



# LAWS OF MALAYSIA

REPRINT

**Act 77**

## **ARMED FORCES ACT 1972**

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# LAWS OF MALAYSIA

## Act 77

### ARMED FORCES ACT 1972

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**LAWS OF MALAYSIA**

**Act 77**

**ARMED FORCES ACT 1972**

An Act to amend and consolidate the law relating to the establishment, government and discipline of the armed forces of Malaysia.

[1 June 1976, P.U. (B) 271/1976]

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the Armed Forces Act 1972.

**Interpretation**

2. In this Act, the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them:

“acting rank” means rank of any description (however called) such that under regulations made under section 155 a commanding officer has power to order the holder to revert from that rank; and “acting warrant officer”, “acting chief petty officer”, “acting non-commissioned officer” and “acting petty officer” shall be construed accordingly;

“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, ammunition, 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 or other substances used for the propulsion of aircraft and any material used as a lubricant or coolant for aircraft or aircraft material;

“air signal” means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;

“appointed date” means a date as the Minister may, by notification in the *Gazette*, appoint and the Minister may appoint different dates for the coming into force of the various provisions and such dates may be dates earlier than the date of publication of this Act;

“appropriate superior authority” has the meaning assigned to it by subsection 101(2);

“armed forces” or “His Majesty’s armed forces” includes the regular forces and volunteer forces of Malaysia and any other forces which may be declared by the Yang di-Pertuan Agong from time to time to be armed forces;

“Armed Forces Council” means the council established under Article 137 of the Federal Constitution;

“arrest” includes open arrest and arrest by the civil power;

“basic pay” means any such emoluments of an officer or serviceman as may from time to time be defined by regulations made under section 157 as basic pay for the purposes of this Act;



“before the enemy”, in relation to a person, means that he is in action against the enemy or about to go into action against the enemy or is under attack or threat of imminent attack by the enemy;

“Board of Inquiry Rules” means rules governing boards of inquiry made by the Minister under section 147;

“civil court” means a court of ordinary criminal jurisdiction but does not, except where otherwise expressly provided, include any such court outside Malaysia;

“civil custody” means any prison, gaol or other place in Malaysia in which offenders sentenced by a civil court in Malaysia can lawfully be confined, and, if sentenced out of Malaysia, any prison, gaol or other place in which a person sentenced to a term of imprisonment by a civil court having jurisdiction in the place where the sentence was passed, can for the time being lawfully be so confined;

“civil offence” has the meaning assigned to it by subsection 88(2);

“commanding officer”, in relation to any person, means the officer, whatever his rank may be, who is in immediate command of the unit, ship, station or establishment to which the person belongs or is attached;

“competent authority” means the Armed Forces Council or any officer appointed by the Armed Forces Council in that behalf;

“court-martial”, except where it is otherwise expressly provided, means a court-martial under this Act;

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

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

“defence establishment” means any area, building or structure under the control of the Minister, and the material and other things situate in or on any such area, building or structure;

“emergency” includes war, invasion, riot, insurrection and civil disaster whether actual or apprehended;

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

“fraudulent misapplication” includes, where applicable, an offence of criminal breach of trust as defined in the Penal Code [Act 574] and the words “fraudulently misapplies” shall be construed accordingly;

“His Majesty’s aircraft” means any aircraft in the service of His Majesty, whether belonging to His Majesty or not;

“His Majesty’s ship” means any commissioned ship of the Royal Malaysian Navy or the Royal Malaysian Naval Volunteer Reserve and any ship engaged in the service of His Majesty, whether belonging to His Majesty or not;

“Imprisonment and Detention Rules” means rules governing the imprisonment and detention of persons subject to service law under this Act made by the Minister under section 137;

“Minister” means the Minister charged with responsibility for defence;

“officer” means any person of or above the rank of midshipman or officer cadet who has been appointed to or commissioned in the armed forces and (subject to such adaptation and modification as may be prescribed by any written law or the conditions of service relating to such appointment, secondment, attachment or loan) any officer of any naval, military or air forces of a foreign country duly appointed, seconded, attached or on loan to the armed forces;

“Perintah Majlis Angkatan Tentera” means instructions or orders issued by the Armed Forces Council pursuant to this Act;

“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 whether movable or immovable belonging to any department of the Federal Government or held for the purposes of any such department;

“regular forces” includes the Malaysian Army, the Royal Malaysian Navy and the Royal Malaysian Air Force:

Provided that an officer of the Regular Forces Reserve or an officer who is retired within the meaning of any written law shall not be treated as a member of the regular forces save in so far as expressly provided by this Act;

“reserve” means the Regular Forces Reserve established under section 189;

“reservists” means the officers and servicemen who upon termination or completion of their full time service with the regular forces are required under Part VIII to serve in the Regular Forces Reserve;

“Rules of Procedure” has the meaning assigned to it by section 119;

“service” when used adjectivally means belonging to or connected with the armed forces or any part of the said forces.

“Service Chief” means the Chief of the Army, the Chief of the Navy or the Chief of the Air Force, as the case may be;

“serviceman” means any person, other than an officer, who is enlisted in the regular forces and (subject to such adaptation and modification as may be prescribed by any written law or the conditions of service relating to such appointment, secondment, attachment or loan) any serviceman of any naval, military or air forces of a foreign country duly appointed, seconded, attached or on loan to the regular forces;

“service property” includes property belonging to a unit institution or a unit mess or any local organization corresponding with the Navy, Army and Air Force Institutes of the British Forces;

“steal” means to commit theft as defined in the Penal Code;

“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 an offence committed against this Act;

“superior officer” means any officer or serviceman who, in relation to any other officer or serviceman, is by this Act or by regulations made thereunder or by custom of the Service, authorized to give a lawful command to that other officer or serviceman;

“volunteer” means a member of any of the volunteer forces who is not a commissioned officer in such a force;

“volunteer forces” includes the Territorial Army, Royal Malaysian Naval Volunteer Reserve and Royal Malaysian Air Force Volunteer Reserve.

### **Provisions as to active service**

3. (1) In this Act the expression “on active service” in relation to a force means that it is engaged in operations against an enemy, or is in a country or territory outside Malaysia for the preservation of life or property or is on military occupation of a foreign country, and in relation to a person means that he is serving in or with such a force which is on active service.

(2) Where it appears to the Minister that, by reason of the imminence of active service or of the recent existence of active service, it is necessary that a force should be deemed to be on active service, he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration as may be specified therein that force shall be deemed to be on active service.

(3) Where the Minister deems it necessary that the period specified in a declaration under the last foregoing subsection should be prolonged or, if previously prolonged under this subsection, should be further prolonged, he may declare that the said period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If, at any time while any force is deemed to be on active service by virtue of the foregoing provisions of this section, it appears to the Minister that there is no necessity for the force to continue to be treated as being on active service, he may direct that as from the coming into operation of the direction the force shall cease to be deemed to be on active service; but any direction under this subsection shall be without prejudice to anything done by virtue of the declaration before the coming into force of the direction.

(5) The Minister may delegate the powers conferred on him by subsections (2) and (3) to any officer not below the rank of colonel, or its equivalent commanding a force which is serving outside the Federation:

Provided that before an officer to whom the Minister has delegated all or any of his powers as aforesaid makes a declaration under this section he shall, unless satisfied that it is not possible to communicate with sufficient speed with the Minister, obtain the consent of the Minister to the declaration; and in any case where that consent has not been obtained before the making of a declaration under this section the officer shall report the making thereof to the Minister with the utmost practicable speed.

## PART II

### THE REGULAR FORCES OF MALAYSIA

#### **Raising of regular forces**

4. (1) There shall be raised and maintained in Malaysia the following three Services of regular forces, that is to say:

- (a) “Tentera Darat Malaysia” or in English “The Malaysian Army” (hereinafter in this Act referred to as “the Army”);
- (b) “Tentera Laut Diraja Malaysia” or in English “The Royal Malaysian Navy” (hereinafter in this Act referred to as “the Navy”); and
- (c) “Tentera Udara Diraja Malaysia” or in English “The Royal Malaysian Air Force” (hereinafter in this Act referred to as “the Air Force”).

(2) In each year the expenditure proposed to be incurred on the regular forces shall be included in the total of the estimates of the expenditure to be incurred on the armed forces.

#### **Composition of regular forces**

5. (1) The regular forces shall consist of such corps, ships, establishments and other components as the Armed Forces Council with the approval of the Yang di-Pertuan Agong may from time to time by order published in the *Gazette* constitute and establish.

(2) Every corps, ship, establishment or other component constituted and established by order made under the provisions of the last foregoing subsection shall bear and be known by such name or title as the Armed Forces Council with the approval of the Yang di-Pertuan Agong may in such order designate.

(3) Any reference in any written law to any corps, ship, establishment or other component constituted, established and named as aforesaid shall be construed as a reference to such corps, ship, establishment or other component or, as the context may require, to the members thereof.

(4) A corps, establishment or other component shall consist of such units as may be determined by the Armed Forces Council from time to time.

(5) The Armed Forces Council with the approval of the Yang di-Pertuan Agong may from time to time by order published in the *Gazette* do any of the following things, that is to say:

- (a) disband any corps, establishment or other component in whole or in part;
- (b) amalgamate any corps with any other corps or any establishment with any other establishment or any component with any other component;
- (c) strike off any ship from the register; or
- (d) alter or amend the name or title of any corps, ship, establishment or other component.

### **Service outside Malaysia**

**5A.** The Armed Forces Council may require an officer or serviceman to serve outside Malaysia.

### **Attachment of officer or servicemen to forces in and outside Malaysia**

**5B.** (1) The Armed Forces Council may attach temporarily any officer or serviceman to—

- (a) any visiting force present in Malaysia pursuant to paragraph 17(1)(b) of the Visiting Forces Act 1960 [Act 432]; or
- (b) any foreign force of another country outside Malaysia.

(2) An order made pursuant to paragraph (1)(b) shall subject the officer or serviceman, as the case may be, to service law under this Act to such extent, and subject to such adaptation and modification as may be provided by or under any written law relating to the attachment of members of such forces in that country.

### **Secondment of officer or serviceman**

**5c.** The Armed Forces Council may second any officer or serviceman to the service of—

- (a) a department of the Federal Government;
- (b) a State;
- (c) a local authority;
- (d) a statutory authority; or
- (e) an organisation,

in or outside Malaysia:

Provided that such officer or serviceman, as the case may be, shall remain a member of the regular forces but his remuneration shall be paid by that department of the Federal Government, the State, authority or organisation, as the case may be, to whose service he is seconded.

### **Operational use**

**5d.** Sections 5A, 5B and 5C shall not apply in relation to the operational use of the officer or serviceman as the case may be.

## **PART III**

### **COMMISSIONING AND APPOINTMENT OF OFFICERS OF THE REGULAR FORCES**

#### **Commissioning of officers**

**6.** (1) The Yang di-Pertuan Agong may on the recommendation of the Armed Forces Council grant to any person a commission in the Army, Navy or the Air Force, as the case may be:

Provided that only persons being Malays shall be commissioned in the Royal Malay Regiment.

(2) Where the person granted a commission under subsection (1) is an officer in the volunteer forces, the Armed Forces Council may recognize the reckonable service, if any, of that officer, including his last rank and other matter connected therewith, as reckonable service.

(3) For the purpose of subsection (2), section 15 shall apply.

### **Types of commissions**

7. (1) A commission granted under the provisions of the last foregoing section may be either for an indefinite period or for a specified time and shall in either case be in the form prescribed by regulations made under section 15 and shall be issued under the Sign Manual of the Yang di-Pertuan Agong and impressed with the Public Seal of the Federation.

(2) A commission issued for a stated period may be extended by the Yang di-Pertuan Agong for such period as may be deemed expedient.

### **Honorary commissions**

8. The Yang di-Pertuan Agong may grant honorary commissions in the regular forces to such persons as he may think fit.

### **Cancellation of commissions**

9. The Yang di-Pertuan Agong may on the recommendation of the Armed Forces Council at any time without assigning any reason therefor cancel any commission granted under the provision of this Part.

### **Appointment of midshipman and officer cadets**

10. (1) A person may be appointed by the Armed Forces Council as a midshipman or officer cadet for an indefinite term of service or for a fixed term of service.

(2) A person under the age of seventeen and a half years shall not be appointed as a midshipman or officer cadet without written consent of his parents or of his guardian.



### **Officer cadet may purchase discharge**

**10A.** Subject to any regulations made under this Part, an officer cadet, other than a serviceman who has been appointed as an officer cadet, may, before the expiration of a period of three months beginning with the date of his appointment, apply to the competent authority for discharge and upon the consent of the Armed Forces Council and the payment of a sum not exceeding six months of his allowances as may be prescribed he shall be discharged with all convenient speed.

### **Cancellation of appointments**

**11.** The Armed Forces Council may at any time, without assigning any reason therefor cancel any appointment made by them under section 10.

### **Promotion**

**12.** (1) The Armed Forces Council or an officer authorized on its behalf may from time to time promote a naval cadet or midshipman up to and including the rank of acting sub-lieutenant.

(2) The Armed Forces Council or an officer authorized on its behalf may from time to time promote commissioned officers up to and including the rank of captain in the Army or its equivalent in the Navy and the Air Force, as the case may be.

(3) Promotion beyond the ranks specified in subsection (2) shall be by approval of the Yang di-Pertuan Agong on the recommendation of the Armed Forces Council.

### **Transfer from one Service to another or within the same Service**

**13.** (1) A commissioned officer or a person appointed under section 10 may be transferred from one Service to another Service, or from one corps or branch to another corps or branch in the same Service, of the regular forces—

(a) with his own consent;

- (b) by an order of the Armed Forces Council made with the approval of the Yang di-Pertuan Agong; or
- (c) by an order of the Armed Forces Council or an officer authorized on its behalf at any time whilst a Proclamation of Emergency, issued under Article 150 of the Federal Constitution, is in force.

(2) Where a commissioned officer or a person appointed under section 10 is transferred to another Service, corps or branch he shall be subject to all the rules, regulations and orders applicable to such Service, corps or branch and the conditions of his service shall be varied so as to correspond with the general conditions of service of the Service, corps or branch to which he is transferred.

(3) No commissioned officer or person appointed under section 10 shall be transferred to another Service, corps or branch unless he would have been eligible for commissioning or appointment to that Service, corps or branch.

### **Attachment of officers**

**14.** A commissioned officer or person appointed under section 10 may be attached temporarily from one Service to another Service or from one unit to another unit within the Service.

### **Regulations governing commissioning, etc., of officers**

**15.** The Armed Forces Council with the approval of the Yang di-Pertuan Agong may make regulations including regulations providing for matters which may be issued by Perintah Majlis Angkatan Tentera governing the commissioning and appointment of officers, their terms of service, including the absorption, attachment and secondment of any officer to any body, force or service, promotion, advancement in rank, retirement, resignation, dismissal and such other matters as the Armed Forces Council may think necessary or expedient for the better carrying into effect the provisions of this Part.

PART IV

ENLISTMENT AND TERMS OF SERVICE FOR  
THE REGULAR FORCES

**Who may be enlisted**

16. (1) Persons may be enlisted in the regular forces:

Provided that only persons being Malays shall be enlisted in the Royal Malay Regiment.

(2) Where the person enlisted under subsection (1) is a volunteer, the Armed Forces Council may recognize the reckonable service, if any, of that volunteer including his last rank and other matters connected therewith, as reckonable service.

(3) For the purpose of subsection (2), section 36 shall apply.

**Recruiting Authorities**

17. Magistrates holding office in Malaysia and the undermentioned officers (referred to in this Act as “recruiting officers”) may enlist persons in the regular forces—

(a) Senior Personnel Selection Officer and Personnel Selection Officers of the regular forces;

(b) any officer of the regular forces specially authorized by the Armed Forces Council.

**Mode of enlistment and attestation**

18. (1) A person offering to enlist in the regular forces shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him; and a Magistrate or recruiting officer shall not enlist any person in the regular forces unless satisfied that such person has been given such a notice, understands it and wishes to be enlisted.

(2) The procedure for enlisting a person in the regular forces shall be that set out in the First Schedule to this Act.

(3) A recruiting officer shall not enlist any person under the age of seventeen and a half years without the written consent of his parents or of his guardian.

(4) Where the recruiting officer is satisfied, by the production of a certified copy of an entry in the register of births or by any other evidence appearing to him to be sufficient, that a person offering to enlist has or has not attained the age of eighteen years, that person shall be deemed for the purposes of this Act to have attained or, as the case may be, not to have attained that age.

(5) The date at which a person signs the declaration and takes the oath prescribed in an attestation paper shall be deemed to be the date of attestation of such person.

(6) A Magistrate or a recruiting officer may at any time, if satisfied that an error in the attestation paper of a person which is not so material as to render it just that the person should be discharged, amend the error in the attestation paper, and the paper as amended shall thereupon be deemed valid as if the matter of the amendment had formed part of the original matter of such paper.

(7) Where there are duplicate attestation papers signed and attested, this section shall apply both to such duplicates, and in the event of any amendment of an attestation paper the amendments shall be made in both the duplicate attestation papers.

### **False answers in attestation papers**

**19.** (1) If a person knowingly makes a false answer to any question contained in the attestation paper which has been put to him by or by direction of the Magistrate or the recruiting officer before whom he appears for the purpose of being attested, he shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred ringgit or to both.

(2) If a person commits an offence under this section and has been attested as a serviceman, he shall be liable, at the discretion of the competent authority, to be proceeded against before the court of a Magistrate or to be tried by court-martial for the offence.

**Unlawful recruiting or interference with recruiting**

- 20.** If a person without due authority—
- (i) publishes or cause to be published notices or advertisements for the purpose of procuring recruits for the regular forces;
  - (ii) opens or keeps any house, place of rendezvous, or office for the purpose of recruiting such forces;
  - (iii) receives any person under any such notice or advertisement as aforesaid; or
  - (iv) directly or indirectly interferes with the recruiting service of such forces,

he shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both.

**Enlistment in the Army to be in a particular corps**

**21.** (1) A person enlisted for service as a soldier shall be enlisted in a particular corps of the Army and shall serve in such corps for the period of his full-time service whether during the term of his enlistment or during any period of re-engagement unless he is transferred to another corps in accordance with the provisions of the next following subsection:

Provided that a person enlisted for service as a soldier before attaining the age of eighteen years may be enlisted for general service and need not be appointed to a corps until he attains that age.

(2) A soldier may, at any time, with his consent be transferred from one corps to another by order of the competent authority:

Provided that while a state of war exists between the Yang di-Pertuan Agong and any foreign power or while a Proclamation of Emergency issued by the Yang di-Pertuan Agong under Article 150 of the Federal Constitution is in force, the soldier may be so transferred without his consent.

(3) Where in pursuance of the last foregoing subsection a soldier is transferred to a corps in an arm or branch of the Army different

from that in which he was previously serving, the competent authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

(4) No soldier shall be transferred to any corps unless he would have been eligible for enlistment therein.

(5) This section shall apply *mutatis mutandis* to a serviceman enlisted in the Navy and the Air Force.

### **Transfer from one Service to another**

**22.** (1) A serviceman may be transferred from one Service to another Service of the regular forces—

- (a) with his own consent;
- (b) by an order of the Armed Forces Council made with the approval of the Yang di-Pertuan Agong; or
- (c) by an order of the Armed Forces Council or an officer authorized on its behalf at any time whilst a Proclamation of Emergency issued under Article 150 of the Federal Constitution is in force.

(2) Where a serviceman is transferred to another Service he shall be subject to all the rules, regulations and orders applicable to such Service and the conditions of his service shall be varied so as to correspond with the general conditions of service of the Service to which he is transferred.

(3) No serviceman shall be transferred to another Service unless he would have been eligible for enlistment to that Service.

### **Attachment of servicemen**

**23.** A serviceman may be attached temporarily from one Service to another Service or from one unit to another unit within the Service.

**Terms of enlistment**

**24.** (1) The term for which a person enlisting in the regular forces may be enlisted shall be such a term, beginning with the date of his attestation, as is mentioned in the following provisions of this section.

(2) Where the person enlisting has attained the age of eighteen years, the said term shall be—

- (a) such term not exceeding twelve years as may be prescribed, being a term of full-time service; or
- (b) such term not exceeding twelve years as may be prescribed, being as to such part thereof as may be prescribed a term of full-time service and as to the remainder a term of service in the reserve.

(3) Where the person enlisting has not attained the age of eighteen years, the said term shall be—

- (a) a term ending with the expiration of such period not exceeding twelve years as may be prescribed, beginning with the date on which he attains such age, being a term of full-time service; or
- (b) a term ending with the expiration of such period as aforesaid, being as to such part thereof as may be prescribed a term of full-time service and as to the remainder a term of service in the reserve.

