

CHAPTER 15:01

DEFENCE ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title.
2. Interpretation.
3. Provisions as to active service.
4. Establishment of Guyana Defence Force.
5. Employment of Defence Force.
6. Formation into units.
7. Employment of Defence Force outside Guyana.
8. Overseas training.

PART II

GUYANA DEFENCE BOARD

9. Establishment of Defence Board.
10. Membership of Defence Board.
11. Secretary of Defence Board.
12. Performance of functions of Defence Board.

PART III

OFFICERS

13. Power to grant commissions.
14. Commissions Board.
15. Appointment and transfer of officers.
16. Power to make regulations for this Part.

PART IV

ENLISTMENT AND TERMS OF SERVICE IN THE REGULAR FORCE

Enlistment

SECTION

17. Recruiting officers.
18. Enlistment.

Terms and Conditions of Service

19. Terms of enlistment.
20. Re-engagement and continuance of service.
21. Prolongation of service.

Discharge and Transfer to the Reserve

22. Discharge.
23. Transfer to the Reserve.
24. Postponement of discharge or transfer pending proceedings for offences, etc.
25. Restrictions on reduction in rank of warrant officers and non-commissioned officers.
26. Right of warrant officer to discharge on reduction in rank.
27. Discharge upon prescribed grounds.
28. Right of soldier to purchase discharge.

Miscellaneous and Supplementary Provisions

29. Rules for reckoning service.
30. Validity of attestation and enlistment.
31. False answers in attestation papers.
32. Interpretation.

PART V

DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

*Treachery, Cowardice and Offences Arising out of
Military Service*

SECTION

33. Aiding the enemy.
34. Communication with the enemy.
35. Cowardly behaviour.
36. Offences against morale.
37. Becoming a prisoner of war through disobedience or wilful neglect; and failure to rejoin forces.
38. Offences by or in relation to sentries, etc.
39. Sleeping on watch or abandoning post.
40. Looting.

Mutiny and Insubordination

41. Mutiny.
42. Failure to suppress mutiny.
43. Insubordinate behaviour.
44. Disobedience to particular orders.
45. Obstruction of provost officers.
46. Disobedience to standing orders.

Desertion, Absent Without Leave, etc.

47. Desertion.
48. Absence without leave.
49. Assisting and concealing desertion and absence without leave.
50. Failure to perform military duties.

Malingering and Drunkenness

51. Malingering.
52. Drunkenness.

Offences Relating to Property

SECTION

- 53. Offences in relation to public and service property.
- 54. Offences in relation to property of members of forces.
- 55. Miscellaneous offences relating to property.

Offences Relating to Ships and Aircraft

- 56. Dangerous flying, loss or hazarding of ships.
- 57. Inaccurate certification of aircraft, etc.
- 58. Low flying.
- 59. Annoyance by flying.

Offences Relating to, and by, Persons in Custody

- 60. Irregular arrest and confinement.
- 61. Permitting escape, and unlawful release of prisoners.
- 62. Resistance to arrest.
- 63. Escape from confinement.

Offences in relation to Courts-Martial and Civil Authorities

- 64. Offences in relation to courts-martial.
- 65. False evidence.
- 66. Obstruction of policeman arresting officer or soldier.

Miscellaneous Offences

- 67. Injurious disclosures.
- 68. Making of false statements on enlistment.
- 69. Making of false documents.
- 70. Scandalous conduct of officer.
- 71. Ill-treatment of officers or men of inferior rank.
- 72. Disgraceful conduct.
- 73. False accusation.
- 74. Attempts to commit military offences.
- 75. Conduct to prejudice of military discipline.

Civil Offences

SECTION

76. Civil offences.

Punishments

- 77. Punishment of officers.
- 78. Punishment of soldiers.
- 79. Field punishment.
- 80. Imprisonment.

Arrest

- 81. Power to arrest offenders.
- 82. Provisions for avoiding delay after arrest.

Investigation of, and Summary Dealing with Charges

- 83. Investigation of charges by commanding officer.
- 84. Charges to be dealt with summarily or by court-martial.
- 85. Further proceedings on charges against non-commissioned officers and soldiers.
- 86. Further proceedings on charges against officers and warrant officers.
- 87. Dismissal of charges referred to higher authority.
- 88. Officers who are to act as commanding officers and appropriate superior authorities.
- 89. Limitation on powers of summary dealing with charges.

Court-Martial: General Provisions

- 90. Trial by, and powers of, ordinary court-martial.
- 91. Trial by, and powers of, field court-martial.
- 92. Officers having powers to convene courts-martial.
- 93. Constitution of ordinary courts-martial.
- 94. Constitution of field courts-martial.
- 95. Supplementary provisions as to constitution of courts-martial.

SECTION

96. Place for sitting of courts-martial and adjournment to other places.

Courts-Martial: Provisions Relating to Trial

97. Challenges by accused.
98. Administration of oaths.
99. Courts-martial to sit in open court.
100. Dissolution of courts-martial.
101. Decisions of courts-martial.
102. Finding and sentence.
103. Power to convict of offence other than that charged.
104. Rules of evidence.
105. Privilege of witnesses and others at courts-martial.
106. Offences by civilians in relation to courts-martial.
107. Affirmations.

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

108. Confirmation of proceedings of courts-martial.
109. Petition against finding or sentence.
110. Revision of findings of court-martial.
111. Powers of confirming authorities.
112. Confirming authorities.
113. Approval of death sentence by President.
114. Review of findings and sentences of courts-martial.
115. Reconsideration of sentences of imprisonment and detention.

Review of Summary Findings and Awards

116. Review of summary findings and awards.

Findings of Insanity, etc.

117. Provisions where accused found insane.

Commencement, Suspension and Duration of Sentences

SECTION

- 118. Commencement of sentences.
- 119. Duration of sentences of imprisonment or detention.
- 120. Restrictions on serving of sentences of detention in prisons.
- 121. Special provisions as to civil prisons in Guyana.
- 122. Special provisions as to carrying out or serving of sentences outside Guyana.
- 123. Country in which sentence of imprisonment or detention to be served.
- 124. Duties of officers in charge of prisons and others to receive prisoners.

Trial of Persons ceasing to be subject to military law under this Act and time limited for trials

- 125. Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto.
- 126. Limitation of time for trial of offences under this Act.

Relations between Military and Civil Courts and Finality of Trials

- 127. Powers of civil courts.
- 128. Persons not to be tried under this Act for offences already disposed of.

Inquiries

- 129. Boards of Inquiry.
- 130. Inquiries into absence.

Miscellaneous Provisions

- 131. Restitution or compensation for theft, etc.
- 132. Appointment of judge advocates.
- 133. Promulgation.

LAWS OF GUYANA

10

Cap. 15:01

Defence

SECTION

- 134. Custody of proceedings of court-martial and right of accused to a copy thereof.
- 135. Indemnity for prison officers, etc.

Interpretation of this Part

- 136. Interpretation of Part V.

Rules of Procedure, etc.

- 137. Rules of Procedure.
- 138. Imprisonment and Detention Regulations.
- 139. Board of Inquiry Rules.
- 140. Miscellaneous regulations.
- 141. Section 140 (c) and (d) not to prejudice powers under sections 137, 138 and 139.

PART VI

APPEALS FROM COURTS-MARTIAL

- 142. Right of appeal.
- 143. Procedure for applying for leave to appeal or lodging appeal.
- 144. Determination of appeals in ordinary cases.
- 145. Powers of Court of Appeal in special cases.
- 146. Commencement of sentence.
- 147. Appeals to be final.
- 148. Proceedings may be heard in absence of appellants.
- 149. Defence of appeals.
- 150. Right of appellant to present his case in writing.
- 151. Suspension of death sentence.
- 152. Person not be tried again where conviction quashed.
- 153. Removal of prisoners for purposes of this Part.
- 154. Furnishing on appeal, of documents relating to trial.
- 155. Saving of powers of reviewing authorities.
- 156. Supplementary powers of the Court of Appeal.
- 157. Interpretation of Part VI.

PART VII

FORFEITURES AND REDUCTIONS

SECTION

- 158. Forfeitures and deductions; general provisions.
- 159. Forfeiture of pay for absence from duty.
- 160. Deductions for payment of civil penalties.
- 161. Compensation for loss occasioned by wrongful act or negligence.
- 162. Deductions for barrack damage.
- 163. Review of orders and remission of forfeitures and deductions.
- 164. Enforcement of maintenance and affiliation order by deduction from pay.
- 165. Deductions from pay for maintenance of wife, husband or child.
- 166. Limit of deductions under sections 164 and 165 and effect on forfeiture.
- 167. Service of process in maintenance proceedings.

PART VIII

GOVERNMENT AND GENERAL PROVISIONS COMMAND

- 168. Command and precedence.
- 169. Command of Force.
- 170. Regulations as to command.
- 171. Powers of command of members of co-operating forces.

Redress of Complaints

- 172. Complaints by officers.
- 173. Complaints by soldiers.
- 174. Restriction on composition of Defence Board dealing with complaint.

Exemptions for officers and soldiers

- 175. Exemptions from jury service.
- 176. Exemptions from tolls, etc.
- 177. Exemption from execution.

Provisions relating to deserters and absentees without leave

SECTION

- 178. Arrest of deserters and absentees without leave.
- 179. Proceedings before a civil court where persons suspected of illegal absence.
- 180. Deserters and absentees without leave surrendering to police.
- 181. Certificates of arrest or surrender of deserters and absentees.
- 182. Duties of superintendents of prisons and others to receive deserters and absentees.

Offences relating to military matters punishable by civil courts

- 183. Punishment for pretending to be a deserter.
- 184. Punishment for procuring and assisting desertion.
- 185. Punishment for obstructing officers or soldiers in execution of duty.
- 186. Punishment for aiding malingering.
- 187. Unlawful purchase, etc. of military stores.
- 188. Illegal dealings in documents relating to pay, pensions, mobilization, etc.
- 189. Unauthorised use of and dealing in decorations, etc.

Provisions as to evidence

- 190. General provisions as to evidence.
- 191. Proof of outcome of civil trial.
- 192. Evidence of proceedings of court-martial.

Miscellaneous Provisions

- 193. Temporary reception in civil custody of persons under escort.
- 194. Avoidance of assignment of, or charge on military pay, pension, etc.
- 195. Statutory declarations taken outside Guyana.

PART IX

RESERVE

SECTION

196. Composition of Reserve.
197. Enlistment and re-engagement in the Reserve.
198. Training of Reserve.
199. Call out of first class of Reserve on temporary service.
200. Call out of Reserve on permanent service.
201. Attendance upon call out.
202. Effective time of call out.
203. Termination of service.
204. Posting or attachment of members of Reserve.
205. Punishment for non-attendance.
206. Wrongful sale etc. of public property.
207. Discharge from Reserve.
208. Application of Parts V and VII of this Act.

PART X

THE COAST GUARD

209. Establishment and special duties of Coast Guard.
210. Powers of members of Coast Guard with respect to vessels.
211. Obstruction of officer or soldier of the Force.
212. Powers under laws mentioned in Third Schedule.
213. Hazarding or loss of ship.
214. Provisions not in derogation.

PART XI

APPLICATION OF THE LAW AND SUPPLEMENTARY PROVISIONS

215. Application of Act to civilians.
216. Application of the Act.
217. Power to make regulations.
218. Powers exercisable in subsidiary legislation.
219. Execution of orders, instruments, etc.
220. Powers of members of the Force with respect to vessels.

LAWS OF GUYANA

14

Cap. 15:01

Defence

FIRST SCHEDULE—Forms.

SECOND SCHEDULE—Alternative offences for which accused
may be committed by Court Martial.

THIRD SCHEDULE

CHAPTER 15:01

DEFENCE ACT

24 of 1966A

**An Act to provide for defence and the maintenance of order by
the establishment of a defence force and to provide for
matters connected therewith and incidental thereto.**

[22ND MAY, 1966]

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Defence Act.

Interpretation.
[O. 15/1970
O. 80/1980]

2. (1) In this Act—

“acting rank” means rank of any description (however called) such that
under regulations a commanding officer has power to order the
holder to revert from that rank; and “acting warrant officer” and
“acting non-commissioned 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 and bombs and other
missiles of any description in, or for use in, aircraft;

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

(d) any apparatus used in connection with the detecting the movement of aircraft; and

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

“appropriate superior authority” has the meaning assigned to it by section 84(1) and of section 88(2);

“arrest” includes open arrest;

“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 made by the Defence Board under section 139;

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

“civil offence” has the meaning assigned to it in section 76(2);

“colour service” means service in the regular Force under this Act;

“the Chief of Staff” means the officer appointed by the President under section 169 to have command of the Force;

“commanding officer” has the meaning assigned to it by section 88(1);

“Commonwealth Force” means any military force raised in any territory within the Commonwealth by the government of that territory, but does not include the Force;

“competent military authority” means such officer as may be prescribed;

LAWS OF GUYANA

16

Cap. 15:01

Defence

“corresponding civil offence” has the meaning assigned to it by section 76(2);

“corresponding rank” in relation to any rank or rating in a Commonwealth force, means such rank or rating in any other of those forces as may be declared by regulations under section 217 to correspond therewith;

“court-martial” except where it is expressed to be under service law, means a court-martial under this Act;

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

“date of attestation” in relation to any person means the date on which he is attested in accordance with regulations;

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

“Defence Board” means the Defence Board established by section 9;

“desertion” shall be construed in accordance with section 47(2);

“enemy” includes all persons engaged in armed operations against the Force or any force co-operating therewith and also includes all armed mutineers, armed rebels, armed rioters and pirates;

“the Force” means the Guyana Defence Force established under section 4;

“Imprisonment and Detention Regulations” means regulations made by the Defence Board under section 138;

“military” when used adjectivally means connected to or belonging to land, sea or air forces;

“Permanent Secretary” means the public officer, however styled, in charge of the Secretariat of the President;

“policeman” means a member of the Guyana Police Force;

“prescribed” means prescribed by regulations under this Act or Rules of Procedure, as the case permits;

“provost officer” means a provost marshal or officer subject to service law appointed to exercise the functions conferred by or under service law on provost officers;

“public property” means any property belonging to the Government or held for the purposes thereof;

“recruiting officer” means a person authorised as such under section 17;

“Registrar of the Supreme Court” includes a Deputy Registrar, or other officer for the time being discharging the duties of the Registrar or Deputy Registrar of the Supreme Court;

“the Reserve” means the body of officers and soldiers established under paragraph (b) of section 4;

“Rules of Procedure” means the Rules of Procedure made by the Defence Board under section 137;

“service” when used adjectivally, means belonging to or connected with the Force or any part thereof or belonging to or connected with a Commonwealth force or any part of a Commonwealth force;

“service law” means any law (including this Act) governing service in the Force or any Commonwealth force acting in co-operation with the Force;

“soldier” does not include an officer but, with the modifications contained in this Act in relation to warrant officers and non-commissioned officers, includes a person who is a warrant officer or a non-commissioned officer or of lower military rank;

“ship” includes any description of vessel;

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

“unit” means—

(a) any independent body of the Force which is not higher in the organisation of the Force than a battalion or any equivalent body of troops; or

(b) any other body of the Force declared by the Defence Board to be a unit.

