a summary of evidence for cross-examination;

(c) rule 17 insofar as it provides that the documents specified therein must be given to the accused not less than 24 hours before the appropriate superior authority investigates and deals summarily with the charge;

(d) rule 22(2), (3) and (4) insofar as it provides that the documents specified therein shall be given to the accused not less than 24 hours before his trial.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under subrule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Exceptions from Rules in interests of security

100. (1) When in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or, if he is not available, of the senior officer on the spot, a charge sheet, summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly

useful to an enemy, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the form set out in Schedule 3 specifying the document concerned.

(2) Any declaration made under subrule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under subrule (1) it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under subrule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Deviations from forms in Schedules

101. A deviation or omission from a form or form of words set out in a Schedule shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

Best course of justice

102. In any case not provided for by these Rules, such course shall be adopted as appears best in the interests of justice.

SCHEDULE 1

FORMS

(rules 4(1), 8, 9(1), (5) and 88(3))

FORM 1

(rule 4(1))

DELAY REPORT

From: (UNIT)
To: (CONVENING OFFICER)

.....[1]EIGHT DAY DELAY REPORT

Number, rank and name of accused: .....

Date of arrest: .....

Alleged offence: ..... Date of alleged offence: .....

The reasons for this retention in arrest are:

.....

.....

.....

Proposed date for summary dealing/trial: .....

Reasons for delay since last report: .....

.....

.....

.....
(Commanding officer)

1 Insert "1st", "2nd", "3rd" , "Final" as the case may be.

FORM 2

(rules 8 and 88(3))

SUMMARY OF EVIDENCE

Summary of evidence in the case of ..... (number, rank, name, unit or other description).

Taken by [the commanding officer of the accused] [..... (rank, name, unit) on the direction of the commanding officer of the accused].

..... (number, rank, name, unit or other description), having been duly sworn[1] state —

(Cross-examined by the accused)

[2]Question .....

Answer .....

or

(The accused declines to cross-examine this witness)

.....
(Signature and rank (if any) of witness)

..... (number, rank, name, unit or other description).

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page ..... Having regard to ..... (insert grounds for non-attendance of witness — see rule 8*(b)*) the attendance of this witness cannot in my opinion be readily procured.

FORM 2 — *(continued)*

[The accused does not demand the attendance of this witness for cross-examination]. [The accused demands the attendance of this witness for cross-examination but the witness is not compellable and has refused to attend].

.....
(Signature of officer taking the summary of evidence)

or

..... (description)

A written statement of this witness's evidence has been read to the accused and is included in this summary at page .....

.....
(Signature of officer taking the summary of evidence)

* The accused having been duly cautioned in accordance with rule 8*(c)* reserves his defence.

or

The accused having been duly cautioned in accordance with rule 8*(c)*.

The accused ..... (number, rank, name, unit or other description) being duly sworn[1] states —

.....
(Signature and rank (if any) of accused if he signs)

FORM 2 — *(continued)*

..... (number, rank, name, unit or other description) having been duly sworn[1] states —

.....
(Signature and rank (if any) of witness)

or

..... (number, rank, name, unit or other description)

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page ..... having regard to ..... (insert grounds for non-attendance of witness — see rule 8*(d)*) the attendance of this witness cannot in my opinion be readily procured.

.....
(Signature of officer taking the summary of evidence)

Certified that rule 8 has been complied with.

This summary of evidence was taken by me at ..... in the presence and hearing of the accused on the ..... day of ..... 20.....

.....
(Signature of officer taking the summary of evidence)

1 When a witness or the accused affirms the words "duly affirmed" should be substituted for the words "been duly sworn" and when a witness is a child is too young to give evidence on oath, the words "without being sworn" should be substituted for the words "having been duly sworn".

2 See however rule 8*(g)*.

* Where an accused calls witnesses without giving evidence himself, the *pro forma* should be amended accordingly.

FORM 3

(rule 9(1))

ABSTRACT OF EVIDENCE

Abstract of evidence in the case of ..... (number, rank, name, unit or other description) consisting of the ..... (insert the number of statements) attached statements and .....[1] (insert the number of precis) precis of evidence of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [.....[2] on the direction of the commanding officer of the accused].

Date: ..... 20 ....

(Signature and rank)

1 Delete any references to statements or precis which are not applicable.

2 Insert the name and rank of the officer making the abstract.

FORM 4

(rule 9(5))

CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Certified that I[1] .....

.....

on the ..... day of ..... 20....

handed to the accused[2].....

.....

a copy of the abstract of evidence relating to him dated the ..... day of ..... 20 ..... and duly cautioned him in accordance with rule 9(2) and that [on the ..... day of ..... 20 ..... he elected to make and sign the statement which is marked ..... and attached to this certificate] [he did not make a statement].

[The accused submitted ..... statements of evidence for the defence which are marked ..... [respectively] and attached to this certificate].

Date: ..... 20 .....