**Non-application of sections 24, 25 and 26**

**\*24A.** Sections 24, 25 and 26 shall not apply to a person enlisting in the regular forces on or after the appointed date.

**Terms of enlistment of servicemen enlisting on or after the appointed date**

**\*24B.** (1) The term for which a person enlisting in the regular forces on or after the appointed date shall be such a term, beginning with the date of his attestation, as is mentioned in the following provisions of this section.

(2) Where the person enlisting has attained the age of eighteen years, the said term shall be a term of twelve years, being a term of full-time service.

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*\*NOTE—Sections 24A–24B are not yet in force—see Act A974.*

(3) Where the person enlisting has not attained the age of eighteen years, the said term shall be a term ending with the expiration of twelve years, beginning with the date on which he attains such age, being a term of full-time service.

### **Extension and reduction of service**

**25.** (1) Subject to any regulations made under this Part a person in full-time service may, on written application made by him to the competent authority and with the consent of that authority, be permitted to do any of the following things, that is to say:

- (a) if his enlistment was for a term ending before the expiration of a period of twelve years beginning with the date of his attestation or, if he was enlisted before he attained the age of eighteen years, the date on which he attained that age, to extend the term of his enlistment so as to end at such time, not later than the expiration of the said period as may be specified in the application, and so as to increase the period of his full-time service, his service in the reserve, or both as may be specified;
- (b) if the term of his enlistment, or that term as extended under the last foregoing paragraph, includes a period of service in the reserve, to increase the period of his full-time service, accordingly as may be specified in the application, so as to extend to the whole or to a specified part of that period;
- (c) to be transferred to the reserve to serve therein for the residue of the term of his enlistment, or if that term has been extended under paragraph (b), for the remainder of that term as so extended;
- (d) to reduce the term of his enlistment.

(2) A person in consideration of his being permitted to undergo a prescribed course of instruction or a course of instruction of a prescribed class or of the conferring on him of such other benefit or advantage as may be prescribed, may be required by the competent authority to undertake, in the prescribed form, not to determine his full-time service before the expiration of such period beginning with the day on which that course of instruction ends as may be prescribed or, before the expiration of such period as may be prescribed in relation to that other benefit or advantage.



(3) A person in the reserve by virtue of the terms of his enlistment or of subsection (1) may, on written application to the competent authority, at any time re-enter upon full-time service, and accordingly as may be specified in the application, either—

- (a) serve in full-time service for the remainder of the period for which he would have been liable to serve in the reserve if he had not re-entered upon full-time service; or
- (b) serve in full-time service for a specified part of that remainder and thereafter serve in the reserve for the residue thereof.

### **Extension of service of servicemen enlisting on or after the appointed date**

**\*25A.** (1) Subject to any regulations made under this Part, a person in full-time service and enlisting on or after the appointed date may, on written application made by him to the competent authority and with the consent of that authority, be permitted to extend his term of full-time service from twelve to fifteen years:

Provided that the application shall be made at least six months before the completion of his full-time service under section 24A.

(2) A person who has enlisted on or after the appointed date, in consideration—

- (a) of his being permitted to undergo a prescribed course of instruction or a course of instruction of a prescribed class; or
- (b) of the conferring on him of such other benefit or advantage as may be prescribed,

may be required by the competent authority to undertake, in the prescribed form, not to determine his full-time service before the expiration of such period beginning with the day on which that course of instruction ends as may be prescribed or, as the case may be, before the expiration of such period as may be prescribed in relation to that other benefit or advantage.

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\*NOTE—Sections 25A is not yet in force—see Act A974.

**Re-engagement of servicemen**

**26.** (1) Subject to any regulations made under this Part any person in full-time service who has completed a period of nine years of such service reckoned from the date of his attestation or (if he enlisted before attaining that age) the date on which he attains the age of eighteen years, may, if he so desires and with the approval of the competent authority, be permitted to re-engage for such further period in full-time service as will make up a total continuous period of twenty-one years of full-time service.

(2) Any person who will within one year complete a period of twenty-one years' full-time service may, if he so desires and with the approval of the competent authority, continue to serve in all respects as if his term of full-time service was still unexpired.

**Re-engagement of servicemen enlisting on or after the appointed date**

**\*26A.** (1) Subject to any regulations made under this Part, any person in full-time service under section 24A or 25A enlisting on or after the appointed date may, if he so desires, apply to the competent authority and upon the approval of the competent authority, be permitted to re-engage for such further period in full-time service as will make up a total continuous period of twenty-one years of full-time service:

Provided that the application shall be made at least six months before the completion of his full-time service under section 24A or 25A.

(2) A person who has been permitted to re-engage under subsection (1) may, if he so desires apply to the competent authority and upon the approval of the competent authority, continue to serve in all respects as if his term of full-time service was still unexpired:

Provided that the application shall be made at least six months before the completion of his period of full-time service of twenty-one years.

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\*NOTE—Sections 26A is not yet in force—see Act A974.

**No extension or re-engagement beyond fifty-five years**

**26B.** Subject to sections 27 and 30, no person shall have his period of full-time service extended or be permitted to re-engage if the effect of such extension or re-engagement would be to require him to serve beyond the age of fifty-five years.

**Service in the reserve for servicemen**

**\*26c.** (1) A person whether in full-time service in the regular forces or in the reserve pursuant to sections 24 to 26A and 27 shall upon his discharge or completion of service in the reserve be transferred to the reserve for a period of five years commencing from the day following his discharge or completion of service in the reserve:

Provided that no person shall be required to serve in the reserve after he has attained the age of fifty years.

(2) The Armed Forces Council may in its discretion exempt any person or category of persons from such reserve service.

**Postponement in certain cases of discharge or transfer to the reserve**

**27.** (1) Where, at the time at which apart from this section a serviceman would be entitled to be discharged or would fall to be transferred to the reserve, a state of war exists between the Yang di-Pertuan Agong and any foreign power, or a Proclamation of Emergency issued by the Yang di-Pertuan Agong under Article 150 of the Federal Constitution is in force, or reservists in the Regular Forces Reserve have been called out for service, or he is serving outside Malaysia, he may be retained in full-time service for such period as is hereinafter mentioned, and his service may be prolonged accordingly.

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

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\*NOTE—Sections 26c is not yet in force—see Act A974.

(3) Subject to the provisions of the last foregoing subsection, a person who apart from this section would be entitled to be discharged may be retained in full-time service for such period as the competent authority may order.

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

(5) If while a person is being retained in full-time service by virtue of 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, as the case may require.

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

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

(7) In relation to persons serving outside Malaysia, references in this section to being entitled to be transferred to the reserve shall be construed as references to being entitled to be sent back to Malaysia on with all convenient speed for the purpose of being transferred to the reserve.

## **Discharge**

**28.** (1) Save as hereinafter provided every person, upon becoming entitled to be discharged, shall be discharged with all convenient speed, but until discharged shall remain subject to service law under this Act.

(2) Where a person enlisted in Malaysia is, when entitled to be discharged, serving outside Malaysia, then—

- (a) if he requires to be discharged in Malaysia, he shall be sent there free of cost with all convenient speed and shall be discharged upon his arrival there, or if he consents to his discharge being delayed, within six 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 back to Malaysia or elsewhere.

(3) Except in pursuance of the sentence of a court-martial under this Act, a person shall not be discharged unless his discharge has been authorized by the competent authority in accordance with any regulations made under this Part.

(4) Every person discharged under the provisions of this Part shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed:

Provided that a person who is discharged within three months of attestation shall not be entitled to receive a certificate of discharge.

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

### **Transfer to the reserve**

**29.** (1) Save as otherwise provided in this Act every person, upon falling to be transferred to the reserve, shall be transferred to the reserve, but until so transferred shall remain subject to service law under this Act.

(2) Where a person when falling to be transferred to the reserve, is serving outside Malaysia, he shall be sent to Malaysia free of cost with all convenient speed and shall be transferred to the reserve on his arrival there, or if he consents to his transfer being delayed, within six months of his arrival:

Provided that if he so requests he may be transferred to the reserve without being required to return to Malaysia.

(3) A person transferred to the reserve in Malaysia 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.

### **Postponement of discharge or transfer to the reserve pending proceedings for offences**

**30.** (1) Notwithstanding anything in this Part, a person shall not be entitled to be discharged or transferred to the reserve at a time when he has become liable, as a person subject to service law under this Act, to be proceeded against for offences 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 person who is outside Malaysia and serving a sentence of imprisonment or detention awarded by a court-martial under this Act shall not be entitled to be discharged or transferred to the reserve during the currency of the sentence.

### **Recruit may purchase discharge**

**31.** (1) Subject to any regulations made under this Part, a recruit may apply for discharge before the expiration of a period of three months beginning with the date of his attestation, and if he makes such an application, he shall on payment of a sum prescribed by the competent authority be discharged with all convenient speed.

(2) In this section the expression “recruit” means a person enlisted in accordance with the provision of this Part who has not been previously enlisted in any of the regular forces.

### **Right of warrant officer to discharge on reduction to the ranks**

**32.** A warrant officer of the regular forces who is reduced to the ranks may thereupon claim to be discharged unless a state of war exists between the Yang di-Pertuan Agong and any foreign power or reservists are called out for service.

### **Discharge of servicemen of unsound mind**

**33.** (1) Where it appears to the competent authority that a serviceman is—

- (a) a dangerous person of unsound mind; or
- (b) a person of unsound mind requiring treatment in a mental hospital,

the competent authority may, if the authority thinks proper and on the recommendation of a medical officer, cause such serviceman to be discharged, and when discharged to be received in a Government mental hospital.

(2) Where it appears to the competent authority that a serviceman is neither a dangerous person of unsound mind nor a person of unsound mind requiring treatment in a mental hospital, the authority may, if the authority thinks proper and on the recommendation of a medical officer, cause such serviceman to be discharged and to be sent on his discharge to any place in Malaysia where he has one or more relatives or friends who are willing to take charge of him.

### **Rules for reckoning service**

**34.** (1) In reckoning the service of any person for discharge or re-engagement or transfer to the reserve, there shall be excluded therefrom—

- (a) all periods during which he has been absent from his duty from any of the following causes:
  - (i) imprisonment;
  - (ii) desertion; and
- (b) any period ordered by a court-martial to be forfeited.

(2) Regulations under this Part may make provision for restoring service excluded by subsection (1) in consideration of good service or on other grounds justifying the restoration of service so excluded.

**Validity of attestation, enlistment and re-engagement**

**35.** (1) Where a person has made such declaration upon his attestation or re-engagement as may be prescribed and has thereafter received pay as a serviceman—

- (a) the validity of his enlistment or re-engagement shall not be called in question on the grounds of any error or omission in his attestation paper or application for re-engagement;
- (b) if within three months from the date on which he signed the said declaration he claims that his enlistment is invalid by reason of any non-compliance with the requirements of this Act or regulations made thereunder as to enlistment or re-engagement or any ground whatsoever (not being an error or omission in his attestation paper or application for re-engagement), the claim shall be submitted to the competent authority and if the claim is well founded the competent authority shall cause him to be discharged or his re-engagement revoked, as the case may be, with all convenient speed;
- (c) subject to the provisions of the last foregoing paragraph he shall be deemed as from the expiration of three months from the date on which he made the said declaration to have been validly enlisted or re-engaged, as the case may be, notwithstanding any such non-compliance or other grounds as aforesaid;
- (d) notwithstanding any such non-compliance or other grounds as aforesaid, or the making of a claim in pursuance of paragraph (b), he shall be deemed to be a serviceman until his discharge.

(2) Where a person has received pay as a serviceman without having previously made such declaration as aforesaid, then—

- (a) he shall be deemed to be a serviceman of the regular forces until discharged; and
- (b) he may claim his discharge at any time, and if he makes such claim, the claim shall be submitted as soon as may be to the competent authority who shall cause him to be discharged with all convenient speed.



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

### **Regulations as to enlistment**

**36.** The Armed Forces Council, with the approval of the Yang di-Pertuan Agong, may make regulations including regulations providing for matters which may be issued by Perintah Majlis Angkatan Tentera governing the enlistment of persons in the regular forces, their terms of service including the absorption, attachment and secondment to any body, force or service, promotion, advancement in rank, discharge, dismissal and such other matters concerning servicemen as the Armed Forces Council may think necessary or expedient for the better carrying into effect the provisions of this Part.

### **Interpretation of Part IV**

**37.** In this Part—

“date of attestation”, in relation to any person, means the date on which he signs the declaration and takes the oath mentioned in paragraph 3 of the First Schedule to this Act;

“prescribed” means prescribed by regulations made under this Part.

## **PART V**

### **SERVICE OFFENCES AND PUNISHMENTS**

#### *Offences in Respect of Military Service*

### **Aiding the enemy**

**38.** (1) Every person subject to service law under this Act who with intent to assist the enemy—

- (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person’s duty to defend;

- (b) surrenders any ship or aircraft to the enemy when it is capable of being successfully defended or destroyed;
- (c) surrenders any base, airfield or other defence establishment or installation to the enemy when it is capable of being successfully defended or when it is his duty to cause it to be destroyed;
- (d) does any act calculated to imperil the success of operations of His Majesty's armed forces, of any forces co-operating therewith or of any part of any of those forces;
- (e) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorized by international usage;
- (f) furnishes the enemy with arms or ammunition or with supplies of any description or with any other thing likely to assist him;
- (g) harbours or protects an enemy not being a prisoner of war;
- (h) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal;
- (i) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air fails to use his utmost exertion to carry such orders into effect; or
- (j) causes the capture or destruction by the enemy of any of His Majesty's ships or aircraft or the ships or aircraft of any force co-operating with His Majesty's armed forces,

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

(2) Every person subject to service law under this Act who knowingly and without lawful excuse does any of the acts specified in subsection (1) shall, where it is not proved that he acted with intent to assist the enemy, be liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

(3) Every person subject to service law under this Act who negligently causes the capture or destruction by the enemy of any of His Majesty's ships or aircraft or the ships or aircraft of any force co-operating with His Majesty's armed forces shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

**Misconduct by commanders when in action**

**39.** Every officer subject to service law under this Act who, being in command of a unit, ship, aircraft, defence establishment or other element of the armed forces—

- (a) when under orders to carry out an operation of war or on coming into contact with the enemy that it is his duty to engage, fails to use his utmost exertion to bring the officers and servicemen under his command or his unit, ship, aircraft or other element into action;
- (b) being in action, does not, during the action, in his own person and according to his rank, encourage the officers and servicemen under his command to fight courageously;
- (c) being in action, improperly withdraws from the action; or
- (d) improperly fails to pursue the enemy or to consolidate any position gained,

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

**Misconduct by other persons in operations against the enemy**

**40.** Every person subject to service law under this Act who not being in command of any unit, ship, aircraft, defence establishment, or other element of the armed forces—

- (a) improperly delays or discourages any action against the enemy;
- (b) when ordered to carry out an operation of war, fails to use his utmost exertion to carry out the orders into effect;
- (c) throws away his arms, ammunition or tools in the presence of the enemy;
- (d) leaves his post in the presence of the enemy; or
- (e) behaves before the enemy in such manner as to show cowardice,

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

### Communication with the enemy

**41.** (1) Every person subject to service law under this Act who with intent to assist the enemy communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Every person subject to service law who without authority communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this section the expression “intelligence” means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to the enemy, and in particular (but without prejudice to the generality of the foregoing provisions) as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:

- (a) the number, description, armament, equipment, disposition, movement or condition of any of His Majesty’s armed forces or of any forces co-operating therewith or any of His Majesty’s ships or aircraft or of the ships or aircraft of any such co-operating force;
- (b) any operations or projected operations of any of such forces, ships or aircraft as aforesaid;
- (c) any code, cipher, call sign, password or countersign;
- (d) any measures for the defence or fortification of any place on behalf of His Majesty;
- (e) the number, description or location of any prisoners of war;
- (f) munitions of war.

### Offences against morale

**42.** Every person subject to service law under this Act who—

- (a) spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of His Majesty’s armed forces, of any forces co-operating therewith, or of any part of any of those forces, being reports calculated to create despondency or unnecessary alarm; or

- (b) when before the enemy uses words calculated to create despondency or unnecessary alarm,

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

**Becoming prisoner of war through disobedience or wilful neglect; and failure to rejoin forces**

**43.** (1) Every person subject to service law under this Act who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section.

(2) Every person subject to service law under this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other such person captured by the enemy from taking, any reasonable steps to rejoin His Majesty's service which are available to him or, as the case may be, to that other person shall be guilty of an offence against this section.

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

**Offences by or in relation to sentries, etc.**

**44.** (1) Every person subject to service law under this Act who while on guard duty—

- (a) sleeps at his post;
- (b) when not on duty at a post, is asleep at a time when he is not allowed to be asleep;
- (c) is drunk; or
- (d) leaves his post without having been regularly relieved or otherwise absents himself from any place where it is his duty to be,

shall be guilty of an offence against this section.

(2) For the purposes of this section a person shall be treated as being drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.

(3) Every person subject to service law under this Act who strikes or otherwise uses force against any person on guard duty, being a member of any of His Majesty's armed forces or of any forces co-operating therewith, or by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence against this section.

(4) Every person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

(5) References in this section to a person on guard duty are references to a person who—

- (a) is posted or ordered to patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol,

for the purpose of protecting any person, premises or place.

(6) The foregoing provisions shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises or place, or of regulating traffic by road, by rail or any inland navigation, as they apply to persons on guard duty.

### **Offences relating to supplies**

**45.** (1) Every person subject to service law under this Act who—

- (a) does violence to any person bringing any provision or supply to any of the armed forces or to any forces co-operating therewith;

- (b) irregularly detains any provision or supply being conveyed to any unit or other element of the armed forces or of any forces co-operating therewith;
- (c) irregularly appropriates to the unit or other element of the armed forces with which he is serving any provision or supply being conveyed to any other unit or other element of the armed forces or of any forces co-operating therewith,

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

(2) In this section the expression “any provision or supply” includes any ship, vehicle, aircraft, animal, missile, arms, ammunition, equipment, clothing and any article of any kind or description intended for the use or consumption of the armed forces.

### **Looting**

- 46.** Every person subject to service law under this Act who—
- (a) steals from, or with intent to steal searches, the person of anyone killed or wounded in the course of warlike operation;
  - (b) breaks into any house or other place in search of plunder;
  - (c) without orders from his superior officer wilfully destroys or damages any property;
  - (d) steals any property which has been left exposed or unprotected in consequence of warlike operations; or
  - (e) takes, otherwise than for the public service, any vehicle, equipment or stores abandoned by the enemy,

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

### *Mutiny and Insubordination*

### **Mutiny**

- 47.** (1) Every person subject to service law under this Act who—
- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence;

- (b) 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
- (c) incites any other person subject to service law under this Act 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) Every person subject to service law under this Act who, in a case not falling within the foregoing subsection, takes part in a mutiny or incites any person subject to service law under this Act 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, the expression “mutiny” means the combination between two or more persons subject to service law under this Act, or between persons of whom at least two are subject to service law under this Act—

- (a) to overthrow or resist lawful authority in the armed forces or in forces co-operating therewith or in any part of the said forces;
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline; or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or
- (c) to impede the purpose of any duty or service in the armed forces or in forces co-operating therewith or in any part of the said forces.

### **Failure to suppress mutiny**

**48.** Every person subject to service law under this Act who, knowing that a mutiny is taking place or is intended—

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



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

shall, on conviction by court-martial—

- (i) if the offence was committed with intent to assist the enemy, be liable to suffer death or any less punishment provided by this Act; and
- (ii) in any other case, be liable to suffer imprisonment or any less punishment provided by this Act.

### **Insubordinate behaviour**

**49.** Every person subject to service law under this Act 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:

Provided that he shall not be liable to imprisonment for more than two years if the offence was not committed on active service and did not involve the striking or other use of violence or offering of violence to a superior officer exercising authority as such.

### **Disobedience to superior officer**

**50.** (1) Every person subject to service law under this Act who in such manner as to show wilful defiance of authority disobeys any lawful command of his superior officer shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Every person subject to service law under this Act who, whether wilfully or through neglect, disobeys any lawful command of his superior officer shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service, he shall not be liable to be imprisoned for more than two years.

**Disobedience to standing orders**

**51.** (1) Every person subject to service law under this Act 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 a term not exceeding two years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature for any formation or unit or body of troops, or for any command or other area, establishment, garrison or place, or for any ship, train or aircraft.

(3) The standing orders or other routine orders described in subsection (2) may be—

(a) made by; and

(b) published in such manner as may be determined by,

the Service Chief for each Service or any officer authorized by him.