(2) References to officers and soldiers of the Force shall, except in Part VII of this Act, be construed as including references to officers and soldiers attached or seconded to that Force.

(3) References to warrant officers and non-commissioned officers shall be construed as including references to persons of any corresponding ranks, respectively.

(4) The provisions of this Act which relate to stealing shall be construed in accordance with the following principles:

(A) A person steals, who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof:

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.

(B) The expression “takes” includes obtaining the possession—

(a) by any trick;

(b) by intimidation;

(c) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained;

(d) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps.

(C) The expression “carries away” includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached.

(D) The expression “owner” includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

(E) Everything which has value and is the property of any person, and if adhering to the realty then after severance therefrom, shall be capable of being stolen:

Provided that—

(a) save as hereinafter expressly provided with respect to fixtures, growing things, and minerals, anything attached to or forming part of the realty shall not be capable of being stolen by the person who severs the same from the realty, unless after severance he has abandoned possession thereof; and

(b) the carcass of a creature wild by nature and not reduced into possession while living shall not be capable of being stolen by the person who has killed such creature, unless after killing it he has abandoned possession of the carcass.

(F) Every person who—

(a) with intent to steal, rips, cuts, severs or breaks—

(i) any glass or woodwork belonging to any building; or
(ii) any metal or utensil or fixture, fixed in or to any building; or

(iii) anything made of metal fixed in any land being private property, or as a fence to any dwelling house, garden or area or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground;

LAWS OF GUYANA

20

Cap. 15:01

Defence

(b) with intent to steal, cuts, breaks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling, shrub, or underwood growing in any place whatsoever, the value of the article stolen or the injury done being to the amount of one dollar at the least; or

(c) with intent to steal, destroys, or damages any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery-ground, hothouse or conservatory,

shall be guilty of stealing.

c. 8:01

(G) Every person who severs with intent to steal, the ore of any metal, or any raw gold, precious stones or valuable minerals as defined in section 189(1) of the Criminal Law (Offences) Act, shall be guilty of stealing.

Provisions as to active service.

3. (1) In this Act the expression “on active service”, in relation to any unit, means that it is engaged in operations against an enemy, and in relation to a person means that he is serving in or with such a unit 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 for the public service that a unit 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 unit shall be deemed to be on active service.

(3) Where it appears to the Minister that it is necessary for the public service that the period specified in a declaration under subsection (2) should be prolonged or, if previously prolonged under this section, 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 unit 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 unit to continue to be treated

LAWS OF GUYANA

Defence

Cap. 15:01

21

as being on active service, he may declare that as from the coming into operation of the declaration the unit shall cease to be deemed to be on active service.

(5) Any declaration under this section shall be made by proclamation.

4. There shall be established and maintained in Guyana a force to be called the GUYANA DEFENCE FORCE consisting of—

Establishment of Guyana Defence Force. [O. 15/1970]

- (a) a regular Force; and
- (b) a reserve Force.

5. The Force shall be charged with the defence of and maintenance of order in Guyana and with such other duties as may from time to time be defined by the Defence Board.

Employment of Defence Force.

6. The Force may by order of the Defence Board be formed into units or other military bodies.

Formation into units.

7. The Minister may at any time, with the approval of the National Assembly signified by resolution thereof, order that the whole or any part of the Force shall be employed out of or beyond Guyana:

Employment of Defence Force outside Guyana.

Provided that no officer or soldier of the Reserve shall be liable to be employed out of or beyond Guyana unless either he is an officer or soldier serving in the Reserve in consequence of being transferred from the regular Force or he has entered into an agreement in writing accepting such a liability.

8. (1) The Minister may order that any officer or soldier of the regular Force or, with his consent, any officer or soldier of the Reserve, shall proceed to any place outside Guyana for the purpose of undergoing instruction or training or for duty or employment.

Overseas training.

LAWS OF GUYANA

22

Cap. 15:01

Defence

(2) The Minister may, if the consent of the officer or soldier concerned is first obtained, place any officer or soldier of the Force at the disposal of the military authorities of any other country or territory for the purpose of his being attached to the armed forces of that country or territory.

PART II

GUYANA DEFENCE BOARD

Establishment
of Defence
Board.

9. (1) There shall be a board to be called the Guyana Defence Board which shall, subject to subsection (2), be responsible under the general authority of the Minister for the command, discipline and administration of, and all other matters relating to, the Force.

(2) The responsibility of the Defence Board shall not extend to the operational use of the Force, for which use responsibility shall be vested in the Chief of Staff subject to the general or special directions of the Minister.

Membership
of Defence
Board.
[O. 80/1980]

10. (1) The members of the Defence Board shall be—

- (a) the President, who shall be the Chairman of Board;
- (b) the Prime Minister;
- (c) the Minister charged with responsibility for home affairs;
- (d) the Chief of Staff; and
- (e) not more than three other persons appointed by the Minister for such periods, respectively, as he shall, without prejudice to the conferment of any powers on him by virtue of section 29(1) of the Interpretation and General Clauses Act, specify.

c. 2:01

(2) The Chairman may nominate any member to perform the functions of the Chairman at any meeting of the Defence Board at which the Chairman is absent, and such nomination may be either general or in respect of a particular occasion.

(3) In the event of any member being for any reason unable to perform his functions as a member he may with the approval of the Chairman nominate a person to perform such functions during his inability.

11. The Secretary of the Defence Board shall be the Permanent Secretary or such person as the Chairman of the Board may nominate to perform the duties of Secretary at any meeting of the Defence Board in the event that the Permanent Secretary so designated is unable to perform those duties.

Secretary of
Defence
Board.
[O. 80/1980]

12. (1) The Defence Board may make rules providing for all or any of the following matters—

Performance of
functions of
Defence
Board.

(a) the organisation of the work of the Board and the manner in which it shall perform its functions and the duties and responsibilities of the several members thereof;

(b) the delegation, by notification in the *Gazette*, of powers or duties of the Board to any members thereof;

(c) the consultation by the Board with persons other than members thereof;

(d) the procedure to be followed by the Board in conducting its business; and

(e) any other matters for which the Board may consider it necessary or desirable to provide in order to secure the better performance of the functions of the Board.

(2) Nothing in any Act shall be deemed to require the publication in the *Gazette* of any rules made under subsection (1).

(3) Subject to any rules made under subsection (1) and to the other provisions of this Act, the Board may regulate its own proceedings.

PART III

OFFICERS

13. (1) The power to grant commissions in the Force shall be vested in the President.

Power to grant
commissions.

LAWS OF GUYANA

24

Cap. 15:01

Defence

(2) A commission may be granted either for an indefinite period or for a specified time.

First Schedule. (3) Every officer on being granted a commission shall be issued with a commission in the form set out in the First Schedule which commission shall be signed by the President.

Commissions Board. **14.** (1) There shall be a Commissions Board of three persons which shall be responsible for advising the President on the exercise of the powers conferred by section 13.

(2) The members of the Commissions Board shall be—

c. 2:01 (a) the Chief of Staff;
(b) the Chairman of the Public Service Commission; and
(c) one other person appointed by the Defence Board for such period as it shall, without prejudice to the conferment of any powers upon it by virtue of section 29(1) of the Interpretation and General Clauses Act, specify.

The member mentioned in paragraph (a) shall be the Chairman of the Board and if on any question the members of the Board are equally divided he shall have and exercise a casting vote in addition to his original vote.

Appointment and transfer of officers. **15.** (1) Every officer upon being granted a commission shall be appointed by the Minister either to the regular Force or to the first or second class of the Reserve.

(2) The Minister may, upon such terms and conditions as he may determine, transfer any officer between the regular Force and the Reserve and between the first and second classes of the Reserve:

Provided that no officer shall be transferred to the regular Force or to the first class of the Reserve without his consent.

Power to make regulations for this Part. **16.** (1) Subject to this Act, the Minister may make regulations for the better carrying out of the provisions of this Part and, without prejudice to the generality of the foregoing, such regulations may make provisions

with respect to all or any of the following matters, that is to say the commissioning of officers, their terms of service, appointment, transfer, promotion, retirement, resignation, removal from office and such other matters concerning officers as may seem to him necessary.

(2) The appointment, transfer, substantive promotion, retirement, resignation or removal from office of any officer shall be notified in the *Gazette*.

PART IV

ENLISTMENT AND TERMS OF SERVICE IN THE REGULAR FORCE

Enlistment

17. Any person authorised in that behalf by regulations, in this Act referred to as a recruiting officer, may enlist recruits in the regular Force in the prescribed manner.

Recruiting
officers.

18. (1) A person offering to enlist in the regular Force 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 recruiting officer shall not enlist any person in that Force unless satisfied by that person that he has been given such a notice, understands it, and wishes to be enlisted.

Enlistment.
[32 of 1975]

(2) A recruiting officer shall not enlist a person under the age of sixteen years in the regular Force, unless consent to the enlistment has been given in writing—

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

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

(c) if there is no such person as is mentioned in paragraph (b) or if after reasonable inquiry it cannot be ascertained whether there is any such person, by any person in whose

care (whether in law or in fact) the person offering to enlist may be:

Provided that no person under the age of fourteen years shall be enlisted in the regular Force.

(3) 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 permitted by this section for recruitment, 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.

(4) A document purporting to be a certificate signed by the recruiting officer, stating that he is satisfied as aforesaid, shall be sufficient evidence, until the contrary is provided, that he is so satisfied.

Terms and Conditions of Service

Terms of enlistment.

19. The term for which a person enlisting in the regular Force may be enlisted shall be such term beginning with the date of his attestation and not exceeding twelve years as may be prescribed:

Provided that such term may consist in part, and determine upon the completion, of a prescribed term of service in the Reserve.

Re-engagement and continuance of service.

20. (1) Any soldier of the regular Force of good character who at any time has completed or is within the prescribed period before completing a prescribed term of service may, with the approval of the competent military authority, re-engage for such further period or periods of further colour service or service in the Reserve as may be prescribed:

Provided that any such further period or periods of colour service together with the original period of colour service shall not, except as provided by subsection (2), exceed a total continuous period of twenty-two years' colour service from the date of the soldier's original attestation.

(2) Any soldier of the regular Force who shall have completed a period of twenty-two years' colour service may, if he shall so desire and with the approval of the competent military authority, continue to serve in all respects as if his term of colour service was still unexpired except that it shall be lawful for him to claim his discharge at the expiration of the period of three months beginning with the day on which he gives to his commanding officer notice of his wish to be discharged.

21. Any soldier of the regular Force whose term of colour service expires during a state of war, insurrection, hostilities or public emergency may be retained in that Force and his service prolonged for such further period as the competent military authority with the approval of the Defence Board may direct.

Prolongation
of service.

Discharge and Transfer to the Reserve

22. (1) Save as in the Act provided, every soldier of the regular Force upon becoming entitled to be discharged shall be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act.

Discharge.

(2) Where a soldier of the regular Force is, when entitled to be discharged, serving out of Guyana, then—

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

(3) Except in pursuance of the sentence of a court-martial, a soldier of the regular Force shall not be discharged unless his discharge has been authorised by order of the competent military authority.

LAWS OF GUYANA

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

Transfer to the Reserve.

23. (1) Save as in this Act provided, every soldier of the regular Force upon falling to be transferred to the Reserve shall be transferred to the Reserve but until so transferred shall remain subject to military law under this Act.

(2) Where a soldier of the regular Force when falling to be transferred to the Reserve, is serving out of Guyana, he shall be sent to Guyana 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 from his arrival:

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

(3) Notwithstanding anything in this section hereinbefore contained, but subject as may be otherwise prescribed, the competent military authority may, when a soldier of the regular Force falls to be transferred to the Reserve, discharge him forthwith without giving any reason and in any such case section 22 shall apply.

Postponement of discharge or transfer pending proceedings for offences, etc.

24. (1) Notwithstanding anything in this Part, a soldier of the regular Force shall not be entitled to be discharged or transferred to the Reserve at a time when he has become liable to be proceeded against for an offence against any of the provisions of this Act:

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

(2) Notwithstanding anything in this Part, a soldier of the regular Force who is serving a sentence of imprisonment or detention awarded by a court-martial or by his commanding officer shall not be entitled to be discharged or transferred to the Reserve during the currency of the sentence.

LAWS OF GUYANA

Defence

Cap. 15:01

29

25. (1) A warrant officer or non-commissioned officer of the regular Force whose rank is not below that of sergeant or corresponding rank shall not be reduced in rank except by a sentence of a court-martial or by order of the Defence Board or of an officer not below the rank of major or corresponding rank, authorised by regulations to act for the purposes of this subsection.

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

(2) An authorisation under the last foregoing subsection may be given generally or subject to such limitations as may be prescribed.

(3) For the purposes of this section reduction in rank does not include reversion from acting rank.

26. A warrant officer of the regular Force who is reduced to the ranks may thereupon claim to be discharged unless a state of war, insurrection, hostilities or public emergency exists.

Right of warrant officer to discharge on reduction in rank.

27. A soldier of the regular Force may be discharged by the competent military authority at any time during the currency of any term of engagement upon such grounds as may be prescribed.

Discharge upon prescribed grounds.

28. (1) Subject to this section, a soldier of the regular Force shall be entitled to claim his discharge at any time within three months after the date of his first attestation and if he makes such a claim he shall on payment of one hundred dollars be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act:

Right of soldier to purchase discharge.

Provided that the right conferred by this subsection shall not be exercisable within such period (not exceeding two months) beginning with the said date as may be prescribed.

(2) This section shall not apply to a soldier of the regular Force who was at any time within three months prior to the date of his first attestation a member of any Commonwealth force.

(3) Section 22 shall not apply to a soldier discharged under this section.

(4) Notwithstanding this section, a soldier of the regular Force shall not be entitled to claim his discharge pursuant to this section while soldiers of that Force are required to continue their colour service under section 21.

Miscellaneous and Supplementary Provisions

Rules for reckoning service.

29. In reckoning the service of any soldier of the regular Force towards 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 for any of the following causes—

- (i) imprisonment;
 - (ii) desertion;
 - (iii) absence without leave exceeding twenty-eight days;
- and

(b) any period ordered by a court-martial to be forfeited.

Validity of attestation and enlistment.

30. (1) Where a person has made such declaration upon his attestation as may be prescribed and has thereafter received pay as a soldier of the regular Force—

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

(b) after the expiration of a period of three months from the date on which he made the said declaration he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any regulations made as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper) and he shall be deemed to be a soldier of that Force until his discharge.

(2) Where a person has received pay as a soldier of the regular Force without having previously made such declaration as aforesaid then—

(a) he shall be deemed to be a soldier of that Force until discharged;

(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 Defence Board who shall, if the claim is well founded, 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.

31. (1) If a person appearing before a recruiting officer for the purpose of being enlisted in the regular Force knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer he shall be liable on summary conviction to a fine of six thousand five hundred dollars or to imprisonment for three months.

False answers
in attestation
papers.
[6 of 1997]

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

32. In this Part, “Reserve” means the second class of the Reserve.

Interpretation.

