

LAWS OF BRUNEI

CHAPTER 149

ROYAL BRUNEI ARMED FORCES ACT

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LAWS OF BRUNEI
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CHAPTER 149
ROYAL BRUNEI ARMED FORCES
ARRANGEMENT OF SECTIONS

Section

PART 1
PRELIMINARY

1. Citation
2. Interpretation

Military forces

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

PART 2
OFFICERS

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

PART 3

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

Warrant officers

11. Appointment of warrant officers

Enlistment

12. Enlistment of soldiers and men
13. *Repealed*
14. Proceedings for enlistment and attestation

Extension of service

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

Discharge and transfer to Reserve Regiment

16. Discharge of soldiers
17. Transfer to Reserve Regiment
18. Postponement of discharge or transfer pending proceedings for offences
19. Right of recruit to purchase discharge

-
- 20. Right of warrant officer to discharge on reduction to ranks
 - 20A. Service no longer required

Miscellaneous and supplementary provisions

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

PART 4

SPECIAL PROVISIONS RELATING TO RESERVE REGIMENT

Call out of Reserve Regiment

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

Extension of service

- 26. Postponement of discharge

Release

- 27. Release from full-time service

Training

- 28. Call out of Reserve Regiment for training

Application of Act

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

Offences

30. Offences by men of Reserve Regiment

PART 5

DISCIPLINE AND TRIAL AND PUNISHMENT OF
MILITARY OFFENCES

Interpretation

31. Interpretation of Part 5

Misconduct in action and other offences arising out of military service

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

Mutiny and insubordination

37. Mutiny
38. Failure to suppress mutiny
39. Insubordinate behaviour
40. Disobedience to lawful commands
41. Obstruction of provost officers
42. Disobedience to standing orders

Desertion, absence without leave etc.

43. Desertion

-
- 43A. Failure to comply with terms of engagement
 - 44. Absence without leave
 - 45. Failure to report or apprehend deserters or absentees

Malingering and drunkenness

- 46. Malingering
- 47. Drunkenness

Disorderly conduct

- 48. Fighting, threatening words etc.

Offences relating to property

- 49. Damage to and loss of public or service property etc.
- 50. Damage to and loss of aircraft or aircraft material
- 51. Misapplication or waste of public or service property
- 52. Offences relating to issues and decorations

Navigation and flying etc. offence

- 53. Damage to and loss etc. of ships or naval material
- 54. Dangerous flying etc.
- 55. Inaccurate certification of ships and aircraft
- 56. Low flying
- 57. Annoyance by flying

Offences relating to, and by, persons in custody

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

Offences in relation to courts-martial

61. Offences in relation to courts-martial

Miscellaneous offences

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

Civil offences

72. Civil offences

Punishments available to courts-martial

73. Scale of punishments and supplementary provisions

Arrest

- 74. Power to arrest offenders
- 74A. Powers of investigation
- 75. Provisions for avoiding delay after arrest

Investigation of, and summary dealing with, charges

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

Courts-martial: general provisions

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

Courts-martial: provisions relating to trial

- 87. Challenges by accused
- 88. Administration of oaths
- 89. Courts-martial to sit in open court

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

Offences procedure

99. Rules of Procedure
100. Rules as to exercise of functions of Judge Advocate
101. Taking of offences into consideration

Confirmation and review of proceedings of courts-martial

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

Review of summary findings and awards

107. Review of summary findings and awards

Findings of insanity etc.

108. Provisions where accused unfit to stand trial

Saving for functions of Judge Advocate General

109. Saving for functions of Judge Advocate General

Commencement and duration of sentences

110. Commencement
111. Consecutive terms of imprisonment and detention
112. Limitation of total period of sentences of detention

Execution of sentences of death, imprisonment and detention

113. Execution of sentences of death
114. Imprisonment and Detention Rules
115. Supplementary provisions relating to regulations and rules under sections 113 and 114
116. Special provisions as to civil prisons in Brunei Darussalam
117. Duties of Director or officers in charge of civil prisons to receive prisoners

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

118. Trial and punishment of offences under military law notwithstanding offender ceasing to be subject to military law
119. Limitation of time for trial of offences under military law