**Obstruction of provost officers**

**52.** Every person subject to service law under this Act who—

(a) obstructs; or

(b) when called on, refuses to assist,

any person known to him to be a provost officer or to be a person (whether subject to service law under this Act or not) legally exercising authority under or on behalf of a provost officer shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Obstruction of police officer arresting a member of the armed forces**

**53.** Every person subject to service law under this Act who at any place in Malaysia prevents or obstructs—

(a) the execution by a police officer of a warrant for the arrest of a person subject to service law under this Act who has committed or is suspected of having committed an offence punishable on conviction by a civil court; or

- (b) the arrest of a person subject to service law under this Act by a police officer in the exercise of his powers without warrant,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Avoidance of or Failure to Perform Military Duties*

**Desertion**

**54.** (1) Every person subject to service law under this Act who—

- (a) deserts; or
- (b) persuades, endeavours to persuade, procures or attempts to procure any person subject to service law under this Act to desert,

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

Provided that a person shall not be liable to be imprisoned for more than two years unless—

- (i) if the offence was against paragraph (a), he was on active service or under orders for active service at the time when it was committed; or
- (ii) if the offence was against paragraph (b), the person in relation to whom it was committed was on active service or under orders for active service at that time.

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

- (a) leaves His Majesty's Service, or when it is his duty to do so, fails to join or rejoin His Majesty's Service, with (in either case) the intention, either subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty;

- (b) absents himself without leave with intent to avoid serving at any place overseas or to avoid service or any particular service when before the enemy;
- (c) in the case of a sailor having been warned that his vessel is under sailing orders, is absent without proper authority, with the intention of missing that vessel; or
- (d) being an officer enlists in or enters any of the armed forces without having been relieved of his commission, or being a serviceman enlists in or enters any of the armed forces without having been discharged from his previous enlistment,

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

(3) In addition to or in lieu of any punishment provided by subsection (1), the court-martial by whom a serviceman is convicted of desertion may direct that the whole or any part of his service previous to the period as respects which he is convicted of having been a deserter shall be forfeited.

### **Absence without leave**

**55.** Every person subject to service law under this Act who—

- (a) absents himself without leave; or
- (b) persuades, endeavours to persuade, procures or attempts to procure any person subject to service law under this Act to absent himself without leave,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Assisting and concealing desertion and absence without leave**

**56.** Every person subject to service law under this Act who—

- (a) knowingly assists any person subject to service law under this Act to desert or absent himself without leave; or
- (b) knowing that any person subject to service law under this Act has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**False statements in respect of leave**

**57.** Every person subject to service law under this Act who, for the purpose of obtaining leave or prolonging his leave, knowingly makes any false statement to any service authority, to any police officer or to any person authorized by or under instructions of the Armed Forces Council to act for the purposes of obtaining prolongation of leave shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Failure to attend parades or to perform duties**

**58.** Every person subject to service law under this Act who without reasonable excuse fails to attend any parade or other duty of any description or leaves any such parade or duty as aforesaid before he is permitted to do so shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Malingering**

**59.** (1) Every person subject to service law under this Act who—

- (a) falsely pretends to be suffering from sickness or disability;
- (b) injures himself with intent thereby to render himself unfit for service or causes himself to be injured by any person with that intent;
- (c) injures any person subject to service law under this Act, at the instance of that other person, with intent thereby to render that other person unfit for service; or
- (d) with intent to render himself or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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

### **Drunkenness**

**60.** (1) Every person subject to service law under this Act who is guilty of drunkenness whether on duty or not shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that where the offence is committed by a serviceman neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months.

(2) For the purposes of this section a person is guilty of drunkenness if owing to the influence of alcohol or any other 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 be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on His Majesty’s Service.

### *Offences Relating to Property*

#### **Offences in relation to public and service property**

- 61.** Every person subject to service law under this Act who—
- (a) steals or fraudulently misapplies any public or service property or is concerned in or connives at the stealing or fraudulent misapplication of any public or service property;
  - (b) receives or retains in his possession any public or service property knowing it to have been stolen or to have been fraudulently misapplied or obtained by the commission of any offence against this Act;
  - (c) wilfully damages or is concerned in the damage of any public or service property; or
  - (d) by wilful neglect causes damage by fire to any public or service property,

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

**Offences in relation to property of members of the armed forces**

- 62.** Every person subject to service law under this Act who—
- (a) steals or fraudulently misapplies any property belonging to a person subject to service law under this Act, or is concerned in or connives at the stealing or fraudulent misapplication of any such property;
  - (b) receives or retains in his possession any such property knowing it to have been stolen or to have been fraudulently misapplied; or
  - (c) wilfully damages, or is concerned in the wilful damage of any property belonging to a person subject to service law under this Act,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Miscellaneous offences relating to property**

- 63.** Every person subject to service law under this Act who—
- (a) loses or by negligence damages any public or service property of which he has the charge or which has been entrusted to his care or which forms part of the property of which he has the charge or which has been entrusted to his care;
  - (b) by negligence causes damage by fire to any public or service property;
  - (c) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for service purposes;
  - (d) fails to take proper care of any animal or bird used in the public service which is in his charge; or

- (e) makes away with or disposes of (whether by pawning, selling, destroying or in any other way) any service decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for service purposes,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that it shall be a defence for any person charged under this section with losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

*Offences Relating to, and by, Persons in Custody*

**Irregular arrest and confinement**

**64.** (1) Every person subject to service law under this Act who, when another person subject thereto is under arrest—

- (a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegation against that other person or for having that allegation against that other person investigated by his commanding officer or the appropriate superior authority or, as the case may be, tried by court-martial; or
- (b) fails to release, or effect the release of, that other person when it is his duty to do so,

shall be guilty of an offence against this section.

(2) Every person subject to service law under this Act who, having committed a person (hereinafter referred to as “the prisoner”) to the custody of any provost officer or other officer, or any warrant officer, chief petty officer, non-commissioned officer or petty officer, fails without reasonable cause to deliver—

- (a) at the time of the committal; or



- (b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, shall be guilty of an offence against this section.

(3) Where any person (hereinafter referred to as “the prisoner”) is committed to the charge of a person subject to service law under this Act who is in command of a guard, then if without reasonable cause that person does not, as soon as he is relieved from his guard and any further duty, or, if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is his duty to report—

- (a) a written statement containing as far as is known to him the prisoner’s name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; and

- (b) if he has received it, the report required by subsection (2),

he shall be guilty of an offence under this section.

(4) Every person guilty of an offence under this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Permitting escape, and unlawful release of prisoners**

**65.** (1) Every person subject to service law under this Act 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) Every person subject to service law under this Act 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 a term not exceeding two years or any less punishment provided by this Act.

### **Resistance to arrest**

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

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

(3) Every person guilty of an offence under this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Escape from lawful custody**

**67.** Every person subject to service law under this Act who escapes from arrest, prison or other lawful custody (whether service or not) shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## *Navigation and Flying Offences*

### **Loss or hazarding of ships or aircraft**

**68.** Every person subject to service law under this Act who either wilfully or by negligence—

- (a) causes or allows to be lost, stranded or hazarded any of His Majesty's ships; or

(b) causes or allows to be lost or hazarded any of His Majesty's aircraft,

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 he shall be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Dangerous flying, etc.**

**69.** Every person subject to service law under this Act 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 he shall be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Low flying**

**70.** Every person subject to service law under this Act who, being the pilot of one of His Majesty's aircraft, flies it at a height less than such height as may be provided under the prevailing regulations or orders except—

(a) when taking off or landing; or

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

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Annoyance by flying**

**71.** Every person subject to service law under this Act who, being the pilot of one of His Majesty's aircraft, 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 His Majesty's service or any less punishment provided by this Act.

**Inaccurate certification**

**72.** Every person subject to service law under this Act who makes or signs, without having ensured its accuracy—

- (a) a certificate relating to any matter affecting the seagoing or airworthiness or fighting efficiency of any of His Majesty's ships or aircraft; or
- (b) any certificate relating to any of His Majesty's ships or aircraft or of any material thereof,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Prize offences by commanding officers**

**73.** Every person subject to service law under this Act who, being in command of any of His Majesty's ships or aircraft—

- (a) having taken any ship or aircraft as prize, fails to send to the High Court or some other prize court having jurisdiction in the case, all the ship papers or aircraft papers, as the case may be, found on board;
- (b) unlawfully makes any agreement for the ransoming of any ship, aircraft or goods taken as prize; or
- (c) in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any ship, aircraft or goods taken as prize,

shall, on conviction by court-martial, be liable to be dismissed with disgrace from His Majesty's service or any less punishment provided by this Act.

**Other prize offences**

**74.** Every person subject to service law under this Act who—

- (a) strikes or otherwise ill-treats any person who is on board a ship or aircraft when taken as prize, or unlawfully takes from any such person anything in his possession;

- (b) removes out of any ship or aircraft taken as prize (otherwise than for safe keeping or for the necessary use and service of His Majesty's forces) any goods not previously adjudged by a prize court to be lawful prize; or
- (c) breaks bulk on board any ship or aircraft taken as prize, or detained in exercise of any belligerent right or under any enactment, with intent to steal or fraudulently misapply anything therein,

shall be liable to dismissal with disgrace from His Majesty's service or any less punishment provided by this Act.

*Offences Relating to Service Tribunals*

**Offences in relation to courts-martial**

- 75.** (1) Every person subject to service law under this Act who—
- (a) having been duly summoned or ordered to attend as a witness before a court-martial, makes default in attending;
  - (b) refuses to take an 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 as aforesaid while that person is going to or returning from the proceedings of the court; or
  - (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall, on conviction by court-martial other than the court in relation to which the offence was committed, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Notwithstanding anything in the last foregoing subsection where an offence against paragraph (e) or (f) of 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 by another court-martial, may by order under the hand of the president order the offender to be imprisoned for a period not exceeding twenty-one days, or in the case of a serviceman, either to be imprisoned for such a period or to undergo detention for such a period.

### **False evidence**

**76.** Every person subject to service law under this Act who, when having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement or translation materially in those proceedings which he knows to be false or does not believe to be true, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

### *Miscellaneous Offences*

#### **Falsifying service documents**

- 77.** Every person subject to service law under this Act who—
- (a) makes, signs or makes an entry in any service report, muster, return, record, pay list, pay certificate, acquittance roll or other service document, being a document or entry which is to his knowledge false in a material particular;
  - (b) alters any service report, muster, return, record, pay list, pay certificate, acquittance roll or other service document, or alters any entry in such a document, so that the document or entry is to his knowledge false in a material particular;
  - (c) suppresses, defaces or makes away with any service report, muster, return, record, pay list, pay certificate, acquittance roll or other service document which it is his duty to preserve or produce;

- (d) with intent to defraud fails to make an entry in any such documents as aforesaid; or
- (e) aids, abets, commands, counsels, procures or connives at the commission by another person subject to service law under this Act of an offence against this section (whether or not he knows the nature of the document in relation to which that offence will be committed),

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **False accusations, etc.**

**78.** Every person subject to service law under this Act who—

- (a) makes an accusation against any officer or serviceman subject to service law under this Act which he knows to be false or does not believe to be true; or
- (b) in making a complaint where he thinks himself wronged, makes a statement affecting the character of an officer or a serviceman subject to service law under this Act which he knows to be false or does not believe to be true, or wilfully suppresses any material facts,

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Unauthorized disclosure of information**

**79.** (1) Every person subject to service law under this Act who without authority discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to an enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) In this section the expression “information useful to an enemy” means information which is or purports to be information as to any matter such that information as to it would or might be directly or indirectly useful to an enemy, and in particular (but

without prejudice to the generality of the foregoing provisions) as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:

- (a) the number, description, armament, equipment, disposition, movement, preparation for movement or condition of any of the armed forces or of any forces co-operating therewith;
- (b) any operations, projected operations or preparation for operations of any such forces as aforesaid;
- (c) any cryptographic system, aid, process, procedure, publication or document of any such forces as aforesaid;
- (d) any parcels, call sign, password, watchword, countersign or identification signal;
- (e) any measures for the defence or fortification of any place on behalf of His Majesty;
- (f) the number, description, location or movement of any prisoners of war;
- (g) munitions of war.

### **Attempting to commit suicide**

**80.** Every person subject to service law under this Act who attempts to commit suicide shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Ill-treatment of officers or servicemen of inferior rank**

**81.** If—

- (a) any officer subject to service law under this Act strikes or otherwise ill-treats any officer subject to service law under this Act of inferior rank or less seniority or any serviceman subject to service law under this Act; or
- (b) any serviceman subject to service law under this Act strikes or otherwise ill-treats any person subject to service law under this Act, being a serviceman of inferior rank or rate or of less seniority,

he shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.



### **Unlawful detention of pay**

**82.** Every person subject to service law under this Act who having received the pay of any officer or serviceman subject to service law under this Act or of any officer or serviceman loaned or seconded for service with the armed forces unlawfully detains or unlawfully refuses to pay the same when due shall, on conviction by court-martial, be liable to dismissal from His Majesty's service or any less punishment provided by this Act.

### **Disgraceful conduct**

**83.** Every person subject to service law under this Act who is guilty of disgraceful conduct of an indecent or unnatural kind, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Improper carriage of goods**

**84.** Every person subject to service law under this Act who being in command of any ship, aircraft or vehicle of the armed forces, without lawful authority—

- (a) receives or permits to be received on board the ship, aircraft or vehicle any goods or merchandise intended for disposal or delivery by way of trade or business (whether on his own account or on account of any other person), not being merchandise received in the course of salvage; or
- (b) agrees to carry any goods or merchandise on board the ship, aircraft or vehicle in consideration of the payment of freight, or demands or receives any payment in respect of such carriage,

shall be liable to dismissal from His Majesty's service or any less punishment provided by this Act.

### **Scandalous conduct of officers**

**85.** Every officer subject to service law under this Act who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman shall, on conviction by court-martial, be dismissed with disgrace from His Majesty's service.

**Attempts to commit offences against this Act**

**86.** Every person subject to service law under this Act 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.

**Conduct to the prejudice of service discipline**

**87.** Every person subject to service law under this Act who is guilty of any act, conduct or neglect to the prejudice of good order and service discipline, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**Civil offences**

**88.** (1) Every person subject to service law under this Act who commits a civil offence whether in Malaysia or elsewhere shall be guilty of an offence against this section.

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

(3) A person convicted by court-martial of an offence against this section shall—

- (a) if the corresponding civil offence is treason be liable to suffer death or any other punishment provided by this Act;
- (b) if the corresponding civil offence is murder be liable to suffer death or any other punishment provided by this Act;
- (c) if the corresponding civil offence is manslaughter be liable to imprisonment or any less punishment provided by this Act;
- (d) if the corresponding civil offence is rape be liable to imprisonment or any less punishment provided by this Act; and

- (e) in any other case be liable to suffer any punishment which a civil court could award for the corresponding civil offence, being a punishment provided by this Act, or such punishment less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than dismissal with disgrace from His Majesty's service in the case of an officer or detention in the case of a serviceman, as is so provided.

(4) A person shall not be tried by court-martial for an offence of treason, murder, manslaughter or rape unless such person at the time he committed the offence was on active service or serving outside Malaysia.

### *Punishments*

#### **Punishment of officers**

**89.** (1) The punishments which may be awarded to an officer by sentence of a court-martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts-martial, those set out in the following scale; and in relation to an officer, references in this Act to punishments provided by this Act are references to those punishments.

(2) The said scale is—

- (a) death;
- (b) imprisonment for a term not exceeding fourteen years;
- (c) dismissal with disgrace from His Majesty's service;
- (d) dismissal from His Majesty's service;
- (e) forfeiture of seniority of rank or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for purposes of promotion;
- (f) dismissal of an officer from the ship to which he belongs;
- (g) fine;

- (h) severe reprimand;
- (i) reprimand;
- (j) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those in the following paragraphs, of the scale.

(4) Save as expressly provided by this Act, a court-martial shall award only one punishment in respect of all offences on which the accused is convicted.

(5) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(6) A severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or a fine.

(7) Where an officer is sentenced to imprisonment he shall also be sentenced to be dismissed with disgrace from His Majesty's service:

Provided that, if the court-martial fails to sentence him to be dismissed with disgrace from His Majesty's service, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of dismissal with disgrace from His Majesty's service.

### **Punishment of servicemen**

**90.** (1) The punishments which may be awarded to a serviceman by sentence of a court-martial under this Act are, subject to the limitations hereinafter provided on the powers of certain courts-martial, those set out in the following scale; and in relation to a serviceman, references under this Act to punishments provided by this Act are references to those punishments.

(2) The said scale is—

- (a) death;
- (b) imprisonment for a term not exceeding fourteen years;
- (c) dismissal with disgrace from His Majesty's service;

- (d) dismissal from His Majesty's service;
- (e) detention for a term not exceeding two years;
- (f) where the offender, being a serviceman, is on active service on the day of the sentence, field punishment for a period not exceeding ninety days;
- (g) reduction to the ranks or any less reduction in rank or disrating to a rank not lower than a private or its equivalent in the Army, able rate in the Navy or aircraftman I in the Air Force, as the case may be;
- (h) in the case of a warrant officer or non-commissioned officer forfeiture of seniority of rank;
- (i) where the offence is desertion, forfeiture of service;
- (j) a fine;
- (k) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (l) forfeiture of good conduct medal or good conduct badges or both, either in addition to or in lieu of any other punishment;
- (m) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part a punishment specified in any paragraph of the said scale shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the scale:

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

(4) Save as expressly provided in this Act a court-martial shall award only one punishment in respect of all offences on which the accused is convicted.

(5) A serviceman sentenced by a court-martial to imprisonment may, in addition thereto, be sentenced to dismissal with disgrace from His Majesty's service or to dismissal from His Majesty's service.

(6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment, detention or field punishment, he shall also be sentenced to be reduced to the ranks or to be disgraced to a grade lower than that of leading rating, as the case may be:

Provided that, if the court-martial fails to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks or of disgracing to a grade lower than that of leading rating, as the case may be.

(7) In the case of a warrant officer or non-commissioned officer a severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or a fine.

(8) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(9) Where an offender has been sentenced by a court-martial to detention, then if he is subsequently sentenced by a court-martial to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.

(10) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

### **Provisions as to fines**

**91.** (1) The amount of a fine awarded as a punishment under this Act for an offence other than against section 88 shall not exceed the aggregate of fourteen days' pay, and for an offence against section 88—

(a) in any case shall not exceed the aggregate of fourteen days' pay; and

(b) where the civil offence constituting the offence against that section is punishable by a civil court in the Federation and is so punishable by a fine of a maximum amount less than the said aggregate, shall not exceed that maximum.

(2) For the purposes of this section "pay" means basic pay.

## **Field punishment**

**92.** Field punishment shall consist of such duties or drills in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under regulations made under section 155, and may include confinement in such place and manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

## *Arrest*

### **Arrest**

**93.** (1) Every person subject to service law under this Act 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.

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

(3) A serviceman or a volunteer (when subject to service law under this Act) may be arrested by any officer, warrant officer or non-commissioned officer of the regular forces:

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

(4) A rating exercising authority as a member of the regulating staff or as a member of the staff of the officer of the watch may arrest any rating.

(5) A provost officer or any officer, warrant officer or non-commissioned officer or rating legally exercising authority under a provost officer, may arrest any officer, serviceman or volunteer (when subject to service law under this Act):

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

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

(7) In this section the expressions "officer of the regular forces" and "warrant officer or non-commissioned officer of the regular forces" include an officer, warrant officer or non-commissioned officer of any of the volunteer forces when they are subject to service law under this Act and of any foreign force duly appointed, seconded or attached to any of the regular forces or when such members of a foreign force are serving together or acting in combination with any of the regular forces under subsections 17(3) and (4) of the Visiting Forces Act 1960.

### **Provisions for avoiding delay after arrest**

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

(2) Wherever any person subject to service law under this Act having been taken into service custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report for the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report to the like authority and in the like manner every eight 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 exigency of operations.

(3) For the purposes of subsection 64(1) the question whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to the provisions of the last foregoing subsection.



### **Chief Provost Marshal**

**94A.** (1) The Armed Forces Council shall appoint a Chief Provost Marshal for all the three Services.

(2) The Chief Provost Marshal shall—

(a) act as a Staff to the Chief of Armed Forces Staff on disciplinary matters; and

(b) exercise the functions of a Provost Marshal—

(i) when two or more Services are serving together under section 169; or

(ii) when directed by the Armed Forces Council in relation to a disciplinary matter concerning any individual Service.

(3) For the purpose of this section, the Chief Provost Marshal may—

(a) with the approval of the Armed Forces Council appoint such number of officers; and

(b) under the circumstances described in subparagraph (2)(b)(ii) direct the provost officers of that Service,

to assist him in the exercise of his functions.