.....
(Signature of certifying officer)

1 Insert the rank, name and unit of officer signing the certificate.

2 Insert the number, rank, name, unit or other description of the accused.

FORM 5

(rule 88(3))

SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE

To .....[1]
WHEREAS a charge has been preferred against .....[2]

AND WHEREAS I have directed a summary of the evidence to be taken at .....[3] on the ..... day of ..... 20 .....

You are pursuant to section 99 of the Act and rule 88 of the Royal Brunei Armed Forces Rules of Procedure (R 3) hereby summoned and required to attend as a witness the taking of the said summary of evidence at .....[3] on the ..... day of ..... 20 ..... at ..... a.m./p.m and to bring with you the documents following[4].....

.....

.....

Whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ..... 20 .....

.....
(Signature, rank and unit)
Commanding officer of the accused

1 Insert the name and address of the person to whom the summons is to be sent.

2 Insert the number, rank, name, unit or other description of the accused.

3 Insert the place where the summary of evidence is to be taken.

4 Specify the documents (if any) which the witness is to bring. If the witness is not required to bring documents, delete the words relating to documents.

SCHEDULE 2

(rule 18*(g)*)

RECORD OF PROCEEDINGS BEFORE APPROPRIATE SUPERIOR AUTHORITY

ACCUSED'S NUMBER, RANK AND NAME .....
UNIT .....

1. Questions to be put to the accused by the officer dealing with the case before the charge is read —

Q. Have you received a copy of the charge-sheet and [summary] [abstract] of evidence not less than 24 hours ago?
A. .....

Q. Have you had sufficient time to prepare your defence?
A. .....

2. The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question —

Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?
A. .....

3. If the accused has agreed in writing that the witnesses against him need not give their evidence in person, the officer dealing with the case shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

4. After the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused —

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.
A. .....

Q. Do you wish to adduce any other evidence in your defence?
A. .....

5. If the accused elects to give evidence or to make a statement or to call witnesses, the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then —

(i) consider all the evidence and determine whether the accused is guilty of the offence or not; and

SCHEDULE 2 — *(continued)*

(ii) if he determines that the accused is guilty, examine and consider the accused's record of service. If he intends to award the punishment of forfeiture of seniority or of a fine or of stoppages or the finding will involve a forfeiture of pay or, in the case of a civilian, if he intends to award any punishment, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.

Q. Will you accept my award or do you elect to be tried by court-martial?
A. .....

6. FINDING .....
AWARD .....

Date: ..... 20..... .....

(Signature, rank and appointment of appropriate superior authority)

SCHEDULE 3

(rules 19(1)*(a)*, 65(3), 69(2), 77(7), 88(3), 89(1)*(a)*, 92(1), 92(7), 93(3), 99 and 100)

COURT-MARTIAL FORMS

FORM 1

(rule 19(1)*(a)*)

CONVENING ORDERS FOR COURT-MARTIAL

ORDERS BY .....[1]

The detail of officers as mentioned below shall assemble at ..... at ..... a.m./p.m. on the day of ..... 20 ..... for the purpose of trying by a court-martial the following accused person(s) named in the margin[2] —

.....

.....

PRESIDENT

.....

MEMBERS[3]

.....

.....

WAITING MEMBERS[3]

.....

JUDGE ADVOCATE

The Judge Advocate has been appointed by or on behalf of the Judge Advocate General.

or

.....[4] is hereby appointed Judge Advocate.

FORM 1 — *(continued)*

In the opinion of the convening officer, the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the service.[5]

A field officer having suitable qualifications is not in the opinion of the convening officer available with due regard to the service.[5]

The record of the proceedings will be forwarded to .....

.....

Signed this .....day of ..... 20 .....

.....

(Signature, rank and appointment of the convening officer)

or

.....

(Signature, rank and appointment of the appropriate staff officer)

Authorised to sign for .....

(Appointment held by the convening officer)

1 Insert rank and name of the convening officer.

2 Insert number, rank, name and unit or other description of the accused.

3 A member or a waiting member may be described by either giving his rank, name and unit or thus: "A ... (rank) to be detailed by the officer commanding .... (unit)".

4 Insert the Judge Advocate's name and any legal qualifications.

5 Delete if inappropriate.

FORM 2

DECLARATION UNDER RULE 99

In the case of .....[1]

I .....[2] [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the following exigencies of the service, namely .....

.....

.....

render compliance with the following rules — .....

.....

..... impracticable.

Signed at ..... this ..... day of ..... 20 .....

.....

(Signature)

[S 107/2008]

1 Insert the number, rank, name, unit or other description of accused.

2 Insert the rank, name and appointment of officer making the declaration.

FORM 3

DECLARATION UNDER RULE 100

In the case of .....[1]

I .....[2] [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the .....[3] contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

.....
(Signature)

[S 107/2008]

1 Insert the number, rank, name, unit or other description of accused.

2 Insert the rank, name and appointment of officer making the declaration.

3 Here indicate the documents.

FORM 4

(rule 88(3))

SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL

To: .....[1]

WHEREAS a court-martial [has been ordered to assemble at .....]