PART V

DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

*Treachery, Cowardice and Offences Arising out of
Military Service*

33. (1) Every person subject to military law under this Act who with intent to assist the enemy—

Aiding 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; or

(b) does any act calculated to imperil the success of operations of the Force, of any forces co-operating therewith or of any part of any of those forces; or

(c) 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 authorised by international usage; or

(d) furnishes the enemy with arms or ammunition or with supplies of any description or with any other thing likely to assist him (whether similar to any of the things aforesaid or not); or

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

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

(2) Every person subject to military law under this Act who knowingly and without lawful excuse does any of the acts specified in subsection (1) (a) to (e) (inclusive) 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.

Communica-
tion with the
enemy.

34. (1) Every person subject to military 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 military law under this Act 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 an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) 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 the Force or of any forces co-operating therewith, or of any ships or aircraft of the Force or any such co-operating force;
- (b) any operations or projected operations of any of the Force or any 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 against an enemy;
- (e) the number, description or location of any prisoners of war;
- (f) munitions of war.

35. (1) Every person subject to military law under this Act who when before the enemy—

Cowardly
behaviour.

- (a) leaves the post, position or other place where it is his duty to be; or
- (b) throws away his arms, ammunition or tools, in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice,

shall be guilty of an offence against this section.

(2) Every person subject to military law under this Act who when before the enemy induces any other person subject to service law and before the enemy to commit an offence under subsection (1) shall be guilty of an offence against this section.

LAWS OF GUYANA

(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 against morale.

36. Every person subject to military law under this Act who—

(a) spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of the Force, 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 a prisoner of war through disobedience or wilful neglect; and failure to rejoin forces.
[O. 15/1970]

37. (1) Every person subject to military 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 military law under this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law who has been captured by the enemy from taking any reasonable steps to rejoin the Force 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 in relation to sentries, etc.

38. (1) Every person subject to military law under this Act, who while on guard duty—

(a) sleeps at his post; or

(b) when not on duty at a post, is asleep at a time when he is not allowed to be asleep; or

(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 drugs, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.

(3) Every person subject to military law under this Act who strikes or otherwise uses force against any person on guard duty, being a member of any unit of the Force 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 has adopted the position of sentry at a post or has undertaken the patrol; or

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

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

(6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol or who have adopted the position of sentries at a post or have undertaken the patrol, and to the members of a party mounted or ordered to patrol, for the purpose of preventing or

LAWS OF GUYANA

controlling access to or egress from any premises or place, or of regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

Sleeping on watch or abandoning post.

39. (1) Every person subject to military law under this Act who is attached to any ship of the Force, and who, being in the presence or vicinity of the enemy or under orders to be prepared for action by or against the enemy, abandons his post improperly or sleeps upon his watch shall on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Every person subject to military law under this Act who is attached to any ship of the Force, and who, not being in the presence or vicinity of the enemy or under such orders as aforesaid, abandons his post improperly or sleeps upon his watch shall, on conviction by court-martial, be liable to imprisonment for two years or any less punishment provided by this Act.

Looting.

40. Every person subject to military 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 operations; or

(b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or

(c) takes otherwise than for the public service any vehicles, 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.

41. (1) Every person subject to military law under this Act who—

(a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against the enemy,

or the impeding of the performance of any such duty or service; or

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

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

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

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

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

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

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

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

Failure to suppress mutiny.

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

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

shall on conviction by court-martial—

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

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

Insubordinate
behaviour.

43. (1) Every person subject to military 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 be imprisoned 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.

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

Disobedience
to particular
orders.

44. (1) Every person subject to military law under this Act who, in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Every person subject to military law under this Act who, whether wilfully or through neglect, disobeys any lawful command 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.

45. Every person subject to military law under this Act who—

Obstruction of provost officers.

- (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 military law under this Act or not) lawfully 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.

46. (1) Every person subject to military 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 two years or any less punishment provided by this Act.

Disobedience to standing orders.

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

Desertion, Absence Without Leave, etc.

47. (1) Every person subject to military law under this Act who—

Desertion.

- (a) deserts; or
- (b) persuades or procures any person subject to service law 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 an offence 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 the Force or, when it is his duty to do so, fails to join or rejoin the Force, with (in either case) the intention, subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty; or

(b) being an officer enlists in or enters any Commonwealth force without having resigned his commission, or being a soldier enlists in or enters any Commonwealth force without having been discharged from his previous enlistment; or

(c) 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,

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

(3) In addition to or in lieu of any punishment authorised by subsection (1), the court-martial by whom a soldier is convicted of deserting during a term of service for which he engaged or re-engaged may direct that the whole or any part of his service during that term previous to the period as respects which he is convicted of having been a deserter shall be forfeited:

Provided that this subsection shall not apply to soldiers of the Reserve called out on permanent service or continuing to serve under section 20(2).

Absence
without leave.

48. Every person subject to military law under this Act who—

(a) absents himself without leave; or

(b) persuades or procures any person subject to service law to absent himself without leave,

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

49. Every person subject to military law under this Act who—

- (a) knowingly assists any person subject to service law to desert or absent himself without leave; or
- (b) knowing that any person subject to service law 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,

Assisting and
concealing
desertion and
absence
without leave.

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

50. Every person subject to military law under this Act who without reasonable excuse fails to attend for any parade or other military 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 two years or any less punishment provided by this Act.

Failure to
perform
military duties.

Malingering and Drunkenness

51. (1) Every person subject to military law under this Act who—

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

Malingering.

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

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

Drunkenness.

52. (1) Every person subject to military 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 two years or any less punishment provided by this Act:

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

(2) For the purpose of this section a person is guilty of drunkenness 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 or with any duty which he may be called upon to perform or behaves in a disorderly manner or in any manner likely to bring discredit on the Force.

Offences Relating to Property

Offences in relation to public and service property.

53. Every person subject to military 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; or

(b) receives any public or service property knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied; or

(c) wilfully damages, or is concerned in the wilful 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.

54. Every person subject to military law under this Act who—

Offences in relation to property of members of forces.

- (a) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
- (b) receives any such property knowing or having reason to believe the same 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,

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

55. Any person subject to military law under this Act who—

Miscellaneous offences relating to property.

- (a) loses any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care; or
- (b) 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 property of which he has the charge or which has been entrusted to his care; or
- (c) by negligence causes damage by fire to any public or service property; or
- (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 (whether by pawning, selling, destruction or in any other way) with any military decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

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

Provided that it shall be a defence for any person charged under paragraph (a) with losing any property, that he took reasonable steps for the care and preservation thereof.

Offences Relating to Ships and Aircraft

Dangerous flying, loss or hazarding of ships.

56. Every person subject to military law under this Act who, either wilfully or by negligence—

- (a) causes or allows to be lost, stranded or hazarded any ships belonging to the Force;
- (b) uses any aircraft or aircraft material in a manner which causes or is likely to cause loss of life or bodily injury to any person,

shall, on conviction by court-martial, be liable, if he acts wilfully or with wilful neglect, to imprisonment or any less punishment, and in any other case to imprisonment for a term not exceeding two years or any less punishment, provided by this Act.

Inaccurate certification of aircraft, etc.

57. Every person subject to military law under this Act who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court-martial, be liable to imprisonment for two years or any less punishment provided by this Act.

Low flying.

58. Every person subject to military law under this Act, who, being the pilot of any aircraft belonging to the Force, flies it at a height less than such height as may be provided by regulations except—

- (a) while taking off or alighting; or
- (b) in such other circumstances as may be so provided,

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

59. Every person subject to military law under this Act who, being the pilot of any aircraft belonging to the Force, 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 imprisonment for two years or any less punishment provided by this Act.

Annoyance by flying

Offences Relating to, and by, Persons in Custody

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

Irregular arrest and confinement.

(a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his commanding officer or an 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 military 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 or non-commissioned 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 military 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 so far as known to him the prisoner's name and alleged offence and the name and rank or other description of the officer or other person who alleges that the prisoner has committed the offence; and
- (b) if he has received it, the report required by subsection (2),

he 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 for two years or any less punishment provided by this Act.

Permitting escape, and unlawful release of prisoners.

61. (1) Every person subject to military 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 military 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 two years or any less punishment provided by this Act.

Resistance to arrest.

62. (1) Every person subject to military law under this Act, who, being concerned in any quarrel or disorder, refuses to obey any officer subject to service law 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 military law under this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to 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 against this section shall, on conviction by court-martial, be liable to imprisonment for two years or any less punishment provided by this Act.

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

Escape from confinement.

Offences in relation to Courts-Martial and Civil Authorities

64. (1) Every person subject to military law under this Act who—

Offences in relation to courts-martial.

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

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

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

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

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

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

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

(2) Notwithstanding anything in subsection (1), where an offence against paragraph (e) or paragraph (f) thereof is committed in relation to any court-martial held in pursuance of this Act that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the President order the offender to be imprisoned for twenty-one days, or, in the case of a soldier, either to be imprisoned for such a period or to undergo detention for such a period.

(3) References in subsections (1)(a) to (f) (inclusive) to a court-martial shall include references to a court held in pursuance of service law.

False evidence.

65. (1) Every person subject to military law under this Act who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court under service law or before any board or person having power under service law to administer oaths, makes a statement material 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 for two years or any less punishment provided by this Act.

(2) A person shall not be liable to be convicted of an offence against this section solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Obstruction of policeman arresting officer or soldier.

66. Every person subject to military law under this Act who at any place in the Commonwealth prevents or obstructs—

(a) the execution by a policeman of a warrant for the arrest of a person subject to service law 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 by a policeman acting in the exercise of his powers of arrest 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.

Miscellaneous Offences

67. (1) Every person subject to military 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 for a term not exceeding two years or any less punishment provided by this Act.

Injurious disclosures.

(2) In this section the expression “information useful to an enemy” means 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 of this subsection) information 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 the Force or of any forces co-operating therewith, or of any ships or aircraft of the Force or any such co-operating force; or
- (b) any operations or projected operations of any of the Force or any of such forces, ships or aircraft as aforesaid; or
- (c) any code, cipher, call sign, password or counter-sign; or
- (d) any measures for the defence or fortification of any place against an enemy; or
- (e) the number, description or location of any prisoners of war; or
- (f) munitions of war.

LAWS OF GUYANA

50

Cap. 15:01

Defence

Making of false statements on enlistment.

68. Every person who, when before a recruiting officer for the purpose of being attested has knowingly made a false answer to any question contained in the attestation paper and put to him by or by direction of the recruiting officer shall, if he has since become and remains subject to military law under this Act, be liable on conviction by court-martial, to imprisonment for three months or to any less punishment provided by this Act.

Making of false documents.

69. Every person subject to military law under this Act who—

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

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

(c) with intent to defraud, fails to make an entry in any such documents; or

(d) aids, abets, commands, counsels, procures or connives at the commission by another person subject to service law of an offence against this section or the corresponding section of the applicable service law, as the case may be (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 two years or any less punishment provided by this Act.

Scandalous conduct of officer.

70. Every officer subject to military 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 cashiered.

Ill-treatment of officers or men of inferior rank.

71. If—

(a) any officer subject to military law under this Act strikes or otherwise ill-treats any officer subject to service law of inferior rank or less seniority or any soldier subject to service law; or

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

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

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

Disgraceful conduct.

73. Every person subject to military law under this Act who—

False accusation.

(a) makes an accusation against any officer or soldier subject to service law, 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 soldier subject to service law, 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 two years or any less punishment provided by this Act.

74. Every person subject to military 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:

Attempts to commit military offences.

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

LAWS OF GUYANA

52

Cap. 15:01

Defence

Conduct to
prejudice of
military
discipline.

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

Civil Offences

Civil offences.

76. (1) Every person subject to military law under this Act who commits a civil offence whether in Guyana or elsewhere shall be guilty of an offence under this section.

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

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

(a) if the corresponding civil offence is treason or murder, be liable to suffer death; and

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

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer, or discharge with ignominy in the case of a soldier, as is so provided.

(4) A person shall not be charged with an offence against this section committed in Guyana if the corresponding civil offence is treason, murder, manslaughter, treason-felony or rape.

(5) Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed, for the purposes of subsection (4) to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of the death.

Punishments

77. (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.

Punishment of officers.
[O. 15/1970]

(2) The said scale is—

- (a) death;
- (b) imprisonment;
- (c) cashiering;
- (d) dismissal from the Force;
- (e) fine of a sum not exceeding the equivalent of ninety days' pay;
- (f) forfeiture, in such manner as may be prescribed, of seniority of rank in the Force, or in any unit to which the offender belongs, or in both;
- (g) severe reprimand or reprimand;
- (h) 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.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

(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 a fine imposed under paragraph (e), or any forfeiture of seniority awarded under paragraph (f), of subsection (2).

(7) Where an officer is sentenced by a court-martial to imprisonment, he shall also be sentenced to be cashiered:

Provided that if the court-martial fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

Punishment of
soldiers.
[O. 15/1970]

78. (1) The punishments which may be awarded to a soldier 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 soldier, references in this Act to punishments provided by this Act are references to those punishments.

(2) The said scale is—

- (a) death;
- (b) imprisonment;
- (c) discharge with ignominy from the Force;
- (d) in the case of a warrant officer, dismissal from the Force;
- (e) detention for a term not exceeding two years or such shorter period as may be prescribed;
- (f) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding ninety days;
- (g) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;
- (h) in the case of a warrant officer or non-commissioned officer, forfeiture, in such manner as may be prescribed, of seniority of rank;

- (i) fine of a sum not exceeding the equivalent of ninety days' pay;
- (j) where the offence is desertion, forfeiture of service;
- (k) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (1) 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 less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

(5) A soldier sentenced by a court-martial to imprisonment may in addition thereto be sentenced to be discharged with ignominy from the Force, and a warrant officer sentenced by a court-martial to imprisonment may in addition thereto be sentenced to dismissal from the Force.

(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:

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.

(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 a fine or any forfeiture of seniority of rank.

LAWS OF GUYANA

56

Cap. 15:01

Defence

(8) Where an offender is on active service when sentence of a court-martial is announced, a fine may be awarded in addition to field punishment.

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

(10) 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 the detention which has not been served shall thereupon be remitted by virtue of this subsection.

(11) 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.

Field punishment.

79. 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 and under regulations made under this Part, 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.

Imprisonment.

80. Where in this Act it is provided that any person subject to military law under this Act is liable on conviction by court-martial to imprisonment and no term or maximum term of imprisonment is specified then such person shall be liable to imprisonment for any term.

Arrest

Power to arrest offenders.

81. (1) Any person subject to military 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 of this section.

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

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

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

(4) A provost officer, or any officer, warrant officer or non-commissioned officer subject to service law lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or soldier:

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

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

82. (1) The allegations against any person subject to military 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.

Provisions for avoiding delay after arrest.

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

(3) For the purposes of section 60(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 subsection (2) of this section.

Investigation of, and Summary Dealing with, Charges

Investigation of charges by commanding officer.

83. Before an allegation against a person subject to military 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.

84. (1) After investigation, a charge against an officer below the rank of lieutenant-colonel 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 this Act referred to as “the appropriate superior authority”) in accordance with those provisions.