### **Provost Marshal and provost officers**

**94B.** (1) The appropriate Service Chief may, with the approval of the Armed Forces Council, appoint a Provost Marshal and such number of provost officers as may be necessary for his Service.

(2) The Provost Marshals and provost officers appointed under subsection (1) shall exercise the functions conferred by or under this Act, and in particular shall have the power to investigate any offence under this Act.

### **Appointment or authorization of other investigating officers**

**94c.** Notwithstanding sections 94A and 94B, any member of the armed forces may be appointed or authorized by the competent authority to investigate any offence under this Act.

**Validation**

**94D.** A Provost Marshal, provost officer, investigating or authorized officer appointed or authorized before the coming into force of section 94B or 94c shall be deemed to have been appointed or authorized under section 94B or 94c, as the case may be, and any act or thing done by such persons before the coming into force of sections 94B and 94c that would have been lawful if those provisions had been in force at the time when the act or thing is done is hereby validated and declared to have been lawfully done.

*Summary Disposal of Charges***Investigation of charges by commanding officers**

**95.** Before an allegation against a person subject to service law under this Act (hereinafter 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-martial**

**96.** (1) After investigation, a charge against a commissioned officer below the rank of lieutenant-colonel or its equivalent or against a warrant officer 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 accordance with those provisions.

(2) After investigation, a charge against an appointed officer or against a serviceman or volunteer (when subject to service law under this Act) below the rank of warrant officer may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions of this Part.

(3) If, after investigation, any charge is not dealt with summarily as aforesaid, the accused shall be remanded for trial by court-martial.

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

- (a) the commanding officer has investigated a charge against a commissioned officer or a warrant officer; or

- (b) the commanding officer has investigated a charge against an appointed officer or against a serviceman or volunteer (when subject to service law under this Act) below the rank of warrant officer, which is not one which can be dealt with summarily,

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

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

#### **Further proceedings on charges against an appointed officer, servicemen and volunteers below the rank of warrant officer**

**97.** (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against an appointed officer or against a serviceman or volunteer (when subject to service law under this Act) below the rank of warrant officer.

(2) If—

- (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it; or
- (b) the charge is one which can be dealt with summarily but the commanding officer is of the opinion that it should not be so dealt with,

he shall take the prescribed steps with a view to the charge being tried by court-martial.

(3) In any other case, the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty he may, subject to subsection (4), award one or more of the following punishments, that is to say:

- (a) detention for a period not exceeding ninety days, or if the accused being a non-commissioned officer or private or its

equivalent is on active service, field punishment not exceeding ninety days:

Provided that—

- (i) a punishment of detention or field punishment awarded by a commanding officer to a non-commissioned officer shall not be carried into effect until it has been approved by an approving authority and only to the extent so approved;
  - (ii) where a commanding officer awards more than twenty-eight days' detention or field punishment, the portion in excess of twenty-eight days shall be effective only if approved by, and to the extent approved by, an approving authority;
- (b) reduction to the ranks or any less reduction in rank or disrating to a rank not lower than a private or its equivalent in the Army, able rate in the Navy or aircraftman I in the Air Force, as the case may be, but, except as provided in subsections (5) and (6), a punishment of reduction to the ranks or any less reduction in rank or disrating to a rank not lower than a private or its equivalent in the Army, able rate in the Navy or aircraftman I in the Air Force, as the case may be, imposed by a commanding officer shall be effective only if approved by, and to the extent approved by, an approving authority;
- (c) a fine;
- (d) if the accused is an appointed officer or non-commissioned officer, severe reprimand or reprimand;
- (e) forfeiture of good conduct badges, but where such forfeiture will entail the forfeiture of a long service and good conduct medal, a punishment of forfeiture of good conduct badges shall be effective only if approved by an approving authority;
- (f) where the offence has occasioned any expense, loss or damage, stoppages;
- (g) any minor punishments for the time being authorized in regulations made under this Part:

Provided that no fine or minor punishment shall be awarded for an offence for which detention is awarded, and that no fine shall be awarded for an offence for which field punishment is awarded.

(4) If the accused is an appointed officer the commanding officer shall not award any punishment other than those set out in paragraphs (c), (d), (f) and (g) of the last foregoing subsection.

(5) Where the accused is a lance corporal or lance bombardier, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to be reduced to the ranks.

(6) Where the accused is an acting warrant officer or acting non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank or rate.

(7) Where a non-commissioned officer is awarded any period of detention or field punishment, he shall also be ordered to be reduced to the ranks or to be disrated to a grade lower than that of leading rating, as the case may be:

Provided that, if the commanding officer fails to order him to be so reduced, the sentence of the commanding officer shall not be invalid but shall be deemed to include a sentence of reduction to the ranks or of disrating to a grade lower than that of leading rating as the case may be.

(8) Where a commanding officer awards a fine as a punishment for drunkenness, the amount of the fine shall not exceed thirty ringgit.

(9) Notwithstanding anything contained in subsection (3), where the commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award punishment other than severe reprimand, reprimand, fine or a minor punishment, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay (other than a fine), the commanding officer 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 regulations made under this Part withdraw his election, the commanding officer shall not record a finding of guilty but shall take the prescribed steps with a view to the charge being tried by court-martial.

(10) In this section “approving authority” means any officer not below the rank of colonel or its equivalent designated by the Armed Forces Council as an approving authority for the purposes of this section.

(11) Where a charge is one that can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference the commanding officer shall dispose of the charge as if he had originally been of the opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

### **Further proceedings on charges against commissioned officers and warrant officers**

**98.** (1) After investigating a charge against a commissioned officer or a warrant officer the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to higher authority; and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with the two next following subsections.

(2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.

(3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.

(4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty:

Provided that, if, in the course of investigating the charge, the authority determines that it is desirable that the charge should be tried by court-martial, the prescribed steps shall be taken with a view to its being so tried.

(5) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments, that is to say:

- (a) forfeiture of seniority of rank or in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for purposes of promotion;

- (b) a fine;
- (c) severe reprimand or reprimand;
- (d) where the offence has occasioned any expense, loss or damage, stoppages,

except that he may not award both forfeiture of seniority of rank and a fine.

(6) Notwithstanding anything in subsection (4), where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award forfeiture of seniority of rank or service or stoppages, or where a finding of guilty will involve a forfeiture of 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.

### **Dismissal of charges referred to higher authority**

**99.** (1) Notwithstanding anything in the two last foregoing sections, where a charge—

- (a) has been referred to higher authority with a view to its being tried by court-martial; or
- (b) has been submitted to higher authority for determination how it is to be dealt with,

that authority may, subject to the provisions of this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed, and in any such case the commanding officer shall dismiss the charge.

(2) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.

### **Confession of desertion by a serviceman**

**100.** (1) Where, in accordance with regulations made under this Part, a serviceman 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 Armed Forces Council or such officer not below the rank of colonel or its equivalent as may be prescribed by such regulations as aforesaid.

(2) After considering any such confession the Armed Forces Council or such officer as aforesaid may direct that the offence shall not be tried by court-martial or dealt with summarily by the appropriate superior authority or commanding officer, and if such a direction is given the period of the offender's service as respects which he confesses to have been a deserter shall be forfeited.

(3) A direction under the last foregoing subsection may further provide that the whole or any part of the offender's service previous to that as respects which he confesses as aforesaid shall also be forfeited.

### **Officers who are to act as commanding officers and appropriate superior authority**

**101.** (1) In this Act the expression "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 under this Part.

(2) The following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say, any officer not below the rank of colonel or its equivalent who in each case has power to convene court-martial under this Act.

(3) Such regulations as aforesaid may confer on officers, or any class of officers, who, by or under the regulations, are authorized to exercise the functions of commanding officer, 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 summarily dealing with charges**

**102.** (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may be specified by regulations made under this Part.

(2) In such cases as may be specified in that behalf by such regulations as aforesaid 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*

**Jurisdiction and powers of a court-martial**

**103.** (1) Subject to the provisions of this section a court-martial shall have the power to try any person subject to service law under this Act for any offence which, under this Act, is triable by court-martial and to award for any such offence any punishment authorized by this Act for that offence.

(2) A court-martial for the trial of an officer or a warrant officer shall consist of at least five officers.

(3) A court-martial consisting of less than five officers shall not award any punishment higher in the scale of punishment than imprisonment for two years.

(4) A court-martial shall not, unless it consists of at least five officers, try any offence for which the maximum or only punishment is death.

**Convening Authorities**

**104.** (1) Court-martial may be convened by any qualified officer so authorized by His Majesty by Warrant or by any officer under the command of an officer authorized as aforesaid to whom the last-mentioned officer has, in the exercise of a power conferred by the Warrant issued to him, delegated his power to convene courts-martial.

(2) In this section the expression “qualified officer” means—

(a) the Chief of the Armed Forces Staff;

(b) the Chief of the Army;

(c) the Chief of the Navy;

(d) the Chief of the Air Force;

(e) any officer not below the rank of colonel or its equivalent who is in command of a body of troops or of a naval command or of a body of the air force.

(3) Any Warrant or delegation under this section to convene courts-martial—

- (a) may be made subject to restrictions, reservations, exceptions or conditions;
- (b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and successors;
- (c) may be varied or may be revoked, either wholly or in part, by a subsequent Warrant of His Majesty or, as the case may be, by the officer by whom it was given or his successor in office.

(4) Any power to convene courts-martial delegated under subsection (1) shall be exercisable only for the trial of a person who at the date of the convening order is under the convening officer's command.

### **Constitution of courts-martial**

**105.** (1) Subject to section 103, a court-martial shall consist of the president and not less than two other officers.

(2) An officer who convenes a court-martial under the last foregoing section may appoint as members of the court-martial officers of the Army, the Navy or the Air Force, or any officers of any foreign force who are attached, seconded or on loan to the regular forces:

Provided that the officers forming the court shall belong to the same Service as the accused except where in the opinion of the convening officer the necessary number of officers of the same Service having the requisite qualifications at the place where the court-martial is convened is not, with due regard to the public service, available in which case the convening officer may, with the consent of the proper authority of another Service, appoint officers of another Service having the requisite qualifications as president or members of the court-martial, and the convening order for the court-martial shall contain a statement of such opinion of the convening officer and that statement shall be conclusive.

(3) An officer shall not be appointed to be a member of a court-martial unless he is subject to service law under this Act and has been an officer in any of the armed forces for a period of not less than two years or for periods amounting in the aggregate to not less than two years or in respect of officers of a foreign force who are attached, seconded or on loan to the regular forces who have completed not less than a similar period of service in their own force.

(4) Where the court-martial consists of five officers or more the president shall be an officers of or above the rank of lieutenant-colonel or its equivalent and shall be appointed by order of the officer convening the court-martial.

(5) Where the court-martial consists of less than five officers the president shall be appointed by order of the officer convening the court-martial and shall not be under the rank of major or its equivalent unless, in the opinion of the convening officer, a major or its equivalent is not, with due regard to the public service, available; and in any event the president of a court-martial shall not be under the rank of captain or its equivalent.

(6) Notwithstanding subsection (4) where the accused is of or above the rank of brigadier-general or its equivalent, the president of a court-martial shall be of or above the rank of the accused and the other members shall be of or above the rank of colonel or its equivalent.

(7) Notwithstanding subsection (4) where the accused is of the rank of colonel or its equivalent, the president shall be of or above the rank of the accused, and the other members shall be of or above the rank of lieutenant-colonel or its equivalent.

(8) Where the accused is a lieutenant-colonel or its equivalent, at least two members of a court-martial, other than the president, shall be of or above the rank of the accused.

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

**Supplementary provisions as to constitution of courts-martial**

**106.** (1) The officer who convenes a court-martial shall not be a member of that court-martial:

Provided that, if that part of the force to which he belongs is on active service and if in his opinion it is not practicable to appoint another officer as president, he may himself be president of the court-martial.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who, under this Part or rules made thereunder, 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, shall not sit as a member of a court-martial or act as judge advocate at such a court-martial.

(3) When the officer convening a court-martial appoints a captain or its equivalent to be president, being of opinion that a major or its equivalent having suitable qualifications is not, with due regard to the public service, available, the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

**Place for sittings of courts-martial and adjournment to other places**

**107.** (1) Subject to the provisions of this section, a court-martial shall sit at such the provisions of place (whether within or outside the Federation) as may be specified in the order convening the court-martial; and the convening officer may convene it to sit at a place outside the territorial limits of his command.

(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 requisite in the interests 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 an accused**

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

(2) For the purpose of enabling the accused to avail himself of the right conferred by the foregoing subsection, 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 those officers.

(3) Every objection made by an 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 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**

**109.** (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 on oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that, where the evidence is given on

behalf of the prosecution, the accused shall not be liable to be convicted upon such evidence alone 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:

Provided that, if any witness offers to give evidence on oath in any form common amongst or held binding by persons of the race or persuasion to which he belongs and not repugnant to justice or decency and not purporting to affect any third person, the court may, if it thinks fit, notwithstanding anything hereinbefore contained, cause such oath to be tendered to him.

### **Courts-martial to sit in open court**

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

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

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

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

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

**Dissolution of courts-martial**

**111.** (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 the foregoing subsection, if after the commencement of the trial a court-martial is, by reason of the death of one of the members or 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 of the rank of captain its equivalent or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but

(b) if he is not of such rank as specified above, 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 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 foregoing provisions of this section, the accused may be tried by another court-martial.

**Decisions of courts-martial**

**112.** (1) Subject to the provisions of this section, every question to be determined at 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 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-martial.

(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 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**

**113.** (1) Without prejudice to section 110, the finding of a court-martial on each charge shall be announced in open court.

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

### **Power to convict of offence other than that charged**

**114.** (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 in circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed in circumstances involving a lower 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 88 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 88, 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 Malaysia, he might have been found guilty of another civil offence, then if the court-martial finds that he has committed that other civil offence he may be convicted of an offence against section 88 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 the Second Schedule to this Act may be found guilty of an offence specified in relation thereto in the second column of the said Schedule.

### **Rules of evidence**

**115.** (1) Save as otherwise provided in this Act, the rules of evidence to be observed in proceedings before courts-martial shall be the same as those which are observed in civil courts in Malaysia 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 to produce in similar proceedings before a civil court in Malaysia.

(2) Notwithstanding anything in the foregoing subsection, a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the fact stated in the declaration in a case where, and to the extent to which, oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted as evidence in any such trial on behalf of either the prosecution or the defence—

- (a) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the accused;

- (b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days, or such less period as the commanding officer may allow, before the commencement of the trial, been served on the commanding officer of the accused;
- (c) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused, serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration; or
- (d) in any case, if the court-martial is of the opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

(3) 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 Malaysia.

### **Privilege of witness and others at courts-martial**

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

### **Offences by civilians in relation to courts-martial**

**117.** Where in Malaysia any person other than a person subject to service law under this Act—

- (a) having been duly summoned as a witness before a court-martial, fails to comply with the summons;
- (b) refuses to swear an 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 a court-martial, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of a court-martial;
- (f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court-martial; or
- (g) does any other thing which would, if a court-martial had been a court of law having power to commit for contempt, have been contempt of that court,

the president of the court-martial may certify the offence of that person under his hand to any court of law in that part of Malaysia where the offence is alleged to have been committed, being a court having power to commit for contempt, and that court of law may thereupon inquire into the alleged offence, and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court to which the offence is certified.

### **Affirmations**

#### **118. (1) If—**

- (a) a person required by virtue of this Act to take an oath for the purposes 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 to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief,

he may be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

(2) A person who may be permitted under this section to make a solemn affirmation may also be required to do so, and for the purposes of this section “reasonably practicable” means reasonably practicable without inconvenience or delay.

### *Procedure*

#### **Rules of Procedure**

**119.** (1) Subject to the provisions of this section, the Minister may make rules (hereinafter referred to as “Rules of Procedure”) with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities, and with respect to the confirmation and revision of findings and sentences of courts-martial.

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

- (a) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;
- (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath, and whether or not in full or in summary or abstract form) for the purpose of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules of Procedure shall make provision for the application of section 109 in any case where the accused requires that the evidence shall be taken on oath;
- (c) the addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation, and the treating of the investigation as the investigation of the new charge;
- (d) the convening and constitution of courts-martial;
- (e) the sittings, adjournment and dissolution of courts-martial;
- (f) the procedure to be observed in trials by 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 of Procedure made under paragraph (b);
- (i) applying in relation to proceedings before commanding officers and appropriate superior authorities and otherwise in relation to proceedings prior to trial by court-martial of all or any of the provisions of the four last foregoing sections;
- (j) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by a court-martial;
- (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 a 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 form of orders and other documents to be made for the purposes of any provisions of this Act or the Rules of Procedure relating to the investigation or trial of, or award of punishment for, offences cognizable 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 other matter which by this Part is required or authorized to be prescribed.

(3) Rules of Procedure made by virtue of paragraph (j) of the last foregoing subsection shall secure that the power to amend charges shall not be exercisable in circumstances substantially different from those in which charges are amendable by a civil court in Malaysia, or otherwise than subject to the like conditions, as nearly as circumstances permit, as those subject to which charges are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

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

(5) 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**

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

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

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

(b) for requiring or authorizing the president of a court-martial, in such cases as may be specified in the Rules of Procedure, to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of a court-martial 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 a court-martial or its members and the proceedings thereof as may be specified in the Rules of Procedure.

(3) In the last foregoing subsection 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**

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

*Confirmation, Revision and Review of Proceedings of  
Courts–Martial*

**Confirmation of proceedings of courts-martial**

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

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

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of the two next following sections or the provisions of this Part as to confirmation or approval.

**Petition against findings or sentences**

**123.** At any time after a 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.

**Revision of findings of courts-martial**

**124.** (1) A confirming officer may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him—

- (a) that the finding was against the weight of the evidence; or
- (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.

(2) Any such direction shall be accompanied by the necessary direction for the re-assembly of the court-martial, and shall contain a statement of the reasons for the direction.

(3) On any revision of a finding the court-martial shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court-martial could originally have come at the trial in lieu of the finding under revision.

(4) On any such revision the court-martial shall not have power to receive further evidence.

(5) Where on any such revision the court-martial either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances, the court-martial may substitute a different sentence for the original sentence:

Provided that the court-martial shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which, in the opinion of the court-martial, is more severe than the original sentence.

(6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court-martial on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court-martial on a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court-martial on any such revision as it applies to their deliberation on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court-martial:

Provided that the decision of the court-martial on the revision shall not be required to be announced in open court.

### **Powers of confirming officers**

**125.** (1) Subject to the provisions of the last foregoing section and to the following provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial either—

- (a) by 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 material irregularity in the course of the trial;



- (b) by confirming the finding or sentence; or
- (c) by referring the finding or sentence, or both, for confirmation to a higher confirming officer:

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) In lieu of withholding confirmation of a finding of a court-martial, a confirming officer may, if—

- (a) some other finding of guilty could have been validly made by 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 should consider in what manner, if at all, the powers conferred by subsection (4) of this section 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 court-martial is invalid, he may in lieu 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-martial; or
- (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

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

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

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

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

### **Confirming officers**

**126.** (1) Subject to the provisions of this section, the following shall have power to confirm the finding or sentence of a court-martial, that is to say:

- (a) the officer who convened the court-martial or any officer superior in command to that officer;
- (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer;
- (c) failing any such officer as aforesaid, any officer appointed by the Armed Forces Council to act as confirming officer, whether for the particular case or for a specified class of cases.

(2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say:

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

- (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; or
- (c) any person who, as appropriate superior officer, investigated the allegations against the accused.

(3) A Warrant or delegation empowering the convening of courts-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the Warrant or delegation and the powers conferred by subsection (1) shall be exercisable subject to any such reservation.

### **Approval as well as confirmation required for certain death sentences**

**127.** (1) A sentence of death which has been confirmed shall not be carried into effect unless approved by the Yang di-Pertuan Agong.

(2) Notwithstanding the provisions of the foregoing subsection, sentence of death passed on a person on active service may be carried out without such approval as aforesaid where, in the opinion of the confirming officer, it is essential, in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present, that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.

### **Review of findings and sentences of courts-martial**

**128.** (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 123, the findings 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—
  - (a) the Yang di-Pertuan Agong;

- (b) the Armed Forces Council, or (so far as the delegation extends) any officer to whom the powers of the Armed Forces Council as reviewing authority, or any of those powers, may be delegated by regulations made under this Part;
- (c) any officer superior in command to the confirming officer.

(3) Notwithstanding anything in subsection (1), a sentence of death passed on a person on active service and the finding of guilty in consequence of which it was passed shall not be required to be reviewed if, in the opinion of the confirming officer, it is essential, in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced is present, that the sentence should be carried out forthwith, and the confirming officer states that opinion in the minute confirming the sentence.