[has assembled at .....]
on the ..... day of 20 ..... for the trial of .....[2]

You are pursuant to section 99 of the Act and rule 88 of the Royal Brunei Armed Forces Rules of Procedure (R 3) hereby summoned and required to attend, as a witness at the sitting of the said court at .....

on the ..... day of ..... 20 .....

at ..... a.m./p.m and to bring with you the following[3] —

.....
.....

and so to attend from day to day until you shall be duly discharged; whereof you shall fail at your peril.

Given under my hand at ..... on the .....day of ..... 20 .....

.....
(Signature, rank and appointment)

An officer authorised to convene a court-martial.* President of the court.*

..... authorised to sign for ..... An officer authorised to convene a court-martial.*

* Delete if not applicable.

1 Insert the name and address of the person to whom the summons is to be sent.

2 Insert the number, rank, name, unit or other description of the accused.

3 Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents, delete the words relating to documents.

FORM 4 — *(continued)*

A

(rule 89(1)*(a)*)

RECORD OF PROCEEDING OF COURT-MARTIAL

Proceedings of a court-martial held at .....
on the ..... day of ..... 20 ..... by order of
.....[1]

dated the ..... day of ..... 20 .....

PRESIDENT

MEMBERS

JUDGE ADVOCATE

Trial of .....[2]

The court comply with rule 23 .....
..... not being available
owing to .....
the president appoints ..... a qualified waiting member to take his place.

The accused is brought before the court.

Prosecutor .....
Defending [officer] [counsel] .....
at ..... a.m./p.m. the trial begins.

The convening order is read in the hearing of the accused, marked, signed by the president or Judge Advocate, and attached to the record.

The names of the president and members of the court are read in the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as president, or by any of the officers whose names you have heard read?

A. .....

FORM 4 — *(continued)*

The proceedings relating to the objection(s) are recorded on .....
.....[2]

1 Insert the number, rank, name, unit or other description of the accused as given in the charge sheet.
2 Strike out if not applicable.

FORM 4 — *(continued)*

B

SWEARING IN

The president and members of the court are duly sworn.
[The Judge Advocate is duly sworn]

The [following] officers under instruction [listed on page .....] are duly sworn.

Q. Do you object to ..... as interpreter?
A.[1] ..... is duly sworn as interpreter.

VERBATIM RECORDER

Q. Do you object to ..... recording these proceedings verbatim?[2]
A.[1] .....

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under rule 34. The proceedings relating to his plea are recorded on page .....[2]

The accused objects to the ..... charge(s) under rule 35. The proceeding relating to his objection(s) are recorded on page .....[2]

The accused offers *(a)* plea(s) in bar of trial under rule 36, in respect of the charge(s). The proceedings relating to his plea(s) are recorded on page .....[2]

The accused ..... applies under rule 37 to be tried separately. The proceeding relating to his application are recorded on page .....[2]

The accused applies under rule 38 to have charges ..... and ..... tried separately. The proceeding relating to his application are recorded on page .....[2]

1 If there is an objection, the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.

2 Delete if not applicable.

FORM 4 — *(continued)*

C

ARRAIGNMENT

The charge sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the president or Judge Advocate and inserted in the record immediately before this page as page(s) .....

Q. Are you guilty or not guilty of the first[1] charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the second charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the third charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the fourth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the fifth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the sixth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the seventh charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the eighth charge against which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the ninth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the tenth charge against you which you have heard read?[2]

A. .....

FORM 4 — *(continued)*

Q. Are you guilty or not guilty of the eleventh charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the twelfth charge against you which you have heard read?[2]

A. .....

The accused having pleaded guilty to the ..... charge(s), rule 40 is duly complied with in respect of this / these charge(s).

The accused's pleas to the remaining charges are recorded overleaf.

1 Delete "first" if there is only one charge.

2 Delete if not applicable.

FORM 4 — *(continued)*

D

PROCEEDINGS ON PLEA(S) OF NOT GUILTY[1]

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A.[2] .....

The prosecutor [makes an opening address shortly outlining the facts] [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president or Judge Advocate, marked and attached to the record].

The witnesses for the prosecution are called.

.....

being duly sworn[3] says:

The prosecution is closed.

The accused submits under rule 56 that there is no case for him to answer in respect of the ..... charge(s). The proceedings relating to this submission are recorded on pages .....[4]

DEFENCE

Rule 57 is complied with —

Q. Do you apply to give evidence yourself on oath?

A. .....

Q. Do you intend to call any other person as a witness in your defence?

A. .....

Q. Do you wish to make an opening address?

A. .....

The accused [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president or Judge Advocate, marked ..... and attached to the record].[5]

The witnesses for the defence (including the accused) are ..... called ..... being duly sworn[6] says —

FORM 4 — *(continued)*

The prosecutor [makes a closing address which is summarised on page .....] [hands in a closing address which is read, marked, signed by the president or Judge Advocate and attached to the record].[4]

The accused [makes a closing address which is summarised on page .....] [hand in a closing address which is read, marked, signed by the president or Judge Advocate and attached to the record].