(2) After investigation, a charge against a non-commissioned officer or private soldier may be dealt with summarily by his commanding officer, subject to, and in accordance with, the following provisions of this Part.

(3) Any charge not dealt with summarily as aforesaid shall, after investigation, 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 an officer or warrant officer; or

(b) the commanding officer has investigated a charge against a non-commissioned officer or private soldier, which is not one which can be dealt with summarily,

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

(5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may 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.

85. (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or private soldier.

Further proceedings on charges against non-commissioned officers and soldiers.

(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 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) Otherwise the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty he may award one or more of the following punishments:

- (a) if the accused is a non-commissioned officer—
 - (i) a fine of a sum not exceeding the equivalent of twenty-eight days' pay;
 - (ii) severe reprimand or reprimand;
 - (iii) where the offence has occasioned any expense, loss or damage, stoppages;
 - (iv) stoppage of leave;
 - (v) admonition;

(b) if the accused is a private soldier—

(i) detention for a period not exceeding forty-two days or, if the accused is on active service, field punishment for a period not exceeding forty-two days;

(ii) a fine of a sum not exceeding the equivalent of twenty-eight days' pay;

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

(iv) confinement to barracks for a period beginning with the day of the sentence and not exceeding twenty-eight days;

(v) stoppage of leave;

(vi) extra guards, piquets, duty or drill;

(vii) admonition.

(4) Where the accused is a lance-corporal or of corresponding rank 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.

(5) 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 to assume an acting rank lower than that held by him but higher than his permanent rank.

(6) Notwithstanding anything in subsection (3), where the commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award detention or field punishment, 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 withdraw his election the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(7) Where a charge is one which 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 subsections (3), (4), (5) and (6) shall apply as if the commanding officer had originally been of 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.

86. (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, or the case is one where he has power, and proposes to direct trial by field court-martial, 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 subsections (2) and (3).

Further proceedings on charges against officers and warrant officers.

(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:

(a) a fine of a sum not exceeding the equivalent of twenty-eight days' pay;

(b) forfeiture, in such manner as may be prescribed, of seniority of rank, where the accused is an officer the forfeiture being of seniority of rank either in the Force or in the unit to which the accused belongs or in both;

(c) severe reprimand or reprimand;

(d) where the offence has occasioned any expense, loss or damage, stoppages.

(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 a fine under paragraph (a) or any forfeiture of seniority under paragraph (b), of subsection (5) 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.

87. (1) Notwithstanding anything in sections 85 and 86, 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 proceeded with,

that authority may 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.

88. (1) In this Act the expression “commanding officer”, in relation to a person charged with an offence, means either the officer for the time being commanding the unit to which the person belongs or is attached, or, if the person belongs or is attached to a part of a unit which is so separated from the unit to which it belongs that the officer commanding that unit cannot effectively exercise his powers as commanding officer over it, the officer commanding that part of the unit, or such other officer having powers of command over that person as may be determined by regulations.

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

(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 having power to convene ordinary courts-martial.

(3) Regulations may confer on officers, or any class of officers, who by or under this Act or the regulations are authorised 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.

89. (1) The charges which may not be dealt with by a commanding officer, the charges which may not be dealt with by an appropriate superior authority and the charges which may not be dealt with summarily by a commanding officer or an appropriate superior authority except with the permission of higher authority, shall be such as may be specified by or under regulations. Any charge not so specified, and, upon obtaining such permission as aforesaid, any charge which may be dealt with summarily with such permission, may be dealt with summarily by a commanding officer or an appropriate superior authority, as the case may be.

Limitation on powers of summary dealing with charges.

(2) In such case as may be specified in that behalf by regulations, the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

Court-Martial: General Provisions

Trial by, and powers of, ordinary court-martial.

90. Subject to this Act, an ordinary court-martial under this Act shall have power to try any person subject to military 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 authorised by this Act for that offence.

Trial by, and powers of, field court-martial.

91. (1) Where an officer commanding any body of the Force on active service—

(a) being an officer to whom under section 86(1) a charge has been submitted for determining how it is to be dealt with; or

(b) being the accused's commanding officer who has investigated a charge which cannot be dealt with summarily or which in his opinion ought not to be so dealt with; or

(c) being the accused's commanding officer or the appropriate superior authority who has investigated a charge on which the accused has elected to be tried by court-martial,

is of opinion that it is not possible without serious detriment to the public service that the charge should be tried by an ordinary court-martial, the officer may (whether or not he is authorised to convene ordinary courts-martial) direct that the charge shall be tried by a field court-martial.

(2) A field court-martial shall have the powers of an ordinary court-martial, except that where the court consists of less than three officers the sentence shall not exceed imprisonment for a term of two years.

Officers having powers to convene courts-martial.

92. (1) An ordinary court-martial may be convened by the Chief of Staff or any officer authorised to convene ordinary courts-martial by the Defence Board.

(2) A field court-martial may be convened by the officer who directed that the charge should be tried by field court-martial.

(3) Any authorisation under this section to convene ordinary 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 his successors;

(c) may be varied or may be revoked either wholly or in part by the Defence Board.

93. (1) An ordinary court-martial shall consist of the president and not less than two other officers:

Constitution
of ordinary
courts-martial.
[O. 15/1970]

Provided that an ordinary court-martial shall consist of five members if—

(a) an officer is to be tried; or

(b) the only punishment or the maximum punishment which can be awarded in respect of a charge before the court is death.

(2) Save as hereinafter provided, an officer shall not be appointed a member of an ordinary court-martial unless he belongs to the Force, is subject to service law and has been an officer therein or in any Commonwealth force for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3) Not less than two of the members of an ordinary court-martial shall be of a rank not below that of captain or corresponding rank.

(4) The president of an ordinary court-martial shall be appointed by order of the convening officer and shall not be under the rank of field officer or corresponding rank unless in the opinion of the convening officer an officer of field or corresponding rank having suitable

qualifications is not, with due regard to the public service, available; and in any event the president of an ordinary court-martial shall not be under the rank of a captain or corresponding rank.

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

(6) An officer under the rank of captain or corresponding rank shall not be a member of an ordinary court-martial for the trial of an officer above that rank.

Constitution of field courts-martial.

94. (1) A field court-martial shall consist of the president and not less than two other officers, or, if the convening officer is of opinion that three officers having suitable qualification are not available without serious detriment to the public service, shall consist of the president and one other officer.

(2) Save as hereinafter provided, the members of a field court-martial shall be officers belonging to the Force and subject to service law.

(3) The president of a field court-martial shall be an officer appointed by the convening officer and shall not be under the rank of captain or corresponding rank.

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

Supplementary provisions as to constitution of courts-martial.

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

Provided that if in the case of a field court-martial it is not practicable in the opinion of the convening officer 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 service law has held, or has acted as one of the persons holding, an enquiry into matters relating to the subject matter of the charge against the accused, shall not sit as a member of an ordinary court-martial or act as a judge advocate at such a court-martial.

(3) If any court-martial is required to be convened at any place where in the opinion of the convening officer the necessary number of officers belonging to the Force and having requisite qualifications is not available to form the court, and cannot be made available with due regard to the public service, the convening officer may, with the consent of the proper military authority, appoint any officer of a Commonwealth force as president in lieu of an officer belonging to the Force or as any other member of the court in lieu of or in addition to an officer or officers belonging to the Force:

Provided that no officer of a Commonwealth force shall be qualified to act in relation to a court-martial unless he is of a rank not lower than that which would have been required in the case of an officer belonging to the Force and has been an officer in a Commonwealth force for the like period or periods as would have been so required.

(4) Where—

(a) the officer convening an ordinary court-martial appoints a captain or an officer of corresponding rank to be president, being of opinion that an officer of field or corresponding rank having suitable qualifications is not with due regard to the public service available;

(b) an officer directs that an offender shall be tried by a field court-martial, being of opinion that it is not possible without serious detriment to the public service that the offender should be tried by an ordinary court-martial, or the officer convening a field court-martial appoints two officers only to be members of the court, being of opinion that three officers having suitable qualifications are not without serious

detriment to the public service available, or appoints himself to be president being of opinion that it is not practicable to appoint another officer as president; or

(c) the officer convening any court-martial appoints an officer, not being an officer belonging to the Force, as president or any other member of the court being of opinion that the necessary number of officers belonging to the Force and having requisite qualifications is not available to form the court and cannot be made available with due regard to the public service,

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

Place for sitting of courts-martial and adjournment to other places.

96. (1) Subject to this section, a court-martial shall sit at such place (whether within or without Guyana) as may be specified in the order convening the court; and the convening officer may convene it to sit at a place outside the 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 accused.

97. (1) An accused about to be tried by any 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 subsection (1) the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of 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.

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

Administration
of oaths.

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

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that, where the evidence is given on behalf of the prosecution, the accused shall not be liable to be convicted 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.

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

Courts-martial
to sit in open
court.

(2) Nothing in subsection (1) shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the 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.

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

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

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

(a) if the senior member of the court is of the rank of captain or corresponding rank or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but

(b) if he is not, the court shall be dissolved.

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

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

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

Decision of
courts-martial.

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

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

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

102. (1) Without prejudice to section 99, the finding of a court-martial on each charge shall be announced in open court.

Finding and
sentence.

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

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

Power to convict of offence other than that charged.

103. (1) An accused charged before a court-martial with an offence under this Act, may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less 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 76 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 76, 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 Guyana, he might have been found guilty of another civil offence, then if the court finds that he has committed that other civil offence he may be convicted of an offence against section 76 in respect of the commission of that other civil offence.

Second Schedule.

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

Rules of evidence.

104. (1) Subject to this Act, the rules of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in Guyana, and no person shall be required in proceedings

before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in Guyana.

(2) Notwithstanding anything in subsection (1), a statutory declaration shall, in a trial by court-martial be admissible as evidence of the facts stated in the declaration in a case where, and to the extent which, oral evidence to the like effect would be admissible in that trial:

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

(b) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused or the commanding officer of the accused has given his agreement in writing to its admission; or

(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 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 Guyana.

Privilege of witnesses and others at courts-martial.

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

Offences by civilians in relation to courts-martial.

106. (1) Where in Guyana any person other than a person subject to military law under this Act—

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

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

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

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

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

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

(g) does any other thing which would, if the 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 the High Court, and that court 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 High Court.

(2) In this section “court-martial” means a court held under service law.

107. If—

Affirmations.

(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 shall be required to make a solemn affirmation in the prescribed form instead of taking an oath.

Confirmation, Revision and Review of Proceedings of Courts-Martial

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

Confirmation of proceedings of courts-martial.

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

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation, or the operation of sections 109 and 110 or the provisions of this Act as to confirmation or approval.

109. At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both.

Petition against finding or sentence.

110. (1) A confirming authority 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—

Revision of findings of courts-martial.

(a) that the finding was against the weight of 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 directions for the reassembly of the court, and shall contain a statement of the reasons for the direction.

(3) On any revision of a finding the court 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 could originally have come at the trial in lieu of the finding under revision.

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

(5) Where on any such revision the court 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 may substitute a different sentence for the original sentence:

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

(6) The confirming authority shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming authority, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations 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:

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

111. (1) Subject to section 110 and to the following provisions of this section, a confirming authority shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming authority.

Powers of confirming authorities.

(2) In lieu of withholding confirmation of the finding of a court-martial, a confirming authority may, if—

- (a) some other finding of guilty could have been validly made by the court-martial on the charge before it; and
- (b) he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding,

substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised.

(3) Where it appears to a confirming authority that a sentence of a 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, not being greater than the punishment or the greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

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

- (a) remit in whole or in part any punishment awarded by the court; or
- (b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

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

(6) 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.

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

Confirming
authorities.

112. (1) Subject to this section, the following shall have power to confirm the finding and sentence of any court-martial:

- (a) the officer who convened the court-martial or any officer superior in command to that officer; or
- (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; or
- (c) failing any such officer as aforesaid—
 - (i) any officer appointed by the Defence Board to act as confirming authority, whether for the particular case or for a specified class of cases; or
 - (ii) the Defence Board.

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

- (a) any officer who was a member of the court-martial; or
- (b) any person who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused; or
- (c) any person who, as appropriate superior authority, investigated the allegations against the accused:

Provided that a person excluded by the foregoing provisions of this subsection may act as confirming authority for a field court-martial, if otherwise having power to do so, where he is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to another confirming authority.

(3) An authorisation empowering the convening of an ordinary court-martial may reserve for confirmation by superior authority findings or sentences or both in such circumstances as may be specified by or under the authorisation, and the powers conferred by subsection (1) shall be exercisable subject to any such reservation.

113. A sentence of death shall not be carried into effect unless it has been approved by the President acting on the recommendation of the advisory authority.

Approval of death sentence by President.

114. (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 109 against the finding or sentence then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after presentation of the petition and after consideration of the matters alleged therein.

Review of findings and sentences of courts-martial.

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

- (a) the President acting on the recommendation of the advisory authority;
- (b) the Defence Board or (so far as the delegation extends) any officer to whom the powers of the Defence Board as reviewing authority, or any of those powers, may be delegated by regulations; or
- (c) any officer superior in command to the confirming officer.

(3) If an appeal or an application for leave to appeal is received by the Registrar of the Supreme Court under Part VI of this Act so much of subsection (1) as requires the review of a finding or sentence against

which a petition has been presented shall thereupon cease to apply to the finding to which the appeal or the application for leave to appeal relates and the sentence passed in consequence of that finding.

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

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

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

(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 authority by section 111(2) to (4) inclusive,

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 sentence of the court duly confirmed.

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

Reconsideration of sentences of imprisonment and detention.

115. (1) Sentences of imprisonment and detention passed by courts-martial may be reconsidered by the Chief of Staff or by such officers (not below the rank of colonel or corresponding rank) as may be from time to time appointed by the Defence Board; 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 part or in whole, 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

116. (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.

Review of
summary
findings and
awards.

(2) The said authority is—

- (a) the Defence Board; 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 authority involved substantial injustice to the accused, the authority may quash the finding.

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

could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

Findings of Insanity, etc.

Provisions
where accused
found insane.

117. (1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations under this Part until the directions of the Minister 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 that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but that at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations under this Part until the directions of the Minister are known.

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

(4) A finding under subsection (1) shall not have effect unless and until the finding has been confirmed by an authority 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 or the confirming authority comes to or substitutes a finding of guilty but insane the confirming authority 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 power to substitute for any finding any other finding which could have been come to by the

court-martial in question) apply in relation to such findings as are provided for by subsection (2) as those provisions apply in relation to other findings of guilty.

Commencement, Suspension and Duration of Sentences

118. A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to section 143 (which empowers the Court of Appeal in certain cases to direct that a sentence shall begin to run from the day on which the Court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

Commencement of sentences.

119. (1) Where any person serving a military 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 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 military 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:

Duration of sentences of imprisonment or detention.

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Regulations 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 Regulations so provide, in the custody of any military authority of any country or territory outside Guyana as respects which arrangements have been made under section 122,

otherwise than on account of an offence committed by him while unlawfully at large, 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 military sentence.