- (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 the sentence, quash the sentence;
  - (c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting punishment as are conferred on a confirming officer by subsections (2) to (4) inclusive of section 125,

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 the last foregoing subsection, the determination of the reviewing authority shall be promulgated and shall have effect from the promulgation thereof.

### **Reconsideration of sentences of imprisonment and detention**

**129.** (1) Sentences of imprisonment and detention may be reconsidered by such officers (not below the rank of colonel or its equivalent) as may be specified by regulations made under this Part;

and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in whole or in part, it may be remitted accordingly.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and where, after review, a sentence remains effective it shall be reconsidered at intervals of six months:

Provided that delay in complying with this subsection shall not invalidate the sentence.

### *Review of Summary Findings and Awards*

#### **Review of summary findings and awards**

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

(2) The said authority is—

(a) the Armed Forces Council; or

(b) any officer superior in command to the officer who dealt summarily with the charge.

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

(4) If a finding in any proceedings is quashed under the last foregoing subsection and the award made in those proceedings relates only to the finding quashed, the said authority shall also quash the award, and if the award relates also to any other finding and it appears to the said authority that the award was not warranted by this Act in respect of that other finding, the said authority may vary the award by substituting such punishment or punishments as the said 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 said authority more severe than the punishment or punishments included in the original award.

(5) Where, on a review under this section, it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included 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 said authority may vary the award by substituting such punishment or punishments which could have been included in the original award, and not being in the opinion of the said authority more severe than the punishment or punishments included in the original award.

### *Findings of Insanity*

#### **Provisions where accused found insane**

**131.** (1) Where, on the trial of a person by court-martial, it appears to the court-martial that the accused is by reason of insanity unfit to stand his 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 under this Part until the directions of the Yang di-Pertuan Agong are known or until any earlier time at which the accused is fit to stand his trial.

(2) 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 at the time of the acts or omissions constituting that offence the accused was insane, 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 of the Armed Forces Council until the directions of the Yang di-Pertuan Agong are known.

(3) In the case of any such finding as aforesaid, the Yang di-Pertuan Agong may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the Yang di-Pertuan Agong thinks fit.

(4) A finding under subsection (1) 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 promulgated.

(5) Where the court-martial or the confirming officer comes to or substitutes a finding of not guilty by reason of insanity the confirming officer or, as the case may be, the reviewing authority shall not have power to substitute for that finding a finding of guilty; but save as aforesaid the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer the power to substitute for any finding any other finding which could have been come to by the court-martial in question) shall apply in relation to such findings as are provided for by subsection (2) as those provisions apply in relation to other findings of guilty.

(6) Save as otherwise provided in this Act or unless the context otherwise requires, any reference to a conviction or a finding of guilty in respect of any offence includes a reference to a finding under subsection (2) in respect of the offence.

#### *Savings for Functions of Judge Advocate General*

#### **Savings for functions of Judge Advocate General**

**132.** Nothing in the foregoing provisions of this Part shall prejudice the exercise of the functions conferred (whether by regulations made under this Part or otherwise) on the Judge Advocate General of considering and reporting on the proceedings of courts-martial or any other functions so conferred on him in relation to such courts.

#### *Commencement, Suspension and Duration of Sentences*

#### **Commencement of sentences**

**133.** (1) Subject to the provisions of this section, a service sentence of imprisonment, detention or field punishment shall begin to run from the day on which the sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

(2) A sentence of imprisonment or detention passed by a court-martial on a serviceman which is suspended in pursuance of

section 135 before he has been committed to prison or a detention barrack shall not begin to run until the beginning of the day on which the suspension is determined:

Provided that where the sentence is suspended by the confirming officer and the reviewing authority determines the suspension, the reviewing authority may direct that the sentence shall run from such earlier date, not earlier than the day on which the sentence was originally pronounced by the court-martial, as the reviewing authority may specify.

### **Duration of sentences of imprisonment and detention**

**134.** (1) Where a serviceman has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of the next following section after he has been committed to prison or a detention barrack, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with the provisions of the next following section until the beginning of the day on which the suspension is determined.

(2) Where any person serving a service sentence of imprisonment or detention becomes unlawfully 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 time elapsing during the period beginning with the day on which he became at large and ending with the day, on which, as a person having become unlawfully at large, he is taken into service custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that, if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Rules that during any time during the last-mentioned period he was—

- (a) in the custody of a civil authority; or
- (b) if and in so far as Imprisonment and Detention Rules so provide, in the custody of any service authority of any country outside the Federation as respects which arrangements have been made under section 139,

the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the service sentence.



(3) In the last foregoing subsection the expression “civil authority” means a civil authority (whether of Malaysia or of any country outside Malaysia) authorized by law to detain persons, and includes a police officer.

(4) Without prejudice to subsection (2) where any person serving a service sentence of imprisonment or detention has, in accordance with Imprisonment and Detention Rules, been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to imprisonment or detention in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return into custody.

(5) A person who for any period is released as mentioned in the last foregoing subsection or who is otherwise allowed, in pursuance of Imprisonment and Detention Rules, out of any detention barrack or otherwise out of service custody for any period or subject to any condition shall, on failure to return on the expiration of the period or to comply with the condition, be treated for the purpose of subsection (2) as being unlawfully at large.

(6) A person serving a service sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be imprisoned or detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(7) References in the last foregoing subsection to release or recall under civil law are references to release or recall in pursuance of the law of the country in which he is serving his sentence.

### **Suspension of sentences**

**135.** (1) The following provisions of this section shall have effect as respects the suspension of a sentence of imprisonment or detention passed by a court-martial on a serviceman.

(2) Without prejudice to subsection 125(5), in confirming such a sentence the confirming officer may direct that the sentence shall be suspended.

(3) Any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by direction of the authority reviewing or reconsidering the sentence.

(4) The suspension of any such sentence may (without prejudice to its again being suspended) be determined on the review or reconsideration of the sentence by a direction of the said authority committing the person sentenced to imprisonment or detention, as the case may be.

(5) Where, while any such sentence is suspended, the person is sentenced by court-martial to imprisonment or detention for a fresh offence, then (unless the balance of the earlier sentence is remitted by virtue of subsection 90(9))—

- (a) the court-martial may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so, the court shall direct whether the two sentences are to run consecutively or concurrently;
- (b) if the court does not exercise the powers conferred by the foregoing paragraph, the confirming officer may exercise those powers on the confirmation of the later sentence;
- (c) if neither the court nor the confirming officer exercise the said powers, the reviewing authority may exercise those powers on the review of the later sentence;
- (d) where the said powers are exercised (whether by the court-martial, the confirming officer or the reviewing authority), any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

Provided that this subsection has effect subject to subsection 90(9).

(6) Without prejudice to the further suspension of the earlier sentence, an order under the last foregoing subsection directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.

(7) Where the sentence of a person in custody is suspended, he shall thereupon be released.

(8) The maximum intervals for the reconsideration, under subsection 129(2), of a sentence of imprisonment or detention which is suspended, shall be three months, and not those specified under the said subsection.

*Execution of Sentences of Death, Imprisonment  
and Detention*

**Execution of sentences of death**

**136.** (1) The Minister may make regulations with respect to the execution of sentences of death under this Act whether passed in Malaysia or elsewhere.

(2) Without prejudice to the generality of the foregoing subsection, regulations under this section may make provision for all or any of the following matters, that is to say:

- (a) the manner and place where such executions are to be carried out; and
- (b) the custody, treatment and removal of persons under sentence of death,

or may authorize 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 provost marshal or other provost officer not below the rank of major or its equivalent 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**

**137.** (1) Subject to the provisions of this Act, the Minister may make rules (hereinafter referred to as “Imprisonment and Detention Rules”) with respect to all or any of the following matters, that is to say:

- (a) the places in which and the establishments or forms of custody (whether service or not) in which persons may be required to serve the whole or any part of service sentences of imprisonment and detention passed on them;

- (b) the committal of persons under service sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody 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 service establishments;
- (d) the classification, treatment, employment, discipline and control of persons serving service sentences of imprisonment or detention in service establishments or otherwise in service 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 and officers in charge of persons serving sentences of imprisonment or detention:

Provided that such rules shall not authorize the infliction of corporal punishment.

(2) The Minister may as respects any area in which persons subject to service law under this Act are on active service delegate his power to make Imprisonment and Detention Rules to the officer commanding the command within which those persons are serving, subject to such restrictions, reservations, exceptions and conditions as the Minister may think fit.

### **Special provisions as to civil prisons in Malaysia**

**138.** (1) A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under section 136 or of Imprisonment and Detention Rules shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

(2) The provisions of the Criminal Procedure Code [Act 593] and of the Prisons Act 1995 [Act 537], and of any rules made thereunder shall apply in relation to the execution in a civil prison of a sentence of death passed by a court-martial for any offence, but with the substitution in such written laws for references to the Superintendent of Prisons or Officer-in-Charge, as the case may be of references to the provost marshal or other provost officer responsible for the due execution of the sentence.

### **Special provisions as to the carrying out or serving of sentences outside Malaysia otherwise than in service prisons or detention barracks**

**139.** (1) The Minister may from time to time make arrangements with the authorities of any country outside Malaysia whereby sentences of death passed by courts-martial may, in accordance with regulations made under section 136, be carried out in establishments under the control of those authorities and service sentences of imprisonment or detention may, in accordance with Imprisonment and Detention Rules, be served wholly or partly in such establishments.

(2) The powers conferred on the Minister by sections 136 and 137 shall extend to the making of such provisions as appears to the Minister necessary or expedient for giving effect to any arrangements made under the foregoing subsection.

(3) Such powers shall be so exercised as to secure that no sentence of death passed by a court-martial shall be executed, and no service sentence of imprisonment or detention shall be served in an establishment in any country outside Malaysia, not being a service establishment, except in accordance with arrangements made as respects that country.

### **Country in which sentence of imprisonment or detention to be served**

**140.** (1) A person who is serving a service sentence of imprisonment or detention in Malaysia may (in so far as may be specified by or under Imprisonment and Detention Rules) be removed out of Malaysia to any place where the unit or any part thereof or the ship to which for the time being he belongs is serving or under orders to serve, but not to any other place.

(2) Subject to the following provisions of this section, a person sentenced under this Act, by a court-martial held outside Malaysia, to imprisonment for more than twelve months shall, as soon as practicable after the confirmation of the sentence is completed, be removed to Malaysia.

(3) Where a person has been sentenced under this Act, by a court-martial held outside Malaysia, to imprisonment for more than twelve months, the confirming officer or the reviewing authority may, notwithstanding anything in the last foregoing subsection, direct that he shall not be required to be removed to Malaysia until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years imprisonment) two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection, a confirming officer or a reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

(4) Any direction of a confirming officer under this section may at any time be revoked by the confirming officer or a reviewing authority, or superseded by any direction of the confirming officer or a reviewing authority which the confirming officer or reviewing authority could have given under the last foregoing subsection; and any direction of a reviewing authority under this section may at any time be revoked by the reviewing authority or superseded as aforesaid.

(5) Any direction given under this section, and any revocation of any such direction, shall be promulgated.

(6) In ascertaining at any time for the purposes of this section the nature or length of a sentence regard shall be had to any commutation or remission of the sentence previously directed.

### **Temporary reception in civil custody of persons under arrest**

**141.** Where in Malaysia a person is in service custody when charged with, or with a view to his being charged with, an offence under Part V, it shall be the duty of the superintendent or other person in charge of a prison (not being a service prison) or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody, to receive him into his custody for a period not exceeding seven days.

**Duties of superintendents of prisons and others to receive prisoners**

**142.** (1) It shall be the duty, in so far as regulations made under section 136 or Imprisonment and Detention Rules so provide, of the superintendent or other person in charge of a prison (not being a service prison) to receive any person duly sent to that prison in pursuance of such regulations or rules and to confine him until the 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 service custody in pursuance of a service sentence of imprisonment or detention, then on receipt of a written order in that behalf purporting to be signed by that person's commanding officer, it shall be the duty of any such superintendent or other person as aforesaid, or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

*Trial of Persons Ceasing to be Subject to Service Law  
and Time Limits for Trial*

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

**143.** (1) Subject to section 144, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person whilst subject to service law under this Act, then in relation to that offence he shall be treated, for the purposes of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by court-martial (including confirmation, review, reconsideration and suspension) and execution of sentences, as continuing subject to service law notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in service 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 service law under this Act, 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 the foregoing subsection and the provisions thereof as to the summary dealing with charges, as

having been subject to service law under this Act when the offence was committed or is suspected of having been committed and continuing subject thereto thereafter.

(3) Where, by virtue of either of the two foregoing subsections, a person is treated as being at any time subject to service law under this Act for the purpose of any provision of this Act, that provision shall apply to him—

- (a) if he holds any service rank, as to a person having that rank; or
- (b) otherwise as to a person having the rank which he had when last actually subject to service law under this Act or any written law repealed by this Act:

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

(4) Where, apart from this subsection, any provision of this Act would, under the last foregoing subsection, apply to a person, in relation to 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 service law**

**144.** (1) No person shall be tried by court-martial for any offence, other than one against section 47, 48, 61, 77, 88 or desertion unless the convening order is issued and served on him within three years after the commission of the offence, there being disregarded any time which he was a prisoner of war, any time during which he was illegally absent, or any period with effect from the date of filing of proceedings for judicial review in the High Court to the date of final disposal of those proceedings:

Provided that—

- (a) in the case of an offence against section 88 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 the said section in substitution for the foregoing provisions of this subsection;



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

(2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the regular forces continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

(3) A person shall not be triable by virtue of subsection 143(1) unless his trial is begun within three months after he ceases to be subject to service law, or the trial is for a civil offence committed outside Malaysia and the Public Prosecutor consents to the trial:

Provided that this subsection shall not apply to an offence against section 47 or 48 or desertion.

(4) A person shall not be arrested or kept in custody by virtue of subsection 143(1) for an offence at any time after he has ceased to be triable for that offence.

(5) In this section, “judicial review” includes proceedings instituted by way of—

- (a) an application for any of the prerogative orders of *mandamus*, prohibition or *certiorari*;
- (b) an application for a declaration or an injunction;
- (c) a writ of *habeas corpus*; or
- (d) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the court-martial or the convening authority in accordance with this Act.

*Relations between Service Law and Civil Courts and  
Finality of Trials*

**Jurisdiction of civil courts**

**145.** Where a person is tried by a civil court for any offence and he has previously been sentenced by court-martial to punishment for any act or omission constituting (whether wholly or in part to) that offence, or in pursuance of this Act he has been punished for any such act or omission by his commanding officer or an appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of this Act.

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

**146.** (1) Where a person subject to service law under this Act—

- (a) has been tried for an offence by a competent civil court or a court-martial or has had an offence committed by him taken into consideration by any such court in sentencing him;
- (b) 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 an appropriate superior authority; or
- (c) 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 an appropriate superior authority.

(2) For the purposes of this section—

- (a) a person shall not be deemed to have been tried by a court-martial if confirmation 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, is withheld;

- (b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed;
- (c) a case shall be deemed to have been dealt with summarily by a commanding officer or an appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed or varied, on the review thereof;
- (d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorized 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 subsection 75(2) to be imprisoned or to undergo detention for an offence against that section shall be deemed to have been tried by court-martial for the offence.

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

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

### *Inquiries*

#### **Boards of inquiry**

**147.** (1) The Minister may make rules governing any board of inquiry (hereinafter referred to as “Board of Inquiry Rules”) and subject to and in accordance with the provisions of such Board of Inquiry Rules, the Armed Forces Council or any officer of the regular forces empowered by or under such rules so to do may

convene a board of inquiry to investigate and report on the facts relating to any matter which may be referred to such board by the Armed Forces Council or by any such officer as aforesaid; and a board shall, if directed so to do, express their opinion on any question arising out of any matter referred to it.

(2) A board of inquiry shall consist of such number of persons, as may be provided for by Board of Inquiry Rules, who shall be persons subject to service law under this Act and the president of a board of inquiry shall be an officer not below the rank of army lieutenant or its equivalent.

(3) Subject to the provisions this section, Board of Inquiry Rules may make provision with respect to the convening, constitution and procedure of boards of inquiry and, without prejudice to the generality of the foregoing subsection, may make provision for all or any of the following matters, that is to say:

- (a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, including the administration of oaths and affirmations to witnesses;
- (b) without prejudice to the provisions of the next following section, the making in service books of records of findings by boards of inquiry in such cases as may be provided by the rules;
- (c) such incidental and supplementary matters as appear requisite for the purpose of the rules.

(4) Board of Inquiry Rules shall contain provisions for securing that any witness or other person who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the Board of Inquiry Rules.

(5) 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 for an offence against section 77, or for an offence against section 88 where the corresponding civil offence is giving or fabricating false evidence.

**Inquiries into absence**

**148.** (1) Where a board of inquiry inquiring into the absence of an officer or serviceman reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one clear days, a record of the report shall in accordance with Board of Inquiry Rules 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 Armed Forces Council or a subsequent board of inquiry, have the like effect as a conviction by court-martial for desertion.

*Miscellaneous Provisions***Restitution or compensation for theft, etc.**

**149.** (1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, receiving it or retaining it knowing or having reason to believe it to have been stolen, fraudulently misapplying it or otherwise.

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

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

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

(5) Where any of the property unlawfully obtained 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 restitution to the owner thereof of the property sold or given in pawn as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be the proceeds of the sale or giving in pawn) such sums 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 of the 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 restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

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

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

(9) 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.

### **Appointment of Judge Advocate General**

**150.** (1) The Yang di-Pertuan Agong may appoint a suitable person to perform in respect of the armed forces the functions which under this Act or any other written law are lawfully exercisable by the Judge Advocate General.

(2) References in this Act or such written law to the Judge Advocate General shall be deemed to be references to the person for the time being appointed under the foregoing subsection.

(3) The person appointed under subsection (1) shall either be a member of the judicial and legal service of not less than five years' service, or an advocate and solicitor of not less than five years' standing, or a qualified person within the meaning of the Legal Profession Act 1976 [*Act 166*], who has been so qualified for a period of not less than five years.

(4) Without prejudice to the generality of subsection (1), the duties of the person appointed under that subsection shall include—

- (a) advising the Armed Forces Council, confirming officers and reviewing authorities on the validity of the findings and sentences of courts-martial;
- (b) advising the Armed Forces Council and officers of the armed forces on any other matters which may from time to time be referred to him; and
- (c) appointing persons having legal experience to act as judge advocates at courts-martial.

### **Appointment of judge advocates**

**151.** Without prejudice to the powers conferred on the Judge Advocate General under section 150, 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**

**152.** 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 the confirming officer or the reviewing authority, as the case may be, may direct.

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

**153.** (1) The record of the proceedings of a court-martial shall be kept in the custody of the Officer-in-Charge of Combined Records, Malaysian Armed Forces or such other officer or officers as may from time to time be appointed by the Armed Forces Council for that purpose (hereinafter in this section referred to as “the officer in charge”) for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by the next two following subsections shall be capable of being exercised.

(2) Subject to this section, any person tried by a court-martial shall be entitled to obtain from the officer in charge on demand at any time within the relevant period, and on payment therefor at such rates as may be prescribed, a copy of the record of the proceedings of the court-martial.

(3) Where a person tried by court-martial dies within the relevant period, his personal representative or any person who, in the opinion of the officer in charge, ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the officer in charge on demand at any time within the period of twelve months from the death and on payment therefor at the prescribed rates a copy of the record of the proceedings of the court-martial.

(4) If, on application in pursuance of either of the last two foregoing subsections for a copy of the record of any proceedings, the Minister certifies that it is requisite 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 thereof 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 five 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 five years beginning with the date of the promulgation of



the 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 proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

### **Indemnity for prisons officers, etc.**

**154.** No action shall lie in respect of anything done by any person in pursuance of a service sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument for the purposes of that sentence.

### **Power of Armed Forces Council to make regulations under this Part**

**155.** Subject to section 136 the Armed Forces Council with the approval of the Yang di-Pertuan Agong may make regulations in respect of matters for which regulations and Perintah Majlis Angkatan Tentera may be made under the foregoing provisions of this Part.

### *Interpretation*

#### **Interpretation**

**156.** (1) In this Part—

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

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

“prescribed” means prescribed by Rules of Procedure or any regulation made under section 155;

“prison” means a civil prison or a service prison;

“serviceman” shall have the meaning assigned to it in section 2 and shall also include a serviceman in the Regular Forces Reserve and a volunteer;

“service prison” means separate premises designated by the Minister for persons serving service sentences of imprisonment.

(2) References in this Part to a service sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial.