The note of the summing-up of the Judge Advocate is recorded on page .....[4]

FINDING(S)

The court closes to deliberate on its finding(s).

The court finds that the accused[7] ..... is — [8]

ANNOUNCEMENT OF FINDING(S)

The court being re-opened the accused is again brought before it.

The finding(s) [is] [are] read and (with the exception of the finding(s) of "not guilty")[2] [is] [are] announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES[4]

The accused is released.

Signed at ..... this ..... day of ..... 20 .....

....

Judge Advocate *President*

1 Remove this page if not applicable.

2 If the accused asked for an adjournment, the grounds relating to his application should, if necessary, be recorded on a separate page and a record made here that this has been done.

3 When a witness affirms the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

4 Delete if not applicable.

5 Delete if the accused does not intend to call witnesses as to fact, other than himself.

6 When a witness or the accused affirms, the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

7 Insert the number, rank, name, unit or other description of the accused as given on the charge sheet.

8 Set out the finding on each charge in the appropriate form set out in Schedule 3.

FORM 4 — *(continued)*

E

PROCEEDINGS ON PLEA(S) OF GUILTY[1]

The accused[2] .....
is found guilty of .....[3]

The finding(s) [is] [are] read in open court and [is] [are] announced as being subject to confirmation.

The [summary] [abstract] of evidence is read to the court by the prosecutor, marked ....., signed by the president or Judge Advocate and attached to the record.[4]

or

The prosecutor informs the court of the facts contained in the [summary] [abstract] of evidence which is marked ....., signed by the president or Judge Advocate and attached to the record.[4]

1 Delete this page if not applicable.

2 Insert the number, rank and name, unit or other description of the accused as given on the charge sheet.

3 Record the finding on each charge of which the accused is found guilty in the appropriate form set out in Schedule 3.

4 Delete if not applicable. If this paragraph is deleted, rule 43(2) must be complied with.

FORM 4 — *(continued)*

F1

PROCEEDINGS ON CONVICTION

Note: F2 should be completed before F1 if the accused has pleaded not guilty to all charges. F1 should normally be completed before F2 if the accused has pleaded guilty to any charge but the president may in his discretion complete F2 before F1 if there is no danger of the accused making an inconsistent plea.

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. .....

The evidence for the defence as to the accused's character and in mitigation of punishment, is recorded on pages .....[1]

Q. Do you wish to address the court in mitigation of punishment?

A. .....

The ..... [makes an address in mitigation of punishment, which is summarised [below] [on page .....] [hands in an address in mitigation of punishment, which is read, marked....., signed by the president or Judge Advocate and attached to the record].[1]

The list of offences which the court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked ..... , signed by the president or Judge Advocate and attached to the record.[2]

Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?

A. .....

The accused makes a statement which is recorded on page .....

The court closes to deliberate on sentence.

* Delete if Fl is completed before F2.

1 Delete this paragraph if not applicable.

2 Delete this paragraph if the accused has not requested other offences to be taken into consideration.

FORM 4— *(continued)*

F2

PROCEEDINGS ON CONVICTION

Note: F2 should be completed before Fl if the accused has pleaded not guilty to all charges.

The prosecutor calls evidence as to the accused's character and record.

..... is duly sworn.

Q. Do you recognise the accused as ..... (number, rank and name)?
A. .....

Q. Do you produce a summary of the service record of the accused?
A. I produce .....

Q. Have you compared it with the service record?
A. .....

Q. Do the entries on it correspond with the service record?
A. .....

The ..... is read, marked....., signed by the president or Judge Advocate and attached to the record.

The accused [declines] [elects] to cross-examine this witness [and the cross-examination is recorded on page .....].

The prosecutor adduces evidence under rule 69(3) which is recorded on pages .....[1]

Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?
A. .....

The accused makes a statement which is recorded on page .....

The court closes to deliberate on sentence.

* Delete if F2 is completed before Fl.

1 Strike out this paragraph if the prosecutor does not adduce evidence under rule 69(3).

FORM 4 — *(continued)*

G

SENTENCE[1]

The court (having taken into consideration that he has spent ..... days in civil custody and ..... days in close arrest and ..... days in open arrest in connection with the matters for which he is before the court)[2] sentence the accused .....[3] to.....[4]

ANNOUNCEMENT OF SENTENCE

The court being re-opened, the accused is again brought before it. The sentence (and recommendation to mercy[5]) [is] [are] announced in open court; the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at ..... this ..... day of ..... 20....

....

Judge Advocate *President*

1 Remove this page if not applicable.

2 The words in brackets are to be struck out when the sentence is mandatory e.g. "to be imprisoned for life" where the offence is murder. In all other cases only words which are inapplicable should be deleted.

3 Insert the number, rank, name, unit or other description of the accused as given on the charge sheet.

4 Record the sentence in the appropriate form of words set out in Schedule 4. Any recommendation to mercy (see rule 72(4), restitution order (see section 125 of the Act), an order that sentences shall run consecutively (see section 111 of the Act) made by the court, should be entered on the record immediately after the sentence).