(2) In subsection (1) the expression “civil authority” means a civil authority (whether of Guyana or of any country or territory outside Guyana), authorised by law to detain persons, and includes a policeman.

(3) Without prejudice to subsection (1) where any person serving a military sentence of imprisonment or detention has in accordance with Imprisonment and Detention Regulations been temporarily released on compassionate grounds, 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 after that on which he is released and ending with the day on which he is required to return to custody.

(4) A person who for any period is released as mentioned in subsection (3) or who is otherwise allowed, in pursuance of Imprisonment and Detention Regulations, out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (1) as being unlawfully at large.

(5) A person serving a military 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 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.

(6) References in subsection (5) to release or recall under civil law are references to release or recall in pursuance of the law of the country or territory in which he is serving his sentence.

Restrictions on serving of sentences of detention in prisons.

120. A person shall not be required to serve any part of a military sentence of detention in a military or civil prison:

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Regulations a person serving such a sentence may be temporarily detained in a military or civil prison for any period not exceeding seven days.

121. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under this Part or of Imprisonment and Detention Regulations shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

Special provisions as to civil prisons in Guyana.

122. The President may from time to time make arrangements with the authorities of any country or territory outside Guyana whereby sentences of death passed by courts-martial may in accordance with regulations made under this Part be carried out in establishments under the control of those authorities and military sentences of imprisonment or detention may in accordance with Imprisonment and Detention Regulations be served wholly or partly in such establishments.

Special provisions as to carrying out or serving of sentences outside Guyana.

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

Country in which sentence of imprisonment or detention to be served.

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

(3) Where a person has been sentenced under this Act by a court-martial held out of Guyana to imprisonment or detention for more than twelve months, the confirming or reviewing authority may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to Guyana 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 or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

(4) Any direction of a confirming authority under this section may at any time be revoked by the confirming authority or by a reviewing authority, or superseded by any direction of a confirming authority or a reviewing authority which the authority could have given under subsection (3); and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or superseded as aforesaid.

(5) Any direction given under this section, and the 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.

Duties of officers in charge of prisons and others to receive prisoners.

124. (1) It shall be the duty, in so far as regulations made under this Part or Imprisonment and Detention Regulations so provide, of the superintendent or other person in charge of a prison (not being a military prison) to receive any person duly sent to that prison in pursuance of such Regulations, or regulations made as aforesaid, and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

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

Trial of persons ceasing to be subject to military law under this Act and time limited for trials

125. (1) Subject to section 126, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed, by any person while subject to military law under this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by court-martial (including confirmation, review, and reconsideration) and execution of sentences as continuing subject to military law under this Act notwithstanding his ceasing at any time to be subject thereto.

Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto.

(2) Where, while a person is in military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law 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 subsection (1) and the provisions thereof as to the summary dealing with charges, as having been subject to military law under this Act when the offence was committed or is suspected of having been committed and as continuing subject thereto thereafter.

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

- (a) if he holds any military rank, as to a person having that rank;
- (b) otherwise, as to a person having the rank which he had when last actually subject to military law under 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 private soldier.

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

Limitation of time for trial of offences under this Act.

126. (1) No person shall be tried by court-martial for any offence, other than one against section 33(1), section 34(1), section 41 or section 42 or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent:

Provided that—

(a) in the case of an offence against section 76 where proceedings for the corresponding civil offence must, by virtue of any enactment, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section 76 in substitution for the foregoing provisions of this subsection;

(b) subject to any such limit of time as is mentioned in paragraph (a), a person may be tried by court-martial for a civil offence committed outside Guyana notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney-General 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 Force continuously in an exemplary manner for not less than three years, he shall not be tried for the offence.

(3) A person shall not be triable by virtue of section 125(1) unless his trial is begun within three months after he ceases to be subject to military law under this Act or the trial is for a civil offence committed outside Guyana and the Attorney-General consents to the trial:

Provided that this subsection shall not apply to an offence against section 33(1), section 34(1), section 41 or section 42 or to desertion.

(4) A person shall not be arrested or kept in custody by virtue of section 125(1) for an offence at any time after he has ceased to be triable for the offence.

*Relations between Military and Civil Courts and
Finality of Trials*

127. (1) Save as provided in section 152, nothing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to military law under this Act for any offence.

Powers of civil courts.

(2) Where a person is tried by a civil court for any offence, and he has previously been sentenced by court-martial held under service law to punishment for any act or omission constituting (whether wholly or in part) 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.

128. (1) Where a person subject to military law under this Act—

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

(a) has been tried for an offence by a competent civil court or a court-martial under service law; or has had an offence committed by him taken into consideration by any such court in sentencing him; or

(b) has been charged with an offence under service law, 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 is withheld of a finding by the court-martial that he is guilty of the offence;

(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-martial is withheld or the sentence is quashed;

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

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

(e) a person ordered under section 64(2) or the corresponding provisions of any service law, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

(3) Subject to section 144(2), where confirmation of a finding of guilty of an offence 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 twenty-eight days after the promulgation of the decision to withhold confirmation.

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

Inquiries

129. (1) Subject to and in accordance with rules made under this Part (hereinafter referred to as Board of Inquiry Rules), the Defence Board or any officer empowered by or under such rules so to do, may convene a board of inquiry to investigate and report on the facts relating to—

Boards of Inquiry.

- (a) the absence of any person subject to military law under this Act; or
- (b) the capture of any such person by the enemy; or
- (c) the death of any person where an inquiry into the death is not required to be held by any civil authority; or
- (d) any other matter of a class specified in such rules or referred to such a board by the Defence Board or any such officer as aforesaid,

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matters referred to the board.

(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 and the president of a board of inquiry shall be an officer not below the rank of lieutenant or corresponding rank.

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section 65 or for an offence against section 76 when the corresponding civil offence is perjury.

130. (1) Where a board of inquiry inquiring into the absence of an officer or soldier of the Force 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 days, a record of the report shall in accordance with Board of Inquiry Rules be entered in the service books.

Inquiries into absence.

(2) A record entered in pursuance of subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Defence Board 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.
[21 of 1978]

131. (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 or receiving 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) An order may be made for the seizure or attachment of any property which appears to have been unlawfully obtained or to be the proceeds of any property unlawfully obtained, or into which the proceeds of any property unlawfully obtained have been converted and, upon the making of the order, directions shall be given that the property seized or attached shall be kept or sold, and that it, or the proceeds thereof if sold, shall be held as provided for by the directions until some person establishes a right thereto and, if no person establishes the right within twelve months from the seizure or attachment, the property or the proceeds thereof shall become vested in the Accountant General for the public use and be disposed of accordingly.

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

(5) Where any of the property unlawfully 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 the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any 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 the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court-martial by whom the offender is convicted, by the confirming 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 under this section made by a court-martial shall not have effect until confirmed by the confirming authority; and the provisions of this Part as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.

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

(a) in any case, until the expiration of the period prescribed under Part VI as the period within which an application for leave to appeal to the Court of Appeal against the conviction must be lodged; and

(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned,

and where the operation of such an order as aforesaid is suspended under this section—

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

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

(e) such directions shall be given for securing as far as practicable the preservation of the property in the state in which it is at the time of the making of the directions including directions as to the safe custody and application of any income arising therefrom.

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

c. 10:01

(11) For the purposes of any order made under subsection (3) the provisions of subsections (4) to (10) (inclusive) of section 203 of the Criminal Law (Procedure) Act shall apply *mutatis mutandis* subject to the following modifications—

(a) references to a magistrate or the Court shall be construed and have effect as references to a court-martial;

(b) references to property having been obtained by or being the proceeds of an indictable offence or to a person convicted of an indictable offence shall be construed and have effect as references to property having been unlawfully obtained, or to a person convicted of having unlawfully obtained property; and

(c) references to an appeal shall be construed and have effect as references to an appeal from a court-martial.

Appointment
of judge
advocates.

132. The appointment of a judge advocate to act at any court-martial may be made by the Defence Board or by the convening officer.

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

Promulgation.

134. (1) The record of the proceedings of a court-martial shall be kept in the custody of the Defence Board for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsection (2) and subsection (3) shall be capable of being exercised.

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

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

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

(4) If, on an application in pursuance of either subsection (2) or subsection (3) for a copy of the record of any proceedings the Defence Board 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 to which the certificate relates.

(5) In this section the expression “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 or 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 finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

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

Indemnity for
prison officers
etc.

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

Interpretation of this Part

Interpretation
of Part V.
[4 of 1972]

136. (1) In this Part—

“the advisory authority” means the authority in accordance with whose advice the prerogative of mercy is, in relation to persons convicted by courts-martial, required by the Constitution to be exercised by the President;

“civil prison” means a prison in Guyana 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 or any person for the time being exercising his or his successor’s functions;

“military establishment” means a military prison or any other establishment under the control of the Defence Board where persons may be required to serve military sentences of imprisonment or detention, or a corresponding establishment in a Commonwealth country;

“military prison” means separate premises designated by the Defence Board for persons serving military sentences of imprisonment;

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

“private soldier” includes any soldier who is not a warrant officer or a non-commissioned officer.

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

(3) References in this Part to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender’s commanding officer.

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

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

Rules of Procedure, etc.

137. (1) Subject to the provisions of this section, the Defence Board may make rules (in this Act 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.

Rules of
Procedure.
[4 of 1972]

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

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

(b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary 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 shall make provision for the application of section 98 in any case where the accused requires that 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 court-martial;

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

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

(i) applying in relation to proceedings before commanding officers and appropriate superior authorities and otherwise in relation to proceedings prior to trial by court-martial all or any of the provisions of sections 104, 105, 106 and 107;

(j) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;

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

(l) the forms of orders and other documents to be made for the purposes of any provision of this Part or the rules 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.

(3) Rules made by virtue of subsection (2) (j) of this section shall secure that the power to amend charges shall not be exercisable in circumstances substantially different from those in which indictments are amendable by the High Court, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which indictments 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 may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial, and without prejudice to the generality of the foregoing provision may make provision—

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

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

(5) In subsection (4) references to questions of law include references to questions of joinder of charges and as to the trial of persons jointly or separately.

(6) Rules of Procedure may make provision 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.

(7) Where Rules of Procedure make provision for the matter mentioned in subsection (6), they may also make provision for conferring on the court taking one or more offences into consideration, the power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

Imprisonment
and Detention
Regulations.
[4 of 1972]

138. The Defence Board may make regulations (in this Act referred to as Imprisonment and Detention Regulations) 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 military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them under this Act;

(b) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and 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 military establishments;

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

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

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

139. (1) The Defence Board may make rules (in this Act referred to as Board of Inquiry Rules) with respect to the convening, constitution and procedure of boards of inquiry.

Board of
Inquiry Rules.

(2) Without prejudice to the generality of subsection (1), Board of Inquiry Rules may make provision with respect to all or any of the following matters:

(a) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence was being taken at a court-martial an oath could be dispensed with,

(b) without prejudice to the provisions of section 130, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the rules.

(3) Boards of Inquiry Rules shall contain provision for securing that any witness or other person subject to service law 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 Rules.

140. The Defence Board may make regulations with respect to all or any of the following matters:

Miscellaneous
regulations.

(a) the execution of sentences of death under this Act including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;

(b) field punishment;

(c) any matter which by this Part is required or authorised to be prescribed or for which regulations may be made;

(d) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 137, 138 and 139 and in this section.

LAWS OF GUYANA

102

Cap. 15:01

Defence

Section 140(c) and (d) not to prejudice powers under sections 137, 138 and 139.

141. Nothing in section 140(c) and (d) shall be construed to prejudice the powers conferred by section 137, 138 or 139 upon the Defence Board, which may, in the exercise of such powers, prescribe or provide for matters notwithstanding that regulations with respect thereto may be made under section 140(c) and (d).

PART VI

APPEALS FROM COURTS-MARTIAL

Right of appeal.

142. (1) Subject to the following provisions of this Part, a person convicted by a court-martial may, with the leave of the Court of Appeal, appeal to that Court against his conviction, except in the case of a conviction involving sentence of death.

(2) An appeal to the Court of Appeal shall lie as of right without leave from any conviction of a court-martial involving a sentence of death.

Procedure for applying for leave to appeal or lodging appeal.

143. (1) Leave to appeal to the Court of Appeal shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged, subject to subsection (4) within twenty-eight days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, with the Registrar of the Supreme Court, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

(2) An appeal against a conviction involving a sentence of death shall not be entertained by the Court of Appeal unless the appeal is, within fourteen days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, lodged with the Registrar of the Supreme Court, in the prescribed manner, by or on behalf of the person convicted.

(3) Rules of court may provide that, in such circumstances as may be specified in the said rules, any such application or appeal which is lodged with such person (other than the Registrar) as is specified in the said rules shall be treated, for the purposes of subsections (1) and (2), as having been lodged with the Registrar.

(4) The Court of Appeal may extend the period within which an application for leave to appeal is required to be lodged, whether that period has expired or not.

(5) Where the Court of Appeal dismisses an application for leave to appeal it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismisses the application.

144. (1) Subject to section 145, on an appeal under this Part against a conviction, the Court of Appeal shall allow the appeal if it thinks that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Determination
of appeals in
ordinary cases.

Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) If the Court of Appeal allows an appeal under this Part it shall either quash the conviction or direct that the finding of the court-martial shall be treated as if confirmation thereof had been withheld and, in the latter event, notwithstanding section 128(3), a new trial by court-martial may be held within such time as the Court may order.

145. (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant was not one that could lawfully be passed by the

Powers of
Court of
Appeal in
special cases.

court-martial for the offence of which he was convicted on the other charge the Court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Court of Appeal that the court-martial must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which could lawfully have been passed for that other offence but not being a sentence of greater severity.

(3) Where—

(a) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Court of Appeal that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment; or

(b) an appellant has been convicted of an offence and it appears to the Court of Appeal that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations,

the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations, and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks

proper, being a sentence which could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the Court of Appeal that, although the appellant was guilty of the act charged against him, he was insane at the time the act was done, so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody under section 117 in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

146. The term of any sentence passed by the Court of Appeal, under any of the provisions of section 145 shall, unless the Court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the Court of Appeal shall be deemed for the purposes of this Act to be a sentence passed by the court-martial, being a sentence that has been confirmed.

Commence-
ment of
sentence.

147. No appeal shall lie from the Court to any other court and any determination by the Court of any appeal or other matter which it has power to determine under the provisions of this Part shall be final.

Appeals to be
final.

148. An appellant shall not be entitled to be present at the hearing of an appeal to the Court of Appeal under this Part or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the Court gives him leave to be present, and accordingly any power of the Court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

Proceedings
may be heard
in absence of
appellants.

149. It shall be the duty of the Director of Public Prosecutions on an appeal against conviction by a court-martial to undertake the defence of the appeal.

Defence of
appeals.

LAWS OF GUYANA

106

Cap. 15:01

Defence

Right of appellant to present his case in writing.

150. An appellant may if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

Suspension of death sentence

151. Where a conviction by court-martial involves sentence of death—

(a) the sentence shall not in any case be executed until the expiration of the period mentioned in subsection (2) of section 143 within which an appeal to the Court of Appeal against the conviction shall be lodged; and

(b) if such an appeal is duly lodged, the sentence shall not be executed until the appeal is determined or abandoned.