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

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

## PART VI

### PAY, FORFEITURES AND DEDUCTIONS

#### **Power of the Armed Forces Council to make Pay and Allowances Regulations**

**157.** (1) The Armed Forces Council with the approval of the Yang di-Pertuan Agong may make regulations including regulations providing for matters which may be issued by Perintah Majlis Angkatan Tentera (hereinafter referred to as “Pay and Allowances Regulations”) governing the pay, allowances and other emoluments of officers and servicemen of the regular forces and other matters pertaining thereto and in particular governing the following provisions of this Part.

(2) Notwithstanding the appointment of the date for the coming into force of this Act pursuant to section 1 or the provisions of any written law to the contrary, any regulations made under subsection (1) may be given retrospective effect to any date, whether before or after the coming into force of this Act.

(3) Notwithstanding the appointment of the date for the coming into force of this Act pursuant to section 1 or the provisions of any written law to the contrary, the Armed Forces Council with the approval of the Yang di-Pertuan Agong may amend any of the rules, regulations, orders and other instruments made under the enactment and ordinances repealed by subsection 217(1) where such subsidiary legislation is still in force by virtue of subsection (2) of that section and any amendment made hereunder to such subsidiary legislation still in force may be given retrospective effect to any date, whether before or after the coming into force of this Act.

### **Forfeitures and deductions: general provisions**

**158.** (1) No forfeiture of the pay of an officer or serviceman shall be imposed unless authorized by this Act or some other Act and no deduction from such pay shall be made unless so authorized or authorized by Pay and Allowances Regulations.

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

(3) The foregoing provisions of this section shall not prevent the making of Pay and Allowances Regulations providing for the imposition of any forfeiture authorized by this Act or the making of any deduction so authorized or for the time at which and the manner in which sums may be deducted from pay to give effect to authorized deductions or the manner 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 providing for the determination of questions relating to forfeitures or deductions.

(4) Notwithstanding any deduction from the pay of an officer or serviceman, he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed by or under Pay and Allowances Regulations.

(5) Notwithstanding that forfeiture of pay of an officer or serviceman for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such minimum rate as aforesaid but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorized to be deducted from the pay of an officer or serviceman may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or serviceman, and references in this Act to the making of deductions from pay shall be construed accordingly, and the whole or any part of any sum forfeited from an offender's pay may be recovered by deduction from any such balance.

### **Forfeiture for absence from duty**

**159.** (1) The pay of an officer or serviceman may be forfeited—

- (a) for any day of absence in such circumstances as to constitute an offence under section 54 or 55 or, if the competent authority so directs, of other absence without leave;
- (b) for any day of imprisonment, detention or field punishment awarded under this Act by a court-martial or commanding officer, or of imprisonment or detention of any 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, an 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 serviceman may be forfeited for any day of absence by reason of his having been made a prisoner of war if the competent authority is satisfied—

- (a) that he was made a prisoner of war through disobedience of orders or wilful neglect of his duty;
- (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin His Majesty's service; or
- (c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorized by international usage,

but save as aforesaid, nothing in paragraph (1)(a) shall apply to absence by reason of having been made a prisoner of war.

(3) Pay and Allowances Regulations 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 parts of days.

### **Deductions for payment of civil penalties**

**160.** Where a person sentenced or ordered by a civil court (whether within or without Malaysia) to pay a sum by way of fine, penalty, damages, compensation or costs in consequences of being charged before the civil court with an offence is at the time of the sentence or order, or subsequently becomes, a member of the regular forces, then, if the whole or any part of that sum is met by a payment made by or on behalf of any service authority, the amount of the payment may be deducted from his pay.

### **Compensation for loss occasioned by wrongful acts or negligence**

**161.** (1) Without prejudice to the provision of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where after an inquiry by a board of inquiry in accordance with the Board of Inquiry Rules it appears to the competent authority that any officer or serviceman—

- (a) has caused any loss of, or damage to, service or public property;
- (b) has failed to collect any moneys owing to the Federal Government of which he is or was responsible;
- (c) is or was responsible for any improper payment of public moneys of the Federal Government or for any payment of public moneys which is not duly vouched;
- (d) is or was responsible for any deficiency in, or for the destruction of, any public moneys, stamps, securities, stores or other property of the Federal Government;
- (e) being or having been an accounting officer, fails or has failed to keep proper accounts or records;
- (f) has failed to make any payment, or is or was responsible for any delay in the payment, of public moneys of the Federal Government to any person to whom such payment is due under any law or under any lawful contract, agreement or arrangement entered into with that person,

and the aforesaid has been occasioned by any wrongful act or negligence of an officer or serviceman of the regular forces (hereinafter referred to as the “person responsible”).

(2) The competent authority shall require the person responsible to furnish an explanation on the wrongful act or negligence that has been occasioned and if a satisfactory explanation is not furnished within a period specified by the competent authority, the competent authority may order the person responsible (whether or not he is a member of the regular forces at the time when the order is made) to pay, as or towards compensation, a sum not exceeding the amount of any loss or damage to service or public property, or any such amount not collected, or any such payment, deficiency or loss or the value of the property destroyed, as the case may be; and with regard to the failure to keep proper accounts or records, or the failure to make payment, or the delay in making payment, the competent authority may order the person responsible to pay such sum as the competent authority may think fit.

(3) The competent authority shall cause the commanding officer or the head of department of the person responsible to be notified of any order or any decision made under subsection (2), and the commanding officer or the head of department shall thereupon notify the person responsible of any such order or decision.

(4) Any amount ordered to be paid under this section shall be a debt due to the Government from the person responsible against whom the order is made and the amount may be sued for and recovered in any court at the suit of the Government and may also, if the competent authority directs, be recovered by deduction—

- (a) from the pay of the person responsible; or
- (b) from the pension of the person responsible,

by equal monthly instalments not exceeding one-fourth of the total monthly pay or pension, as the case may be, of the person responsible.

(5) No order shall be made under subsection (4) if, in proceedings under this Act before a court-martial, an appropriate superior authority or a commanding officer, the person responsible—

- (a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or
- (b) has been awarded stoppages in respect of the same loss or damage,

but save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (4).

(6) For the purpose of this section—

“accounting officer” includes every officer or serviceman who is charged with the duty of collecting, receiving, or accounting for, or who in fact collects, receives or accounts for, any public moneys, or who is charged with the duty of disbursing, or who does in fact disburse, any public moneys, and every officer or serviceman who is charged with the receipt, custody or disposal of, or the accounting for, public stores or who in fact receives, holds or disposes of public stores;

“public moneys” means all revenue, loan, trust and other moneys and all bonds, debentures, and other securities raised or received by or on account of the Federal Government.

### **Deductions for barrack damage**

**162.** (1) Where damage occurs in which one or more units of the regular forces or parts of such units are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with Pay and Allowances Regulations, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof, but that the said persons cannot be identified, any person belonging to any of the said units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with the aforesaid regulations be determined to be just, and the amount may be deducted from his pay.

(2) The foregoing subsection shall extend to ships, trains and aircraft in which units or parts of the regular forces are being transported, and references to premises, quartering and occupation shall be construed accordingly.

### **Remission of forfeitures and deductions**

**163.** Any forfeiture or deduction imposed under the four last foregoing sections or under Pay and Allowances Regulations may be remitted by the Armed Forces Council or in such manner and by such form as may be provided by such regulations.

**Enforcement of maintenance and affiliation orders by deduction from pay**

**164.** (1) Where any civil court in Malaysia has made an order against any person (hereinafter referred to as “the defendant”) for the payment of any periodical or other sum specified in the order for or in respect of—

- (a) the maintenance of his wife or child;
- (b) any costs incurred in obtaining the order; or
- (c) any costs incurred in proceedings of appeal against, or for the variation, revocation or revival of, any such order,

and the defendant is an officer or serviceman of the regular forces, then (whether or not he was a member of those forces when the order was made) the competent authority 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 of the court as the competent authority thinks fit.

(2) Where to the knowledge of the civil court making any such order as aforesaid, or an order revoking or reviving any such order, the defendant is an officer or serviceman of the regular forces, the civil court shall send a copy of the order to the competent authority.

(3) The competent authority may 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 paragraph 159(1)(a).

(4) In this section—

references to an order made by a civil court in Malaysia include references to an order registered in or confirmed by such a civil court under the provisions of the Maintenance Orders (Facilities for Enforcement) Act 1949 [Act 34];

references to a wife or child include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been the wife or child of the defendant if the marriage had subsisted;



references to a child of a person include references to a child of his wife, and to an illegitimate or adopted child of that person or of his wife, and in this paragraph “adopted child” means a child adopted (whether alone or jointly) in accordance with the provisions of any written law relating to the adoption of children for the time being in force in Malaysia or any part thereof and includes a child whose adoption has been registered in accordance with the provisions of any written law relating to the registration of adoptions for the time being in force in Malaysia.

### **Deductions from pay for maintenance of wife or child**

**165.** (1) Where the competent authority is satisfied that an officer or serviceman is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of seventeen years, the competent authority may order such sums to be deducted from his pay and appropriated towards the maintenance of his wife or child as the competent authority thinks fit.

(2) On an application made to the competent authority for an order under the foregoing subsection the competent authority, 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 the foregoing subsection to take effect pending the further examination of the case.

(3) Where an order under subsection 164(1) is in force for the making of deductions in favour of any person from the pay of an officer or serviceman of the regular forces, no deduction from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer or serviceman is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the civil court in consequence of which the order under subsection 164(1) was made.

(4) The competent authority may 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 paragraph 159(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 subsection (3), to make such an order after the child has reached the age of seventeen years, if an order in favour of the child under subsection 164(1) is in force;
- (b) to make such an order after the child has attained the age of seventeen years if—
  - (i) such an order as is mentioned in subsection 164(1) was in force in favour of the child at the time when the child attained that age;
  - (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 seventeen 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 twenty-one years or shall, unless continued under paragraph (c), remain in force for more than two years.

### **Limit of deductions under sections 164 and 165 and effect of forfeiture**

**166.** (1) The sums deducted under the two last foregoing sections shall not together exceed—

- (a) in the case of an officer, three-sevenths of his pay;
- (b) in the case of a serviceman not below the rank of sergeant or its equivalent, two-thirds of his pay;
- (c) in the case of any other serviceman, three-quarters of his pay.

(2) Where any deductions have been ordered in either of the two last foregoing sections from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay by or 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.

(3) For the purposes of paragraph (1)(b) and (c) a person having acting rank shall be treated as of that rank.

### **Service of process in maintenance proceedings**

**167.** (1) Any process to be served on an officer or serviceman of the regular forces (hereinafter referred to as "the defendant") in connection with proceedings for any such order of a civil court in Malaysia as is mentioned in subsection 164(1), or for the variation, revocation or revival of such an order, shall be deemed to be duly served on him if served either on him or his commanding officer and may, without prejudice to any other method of service, be so served by registered post.

(2) Where any such process as is mentioned in subsection (1) is served in Malaysia and the defendant will be required to appear in person at the hearing, then if his commanding officer certifies to the civil court by which the process was issued that the defendant is under orders for active service or (where the defendant is an officer or rating of the Navy) is under orders for service on a foreign station (that is to say, service based on a port outside Malaysia) and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

## PART VII

### GENERAL PROVISIONS

#### *Powers of Command*

### **Powers of command**

**168.** (1) It is hereby declared for the avoidance of doubt that the Armed Forces Council with the approval of the Yang di-Pertuan Agong may make regulations providing for the persons, being

members of the armed forces, in whom command over the armed forces or any part or members thereof, is to be vested and as to the circumstances in which such command as aforesaid is to be exercised.

(2) In relation to members of the armed forces when in aircraft, the foregoing subsection shall have effect as if references to members of the armed forces include references to any person in command of an aircraft.

(3) Nothing in this section shall affect any power vested in the Yang di-Pertuan Agong by any other written law.

### **Powers of command when portions of different Services are serving together**

**169.** (1) When portions of two or more Services of the armed forces are serving together, command of those portions may be exercised by such officer of any Service of the armed forces as may be designated by the competent authority.

(2) An officer designated as aforesaid shall have command over all officers and servicemen serving in such portions.

(3) When portions of two or more Services of the armed forces are serving together in a composite formation, unit, station or establishment, officers and servicemen serving therein shall, unless the competent authority otherwise directs, obey the orders of all persons, irrespective of their Services, who are senior to them in rank in that formation, unit, station or establishment.

### *Redress of Complaints*

#### **Complaints by officers**

**170.** (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 Armed Forces Council.

(2) On receiving any such complaint it shall be the duty of the Armed Forces Council to investigate the complaint and to grant any redress which appears to it to be necessary, or if the complaint so requires, the Armed Forces Council shall, through the Minister, make its report on the complaint to the Yang di-Pertuan Agong in order to receive the directions of the Yang di-Pertuan Agong thereon.

### **Complaints by servicemen**

**171.** (1) If a serviceman thinks himself wronged in any matter by any officer other than his commanding officer or by any serviceman, he may make a complaint with respect to that matter to his commanding officer.

(2) If a serviceman 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 the foregoing subsection or for any other reason, he may make a complaint with respect thereto to any superior officer under whom the complainant is for the time being serving.

(3) It shall be the duty of a commanding or other officer to have any complaint received by him under this section investigated as soon as practicable and to take any steps for redressing the matter complained of which appear to him to be necessary.

### *Provisions as to Ships under Convoy*

#### **Ships under convoy**

**172.** (1) It is the duty of any master or other person in command of any ship comprised in a convoy under the command of an officer of the Navy or of the Royal Naval Volunteer Reserve or of any person appointed in that behalf with the authority of the Minister, to obey, in all matters relating to the navigation or security of the convoy, any directions which may be given—

- (a) where the convoy is escorted by any ship of the Navy, by the commanding officer of any such ship;
- (b) in any other case, by the said officer or other person in command of the convoy,

and to take such precautions for avoiding the enemy as may be required by any such directions.

(2) If any such directions are not obeyed, any such commanding officer, or the said officer or other person in command of the convoy, may compel obedience by force of arms, and neither he nor any person acting under his orders shall be liable for any injury or loss of life or any damage to or loss of property resulting therefrom.

*Provisions as to Salvage*

**Salvage by His Majesty's ships or aircraft**

**173.** (1) Where salvage services are rendered by or with the aid of a ship or aircraft belonging to or in the service of the Yang di-Pertuan Agong and used in the armed forces, the Federal Government may claim salvage for those services, and shall have the same rights and remedies in respect of those services as any other salvor would have had if the ship or aircraft had belonged to him.

(2) No claim for salvage services by the commander or any of the officers or servicemen of a ship or aircraft belonging to or in the service of the Yang di-Pertuan Agong and used in the armed forces shall be finally adjudicated upon, unless the consent of the Minister to the prosecution of the claim is proved; and such consent may be given at any time before final adjudication.

(3) Any document purporting to give the consent of the Minister for the purpose of this section shall be evidence of that consent.

(4) Where a claim for salvage services is prosecuted and the consent of the Minister is not proved, the claim shall be dismissed with costs.

(5) The Minister may, upon the recommendation of the Attorney-General, accept on behalf of the Yang di-Pertuan Agong and the commander, officers and servicemen or any of them, any offer of settlement with respect to claims for salvage services rendered to any ship or aircraft belonging to or in the service of the Yang di-Pertuan Agong and used in the armed forces.

(6) The proceeds of any settlement made under the last foregoing subsection shall be distributed in such manner as the Armed Forces Council with the approval of the Yang di-Pertuan Agong may prescribe.

*Provisions relating to Deserters and Absentees  
without Leave*

**Arrest of deserters and absentees without leave**

**174.** (1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or serviceman of the regular forces who has deserted or is absent without leave.

(2) Where no police officer is available, any officer or serviceman of the regular forces, or any other person, may arrest any person whom he has reasonable cause to suspect as aforesaid.

(3) A magistrate or other person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that that person is reasonably suspected of being, within his jurisdiction, an officer or serviceman of the regular forces who has deserted or is absent without leave, or is reasonably suspected of being absent without leave, may issue a warrant authorizing his arrest.

(4) Any person in custody in pursuance of this section shall, as soon as practicable and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate.

**Proceedings before a civil court where persons suspected of illegal absence**

**175.** (1) Where a person who is brought before a magistrate is alleged to be an officer or serviceman of the regular forces 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 regular forces and the magistrate is satisfied of the truth of the admission, then—

(a) unless he is in custody for some other cause, the magistrate shall; and

(b) notwithstanding that he is in custody for some other case, the magistrate may,

forthwith either cause him to be delivered into armed forces custody in such manner as the magistrate 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 magistrate may specify (not exceeding such time as appears to the magistrate reasonably necessary for the purpose of enabling him to be delivered into armed forces custody) or until sooner into such custody.

(3) Any time specified by the magistrate in accordance with the last foregoing subsection may be extended by the magistrate from time to time if it appears to the magistrate reasonably necessary so to do for the purpose as aforesaid.

(4) If he does not admit that he is illegally absent as aforesaid, or if the magistrate is not satisfied of the truth of the admission, the magistrate shall consider the offence and any statement of the accused, and if satisfied that he is subject to service law under this Act and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave then, unless he is in custody for some other cause, the magistrate shall cause him to be delivered into armed forces custody, or commit him as aforesaid, or otherwise shall discharge him:

Provided that if he is in custody for some other cause, the magistrate shall have power at his discretion to act in accordance with this subsection.

### **Deserters and absentees without leave surrendering to police**

**176.** (1) Where in Malaysia a person surrenders himself to a police officer as being illegally absent from the regular forces, the police officer shall (unless he surrenders himself at a police station) bring him to a police station.

(2) The officer in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to the officer that the said person is illegally absent as aforesaid he may cause him to be delivered into armed forces custody without bringing him before a magistrate or to be brought before a magistrate.



**Certificates of arrest or surrender of deserters and absentees**

**177.** (1) Where a magistrate in pursuance of section 175 deals with a person who is illegally absent, then when that person is delivered into armed forces custody there shall be handed over a certificate in the prescribed form, signed by the magistrate, containing the prescribed particulars as to his arrest or surrender and the proceedings before the magistrate.

(2) Where in the foregoing subsection a person is delivered into armed forces custody without being brought before a magistrate, there shall be handed over a certificate in the prescribed form, signed by the police officer who causes him to be delivered into armed forces custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence under section 54 or 55—

(a) a document purporting to be a certificate under either of the two last foregoing subsections and to be signed as thereby required, shall be evidence of the matters stated in that document;

(b) where the proceedings are against a person who, on arrest or surrender, has been taken into armed forces custody or into the naval, military or air force custody of any foreign force, a certificate purporting to be signed by a provost officer, or any corresponding officer of a foreign force, or by any other officer in charge of the guard room 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.

(4) In this section the expression “prescribed” means prescribed by regulations made by the Armed Forces Council with the approval of the Yang di-Pertuan Agong.

**Duties of superintendent of prisons and others to receive deserters and absentees without leave**

**178.** (1) It shall be the duty of the superintendent or other person in charge of a civil prison in Malaysia to receive any person duly committed to that prison by a magistrate as illegally absent from the regular forces and to detain him until in accordance with the directions of the magistrate he is delivered into armed forces custody.

(2) The last foregoing subsection shall apply to the person having charge of any police station or other place (not being a prison) in Malaysia provided for the confinement of persons in custody as it applies to the superintendent or other person in charge of a civil prison.

*Offences relating to the Armed Forces punishable  
by Civil Courts*

**Punishment for pretending to be a deserter**

**179.** Every person who in Malaysia falsely represents himself to any armed forces authority or civil authority to be a deserter from the regular forces shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

**Punishment for obstructing members of regular forces in execution of duty**

**180.** Every person who in Malaysia wilfully obstructs or otherwise interferes with any officer or serviceman of the regular forces in the execution of his duty shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

*Provisions as to Evidence*

**General provisions as to evidence**

**181.** (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 attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to the questions recorded therein.

- (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 any of the armed forces, or was discharged from any of the armed forces at or before any specified time;
  - (b) held or did not hold at any specified time any specified rank or appointment in any of those forces, or had at or before any specified time been attached, seconded, posted or transferred to any of those forces, or at any specified time or during 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 authorized to use or wear any decoration, badge or emblem,

shall, if purporting to be issued by or on behalf of the Officer-in-Charge, Combined Records, Malaysian Armed Forces, or by a person authorized by the Armed Forces Council be evidence of the matters stated in such letter, return or other document.

(5) A record made in any service book or other document prescribed by regulations made under this Act for the purposes of this subsection, being a record made in pursuance of any written law or otherwise in pursuance of duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document as aforesaid, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

(6) A document purporting to be issued by order of the Armed Forces Council and to contain instructions, orders or regulations given or made by the Armed Forces Council shall be evidence of the giving of the instructions or the making of the orders or regulations and shall be evidence of the contents of such instructions, orders and regulations.