5 Delete if not applicable.

FORM 4 — *(continued)*

H

CONFIRMATION

(rules 92(1) and 93(3))

Note: These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case[1].

Confirmed

I confirm the court's finding(s) sentence and order under section 125 of the Act but [remit .....[2]] [commute .....[3]]

I confirm the court's finding(s), sentence and order under section 125 of the Act but mitigate the sentence so that it shall be as follows —[4]

I vary the sentence so that it shall be as follows ..... and confirm the finding and sentence as so varied.[5]

I confirm the finding(s) and sentence but [postpone the carrying out of the sentence of ..... until .....[6]] [suspend the sentence of .....]

I confirm the finding(s) but substitute the sentence of ..... for the sentence of the court.[7]

I substitute a finding of ..... for the finding of the court and confirm the sentence but [remit .....[2]] [commute .....[3]]

I substitute a finding of ..... for the finding of the court and substitute the sentence of ..... for the sentence of the court.[8]

I substitute a finding of ..... for the finding of the court on the ..... charge and confirm the finding(s) of the court on the ..... charge(s) and the sentence.

I do not confirmed (on the grounds that .....[9])

I confirm the finding(s) of the court on the ..... charge(s) but do not confirm their finding(s) on the ..... charge(s) (on the grounds that .....[9]). I confirm the sentence but [remit .....[2]] [commute .....[3]].

I refer the finding(s) and sentence to .....[10] for confirmation.

I confirm the finding(s) of the court on the ..... charge(s) and refer the finding(s) on the ..... charge(s) and the sentence to .....[10] for confirmation.

I confirm the finding(s) of the court but refer the sentence to .....[10] for confirmation.

FORM 4 — *(continued)*

CONFIRMATION

[The record] [Part of the record] of the proceedings of the ..... court-martial which tried ..... at ..... on the ..... day of ..... 20 ..... having been lost I do not confirm the finding(s) of the court.

Dated this ..... day of ..... 20 .....

.....[11]

(Signature, rank and appointment of confirming officer)

1 Each form must conclude with the signature block prescribed at the end setting out the place and date of signature. The rank and appointment of the confirming officer should be clearly stated after or under his signature.

2 State what part of the sentence is remitted.

3 State what the sentence is commuted to.

4 This form of words may be used when it is impracticable to use either "remit" or "commute".

5 This form of words is appropriate when the court has expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.

6 Insert the date or event to which the carrying out of the sentence is postponed.

7 This form of words is appropriate when the court has passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.

8 The form of words is appropriate where the court has recorded no finding on some charge alternative to a charge upon which it has recorded a finding of guilty and the confirming officer, being of opinion that the court must have been satisfied of the accused's guilty on the alternative charge, wishes to substitute a finding of guilty on that charge for the finding of the court and to substitute a proper sentence not greater than that imposed by the court.

9 Where a confirming officer withholds confirmation because he disapproves of the decision of the court on a plea to the jurisdiction, in bar of trial or on an objection to a charge, he should specifically state that he is withholding confirmation for this reason. In other cases the confirming officer is not bound to give his reasons for withholding confirmation.

10 Insert the appointment of the higher authority to whom the matter is to be referred.

11 See note 1.

FORM 4 — *(continued)*

FINDINGS

(rule 65(3))

Acquittal on all charges

not guilty of [the charge] [all the charges].

not guilty of [the charge] [all the charges], and honourably acquit him thereof.

Acquittal on some but not all charges

not guilty of the .....[1] charge(s) but is guilty of the .....[1] charges(s).

not guilty of the .....[1] charge(s) and honourably acquit him thereof but is guilty of the .....[1]charge(s).

Conviction on all charges

guilty of [the charge] [all the charges].

Special findings

guilty of the .....[1] charge [with the exception of the words .....[2]] [with the exception that .....[2]].

not guilty of the offence charged but is guilty of .....[3]

No finding on alternative charge

guilty of the .....[1] charge; the court record no finding on the ..... (alternative) charge.

Where the accused is unfit to stand his trial

unfit to stand his trial.

FORM 4 — *(continued)*

Acquitted by reason of insanity

not guilty by reason of insanity.

1 Insert the number of the charge or charges as numbered in the charge sheet.

2 Specify the exception in detail. This form is appropriate when a special finding is made under rule 64(3).

3 State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 93(2), (5) or (6) of the Act.

FORM 4 — *(continued)*

SERVICE RECORD OF ACCUSED

(rule 69(2))

Number	Rank	Name	Unit
.....	.....	.....	.....

(Not for use where the accused is a civilian)

1. [1]He was enlisted on ..... 20 ..... and commissioned on ..... 20 .....

2. He is serving on a .....[2]

3. [3]His age is ..... years.

4. He is single/married/divorced/widowed and has ..... children dependent upon him.

5. His gross rate of pay is ..... per day, but he is subject to the following deductions .....[4]

6. His reckonable service towards discharge or transfer to the reserve is ..... years.

7. His reckonable service towards pension, gratuity, etc. is ..... years.

8. (i) He is entitled to the following decorations and awards:

(ii) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet:

9. He holds the substantive rank of ..... with seniority from ..... 20 ..... and has held the acting rank of..... continuously since ..... 20 .....