Relations between military law and civil courts and finality of trials

120. Jurisdiction of civil courts
121. Persons not to be tried under this Act for offences already disposed of

Inquiries

- 122. Boards of inquiry
- 123. Inquiries into absence

Provisions with respect to Office of Judge Advocate General

- 124. Judge Advocate General

General

- 125. Restitution or compensation for theft etc.
- 126. Appointment of Judge Advocate
- 127. Promulgation
- 128. Custody of proceedings of courts-martial and right of accused to copy

PART 6

**FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF
MAINTENANCE LIABILITIES**

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

PART 7

APPEALS FROM COURTS-MARTIAL

Interpretation

138. Interpretation of Part 7

Right of appeal and initiating procedure

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

Disposal of appeal

142. Power to quash conviction as wrong in law etc.
143. Adjustment of sentence in case of conviction of two or more charges
144. Substitution of conviction on different charge
145. Variation of conviction so as to attract different sentence
146. Substitution of finding of insanity or unfitness to plead
147. Term of sentence passed under section 143, 144 or 145

Retrial

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

Insanity

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

Unfitness to stand trial

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

General procedural provisions

157. Presentation of appellant's case
158. Presence of appellant at hearing
159. Evidence
160. Power to call for report by member of trial court
161. Other powers for facilitating disposal of appeal

Costs

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

Special references to Court of Appeal

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

Supplemental provisions

167. Determination by majority of Court of Appeal
168. Judgment
169. Powers under Part 7 which are exercisable by single Judge or Commissioner
170. Documents relating to trial to be furnished for appeal
171. Defence of appeals

Capital cases

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

General

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

PART 8

GENERAL

Personnel engaged under agreement

179. Personnel engaged under agreement

Redress of complaints

180. Complaints by officers

181. Complaints by soldier

Exemptions

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

Deserters and absentees without leave

184. Arrest of deserters and absentees without leave
185. Proceedings before civil court where persons suspected of illegal absence
186. Deserters and absentees without leave surrendering to police
187. Certificates of arrest or surrender of deserters and absentees
188. Duties of Director of Prisons and others to receive deserters and absentees

Further powers of arrest of civil authorities

189. Arrest under warrant of Commander
190. Arrest of persons unlawfully at large

Searches

191. Search of place entered by person sought to be arrested
192. Search of person arrested
193. General power to search military places and personnel

Evidence

194. General provisions as to evidence
195. Proof of outcome of civil trial

196. Evidence of proceedings of court-martial

Miscellaneous provisions

197. Restrictions on reduction in rank of warrant and non-commissioned officers
198. Temporary reception in civil custody of persons under escort
199. Avoidance of assignment of or charge on military pay, pensions etc.
200. Power of certain officers to take affidavits and declarations
201. Exclusion of requirement of Attorney General's consent for proceedings

PART 9

APPLICATION OF MILITARY LAW AND
SUPPLEMENTAL PROVISIONS

Persons subject to military law

202. Persons subject to military law: general provisions
203. Application of Act to passengers in ships and aircraft of His Majesty the Sultan and Yang Di-Pertuan
204. Application of Act to civilians

Supplemental provisions

205. Loaned personnel
206. Execution of orders, instruments etc.
207. Provisions as to active service
208. Power of His Majesty the Sultan and Yang Di-Pertuan to make regulations
209. General Orders
210. Powers exercisable by subsidiary legislation

211. Application of Queen's Regulations

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 (abettment of thing), section 108 (relating to the abettment of an offence) and section 108A (abettment 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 (abettment 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.

[S 2/2006]

(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 been committed under circumstances involving a higher degree of punishment, be found guilty of an offence as having been committed under circumstances involving a lesser degree of punishment.

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

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

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

(5) Where an accused is charged before a court-martial with an offence against section 72, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Brunei 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

[S 2/2006]

(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.

[S 2/2006]

(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.

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

(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).

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

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.

[S 2/2006]

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.

[S 2/2006]

(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, be deemed to be such a certificate.

(4) References in this section to a competent official of the court are references to any official of the court authorised for the purposes of this section having the lawful custody of the records of the court.

Evidence of proceedings of court-martial

196. (1) The original proceedings of a court-martial purporting to be signed by the president of the court and being in the custody of the Judge Advocate General or of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the original proceedings of a court-martial or any part thereof and to be certified by the Judge Advocate General or any person authorised by him, or by any other person having the lawful custody of the proceedings, to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court in Brunei 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

<i>Offence charged</i>	<i>Alternative offences</i>
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)

SCHEDEULE — (*continued*)

<i>Offence charged</i>	<i>Alternative offences</i>
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