(7) A certificate purporting to be issued by or on behalf of the Officer-in-Charge, Combined Records, Malaysian Armed Forces, or by a person authorized by the Armed Forces Council—

- (a) that a decoration of a description specified in or annexed to a certificate is a service decoration; or

- (b) that a badge or emblem of a description specified in or annexed to a certificate is one supplied or authorized by the Armed Forces Council,

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 authorized 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, station, garrison or place;
- (c) any ship or naval establishment; or
- (d) any train or aircraft,

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

### **Proof of outcome of civil trial**

**182.** (1) Where a person subject to service law under this Act has been tried before a civil court (whether at the time of the trial he was so subject or not), a certificate signed by the registrar of the civil court and stating all or any of the following matters:

- (a) that the said person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) what 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) The registrar of the civil 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 the registrar of the civil court shall, unless the contrary is shown, be deemed to be such a certificate.

### **Evidence of proceedings of courts-martial**

**183.** (1) The original proceedings of a court-martial purporting to be signed by the president of the court-martial and being in the custody of the Officer-in-Charge, Combined Records, Malaysian Armed Forces, 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 Officer-in-Charge, Combined Records, Malaysian Armed Forces, or any person authorized by him, or by any person having 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 any evidence given in any civil court in Malaysia relating to criminal proceedings.

### *Miscellaneous Provisions*

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

**184.** (1) A warrant officer of the regular forces shall not be reduced in rank except by sentence of a court-martial or by order of the Armed Forces Council, or of the appropriate Service Chief or of an officer authorized by the Armed Forces Council.

(2) A non-commissioned officer (other than a lance corporal or lance bombardier) of the regular forces shall not be reduced in rank except by sentence of a court-martial, or by his commanding officer with the approval of and to the extent approved by an approving authority, or by order of the Armed Forces Council or of the appropriate Service Chief or of an officer authorized by the Armed Forces Council.

(3) An authorization under either of the two last foregoing subsections may be given generally or subject to such limitations as may be specified by the Armed Forces Council.

(4) For the purposes of subsections (1) and (2) reduction in rank does not include reversion from acting rank.

### **Avoidance of charge on military pay, pensions, etc.**

**185.** (1) A pension, gratuity or other grant payable under this Act shall not be assignable or transferable, except for the purpose of satisfying—

- (a) a debt due to the Government of the Federation or to the Government of any State; or
- (b) an order of any court for the payment of any sum of money towards the maintenance of a wife or former wife or minor child, whether legitimate or not, of the member to whom the pension, gratuity or other grant has been paid,

and such pension, gratuity or other grant shall not be liable to be attached, sequestered or levied upon for or in respect of any other debt or claim whatever except for the purposes specified in paragraphs (a) and (b).

(2) Save as is expressly provided by this Act, no order shall be made by any court-martial or civil 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 prejudice any written law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution amongst creditors.

### **Power of certain officers to take statutory declarations**

**186.** (1) An officer of the regular forces of a rank not below that of major, lieutenant-commander or squadron leader (hereinafter referred to as "the authorized officer") may, outside Malaysia, take statutory declarations from persons subject to service law under this Act.

(2) A document purporting to have subscribed thereto the signature of an authorized officer in testimony of a statutory 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 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.

### **Power of the Armed Forces Council to make pension, etc., regulations**

**187.** (1) The Armed Forces Council with the approval of the Yang di-Pertuan Agong may make regulations including regulations providing for matters which may be issued by Perintah Majlis Angkatan Tentera in respect of the eligibility of members of the regular forces and their dependants for retired pay, pensions, gratuities and other grants; and such regulations may specify the conditions governing the grant of and the rates of such retired pay, pensions, gratuities and other grants, and may contain any other provisions which may be necessary to carry out the purposes of this section.

(2) Notwithstanding the appointment of the date for the coming into force of this Act pursuant to section 1 or the provisions of any written law to the contrary, any regulations made under subsection (1) may be given retrospective effect to any date, whether before or after the coming into force of this Act.

(3) Notwithstanding the appointment of the date for the coming into force of this Act pursuant to section 1 or the provisions of any written law to the contrary, the Armed Forces Council with the approval of the Yang di-Pertuan Agong may amend any of the rules, regulations, orders and other instruments made under the enactment and ordinances repealed by subsection 217(1) where such subsidiary legislation is still in force by virtue of subsection (2) of that section and any amendment made hereunder to such subsidiary legislation still in force may be given retrospective effect to any date, whether before or after the coming into force of this Act.

### **Collection of contributions**

**187A.** (1) The competent authority may collect such contributions as it thinks fit for the purposes of promoting the welfare of and providing other benefits for the members of the armed forces and their families, including for the establishment of messes in the various units.

(2) For the purposes of Part V, the contributions shall be deemed to be service property.

(3) The Armed Forces Council may issue Perintah Majlis Angkatan Tentera for the purpose of this section including providing for the appointment of persons by whom and the manner in which the contributions are to be administered, managed, controlled and disbursed.

(4) For the purpose of this section, “unit” means headquarters, formation, base, ship, station, depot, training centre or any of its equivalent.

### **Validation of contributions collected**

**187B.** Any contributions collected and any monies expended therefrom for any period prior to the coming into force of this provision that would have been lawful if this provision had been in force are hereby validated and declared to have been lawfully collected and expended.

## PART VIII

### THE REGULAR FORCES RESERVE

#### **Reserve of Officers**

**188.** (1) Upon the termination or completion of his service, his resignation or retirement, every officer of the regular forces shall serve in a Reserve of Officers of his own Service for a period not exceeding five years commencing from the day following that on which the termination or completion of his service, his resignation or retirement takes effect: provided that the Armed Forces Council may in its discretion exempt any officer or such categories of officers from such reserve service.

(2) The provisions of foregoing subsection shall have effect on a date to be appointed by the Minister.



### **Establishment of a Regular Forces Reserve**

**189.** (1) There shall be raised and maintained in Malaysia a Regular Forces Reserve which shall consist of—

- (a) officers who are required to serve in a Reserve of Officers under subsection 188(1);
- (b) all servicemen of the regular forces who at the commencement of this Act are serving in the reserve in pursuance of the terms of their enlistment; and
- (c) all servicemen of the regular forces who in pursuance of the terms of their enlistment are transferred to the reserve on completion of their full-time service.

(2) In each year the expenditure proposed to be incurred on the Regular Forces Reserve shall be included in the total of the estimates of the expenditure to be incurred on the armed forces.

### **Rank while serving in the Regular Forces Reserve**

**189A.** (1) An officer or serviceman serving in the Regular Forces Reserve shall be entitled during the period of his service in the reserve to hold the substantive rank last held by him while serving in the regular forces.

(2) For the purpose of this Part, an officer in the Regular Forces Reserve who has served as an officer commissioned for a specified time in the regular forces shall be deemed to be a commissioned officer.

### **Calling out for service by proclamation**

**190.** (1) The Yang di-Pertuan Agong may, by Proclamation, call out for service the whole or any part of the Regular Forces Reserve.

(2) Every reservist called out for service under subsection (1) shall report for service at such time and place as the Armed Forces Council or an officer authorized on its behalf may, by notification in the *Gazette* or otherwise, appoint.

(3) Every reservist shall upon being called out for service by a Proclamation under this section be deemed to be a person subject to service law under Part V and shall if he fails, without leave being lawfully granted or without any reasonable excuse, to report in accordance with subsection (2) be liable to be tried for an offence of desertion within the meaning of section 54.

(4) Every reservist when called out for service shall be liable to serve as an officer or serviceman in the regular forces until his services are no longer required, so, however, that he shall not be required to serve for a period exceeding in the whole the remaining unexpired term of his service in the Regular Forces Reserve and in the case of a reservist who is a serviceman for a further period not exceeding twelve months as provided under subsection 27(2).

### **Calling out for training**

**191.** (1) During the period of his service in the Regular Forces Reserve a reservist may be called out for such training as may be prescribed by regulations made under section 194.

(2) The competent authority may serve or may cause to be served upon any reservist a training notice which shall state that he is called out for training and the period for which he is called out and shall require him to present himself at such time and place and on such day and to such authority as may be specified in the notice.

(3) Where a training notice has been served on any reservist, the competent authority may at any time before the date on which he is thereby required to present himself cause to be served on him a supplementary notice varying the training notice by altering the place or time, but not the date on which, he is thereby required to present himself.

(4) Every training notice served otherwise than by registered post shall require the reservist upon whom it is served to acknowledge receipt thereof within such time as may be specified in the requirement; and if acknowledgement is not received the competent authority may cause a further training notice to be served on him by registered post and may by that notice direct that the former notice shall be deemed to have no effect.

(5) If at any time during a reservist's period of service in the Regular Forces Reserve any change occurs in his name or address, he shall further notify the change to such person and in such manner as may be prescribed by regulations made under section 194; and if he fails to do so he shall be guilty of an offence under this Act and shall, on conviction before a Magistrate's Court, be liable to a fine not exceeding two hundred ringgit.

(6) Every reservist shall upon being called out for training under this section be deemed to be a person subject to service law under this Act and shall if he fails, without leave being lawfully granted or without any reasonable excuse, to present himself in accordance with subsection (2) be liable to be tried for an offence of absence without leave within the meaning of section 55.

### **Reservists' civil employment not to be affected by service in the reserve**

**192.** Sections 20 and 21 of the National Service Act 1952 [Act 425], shall apply to reservists when called out for service or for training under sections 190 and 191.

### **Discharge of reservists**

**193.** A reservist may be discharged in accordance with regulations made under section 194 at any time during the currency of any term of reserve service.

### **Power of Armed Forces Council to make regulations governing the calling out, pay, reporting, etc., of reservists**

**194.** The Armed Forces Council may with the approval of the Yang di-Pertuan Agong make regulations including regulations providing for matters which may be issued by Perintah Majlis Angkatan Tentera with respect to the administration and discipline of the Regular Forces Reserve and, without prejudice to the generality of the foregoing, may make regulations—

- (a) for the calling out for training of reservists;
- (b) for the calling out for full-time service;
- (c) for providing for pay and allowances of reservists;

- (d) requiring reservists to report themselves from time to time, and to obtain the permission of the competent authority prescribed by such regulations before leaving Malaysia;
- (e) providing for any other matter which is required by this Part to be prescribed.

## PART IX

### THE VOLUNTEER FORCES OF MALAYSIA

#### **Raising of volunteer forces**

**195.** (1) There shall be raised and maintained in Malaysia the following three Services of volunteer forces, that is to say:

- (a) “Askar Wataniah Malaysia” or in English “Malaysian Territorial Army”;
- (b) “Simpanan Sukarela Tentera Laut Diraja Malaysia” or in English “Royal Malaysian Naval Volunteer Reserve”; and
- (c) “Simpanan Sukarela Tentera Udara Diraja Malaysia” or in English “Royal Malaysian Air Force Volunteer Reserve”.

(2) In each year the expenditure proposed to be incurred on the volunteer forces shall be included in the total of the estimates of the expenditure to be incurred on the armed forces.

#### **Composition of volunteer forces**

**196.** (1) The volunteer forces shall consist of such corps, units ships, establishments and other components as the Armed Forces Council may from time to time constitute and establish.

(2) Every corps, unit, ship, establishment or other component constituted and established under subsection (1)—

- (a) shall bear and be known by such name or title as the Armed Forces Council may approve;
- (b) shall consist of such sub-units, wings or squadrons, as the Armed Forces Council may from time to time direct.

(3) Any reference in any written law to any corps, unit, ship, establishment or other component constituted and established under subsection (1) by such name or title as may be approved by the

Armed Forces Council under paragraph (2)(a) shall be construed as a reference to such corps, unit, ship, establishment or other component or, as the context may require, to the members thereof.

(4) The Armed Forces Council may from time to time by order published in the *Gazette* do any of the following things, that is to say:

- (a) disband any corps, unit, establishment or other component in whole or in part;
- (b) amalgamate any corps with any other corps, any unit with any other unit, any establishment with any other establishment or any component with any other component;
- (c) strike off any ship from the register; or
- (d) alter or amend the name or title of any corps, unit, ship, establishment or other component.

## **Command**

**197.** (1) The three Services of the volunteer forces shall be under the command of the respective Service Chiefs, that is to say the Malaysian Territorial Army shall be under the command of the Chief of the Army, the Royal Malaysian Naval Volunteer Reserve shall be under the command of the Chief of Navy and the Royal Malaysian Air Force Volunteer Reserve shall be under the command of the Chief of the Air Force.

(2) Notwithstanding the provisions of subsection (1) where—

- (a) the whole or any part of a volunteer force has been called out for service under section 202; or
- (b) the whole or any part of a volunteer force is training, exercising or operating with the regular forces or a foreign force,

the Service Chief commanding the relevant volunteer force may place the whole or any part of that force under the temporary command of any officer of the regular forces.

(3) A Service Chief may, with the approval of the Armed Forces Council, make orders not inconsistent with this Act and any rules or regulations made thereunder, providing for the equipment, general organization and administration of a volunteer force under his

command. In particular, and without prejudice to the generality of the foregoing power, such orders may provide for—

- (a) the issue and care of arms, accoutrements, ammunition, supplies, clothing and equipment;
- (b) returns, books and forms of correspondence;
- (c) the establishment and conduct of institutions for providing recreation and refreshment to the members of the volunteer force.

### **Commissioning of officers**

**198.** (1) Officers in the volunteer forces shall be commissioned by the Yang di-Pertuan Agong.

(2) A commission granted under subsection (1) may be either for an indefinite period or for a specified time and shall in either case be in the form prescribed by regulations made under section 207 and shall be issued under the Sign Manual of the Yang di-Pertuan Agong and impressed with the Public Seal of the Federation.

(3) A commission issued for a stated period may be extended by the Yang di-Pertuan Agong for such period or periods as may be deemed expedient.

(4) The Yang di-Pertuan Agong may, without publication of any reason therefor, cancel any commission.

(5) The Yang di-Pertuan Agong may grant honorary commissions in the volunteer forces to such persons as he may think fit.

(6) Officers of the volunteer forces may from time to time be promoted or advanced in rank by the Yang di-Pertuan Agong at his discretion.

### **Constitution of Reserve of Officers**

**199.** (1) The Armed Forces Council may constitute a Reserve of Officers for each of the three Services of the volunteer forces, which shall consist of—

- (a) officers who have completed not less than five years consecutive service and who at their request and with the approval of the competent authority, have been transferred to a Reserve of Officers; and

- (b) former officers of the volunteer forces who in the opinion of the competent authority can perform the duties of officers.

(2) In each year the expenditure proposed to be incurred on the Reserve of Officers for the volunteer forces shall be included in the total of the estimates of the expenditure to be incurred on the armed forces.

### **Enrolment, resignation and discharge**

**200.** (1) Every member of a volunteer force not being an officer (hereinafter referred to as a “volunteer”) shall be enrolled for such period as may be prescribed by regulations made under section 207.

(2) Every volunteer enrolled under subsection (1) shall be appointed to a unit or a ship or establishment by the competent authority.

(3) The competent authority may transfer a volunteer from one unit, ship or establishment to another unit, ship or establishment.

(4) Except when called out under section 202 a volunteer may, in accordance with regulations made under section 207, resign from service:

Provided that no such resignation shall become effective until approved by the competent authority.

(5) The competent authority may, without assigning any reason therefor, dismiss a volunteer from service.

(6) Any officer in command of a unit, ship or establishment may, with the approval of the competent authority, discharge any volunteer of his unit, ship or establishment for lack of diligence or for inefficiency.

(7) A volunteer who resigns or is dismissed or discharged under this section shall return in good condition all arms, uniform and equipment issued to him to the officer in command of his unit, or to such other person as may be authorized by such officer in that behalf.

(8) No resignation, dismissal or discharge under this section shall exempt a volunteer from trial or punishment for an offence under this Act.

### **Training and attachment**

**201.** (1) Every member of a volunteer force shall undergo such training as may be prescribed by regulations made under section 207.

(2) Every member of a volunteer force may, at his request and with the approval of the competent authority, be attached to a unit, ship or establishment of the regular forces.

(3) Such attachment shall continue during any period agreed to by such member and specified in such order and during such period the provisions of this Part shall apply to him as if he had been called out under section 202.

(4) Every member of a volunteer force who has completed the training required under subsection (1) may be required to serve in the volunteer forces for such minimum period as may be prescribed by regulations made under section 207.

### **Parts II, III and IV to apply to volunteer forces**

**201A.** To the extent that it is not inconsistent with the provisions of this Part, and for the expediency of service, the Armed Forces Council may apply *mutatis mutandis*, any of Parts II, III and IV other than sections 23 to 27 and sections 29 to 31 to the members of the volunteer forces.

### **Leave for training or attachment**

**201B.** (1) Without prejudice to the National Service Act 1952, every employer shall, if any person in his employment who is a member of a volunteer force is called up for training or attachment under this Act, grant such person leave for the duration of the period of such training or attachment to enable him to undergo the training or attachment.

(2) No employer shall—

- (a) make or cause to be made any undue transfer or deduction from the pay, other remuneration or annual leave of such person;
- (b) impose or cause to be imposed upon or exact from such person any penalty; or



- (c) change the terms and conditions of the employment of such person to his prejudice,

solely by reason of his absence from work during the period of training or attachment.

(3) Any employer who—

- (a) directly or indirectly refuses or, by intimidation, undue influence or in any other manner, interferes with the granting to any person of the period of leave required under subsection (1); or
- (b) contravenes subsection (2),

commits an offence and shall, on conviction, be liable to a fine not exceeding six thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(4) The civil court by which an employer is convicted of an offence under subsection (3) for the contravention of subsection (2) may order the employer to pay to the person referred to in subsection (2) the pay and other remuneration to which that person is entitled during the period of training or attachment.

### **Prohibition of dismissal of employees by reason of training or attachment**

**201c.** (1) Without prejudice to the National Service Act 1952, every employer who terminates the employment of any person in his employment, who is a member of a volunteer force, without the consent of such person solely or mainly by reason of the person being called up for training or attachment under this Act commits an offence and shall, on conviction, be liable to a fine not exceeding six thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) The civil court by which an employer is convicted under subsection (1) may order the employer to pay to the person whose employment is terminated, as compensation for any loss suffered or likely to be suffered by him by reason of the termination, a sum not exceeding an amount equal to six months' remuneration at the rate at which the remuneration was last payable to that person by the employer.

**Calling out for service**

**202.** (1) The Yang di-Pertuan Agong may, by Proclamation, call out for service the whole or any part of any of the volunteer forces.

(2) Every member of a volunteer force called out for service under subsection (1) shall report for service at such time and place as the competent authority may by notification in the *Gazette* or otherwise appoint.

**Obstructing the volunteer forces and aiding or inducing dereliction of duty**

**203.** Every person who—

- (a) knowingly and wilfully obstructs any part of any of the volunteer forces or any member thereof in the performance of any service or duty under this Act, or under rules, regulations or orders made under this Act;
- (b) knowingly agrees with, or induces or attempts to induce any member of the volunteer forces to neglect or act in conflict with his duty as a member thereof;
- (c) knowingly is a party to, or aids or abets, or incites to, the commission of any act of indiscipline or any act whereby any lawful order given to any member of the volunteer forces or any law or regulation with which it is the duty of any member thereof to comply, may be evaded or infringed; or
- (d) without lawful authority wears the uniform or part of the uniform or any badge or emblem of the volunteer forces or falsely represents himself as entitled to wear such uniforms, badge or emblem,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit.

**Offences**

**204.** (1) Any member of a volunteer force who, when he is not subject to service law under this Act—

- (a) fails without just cause (the proof whereof shall lie upon him) to attend at any time or place lawfully appointed by a proper authority for instruction, training or exercise;

- (b) when in uniform or on duty or undergoing instruction, training or exercise, is drunk or is guilty of insubordinate conduct;
- (c) disobeys any standing order or lawful command given by his superior officer;
- (d) neglects to obey any order applicable to his unit, ship or establishment; or
- (e) is guilty of any act, conduct or disorder or neglect to the prejudice of good order and service discipline,

shall be guilty of an offence and shall, on conviction before his commanding officer, be liable to a fine not exceeding one hundred ringgit.

(2) Any member of a volunteer force who, when he is not subject to service law under this Act—

- (a) without proper authority and permission gives, sells, pledges, lends or otherwise disposes of, or loses by neglect, or causes damage to arms, ammunition, accoutrements, clothing, supplies or other articles or things (whether similar to any of those specified or not) entrusted to him or held by him or in his charge for service purposes, or fails to deliver up such property when so required by his commanding officer;
- (b) causes by any wrongful act or negligence any loss of or damage to any public property,

shall be guilty of an offence and shall, on conviction before his commanding officer, be liable to a fine not exceeding three hundred ringgit.