10. He has been awaiting trial for ..... days since he was first, in connection with the matters for which he is before the court, charged or placed in arrest, of which ..... days were spent in civil custody ..... days were spent in close arrest ..... and days were spent in open arrest.

11. [3][He is not now under sentence] [He is now under sentence of ..... beginning on ..... 20 ..... but suspended on ..... 20 ..... and (not yet put into operation again) (put into operation on ..... 20 .....)]

FORM 4 — *(continued)*

12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandant of a military establishment of the following offences[4] —

	During his service	**In the last 12 months**
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)

13. The Schedule to this form sets out details of any of the following matters which appear in the accused's conduct sheets namely —

(a) offences previously committed by him, being offences of which he has been convicted by court-martial of found guilty during his service by a court other than a court-martial, offences taken into consideration by such courts, and offences of which he has been found guilty by an appropriate superior authority; and

(b) dispensations with trial under section 82 of the Act.

1 Delete inapplicable wording.
2 Insert the type and length of the commission or nature and length of the engagement.
3 Delete inapplicable wording.
4 If there are no entries in his conduct sheets, enter "nil".
5 State briefly the offence.

FORM 4 — *(continued)*

THE SCHEDULE[1]

No: ..... Rank: ..... Name: .....of ..... Units

Description of courts, appropriate superior authority or officer dispensing with trial	Date and place of trial, summary dealing or of order dispensing with trial	Charges on which convicted or found guilty, offences taken into consideration and offences in respect of which trial was dispensed with	Sentence or order of the court as confirmed, award of appropriate superior authority or order of the officer dispensing with trial	Punishment remitted on review or reconsideration
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

I HEREBY CERTIFY that this form and schedule contain a summary of entries in the service books relating to the accused.

Dated this.....day of .....20 .....

.....

(Name, rank and appointment of officer signing)

1 A verbatim extract form from the service books, stating these convictions, etc. must be inserted.

FORM 4 — *(continued)*

RECORD OF RECONSIDERATION OF FINDING UNDER RULE 77(7)

The Judge Advocate advises the court that the finding(s) on the .....[1] charge(s) [is] [are] contrary to the law relating to the case, and that in his opinion the following finding(s) [is] [are] open to them[2] —

.....

The court is closed for reconsideration of finding.

The court on reconsideration finds that the accused is .....[3]

The finding(s) on reconsideration [is] [are] read in open court and (with the exception of the finding(s) of "not guilty")[4] [is] [are] announced as being subject to confirmation.

1 Insert the number of charge as numbered in the charge sheet.

2 Insert the advice given by the Judge Advocate.

3 Set out the finding(s) of the court in the appropriate form(s).

4 Delete the words relating to findings of "not guilty" if there is no such finding.

FORM 4 — *(continued)*

DETERMINATION BY A CONFIRMING OFFICER OR REVIEWING AUTHORITY OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY[1]

I ..... [the confirming officer] [the reviewing authority] hereby order the accused to be committed to [imprisonment] [detention] under the sentence passed on him by the court-martial held at ..... on the ..... day of ..... 20 ..... and direct that that sentence and the sentence passed on the accused by [this court-martial] [the court-martial held at ..... day of ..... 20 .....] shall run [concurrently] [consecutively].

....

(Dated) *(Signature)*

1 When the confirming officer is making the determination, this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation: when made by a reviewing authority, it should follow the minute of promulgation.

FORM 4 — *(continued)*

RESTITUTION ORDER[1]

In accordance with subsection ..... of section 125 of the Act, I.....[2] hereby order that .....[3] be [delivered] [paid out of money found in the possession of .....] to .....[4]

Date: ..... 20..... .....

(Signature)
[confirming officer]
[Reviewing authority]

1 When the confirming officer is making the order, this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation; when made by a reviewing authority, it should follow the minute of promulgation.

2 Insert the rank, name and appointment of confirming officer or reviewing authority as the case may be.

3 Insert the description of article or amount of money, as the case may be.

4 Insert the name of person to whom restitution is being made. If the order directs that property shall be delivered to the person appearing to be the true owner and the title to the property is not in dispute, the following words may be added "and I direct that this order shall be carried out forthwith".

FORM 4 — *(continued)*

ANNULMENT OF TAKING INTO CONSIDERATION

I annul the taking into consideration of the following offences —

.....

.....

[and the Restitution/Compensation Order(s) dependent thereon]

Date: ..... 20..... .....

(Signature)
[Confirming officer]
[Reviewing authority]

FORM 4 — *(continued)*

PROMULGATION

(rule 92(7))

Promulgated and extracts taken at ..... (place) this ..... day of ..... 20 .....

.....

(Signature, rank and appointment of officer making the promulgation)

SCHEDULE 4

FORM 1

(rules 18*(f)*, 72(3) and (4))

SENTENCES

Note: The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.