Person not to be tried again where conviction quashed.

152. Where the conviction of a person by a court-martial for an offence has been quashed under this Part, he shall not be liable to be tried again for this offence by a court-martial or by any other court.

Removal of prisoners for purposes of this Part.

153. Imprisonment and Detention Regulations may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for the purposes of this Part or any place to which the Court of Appeal or a judge thereof may order him to be taken for the purpose of any proceedings of the Court.

Furnishing on appeal, of documents relating to trial.

154. In the case of every appeal, or application for leave to appeal, under this Part to the Court of Appeal against a conviction by court-martial, it shall be the duty of the Secretary of the Defence Board to furnish to the Registrar of the Supreme Court in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the findings or sentence of the court-martial in pursuance of section 110(1)), the proceedings with respect to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted.

155. Nothing in this Part shall affect the exercise by reviewing authorities of the powers conferred by section 114 in respect of a conviction of a court-martial so far as regards the exercise thereof at a time before the lodging with the Registrar of the Supreme Court of an appeal or an application for leave to appeal to the Court against the conviction and nothing in this Part shall affect the exercise by the President of the prerogative of mercy.

Saving of powers of reviewing authorities.

156. In relation to appeals under this Part, the Court of Appeal shall have and may exercise the like powers with respect to—

Supplementary powers of the Court of Appeal.

- (a) legal assistance to an appellant;
- (b) the obtaining and production of documents;
- (c) the receiving and examination of further evidence; and
- (d) the issue of warrants necessary for enforcing its orders and sentences,

as are exercisable by the Court in relation to criminal appeals.

157. In this Part, “prescribed” means prescribed by rules of court.

Interpretation of Part VI.

PART VII

FORFEITURES AND DEDUCTIONS

158. (1) No forfeiture of the pay of an officer or soldier of the Force shall be imposed unless authorised by this Act, other service law or some other enactment and no deduction from such pay shall be made unless so authorised or authorised by regulations.

Forfeitures and deductions; general provisions.

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

(3) The foregoing provisions of this section shall not prevent the making of regulations providing for the imposition of any forfeiture authorised by this Act or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised deductions or 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 soldier of the Force he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed.

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

(6) Any amount authorised to be deducted from the pay of an officer or soldier of the Force may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or soldier 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 of
pay for
absence from
duty.

159. (1) The pay of an officer or soldier of the Force may be forfeited—

(a) for any day of absence in such circumstances as to constitute an offence under section 47 or section 48 or, if his commanding officer so directs, of other absence without leave;

(b) for any day of imprisonment, detention or field punishment awarded under service law 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 under service law, an appropriate superior authority or his commanding officer) of an offence under service law, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

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

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

(b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Force; or

(c) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage,

but subject to the foregoing provisions of this subsection, nothing in subsection (1) (a) shall apply to absence by reason of having been made a prisoner of war.

(3) 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.

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

Deductions for
payment of
civil penalties.

LAWS OF GUYANA

110

Cap. 15:01

Defence

Compensation for loss occasioned by wrongful act or negligence.

161. (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations, it appears to an officer authorised by regulations (in this section and in sections 163, 164 and 165 referred to as “the authorised officer”) that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or soldier of the Force (hereinafter referred to as “the person responsible”).

(2) The authorised officer, may order the person responsible to pay as or towards compensation for the loss or damage, such sum as may be specified in the order, and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under subsection (2) if, in proceedings before a court-martial under service law, 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 such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2).

Deductions for barrack damage.

162. (1) When damage occurs to any premises in which one or more units or parts of such units of the Force are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, and it appears on investigation in accordance with 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 thereof, but that the said persons cannot be identified, any person belonging to any of such units or parts of units may be required

to contribute towards compensation for the damage or loss such amount as may in accordance with regulations be determined to be just, and the amount may be deducted from his pay.

(2) Subsection (1) shall extend to vessels, trains, motor vehicles and aircraft in which units or parts of units are being transported or are otherwise serving and reference to premises, quartering and occupation shall be construed accordingly.

163. (1) Any officer or soldier of the Force against whom an order has been made by the authorised officer under section 161, 164 or 165 may, in accordance with regulations to be prescribed apply to a board of officers for a further examination of the case; and that board shall consider the case, and thereafter may, in relation thereto, if it thinks fit, give directions to the authorised officer; and the authorised officer shall give effect to such directions.

Review of orders and remission of forfeitures and deductions.

(2) Any forfeiture or deduction imposed under sections 159, 160, 161 or 162 or under regulations may be remitted by the Defence Board or in such manner and by such authority as may be provided by such regulations.

164. (1) Where any court in Guyana has made an order against any person (in this section referred to as “the defendant”) for the payment of any periodical or other sums specified in the order for or in respect of—

Enforcement of maintenance and affiliation orders by deduction from pay.

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

[19 of 1990]

and the defendant is an officer or soldier of the Force then (whether or not he or she was an officer or soldier when the said order was made) the authorised officer 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 authorised officer may think fit.

(2) Where to the knowledge of the court making any such order as aforesaid, or any order varying, revoking or reviving any such order, the defendant is an officer or soldier of the Force the court shall send a copy of the order to the Defence Board.

(3) Where such an order as is mentioned in subsection (1) has been made by a court of a Commonwealth country outside Guyana, and the authorised officer is satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the authorised officer shall have the like power under subsection (1) as if the order had been made by such a court as is mentioned in that subsection:

Provided that this subsection shall not apply to an order adjudging a man to be the father of an illegitimate child, and ordering him to pay a sum of money for or in respect of the maintenance of that child or any order varying or reviving such an order, or any order for the payment of costs incurred in obtaining such an order or in proceedings on appeal against, or for the variation, revocation or revival of, such an order.

(4) The authorised officer may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in section 159(1)(a).

(5)(a) In this section—

references to an order made by a court in Guyana include references to an order registered in or confirmed by such a court under any law which makes provision for the enforcement in Guyana of maintenance orders made outside Guyana; references to a husband, 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 husband, 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 or her husband, and to an illegitimate or adopted child of that person

or of his wife or her husband, and in this paragraph “adopted child” means a child adopted (whether alone or jointly) in pursuance of an adoption order made under the Adoption of Children Act.

c. 46:04

(b) For the purposes of this subsection the expression “maintenance order” means an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the husband or wife or other dependants of the person against whom the order is made, and the expression “dependants” means such persons as that person is, according to the law in force in that part of the Commonwealth in which the maintenance order was made, liable to maintain.

165. (1) Where the authorised officer is satisfied that an officer or soldier of the Force is neglecting, without reasonable cause, to maintain or to contribute towards the maintenance of the wife or husband of the officer or soldier or any child of his or hers under the age of sixteen, or under the age of eighteen and attending any university, college, school or other educational establishment, the authorised officer may order such sum to be deducted from the officer’s or soldier’s pay and appropriated towards the maintenance of the wife, husband or child of the officer or soldier as the authorised officer thinks reasonable in the circumstances.

Deductions
from pay for
maintenance of
wife, husband
or child.
[19 of 1990]

(2) On an application made to the authorised officer for an order under subsection (1) the authorised officer, 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 said subsection (1) to take effect pending the further examination of the case.

(3) Where an order is in force under section 164(1) or (3) for the making of deductions in favour of any person from the pay of an officer or soldier of the Force, no deductions from his or her pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer or soldier is in a place where process cannot

be served on him or her in connection with proceedings for the variation of the order of the court in consequence of which the order under section 164 was made.

(4) The authorised officer may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in section 159(1)(a).

Limit of deductions under sections 164 and 165 and effect on forfeiture.
[19 of 1990]

166. (1) The sums deducted under sections 164 and 165 shall not together exceed—

- (a) in the case of an officer, three-sevenths of that person's pay;
- (b) in the case of a warrant officer or a non-commissioned officer not below the rank of sergeant or corresponding rank, two-thirds of that person's pay;
- (c) in the case of a soldier below the rank of sergeant or corresponding rank, three-fourths of that person's pay.

(2) Where any deductions have been ordered under either section 164 or section 165 from a person's pay and (whether before or after the deductions have been ordered) that person incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of an appropriate superior authority or a commanding officer, it shall apply only to so much of that person's pay as remains after the deductions have been made.

(3) For the purposes of subsection (1) (b) and (c) a person having acting rank shall be treated as of that rank.

Service of process in maintenance proceedings.
[19 of 1990]

167. (1) Any process to be served on an officer or soldier of the Force (in this section referred to as "the defendant") in connection with proceedings for any such order of a court in Guyana as is mentioned in section 164(1), or for the variation, revocation or revival of such an order, shall be deemed to be duly served on him or her if served either on him or her or his or her commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

(2) Where any such process is served in Guyana and the defendant will be required to appear in person at the hearing, then if his or her commanding officer certifies to the court by which process was issued that the defendant is under orders for service out of Guyana 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 VIII

GOVERNMENT AND GENERAL PROVISIONS COMMAND

168. (1) Officers and soldiers of the Force shall stand with each other in such order of precedence as may be prescribed by the Defence Board. Command and precedence.
[O. 15/1970]

(2) An officer or soldier of any Commonwealth force may, with the approval of the Defence Board, be—

- (a) attached to the Force if the proper military authority in such territory has placed him at the Board's disposal for that purpose; or
- (b) seconded to the Force.

169. The President shall appoint an officer, being a member of the Force, in whom the command of the Force shall be vested and subject to the terms of such appointment such officer shall have the command of that Force. Command of Force.
[O. 15/1970]

170. The Defence Board may make regulations as to the persons, being members of the Force or a Commonwealth force, in whom command over any part of the Force or member thereof is vested and as to the circumstances in which such command as aforesaid is to be exercised. Regulations as to command.

Powers of command of members of co-operating forces.

171. (1) In so far as powers of command depend on rank, a member of a Commonwealth force who—

(a) is acting with; or

(b) is a member of a body of those forces which is acting with, any body of the Force shall have the like such powers as a member of the Force of corresponding rank; and for the purposes of sections 43 and 81 any such member of the said forces shall be treated as if he were a member of the Force of corresponding rank.

(2) If the whole or any part of the Force is required to act with any other military force, the President may place the Force or such part thereof under the command of the officer commanding such other force.

(3) Where any part of the Force is acting in co-operation with any other force the Chief of Staff or the officer commanding that part of the Force may, in agreement with the officer commanding that other force, define the powers of command and the order of precedence of the officers, warrant officers and non-commissioned officers of the Force in relation to the officers, warrant officers and non-commissioned officers of such other force.

Redress of Complaints

Complaints by officers.

172. (1) If an officer of the Force 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 Defence Board.

(2) On receiving any such complaint it shall be the duty of the Defence Board to investigate the complaint and to grant any redress which appears to it to be necessary or, if the complainant so requires, the Defence Board shall make its report on the complaint to the Minister in order to receive the directions of the Minister.

173. (1) If a soldier of the Force thinks himself wronged in any matter by any officer other than his commanding officer or by any soldier, he may make a complaint with respect to that matter to his commanding officer.

Complaints by soldiers.

(2) If a soldier of the Force thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint with respect thereto to the Defence Board.

(3) It shall be the duty of a commanding officer or the Defence Board, upon receipt of a complaint under this section, to have the complaint investigated and to take any steps for redressing the matter complained of which appear to the officer or Board, as the case may be, to be necessary.

174. Where the commanding officer of a complainant under section 172 or section 173(2) is a member of the Defence Board, such officer shall not sit on the Board when it is dealing with the complaint under section 172(2) or section 173(3), as the case may be.

Restriction on composition of Defence Board dealing with complaint.

Exemptions for officers and soldiers

175. An officer or soldier of the Force shall be exempt from serving on any jury.

Exemptions from jury service.

176. (1) Duties, tolls or dues for embarking from or disembarking on any pier, wharf, quay or landing place, or for passing over any road, ferry or bridge, belonging to the State or under its control shall not be payable in respect of—

Exemptions from tolls, etc. [O. 15/1970]

- (a) members of the Force or a Commonwealth force on duty;
- (b) vehicles in military service;
- (c) goods carried in such vehicles;
- (d) animals in military service.

(2) In subsection (1) the expression “in military service” means employed under proper military authority for the purposes of the Force or any body of a Commonwealth force or accompanying the Force or any body of a Commonwealth force.

Exemption
from execu-
tion.
[O. 15/1970]

177. (1) No judgment, decree or order given or made against an officer or soldier of the Force by any court in Guyana shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon.

(2) No member of a Commonwealth force shall be taken out of service, nor shall execution issue against his person, by virtue of any order or judgment of a court in civil proceedings if such taking out of service or execution is contrary to any agreement between the Government and the government of that territory pursuant to which such member is in Guyana.

Provisions relating to deserters and absentees without leave

Arrest of
deserters and
absentees
without leave.

178. (1) Any policeman may arrest without a warrant any person whom he has reasonable cause to suspect of being an officer or soldier of the Force who has deserted or is absent without leave.

(2) Where no policeman is available any officer or soldier of the Force or any other person may arrest without a warrant any person whom he has reasonable cause to suspect as aforesaid.

(3) Any person in Guyana having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or soldier of the Force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a magistrate’s court.

179. (1) Where a person who is brought before a magistrate's court is alleged to be an officer or soldier of the Force who has deserted or is absent without leave, the following provisions shall have effect.

Proceedings before a civil court where persons suspected of illegal absence.

(2) (a) If he admits that he is illegally absent from the Force and the magistrate is satisfied of the truth of the admission, then—

(i) unless he is in custody for some other cause the magistrate shall; and

(ii) notwithstanding that he is in custody for some other cause the magistrate may,

forthwith either cause him to be delivered into military 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 military custody) or until sooner delivered into such custody.

(b) Any time specified by the magistrate may be extended by the magistrate from time to time if it appears to the magistrate reasonably necessary so to do for the purpose aforesaid.

(3) If he does not admit that he is illegally absent as aforesaid, or the magistrate is not satisfied of the truth of the admission, the magistrate shall consider the evidence and any statement of the accused, and if satisfied that he is subject to military 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 military custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the magistrate shall have power, but shall not be required, to act in accordance with this subsection.

(4) The provisions of law for the time being in force relating to the procedure for the holding of preliminary inquiries by magistrates, and conferring powers of adjournment and remand on magistrates so acting, and with respect to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall, *mutatis mutandis*, apply to proceedings under this section.

Deserters and absentees without leave surrendering to police.

180. (1) Where a person surrenders himself to a policeman as being illegally absent from the Force, the policeman shall (unless he surrenders himself at a police station) bring him to a police station.

(2) The policeman in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case, and if it appears to that policeman that the said person is illegally absent as aforesaid he may cause him to be delivered into military custody without bringing him before a magistrate's court or may bring him before such a court.

Certificates of arrest or surrender of deserters and absentees.

181. (1) Where a magistrate's court in pursuance of section 179 deals with a person as illegally absent, then when that person is delivered into military 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 court.