(3) Any person convicted of an offence under subsection (2) shall, in addition to any other punishment, be liable to pay, by way of compensation, a sum of money not exceeding five hundred ringgit or the cost of replacement or repair of the articles disposed of, lost, damaged or not delivered up, whichever is the less.

(4) No sentence or order given or made under subsection (1), (2) or (3) shall have effect until it is confirmed in writing by the appropriate Service Chief; and the appropriate Service Chief may withhold confirmation, in which case any conviction, sentence or order shall be quashed, or may confirm the sentence or order or remit the whole or any part of such sentence or order.

(5) The payment of any sum imposed by way of fine or compensation or both under this section shall, upon the application of the officer in command of the unit, ship or establishment concerned be recovered and enforced by any Magistrate's Court having criminal jurisdiction in the place in which such fine is imposed or compensation ordered, in the same manner in which such Court could recover or enforce the payment of such fine or compensation under the law relating to criminal procedure in force in such place, as if such fine or compensation has been imposed or ordered to be paid by such Court.

(6) Any person accused of an offence under this section may be taken into and kept in service custody and shall be tried summarily in the same manner as if he was subject to service law under this Act.

### **Boards of Inquiry**

**205.** (1) The appropriate Service Chief or an officer authorized by him may, by order, convene a Board of Inquiry to investigate—

- (a) any death or injury caused to or by an officer or volunteer when on duty;
- (b) any loss of or damage to any public property;
- (c) any other matters which the appropriate Service Chief in his discretion requires to be investigated.

(2) A Board of Inquiry convened under subsection (1) shall be composed of officers of the volunteer forces or of officers or warrant officers of any of the regular forces.

(3) A Board of Inquiry convened under subsection (1) shall consist of a President, who shall be an officer, and one or more members as the appropriate Service Chief may appoint.

(4) Boards of Inquiry convened under this Part shall adopt the procedure provided for in respect of similar Boards of Inquiry convened under section 147.

### **Power of the Yang di-Pertuan Agong to make rules**

**206.** (1) The Yang di-Pertuan Agong may make rules including rules providing for matters which may be issued by Perintah Majlis Angkatan Tentera in respect of—

- (a) the pay, allowances, gratuities, pensions and any other grants payable to officers and volunteers;

- (b) the payment of pensions or gratuities to dependants of officers and volunteers who are killed or die of injuries received in the course of, or of illnesses directly attributable to, their service.

(2) Notwithstanding the appointment of the date for the coming into force of this Act pursuant to section 1 or the provisions of any written law to the contrary, any rules made under subsection (1) may be given retrospective effect to any date, whether before or after the coming into force of this Act.

### **Power of the Armed Forces Council to make regulations**

**207.** (1) Subject to section 206, the Armed Forces Council may make regulations including regulations providing for matters which may be issued by Perintah Majlis Angkatan Tentera to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may—

- (a) define the class of persons who may be commissioned or enrolled in the volunteer forces and the minimum period for which such persons may be commissioned or enrolled;
- (b) prescribe the manner in which, and conditions subject to which, persons desiring to be commissioned or enrolled may so offer themselves and the form of declaration to be taken by such persons;
- (c) prescribe the extent of service required of officers and volunteers or of officers in the Reserve of Officers, which service may include service outside Malaysia when the volunteer forces or part thereof has been called out;
- (d) prescribe the conditions of physical fitness required of persons for acceptance in the volunteer forces;
- (e) prescribe the conditions under which an officer or volunteer may resign from the volunteer forces;
- (f) define the manner in which and the conditions under which officers and volunteers may be called out;
- (g) prescribe the training to be carried out by officers and volunteers which training may consist of instruction, exercises or operations on land, air or sea or in any vessel or other craft whatsoever, whether belonging to the Malaysia or not, and whether within or without the territorial limits of the Malaysia;

- (h) prescribe the seniority of officers and provide for their appointment, promotion and tenure of commissioned rank;
- (i) provide for the seniority and rank for purposes of command and discipline of officers and volunteers; and
- (j) provide for minor offences including the procedural matters relating thereto and minor punishments not provided for in this Part.

### **Exemption from certain civil liabilities**

**208.** All officers and volunteers, if acting *bona fide* and in their official capacity shall be exempt from all written laws providing for the carriage and storage of arms, explosives, gunpowder and other munitions of war in the same manner as the members of the regular forces.

## PART X

### APPLICATION OF THE ACT AND SUPPLEMENTAL PROVISIONS

#### *Persons subject to Service Law under this Act*

### **Persons subject to service law: general provisions**

**209.** (1) The following persons are subject to service law under this Act:

- (a) every officer holding a commission of the Yang di-Pertuan Agong issued under section 6;
- (b) every person appointed by the Armed Forces Council under section 10;
- (c) every serviceman of the regular forces;
- (d) every reservist of the Regular Forces Reserve when called out for service or for training under Part VIII;
- (e) every officer and every officer of the Reserve of Officers of a volunteer force constituted under Part IX when performing duty as an officer;

- (f) every member of a volunteer force—
- (i) when on permanent duty or undergoing continuous training as defined in rules or regulations made under Part IX;
  - (ii) when on attachment to the regular forces under subsection 201(2); or
  - (iii) when called out for service by proclamation issued under subsection 202(1).

### **Persons subject to service law: foreign forces**

**210.** Members of a foreign force are subject to service law under this Act to such extent, and subject to such adaptations and modifications, as may be provided by or under any written law relating to the attachment of members of such force.

### **Application of the Act to passengers in His Majesty's ships and aircraft**

**211.** Part V shall, to such extent and subject to such modifications as may be prescribed by regulations made by the Armed Forces Council with the approval of the Yang di-Pertuan Agong, apply to persons embarked as passengers on board His Majesty's ships or aircraft (not being persons who are subject to service law under this Act by virtue of any of the foregoing provisions of this Act), as they apply to persons subject to service law under this Act.

### **Application of the Act to civilians**

**212.** (1) Subject to the modifications hereinafter specified when the regular forces or any part thereof is on active service, Part V shall apply to every person who is employed by or in the service of or who follows or accompanies the regular forces or that part of the regular forces which is on active service.

(2) The said modifications are—

- (a) the punishment which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment;

- (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 two hundred ringgit, but no other punishment;
  - (c) the following provision shall have effect in substitution for subsection 93(2), (3) and (4), that is to say, that a person may be arrested by a provost officer, by any warrant officer, chief petty officer, non-commissioned officer or petty officer legally exercising authority under a provost officer or on his behalf, or by order of any officer of the regular forces;
  - (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 and warrant officers;
  - (f) for the purposes 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 for the purposes of this section by the Armed Forces Council with the approval of the Yang di-Pertuan Agong;
  - (g) for references in sections 143 and 144 to being, continuing or ceasing to be subject to service law under this Act there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that the said Part V applies, and the said subsection 143(3) shall not apply.
- (3) A fine awarded by virtue of this section, whether by a court-martial or an appropriate superior authority shall be recoverable in the Malaysia as a debt due to Government.



*Application of the Act to Particular Forces*

**Application of the Act to reserve and volunteer forces**

**213.** (1) Subject to the provisions of this section, references in Parts V, VI and VII to the regular forces shall include references to the following persons, that is to say:

- (a) reservists of the Regular Forces Reserve who become subject to service law under paragraph 209(1)(d); and
- (b) members of the volunteer forces who become subject to service law under paragraphs 209(1)(e) and (f),

and references to officers and servicemen or to members of a body of the regular forces or to illegal absence from those forces shall be construed accordingly.

(2) Section 34, with the exception of paragraph (1)(b) thereof, shall apply to the servicemen of the Regular Forces Reserve and of the volunteer forces as they apply to servicemen of the regular forces.

(3) The powers conferred by subsections 54(3) and 100(3) to direct the forfeiture of an offender's previous service shall not be exercisable in relation to the servicemen of the Regular Forces Reserve or of the volunteer forces.

(4) Paragraph 54(2)(c), sections 164 to 167 inclusive and except in so far as they may be applied by regulations made under section 207, Part V relating to the award of stoppages and sections 158 to 163 inclusive shall not apply—

- (a) to officers of the Regular Forces Reserve who are not in actual service;
- (b) to the servicemen of the Regular Forces Reserve except when called out for service under section 190; or
- (c) to members of the volunteer forces except when they are called out for service under section 202.

(5) In the last foregoing subsection the expression "actual service", in relation to an officer of the Regular Forces Reserve, means that he is serving (otherwise than when undergoing training) with a body of the regular forces, or of the Regular Forces Reserve called out for service or with a part of any of the volunteer forces which is called out for service.

(6) In the case of a volunteer below the rank of warrant officer who is found guilty of an offence by his commanding officer, section 97 shall apply as if the punishments specified in subsection (3) of that section included dismissal from His Majesty's service:

Provided that if the commanding officer awards such dismissal he shall not award any other punishment.

(7) In respect of Part V, for the purpose of this section, where any of the provisions therein specify that a certain action may be carried out by a member of the regular forces of a particular rank or holding a particular post, and the Regular Forces Reserve or the volunteer forces do not have a member of such rank or holding such post, then a member of the regular forces who is of that rank or is holding that post may carry out such action in relation to a member of the Regular Forces Reserve or volunteer forces.

### **Powers exercisable in subsidiary legislation**

**214.** (1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provisions for specified cases or classes of cases, and to make different provisions for different classes of cases, and for the purposes of any such regulations, rules, orders or instruments, classes of cases may be defined by reference to the circumstances therein specified.

(2) Any such regulations, rules, orders or other instruments as aforesaid may impose conditions, require acts or things to be performed or done to the satisfaction of any person named therein whether or not such persons are members of any of the regular forces, empower such persons to issue orders either orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such condition shall be fulfilled, and provide for appeal against any such order, requirement or direction.

### **Execution of orders, instruments, etc.**

**215.** Save as expressly provided by any rules or regulations under this Act, any order or determination required or authorized to be made under this Act by any authority of the armed forces may be

signified under the hand of any officer authorized 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 authorized shall, unless the contrary is proved, be deemed to be signed by the officer so authorized.

### **Transitional provisions**

**216.** The transitional provisions as set out below shall take effect on the appointed day for the coming into force of this Act (hereinafter referred to as the “appointed day”).

(2) In relation to an offence against any section in Part I of the Malay Regiment Enactment [*F.M.S. Cap. 42*] or against sections 11 to 14 inclusive of the Air Force Ordinance 1958 [*Ord. 20 of 1958*], or against sections 2 to 42 inclusive of the Naval Discipline Act 1957 [*5 and 6 Eliz. 2.*], of the United Kingdom as applied by section 10 of the Navy Ordinance 1958 [*Ord. 27 of 1958*] (hereinafter collectively referred to as “the said sections”) sections 89 to 144 inclusive and sections 149 to 155 inclusive of this Act and the rules and regulations made under sections 119, 137 and 155 shall apply as if the said sections had been contained in this Act and this Act had been in force when the offence was committed and as if any finding or sentence having effect before the appointed day, and anything done before that day by virtue of or in relation to such finding or sentence had been come to, awarded or done under this Act:

Provided that nothing in this subsection shall render an offence capable of being tried by court-martial or dealt with summarily, if by reason of the time or place of the commission of the offence it could not have been so tried or dealt with under or by virtue of any of the written laws repealed by this Act.

(3) Notwithstanding anything in the foregoing subsection, where any proceedings for such an offence as aforesaid have been begun before the appointed day, any step taken in the proceedings taken after that day shall be deemed to be validly taken if taken under or by virtue of any of the written laws repealed by this Act.

(4) In section 146 references to this Act or to any provision thereof shall be construed as including respectively references to the written laws repealed by this Act or to the corresponding provisions of the Naval Discipline Act 1957, of the United Kingdom.

- (5) Where after the appointed day a person is alleged—
- (a) to have committed an offence continuing over a period beginning before that day and ending thereon or thereafter; or
  - (b) to have committed an offence between two dates falling within such a period,

and the offence would be one against a provision in Part V if this Act had been in force at all material times, he may be proceeded against as if this Act had so been in force.

(6) If immediately before the appointed day any person is being detained in service under section 66 of the Malay Regiment Enactment or under section 15 of the Navy Ordinance 1958, then in calculating for what period he may be retained and his service prolonged under the corresponding provisions of this Act account shall be taken of the period for which he has been so detained, or his service prolonged, under the said provisions of this Act.

(7) If immediately before the appointed day a proclamation of the Yang di-Pertuan Agong made under paragraph 67(iv) of the Malay Regiment Enactment is in force it shall continue in force as if made under the corresponding provisions of this Act.

(8) Any order authorizing the discharge of a person given before the appointed day by an officer prescribed in that behalf under any of the written laws repealed by this Act shall be treated for the purposes of subsection 28(3) as an order of the competent authority.

(9) The powers conferred by this Act of restoring forfeited service and remitting forfeitures and deductions shall be exercisable in relation to service forfeited and forfeitures and deductions imposed under or by virtue of any of the written laws repealed by this Act.

(10) Any forfeiture or deduction from pay having effect under or by virtue of any of the written laws repealed by this Act immediately before the appointed day shall, subject to the last foregoing subsection, continue to have effect on and after the appointed day.

(11) Any order having effect immediately before the appointed day under or by virtue of the provisions of any of the written laws repealed by this Act corresponding with sections 164 and 165 shall continue to have effect as if made under this Act, and section 166 shall apply accordingly.

(12) Any document made before the appointed day which would have been admissible in evidence under or by virtue of the provisions of any of the written laws repealed by this Act, or those provisions as applied by any other enactment, shall be admissible to the like extent and in the like proceedings on and after the appointed day.

(13) If immediately before the appointed day any declaration or renewal is in force under section 123 of the Malay Regiment Enactment, it shall continue in force as if made under the corresponding provisions of this Act.

### **Repeal of existing enactment and ordinances**

**217.** (1) The Malay Regiment Enactment, the Federation Regiment Ordinance 1952 [*Ord. 27 of 1952*], the Military Forces Ordinance 1952 [*Ord. 47 of 1952*], the Navy Ordinance 1958, the Air Force Ordinance 1958, the Territorial Army Ordinance 1958 [*Ord. 52 of 1958*], the Naval Volunteer Reserve Ordinance 1958 [*Ord. 55 of 1958*] and the Air Force Volunteer Reserve Ordinance 1958 [*Ord. 58 of 1958*], are hereby repealed:

Provided that—

- (a) all the armed forces raised under the provisions of the aforesaid enactment and ordinances shall be deemed to be raised under this Act; and
- (b) all officers and servicemen serving with the armed forces raised under the provisions of the aforesaid enactment and ordinances on the appointed day shall be deemed to have been commissioned, appointed, enlisted or re-engaged, as the case may be, under this Act, but such officers and servicemen shall not be required to serve with the regular forces for a longer period than that for which they were required to serve at the time of their original commissioning, appointment, enlistment or re-engagement, as the case may be.

(2) Notwithstanding the provisions of the last foregoing subsection or the provisions of any written law to the contrary, all rules, regulations, orders and other instruments made under the enactment and ordinances hereby repealed, in so far as they are not inconsistent with the provisions of this Act, shall remain in force until specifically repealed.

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FIRST SCHEDULE

[Section 18]

1. The Magistrate or recruiting officer shall warn the person to be enlisted that if he makes any false answers to the questions to be read out to him, he shall be liable to be punished under section 19 of this Act.
  2. He shall then read, or cause to be read, to that person the questions set out in the attestation paper and shall satisfy himself that the person understands each of those questions and that his answers thereto have been duly recorded in the attestation paper.
  3. He shall then ask that person to make and sign the declaration set out in the attestation paper as to the truth of the answers and shall administer to him the oath set out in the attestation paper.
  4. Upon signing the declaration and taking the oath, the said person shall be a soldier, sailor or airman, as the case may be, of the regular forces. The Magistrate or recruiting officer shall by signature attest, in the manner required by the attestation paper, that the requirements of this Act as to the attestation of the person have been carried out, and shall deliver the attestation paper duly dated to the officer who for the time being is in charge of the records of the force.
  5. When the person is finally approved for service the officer by whom he is approved shall at his request furnish him with a certified true copy of his attestation paper.
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SECOND SCHEDULE

[Section 114]

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

Offence charged	Alternative offence
1. Communicating with or giving intelligence to the enemy.	1. Disclosing information without authority.
2. Striking his superior officer.	2. (a) Using violence to his superior officer otherwise than by striking him. (b) Offering violence to his superior officer.
3. Using violence to his superior officer otherwise than by striking him.	3. Offering violence to his superior officer.
4. Using threatening language to his superior officer.	4. Using insubordinate language to his superior officer.
5. Disobeying, in such manner as to show wilful defiance of authority, a lawful command.	5. Disobeying a lawful command.
6. Desertion.	6. Absence without leave.
7. Attempting to desert.	7. Absence without leave.
8. Stealing any property.	8. Fraudulently misapplying the property.
9. Any offence against subsection 65(1) of this Act.	9. Any offence against subsection 65(2) of this Act.
10. Any offence against section 66 of this Act 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 66 of this Act other than striking.	11. The corresponding offence involving the offering of violence.



## LAWS OF MALAYSIA

### Act 77

## ARMED FORCES ACT 1972

### LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
Act A440	Armed Forces (Amendment) Act 1978	19-05-1978
Act A583	Armed Forces (Amendment) Act 1984	[ <i>Repealed by Act A974</i> ]
Act A974	Armed Forces (Amendment) Act 1996	Sections 13, 14, 15 (except in so far as it relates to section 26B), 42, 43 and 46—not in force yet
		Sections 2(c), 4, 5, 9, 10, 11, 12, 15 (in so far as it relates to section 26B), 16, 17, 35, 36, 37, 39(b), 40, 43, 44, 45, 47, 48, 49 and 50(b)— 01-06-1976
		Remaining provisions— 27-09-1996
Act A1243	Armed Forces (Amendment) Act 2005	11-08-2005

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# LAWS OF MALAYSIA

## Act 77

### ARMED FORCES ACT 1972

#### LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A974 paragraphs 2(a) and (c) paragraphs 2(b), (d) and (e)	01-06-1976 27-09-1996
3	Act A974	01-06-1976
5A	Act A974	01-06-1976
5B	Act A974	01-06-1976
5C	Act A974	01-06-1976
5D	Act A974	01-06-1976
6	Act A974	01-06-1997
10	Act A974	27-09-1996
10A	Act A974	27-09-1996
12	Act A974	27-09-1996
13	Act A974	01-06-1976
15	Act A974	01-06-1976
16	Act A974	01-06-1976
19	Act 160	29-08-1975
20	Act 160	29-08-1975
21	Act A974	01-06-1976
26B	Act A974	01-06-1976

Section	Amending authority	In force from
36	Act A974	01-06-1976
51	Act A974	01-06-1976
81	Act A974	27-09-1996
90	Act A974	27-09-1996
93	Act A974	27-09-1996
94A	Act A974	27-09-1996
94B	Act A974	27-09-1996
94C	Act A974	27-09-1996
94D	Act A974	27-09-1996
96	Act A974	27-09-1996
97	Act 160	29-08-1975
	Act A974	27-09-1996
98	Act A974	27-09-1996
100	Act A974	27-09-1996
101	Act A974	27-09-1996
104	Act A974	27-09-1996
105	Act A974	27-09-1996
106	Act A974	27-09-1996
111	Act A974	27-09-1996
129	Act A974	27-09-1996
136	Act A974	27-09-1996
144	Act A974	27-09-1996
147	Act A974	27-09-1996
155	Act A974	01-06-1976
156	Act A974	01-06-1976

Section	Amending authority	In force from
157	Act A440	19-05-1978
	Act A974	01-06-1976
161	Act A1243	11-08-2005
166	Act A974	27-09-1996
179	Act 160	29-08-1975
180	Act 160	29-08-1975
184(2)	Act A974	27-09-1996
184(4)	Act A974	01-06-1976
185	Act A440	19-05-1978
187	Act A440	19-05-1978
	Act A974	01-06-1976
187A	Act A974	27-09-1996
187B	Act A974	27-09-1996
189A	Act A974	01-06-1976
191	Act 160	29-08-1975
194	Act A974	01-06-1976
197	Act A974	01-06-1976
201A	Act A974	01-06-1976
201B	Act A1243	11-08-2005
201C	Act A1243	11-08-2005
203	Act 160	29-08-1975
204	Act 160	29-08-1975
206	Act A440	19-05-1978
	Act A974	01-06-1976
207	Act A974	01-06-1976

Section	Amending authority	In force from
212	Act 160	29-08-1975
213	Act A974	27-09-1996
213(7)	Act A974	01-06-1976
217	Act A440	19-05-1978

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