OFFICERS

Death	To suffer death.
Imprisonment	To be imprisoned for .....
Dismissal with Disgrace	To be dismissed with disgrace from His Majesty's the Sultan and Yang Di-Pertuan service.
Dismissal	To be dismissed from His Majesty's the Sultan and Yang Di-Pertuan service.
Fine	To be fined .....
Severe Reprimand [Reprimand]	To be [severely reprimanded] [reprimand].
Stoppages	To be put under stoppages of pay until he has made good the sum of .....[1] in respect of .....[2]

FORM 1 — *(continued)*

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

Death	To suffer death.
Imprisonment and Reduction to the ranks	To be imprisoned for ..... and to be reduced to the rank.
Dismissal with Disgrace and Reduction to the ranks	To be dismissed with disgrace from His Majesty's the Sultan and Yang Di-Pertuan service and to be reduced to the ranks.
Dismissal and Reduction to the ranks	To be dismissed from His Majesty's the Sultan and Yang Di-Pertuan service and reduced to the ranks.
Detention and reduction to the ranks	To undergo detention for .....and to be reduced to the ranks.
Reduction to the ranks [Reduction to .....]	To be reduced [to the ranks] [to the rank of .....]
Fine	To be fined .....
Severe Reprimand [Reprimand]	To be [severely reprimanded] [reprimand].
Stoppages	To be put under stoppages of pay until he has made good the sum of .....[1] in respect of .....[2]
Admonition	To be admonished (non-commissioned officers only).

FORM 1 — *(continued)*

SOLDIERS

Death	To suffer death.
Imprisonment	To be imprisoned for .....
Dismissal with Disgrace	To be dismissed with disgrace from His Majesty's the Sultan and Yang Di-Pertuan service.
Dismissal	To be dismissed from His Majesty's the Sultan and Yang Di-Pertuan service.
Detention	To undergo detention for .....
Fine	To be fined .....
Stoppages	To be put under stoppages of pay until he has made good the sum of .....[1] in respect of .....[2]
Restriction of privileges	To be put under restriction of privileges for ..... days.
Admonition	To be admonished.

1 Insert the amount which has to be made good by stoppages in respect of the charge or article specified.

2 Specify the charge or article in respect of which the stoppage is to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

FORM 2

(rule 18*(f)*)

FORFEITURE OF SENIORITY OFFICERS

To forfeit ..... (months) (years) seniority as a substantive ..... in the Armed Forces and Reserve Regiment of His Majesty the Sultan and Yang Di-Pertuan.

or

To forfeit all seniority as a substantive.....in the Armed Forces and Regiment of His Majesty the Sultan and Yang Di-Pertuan.

FORM 3

(rule 72(1), (2) and (3))

CONSECUTIVE [SENTENCES OF IMPRISONMENT]
FOR OFFENCES AGAINST THE ACT

(a) In cases where the accused is convicted only of offences under section 72 of the Act

To be [imprisoned] for ..... in respect of the ..... charge, for ..... in respect of the ..... charge, and for ..... in respect of the ..... charge [etc. as required].

[The terms of imprisonment] are to run consecutively]. [The terms of imprisonment] in respect of the ..... and ..... charges are to run consecutively to [each other] [one another] but concurrently with the [terms(s) of imprisonment] in respect of the ..... charge(s)].

(b) In cases where the accused is convicted of offences against section 72 of the Act and also of one or more offences against sections 32 to 71 of the Act

To be [imprisoned] for ..... in respect of ..... the ..... charge, for ..... in respect of the ..... charge, and for ..... in respect of the ..... charge (etc. as required, in respect of all the offences against section 72 for which the court desires to award imprisonment] and [to be imprisoned] for ..... in respect of the ..... charge(s) (specifying the charge or charges of offences other than those against section 72 for which the court desires to award imprisonment, detention). The [terms of imprisonment] in respect of the ..... and the ..... charges are to run consecutively to each other but concurrently with the [terms of imprisonment] in respect of the ..... charge(s).

[S 107/2008]

FORM 4

ORDER THAT SENTENCES ARE TO BEGIN TO RUN
ON EXPIRY OF SOME OTHER SENTENCE

The court hereby orders that the sentence of ..... (state period) [imprisonment] [detention under a custodial order] [detention] passed on the accused by this court-martial shall begin to run from the expiry of the sentence of ..... (state period) [imprisonment] [detention] passed upon him/her by ..... on .....[1]

1 This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

FORM 5

RESTITUITION ORDER[1]

In accordance with subsection ..... of section 125 of the Royal Brunei Armed Forces Act, the court hereby orders that .....[2] be [delivered] [paid] to .....[3]

1 This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

2 Insert the description of the article or the amount of money, as the case may be.

3 Insert the name of the person to whom restitution is to be made. If the order directs that property shall be delivered to the person appearing to be the true owner and the title to the property is not in dispute, the following words may be added, "and the court further order that this order shall be carried out forthwith".