(2) Where a policeman lawfully causes a person to be delivered into military custody without being brought before a magistrate's court, there shall be handed over a certificate in the prescribed form, signed by the policeman and containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence under section 47 or section

(a) a document purporting to be a certificate under either subsection (1) or subsection (2) of this section, or under the corresponding provisions of any service law (other than this Act) and to be signed as thereby required, shall be evidence of the matters stated in the document;

(b) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or any corresponding officer of a force raised under the law of a Commonwealth territory, or by any other officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender shall be evidence of the matters stated in the certificate.

182. (1) It shall be the duty of the superintendent or other person in charge of a civil prison to receive any person duly committed to that prison by a magistrate as illegally absent and to detain him until in accordance with the directions of the magistrate he is delivered into military custody.

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

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, as it applies to the superintendent of a prison.

Offences relating to military matters punishable by civil courts

183. Any person who falsely represents himself to any military or civil authority to be a deserter from the Force shall be liable on summary conviction to a fine of sixteen thousand two hundred and fifty dollars and to imprisonment for three months.

Punishment for pretending to be a deserter. [6 of 1997]

184. Any person who—

(a) procures or persuades any officer or soldier of the Force to desert or to absent himself without leave;

(b) knowing that any such officer or soldier is about to desert or absent himself without leave, assists him in so doing; or

Punishment for procuring and assisting desertion. [6 of 1997]

LAWS OF GUYANA

122

Cap. 15:01

Defence

(c) knowing any person to be a deserter or absentee without leave from the Force, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be liable on summary conviction to a fine of sixteen thousand two hundred and fifty dollars and to imprisonment for three months, or on conviction on indictment to a fine of one hundred and sixty-two thousand five hundred dollars and to imprisonment for two years.

Punishment for obstructing officers or soldiers in execution of duty.
[6 of 1997]

185. Any person who wilfully obstructs or otherwise interferes with any officer or soldier of the Force acting in the execution of his duty shall be liable on summary conviction to a fine of sixteen thousand two hundred and fifty dollars and to imprisonment for three months.

Punishment for aiding malingering.
[6 of 1997]

186. Any person who—

(a) produces in an officer or soldier of the Force any sickness or disability; or

(b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is permanently or temporarily unfit for service,

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be liable on summary conviction to a fine of thirty-two thousand five hundred dollars and to imprisonment for three months, or on conviction on indictment to a fine of one hundred and sixty-two thousand five hundred dollars and to imprisonment for two years.

Unlawful purchase etc. of military stores.
[6 of 1997]

187. (1) Any person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall be guilty of an offence, unless he proves either—

(a) that he did not know, and could not reasonably be expected to know, that the chattels in question were military stores; or

(b) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent; or

(c) that those chattels had become the property of an officer of the Force who had retired or ceased to be such an officer, or of a soldier of the Force who had been discharged, or of the personal representatives of a person who had died,

and shall be liable on summary conviction to a fine of thirty-two thousand five hundred dollars and to imprisonment for three months, or on conviction on indictment to a fine of one hundred and sixty-two thousand five hundred dollars and to imprisonment for two years.

(2) A policeman may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the person charged with the execution of the warrant who shall bring the person in whose possession or keeping the property is found before a magistrate's court.

(4) In this section—

“acquire” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

“dispose” means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);

“military stores” means any chattel of any description belonging to the Government, which has been issued for use for military purposes or is held in store for the purpose of being so issued when required, and includes any chattel which had belonged, and had been issued or held, as aforesaid at some past time.

(5) For the purposes of subsection (3) property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

Illegal dealings
in documents
relating to pay,
pensions,
mobilization,
etc.
[O. 15/1970
6 of 1997]

188. (1) Any person who—

- (a) as a pledge or a security for a debt, or
- (b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person’s service in the Force or a Commonwealth force shall be guilty of an offence against this section.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid or any official document issued in connection with the mobilization or demobilization of the Force or any Commonwealth force or any member thereof, shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine of thirty-two thousand five hundred dollars and to imprisonment for three months.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

189. (1) Any person who—

(a) being a person who is not serving in the Force or a Commonwealth force, without authority wears in a public place the uniform of any of those forces or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform; or

(b) without authority uses or wears any military decoration, or any badge, wound stripe or emblem supplied or authorised by the Defence Board or by the Government of a Commonwealth territory; or

(c) uses or wears any decoration, badge, wound stripe, or emblem so nearly resembling any decoration, badge, stripe or emblem mentioned in paragraph (b), as to be calculated to deceive; or

(d) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, stripe or emblem as is mentioned in paragraph (b),

Unauthorised
use of and
dealing in
decorations,
etc.
[O. 15/1970
6 of 1997]

shall be guilty of an offence against this section:

Provided that nothing in this subsection shall—

(a) prevent any persons from wearing any uniform or dress in the course of a stage play performed in a place duly licensed or authorised for the public performance of stage plays or in the case of a music hall or circus performance, or in the course of any *bona fide* military representation; or

(b) prohibit the use and wearing of ordinary regimental badges or of brooches or ornaments representing them.

(2) Any person who purchases or takes in pawn any military decoration awarded to any member of the Force or any Commonwealth force, or solicits or procures any person to sell or pledge any such

decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence against this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of those forces.

(3) Any person guilty of an offence against this section shall be liable on summary conviction to a fine of sixteen thousand two hundred and fifty dollars and to imprisonment for three months.

General provisions as to evidence.

Provisions as to evidence

190. (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 questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person—

(a) was or was not serving at any specified time or during any specified period in the Force or in any Commonwealth force or was discharged from any part of those forces at or before any specified time; or

(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, posted or transferred to any part 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 authorised to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by or on behalf of the Defence Board or the Chief of Staff be evidence of the matters stated in the document.

(5) A record made in any prescribed service book or other prescribed document being a record made in pursuance of service law or regulations, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by a 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 Defence Board or the Chief of Staff and to contain, signify or notify instructions, orders, appointments or matters given, made or determined by the Defence Board or the Chief of Staff shall be evidence of the instructions, orders, appointments or matters and that they were given, made or determined as aforesaid.

(7) A certificate purporting to be issued by or on behalf of the Defence Board, and stating—

- (a) that a decoration of a description specified in or annexed to the certificate is a military decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the Defence Board or by the Government of a Commonwealth territory,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any formation or unit or body of troops; or
- (b) any command or other area, garrison or place; or

(c) any ship, train or aircraft,

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

Proof of
outcome of
civil trial.

191. (1) Where a person subject to military 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 court, or a judge, or a magistrate, 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) A document purporting to be a certificate under this section and to be signed by the Registrar of the court, or a judge, or a magistrate, shall, unless the contrary is shown, be deemed to be such a certificate.

Evidence of
proceedings of
court-martial.

192. (1) The original record of the proceedings of a court-martial under service law purporting to be signed by the president of the court and being in the custody 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 record of the proceedings of a court-martial under service law or any part thereof and to be certified by the person having the lawful custody of the record to be a true copy shall be evidence of the contents of the record or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Miscellaneous Provisions

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

Temporary reception in civil custody of persons under escort.

(2) In this section "civil prison" has the meaning ascribed to it in section 136.

194. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Force shall be void at law.

Avoidance of assignment of or charge on military pay, pension, etc. [O. 15/1970]

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

195. A document in the form of a statutory declaration, purporting to have subscribed thereto the signature of an officer of the Force or any Commonwealth force, being an officer of a rank not below that of major or corresponding rank, in testimony of its having been taken before him outside Guyana from a person subject to military law under this Act and containing in the 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, in the absence of proof to the contrary.

Statutory declarations taken outside Guyana. [O. 15/1970]

PART IX

RESERVE

Composition
of Reserve.

196. The Reserve shall consist of two classes which shall be constituted as follows:

a first class consisting of—

- (a) officers appointed or transferred to the said class;
- (b) soldiers enlisted or deemed to be enlisted or re-engaged in pursuance of this Part for service in the said class;
- (c) soldiers of the second class of the Reserve who have, after written application made by them in that behalf to the competent military authority, been accepted by that authority for service in the first class;

a second class consisting of—

- (a) officers appointed or transferred to the said class;
- (b) soldiers who are by virtue of Part IV members of the Reserve after the termination of their colour service.

Enlistment and
re-engagement
in the Reserve.

197. (1) The term for which a person enlisting in the first class of the Reserve may be enlisted shall be such a term beginning with the date of his attestation as may be prescribed.

(2) A person enlisting in the first class of the Reserve shall be attested in the same manner as a recruit in the regular Force and the following provisions of Part IV, that is to say—

- (a) section 18 (which relates to the mode of enlistment and attestation);
- (b) section 30 (which relates to the validity of attestation and enlistment), omitting the reference in subsection (1) of that section to the receipt of pay and substituting for the reference thereto in subsection (2) of that section a reference to the performance of any service; and

(c) section 31 (which makes recruits punishable for false answers),

shall apply in like manner as if they were re-enacted in this Part with the substitution for references to the regular Force of references to the Reserve.

(3) A person enlisting in the first class of the Reserve may be attested by any officer and the provisions of Part IV mentioned in subsection (2) of this section together also with section 68 (which relates to false answers on enlistment), shall in their application to the Reserve be construed as if the expression "Recruiting Officer" included any officer of the Force.

(4) Any soldier of the Reserve who at any time has completed, or is within six months before completing, the term for which he enlisted or re-engaged in pursuance of this Part, or the term for which he is liable to serve in that Reserve under Part IV, as the case may be, may with the approval of the competent military authority re-engage for such further period or periods of service in the Reserve as may be prescribed.

198. (1) Subject to this section, every officer and soldier of the Reserve shall attend for training at such place or places and for such periods as may be determined by the Defence Board and shall fulfil such conditions relating to training as may be prescribed.

Training of
Reserve.

(2) The requirements of this section may be dispensed with in whole or in part as respects any unit of the Reserve, by the Defence Board, and as respects any individual officer or soldier of the Reserve by his commanding officer subject to any general directions of the Defence Board.

(3) Nothing in this section shall be construed as preventing an officer or soldier of the Reserve, undergoing voluntary training in addition to any training referred to in subsection (1).

LAWS OF GUYANA

132

Cap. 15:01

Defence

Call out of first class of Reserve on temporary service.

199. (1) The Defence Board may, at any time when occasion appears to require, call out the first class of the Reserve, or as many officers and soldiers of that class as they think is necessary, on temporary service.

(2) Officers and soldiers called out for service under this section shall not be liable to serve at any one time for a period exceeding two months.

Call out of Reserve on permanent service.

200. (1) In the event of a state of war being declared or of insurrection, hostilities or public emergency, it shall be lawful for the President by proclamation to direct that the Reserve, or either class thereof, shall be called out on permanent service.

(2) Upon the making of a proclamation under subsection (1), the Defence Board shall call out the Reserve, or the class thereof so directed to be called out, as the case may be, or as many officers and soldiers of the Reserve or of that class as it thinks is necessary, on permanent service.

(3) Every officer and soldier of the Reserve when called out on permanent service shall be liable to continue in service until his services are no longer required.

Attendance upon call out.

201. (1) Where the whole or any part of the first class of the Reserve is called out on temporary service or on permanent service, it shall be the duty of every officer and soldier belonging to that class, or the part of that class so called out, as the case may be, to attend in person at such place or places as may be prescribed:

Provided that no officer or soldier of the said class shall be liable to be proceeded against for an offence under this Act by reason of his failure to attend as aforesaid unless he has been served with a notice under subsection (2) requiring him to attend.

(2) In the event of a call out under section 199 or 200, the Defence Board may cause any officer or soldier liable to such call out to be served with a notice requiring him to attend at the time and place therein specified.

(3) A notice under subsection (2) may be served on any officer or soldier by—

- (a) being delivered to him personally;
- (b) being left at his last known address;
- (c) being sent by registered post addressed to him at his last known address.

202. Where an officer or soldier of the Reserve is called out on temporary service or on permanent service he shall, for the purposes of section 208 be deemed to be so called out with effect from either—

Effective time of call out.

- (a) the time of his attendance under section 201(1); or
- (b) the time specified in any notice served under subsection (2) of that section,

whichever time (in the case of an officer or soldier to whom subsection (1) of that section applies) is the earlier.

203. Where any officer or soldier of the Reserve has been called out on temporary service or on permanent service, the Defence Board may at any time thereafter give such directions as it may think fit for terminating the service of any officer or soldier so called out but without prejudice to the power of the Defence Board by notice served under section 201 to call out for further service any officer or soldier whose service has been terminated by directions given under this section.

Termination of service.

204. Every officer and soldier of the Reserve may, when called out on temporary service or on permanent service or when undergoing training, be posted or attached to any unit of the regular Force or the Reserve.

Posting or attachment of members of Reserve.

205. (1) Any officer or soldier of the Reserve in Guyana who, without leave lawfully granted or other reasonable excuse, (the proof whereof shall lie on him) fails to appear at such time and place as shall be appointed for annual camp, or at the time and place specified in any notice under section 201(2) shall—

Punishment for non-attendance.
[6 of 1997]

(a) if called out on permanent service, be guilty according to the circumstances, of desertion within the meaning of section 47 or of absenting himself without leave within the meaning of section 48; or

(b) if called out on temporary service or due to attend annual camp, be guilty of absenting himself without leave within the meaning of section 48.

(2) Any officer or soldier of the Reserve who commits any offence under this section shall be liable—

(a) to be tried by court-martial, and on conviction shall be punishable as for an offence under section 47, or, as the case may be, section 48; or

(b) to be tried by a court of summary jurisdiction and on summary conviction shall be liable to a fine of thirteen thousand dollars and in default of payment to imprisonment for six months.

(3) Section 81 shall apply to officers and soldiers of the Reserve who commit an offence against this section as it applies to officers and soldiers of the regular Force.

(4) Where an officer or soldier of the Reserve fails to appear at the time and place appointed for training or at the time and place specified in any notice under section 201(2), and his absence continues for not less than twenty-one days, an entry of such absence shall be made by an officer in the service books and such entry shall be *prima facie* evidence of the fact of such absence.

Wrongful sale
etc. of public
property.
[6 of 1997]

206. If any person designedly makes away with, sells or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or soldier of the Reserve, or wrongfully refuses or neglects to deliver up on demand anything issued to him as such officer or soldier the value thereof shall be recoverable from him on complaint by any officer of the Force to a court of summary jurisdiction and he shall also, for any such offence of designedly making away with, selling or pawning, or wrongfully destroying as aforesaid, be liable on summary conviction to a fine of three thousand two hundred and fifty dollars.

207. (1) A soldier of the Reserve may be discharged by the competent military authority at any time during the currency of any term of service in the Reserve upon such grounds as may be prescribed.

Discharge from Reserve.

(2) A soldier of the first class of the Reserve, other than a soldier who is a member of the Reserve by virtue of the provisions of Part IV, shall, unless that class is called out on permanent service, be entitled to be discharged before the end of his current term of service on complying with the following conditions:

- (a) giving to his commanding officer three months' notice in writing of his desire to be discharged; and
- (b) delivering up in good order, fair wear and tear only excepted, all arms, clothing and equipment, being public property issued to him or, in cases where for any good or sufficient cause the delivery of the property aforesaid is impossible, paying the value thereof.