SCHEDULE 5

(rule 32)

OATHS AND AFFIRMATIONS

OATHS AT COURTS-MARTIAL AND AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES*

President and members

I swear by Almighty Allah[1]/Almighty God[2] that I will well and truly try the accused/ accused persons before the court according to the evidence, and that I will duly administer justice according to the Royal Brunei Armed Forces Act, without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Judge Advocate

I swear by Almighty Allah[1]/Almighty God[2] that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Royal Brunei Armed Forces Act, and the rules made thereunder, and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial, unless thereunto required in due course of law.

Officer under instruction

I swear by Almighty Allah[1]/Almighty God[2] that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Interpreter

I swear by Almighty Allah[1]/Almighty God[2] that I will faithfully interpret, to the best of my knowledge, skill and ability and without fear or favour, affection or ill-will, touching the matter before this court-martial being investigated.

SCHEDULE 5 — *(continued)*

Witness

[For Muslims]

بسم‌الله الرحمن الرحيم

والله وبالله وتالله

I swear in this proceedings that I will say and speak the whole truth and nothing but the truth. If I speak false, I shall be guilty in law and religion.

[For Non-Muslims]

I swear by Almighty God that the evidence which I shall give before this court-martial / at this investigation shall be the truth, the whole truth and nothing but the truth.

Child or young person

I promise before Almighty Allah[1]/Almighty God[2] that the evidence which I shall give before this court-martial/at this investigation shall be the truth, the whole truth and nothing but the truth.

AFFIRMATIONS

The person making an affirmation shall say to or repeat after the person administering the affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty Allah" or "I swear by Almighty God" he shall substitute the words "I do solemnly, sincerely and truly declare and affirm", and for the word "swear" wherever else it occurs the words "solemnly, sincerely and truly declare and affirm".

* These forms of oath are appropriate also at a summary of evidence, board of inquiry and a regimental inquiry where the evidence is ordered to be taken on oath.

1 For Muslims.

2 For Non-Muslims.

SCHEDULE 6

FORM 1

(rule 96(1))

PETITION TO CONFIRMING OFFICER (BEFORE CONFIRMATION)

To the confirming officer.

I .....[1] having been convicted by court-martial on .....[2] at [3] ..... and having been sentenced to ..... hereby petition against the finding(s) on the ..... charge(s)[4] and the sentence[5] on the following grounds — .....

.....

.....

Signed: .....[6]

Dated: .....

1 Insert the accused's number, rank, name, unit or other description.

2 Insert the date when accused was convicted.

3 Insert the place where trial was held.

4 The words "the finding(s) on the ..... charge(s)" should be omitted if the accused is only petitioning against sentence.

5 The words "and the sentence" should be omitted if the accused is not petitioning against sentence.

6 Petitions should be signed by the accused himself but may, if necessary, be signed on his behalf by his representative.

SCHEDULE 6 — *(continued)*

FORM 2

(rule 96(2) and (3))

PETITION TO REVIEWING AUTHORITY (AFTER PROMULGATION)

To: .....

I .....[1] having been convicted by court-martial .....[2] on ..... at .....[3] and having been sentenced to and having had the finding(s) and sentence promulgated to me on .....[4] hereby petition against the finding(s) on the ..... charge(s)[5] and the sentences[6] on the following grounds —

.....

.....

Signed: .....[6]

Dated: .....

1 Insert the accused's number, rank, name, unit or other description.

2 Insert the date when accused was convicted.

3 Insert the place where trial was held.

4 Insert the date on which the findings and sentence were promulgated.

5 The words "the finding(s) on the ..... charge(s)" should be omitted if the accused is only petitioning against sentence.

6 The words "and the sentence" should be omitted if the accused is not petitioning against sentence.

7 Petitions should be signed by the accused himself but may, if necessary, be signed on his behalf by his representative.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

DIRECTION UNDER REGULATION 19(3) OF ROYAL BRUNEI ARMED FORCES (PENSIONS) REGULATIONS

S 14/1986

REVISED EDITION 2018

B.L.R.O. 1/2018

SUBSIDIARY LEGISLATION

Direction under regulation 19(3) of Royal Brunei Armed Forces (Pensions) Regulations

His Majesty the Sultan and Yang Di-Pertuan has directed that Government Circular No. 8/1977 shall apply in calculating the proportion of the total derivative pension or gratuity which may be granted under regulation 19 to a widow of a deceased member of the Royal Armed Forces or to a widow and children of such member or to his children.

ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

DIRECTION UNDER REGULATION 3(4) OF ROYAL BRUNEI ARMED FORCES (PENSIONS) REGULATIONS

S 15/1986

REVISED EDITION 2018

B.L.R.O. 1/2018

SUBSIDIARY LEGISLATION

Direction under regulation 3(4) of Royal Brunei Armed Forces (Pensions) Regulations

His Majesty the Sultan and Yang Di-Pertuan has directed that all the provisions of the Royal Brunei Armed Forces (Pensions) Regulations shall have effect on 30th May 1986 in respect of members of the Royal Brunei Armed Forces who were discharged from military service on 30th May 1986.