208. The provisions of Part V relating to the award of fines and stoppages, and the provisions of Part VII shall not apply to officers and soldiers of the Reserve except when called out on permanent service or on temporary service or when serving on such permanent staff of the Reserve as may be employed.

Application of Parts V and VII of this Act.

PART X

THE COAST GUARD

209. (1) There is hereby established the Coast Guard which shall comprise those officers and soldiers of the Force serving as members of the Maritime Corps of the Force or, after the enactment of this Part, appointed to or from the Force as members of the Coast Guard.

Establishment and special duties of Coast Guard.
[4 of 1990]

(2) The members of the Coast Guard shall be primarily employed as a coast-watching force, maintaining a state of readiness to function as a specialised service, enforcing or assisting in the enforcement of all applicable laws on and under the high seas and waters subject to the jurisdiction of Guyana.

(3) Without prejudice to the generality of subsection (2) the members of the Coast Guard shall—

(a) enforce the provisions of every law relating to—

- (i) the regulation of any river, harbour or port of Guyana;
- (ii) quarantine;
- (iii) immigration;
- (iv) fisheries;
- (v) the territorial sea, continental shelf, exclusive economic zone and fishery zone of Guyana;
- (vi) safety at sea;
- (vii) narcotic drugs and psychotropic substances,

Third
Schedule.

including the provisions of the laws mentioned in the Third Schedule;

(b) detect and prevent the contravention of laws relating to revenue and customs;

(c) prevent persons from boarding, holding or clinging to any vessel without the permission of the master of the vessel, and, if necessary, remove any such person from the vessel.

(4) For the purposes of carrying out their duties the members of the Coast Guard shall have the same powers, authorities and privileges as are conferred by law on, and shall be liable to all the responsibilities of, members of the Police Force.

Powers of
members of
Coast Guard
with respect to
vessels.
[4 of 1990]

210. (1) Any member of the Coast Guard may—

(a) cause any vessel within the territorial sea or in any port, harbour, bay, river, roadstead or creek in Guyana that he reasonably suspects is being used or employed in any unlawful operation or enterprise, to be boarded, or stopped and boarded and searched;

(b) after demand and refusal of any key in respect of any vessel, break open any receptacle or break down any door, if he reasonably suspects that there is on board the vessel any merchandise or other property that has been stolen or

unlawfully obtained or any article prohibited to be exported or imported;

(c) direct, for the purposes of any lawful examination, investigation or inquiry, that the vessel be taken to such place as he may specify;

(d) remain on board any such vessel for such reasonable time as he thinks necessary;

(e) deliver, any property that he reasonably suspects to have been stolen or unlawfully obtained or any article prohibited to be imported or exported and the person in whose possession it is found, with all practicable speed, into the custody of a member of the Police Force to be dealt with in accordance with section 21 of the Police Act and otherwise according to law; c. 16:01

(f) where it shall appear that a breach of any law has been committed rendering such vessel or merchandise or other property, or any part thereof, on board of such vessel liable to forfeiture, seize such vessel or such merchandise, or both, and deal with the seizure according to the aforesaid law.

(2) Any member of the Coast Guard acting in the execution of any of the provisions of this section may—

(a) pursue and arrest without warrant or take any other lawful and appropriate action against, whether he has landed or not, any person upon reasonable suspicion of having committed or being about to commit a criminal offence, and a person arrested under this section without a warrant, shall be taken before a magistrate as soon as practicable after he is taken into custody:

Provided that he may, as soon as practicable after his arrest, be delivered or conveyed and delivered into custody of a member of the Police Force to be dealt with in accordance with section 21 of the Police Act and otherwise according to law;

(b) take such steps as are reasonably justifiable in the circumstances of the case in order to compel compliance with any directions given in pursuance of any such provisions.

LAWS OF GUYANA

138

Cap. 15:01

Defence

(3) Subject to section 209 (4) no member of the Coast Guard shall be liable for any loss or damage to any vessel referred to in subsection (1) or loss or injury to any person on board any such vessel, occasioned in the execution of his duty.

Obstruction of officers or soldiers of the Force.
[4 of 1990
6 of 1997]

211. Any person who—

(a) assaults, obstructs, resists or wilfully delays any officer or soldier of the Force acting in execution of any of the provisions of this Part; or

(b) fails to comply, without reasonable excuse, the proof whereof shall lie upon him, with any directions given in pursuance of such provisions,

shall be liable on summary conviction to a fine of three thousand dollars and to imprisonment for twelve months.

Powers under laws mentioned in Third Schedule.
[4 of 1990]

212. (1) Any officer or soldier of the Force may in the pursuance of his duties as a member of the Coast Guard enforce or assist in the enforcement and administration of the laws mentioned in the Third Schedule, and may arrest without a warrant any person who commits an offence against any such laws, where a breach of such laws renders a person liable to arrest.

(2) A member of the Coast Guard who arrests any person pursuant to subsection (1) shall deliver the person into the custody of a member of the Police Force to be dealt with according to law.

Hazarding or loss of ship.
[4 of 1990]

213. Any person who being subject to military law under this Act causes or allows to be lost, stranded or hazarded, any ship belonging to the Force or being used by the Force shall, on conviction by court-martial, be liable, if he acts wilfully or with wilful neglect, to imprisonment or any less punishment; and in any other case to imprisonment for a term of two years or any less punishment, provided by this Act.

Provisions not in derogation.
[4 of 1990]

214. The provisions of this Part shall be in addition to and not in substitution, derogation or limitation of the provisions of any other written law.

PART XI

APPLICATION OF THE LAW AND SUPPLEMENTARY PROVISIONS

215. (1) Subject to the modifications hereinafter specified, where any unit is on active service, Part V shall apply to any person who is employed in the service of that unit or any part or member thereof, or accompanies the said unit or any part thereof, and is not subject to service law, as the said Part V applies to persons subject to military law under this Act.

Application of
Act to
civilians.
[6 of 1997]

(2) The said modifications are the following—

(a) the punishments 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 three thousand two hundred and fifty dollars but no other punishment;

(c) the following provisions shall have effect in substitution for section 81(2) to (4) inclusive that is to say, that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer subject to service law;

(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 soldiers;

LAWS OF GUYANA

140

Cap. 15:01

Defence

(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 appointed by the officer authorised to convene a court-martial;

(g) for references in sections 125 and 126 to being, continuing, or ceasing to be subject to this Act there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that Part V applies and subsection (3) of section 125 shall not apply.

(3) Any fine awarded by virtue of this section, whether by a court-martial or the commanding officer shall be a debt due to the Government, which shall be recoverable by way of an action before a court of summary jurisdiction at the suit of any officer of the Force.

Application of
the Act.
[4 of 1972]

216. (1) The Minister may by order declare that officers, warrant officers, and non-commissioned officers, who being members of the armed forces of any Commonwealth country, are subject to the military law of such country and are seconded to serve with the Force or any part thereof, shall remain subject to the military law of such country and shall not be subject to military law under this Act.

(2) In the event of a person referred to in subsection (1) committing an offence against the military law applicable to him, he may be held, tried and punished in Guyana according to such military law for the offence thereunder.

Power to make
regulations.
[O. 15/1970
12 of 1974]

217. (1) Subject to the foregoing provisions of this Act, the Defence Board may make regulations for the better carrying out of the provisions of this Act and generally for the good government and organisation of the Force and for providing for matters required by this Act to be prescribed and without prejudice to the generality of the foregoing such regulations may make provisions with respect to all or any of the following matters:

(a) the enlistment of persons into, and the discharge of persons from, the regular Force and generally for the carrying into effect of Part IV, including the prescribing of the neces-

sary forms and the administration of oaths and affirmations;

(b) determining to what extent and under what conditions colour service in any Commonwealth force may be counted as colour service in the regular Force;

(c) the pay, allowances, pensions, and gratuities of officers and soldiers and of their dependants surviving them, and the deductions therefrom and the forfeiture thereof (including the reckoning for pay, pensions and gratuities of service of the State, other than in the Force, prior to the commencement of service in that Force);

(d) the description, supply, use and disposal of arms, accoutrement, clothing and other stores;

(e) the enlistment of persons into and the discharge of persons from the Reserve including the prescribing of the necessary forms and the administration of oaths and affirmations;

(f) the calling out of officers and soldiers of the Reserve on temporary service, on permanent service and for training including prescribing the manner in which notification of the places and times appointed for training is to be given;

(g) requiring officers and soldiers of the Reserve to report themselves from time to time and generally for the carrying into effect of Part IX;

(h) prohibiting, restricting and regulating the holding of meetings within the limits of any camp or other military establishment and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;

(i) in respect of matters for which regulations may be made under the foregoing provisions of this Act, other than under Part III and Part VI.

(2) The pensions and gratuities of officers and soldiers and of their dependants surviving them payable by virtue of regulations made under subsection (1) shall be a charge upon the Consolidated Fund.

LAWS OF GUYANA

142

Cap. 15:01

Defence

Powers exercisable in subsidiary legislation.

218. (1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases, and to make different provisions for different classes or cases, and for the purposes of any such instrument classes of cases may be defined by reference to any circumstances specified in the instrument.

(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 persons named therein whether or not such persons are members of the Force or of any Commonwealth force, 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 conditions shall be fulfilled and provide for appeal against any such order, requirement or direction.

Execution of orders, instruments, etc.

219. Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorised to be made under this Act by any military officer or authority may be signified under the hand of any officer authorised in that behalf, and any instrument signifying such an order, determination, direction or appointment and purporting to be signed by an officer stated therein to be so authorised shall unless the contrary is proved be deemed to be signed by an officer so authorised.

Powers of members of the Force with respect to vessels.

220. (1) It shall be lawful for any officer or soldier in command of any ship of the Force, in any case where he reasonably suspects that any vessel within the territorial waters or in any bay, roadstead, river or creek of Guyana is engaged or employed in any unlawful operation or enterprise, to cause such vessel to be boarded, or stopped and boarded, and any and every part thereof searched with any assistance; and he may, for the purpose of any lawful examination, investigation or inquiry, direct that such vessel proceed to such place as he may specify.

(2) It shall be lawful for any officer or soldier acting in the execution of any of the provisions of this section—

(a) to pursue and arrest without a warrant any person upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(b) after demanding and failing to obtain the keys, to break open any door or receptacle; or

(c) to take all such steps as are reasonably justifiable in the circumstances of the case in order to compel compliance with any directions given in pursuance of any such provisions.

(3) No officer or soldier shall be liable as a result of any loss or damage to any such vessel as aforesaid, or of any injury to any person on board the same, occasioned in consequence of any failure to comply with any directions given as aforesaid.

(4) When a person is arrested under this section without a warrant, he shall be taken before a magistrate as soon as practicable after he is taken into custody:

Provided that he may, as soon as practicable after his arrest, be delivered or conveyed and delivered into the custody of a policeman to be dealt with in accordance with section 21 of the Police Act and otherwise according to law. c. 16:01

(5) Every person who assaults, obstructs, resists or wilfully delays any officer or soldier acting in execution of any of the provisions of this section, or without reasonable excuse (the proof whereof shall lie upon him) fails to comply with any directions given in pursuance of any such provisions, shall be liable on summary conviction to a fine of five hundred dollars and to imprisonment for twelve months.

LAWS OF GUYANA

144

Cap. 15:01

Defence

s. 13(3)

FIRST SCHEDULE

STATE COMMISSION

I, President of Guyana do give to

Greetings and reposing especial trust in your loyalty, courage and good conduct, do by these presents constitute and appoint you to be an officer in the Guyana Defence Force [for years]* from theday of 19.....

You are therefore carefully and diligently to discharge your duty as such an officer in the rank ofor in such other rank as you may from time to time hereafter be promoted or appointed and you are in such manner and on such occasions to exercise and well discipline in their duties, such officers and soldiers as may be placed under your orders from time to time and use your best endeavours to keep them in good order and discipline. I do hereby command, all such officers and soldiers to obey you as their superior officer, and you to observe and follow such orders and directions as from time to time you shall receive from me or any of your superior officers in pursuance of the trust hereby reposed in you.

Given at this day of 19 President.

* to be omitted in the case of a commission granted for an indefinite period.

SECOND SCHEDULE

s. 1:03

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

Offence Charged	Alternative Offence
1. Any offence against section 33(1).	1. Any offence against section 33(2).
2. Any offence against section 34(1).	2. Any offence against section 34(2).
3. Any offence against section 41(1).	3. Any offence against section 41(2).
4. Communicating with or giving intelligence to the enemy, either with intent to assist the enemy or without authority.	4. Disclosing information without authority.
5. Striking his superior officer.	5. (a) Using violence to his superior officer otherwise than by striking him. (b) Offering violence to his superior officer.
6. Using violence to his superior officer otherwise than by striking him.	6. Offering violence to his superior officer.
7. Using threatening language to his superior officer.	7. Using insubordinate language to his superior officer.
8. Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally.	8. Disobeying a lawful command.

LAWS OF GUYANA

146

Cap. 15:01

Defence

Offence Charged	Alternative Offence
9. Desertion.	9. Absence without leave.
10. Attempting to desert.	10. Absence without leave.
11. Stealing any property.	11. Fraudulently misapplying the property.
12. Any offence against section 56 of this Act involving wilfulness.	12. The corresponding offence involving negligence.
13. Any offence against section 61(1).	13. Any offence against section 61(2).
14. Any offence against section 62(1) involving striking.	14. (a) The corresponding offence involving the use of violence other than striking. (b) The corresponding offence involving the offering of violence.
15. Any offence against section 62 involving the use of violence other than striking.	15. The corresponding offence involving the offering of violence.

LAWS OF GUYANA

Defence

Cap. 15:01

147

THIRD SCHEDULE

ss. 209 (3)
212 (1)
[4 of 1990]

- | | |
|--|-------------------------------|
| 1. Immigration Act | Cap. 14:02 |
| 2. Police Act | Cap. 16:01 |
| 3. Law of Merchant Shipping Act | Cap. 49:01 |
| 4. Carriage of Goods by Sea Act | Cap. 49:02 |
| 5. Passengers Act | Cap. 49:03 |
| 6. Transport and Harbours Act | Cap. 49:04 |
| 7. Government Wharves Act | Cap. 49:05 |
| 8. Government and Contract Steamer (Traffic) Act | Cap. 49:06 |
| 9. Shipping Casualties (Investigation and Prevention) Act | Cap. 49:07 |
| 10. Wrecks Removal Act | Cap. 49:08 |
| 11. River Navigation Act | Cap. 50:01 |
| 12. Demerara River Navigation Markers Act | Cap. 50:02 |
| 13. Fisheries Act | Cap. 71:08 |
| 14. Customs Act | Cap. 82:01 |
| 15. The Collision Regulations
(Ships and Seaplanes on Water)
and Signals of Distress (Ships)
Order 1965 | S.I. 1965
No. 1525
U.K. |
| 16. Maritime Boundaries Act | Cap. 35:11 |

LAWS OF GUYANA

148

Cap. 15:01

Defence

17. Narcotic Drugs and Psychotropic
Substances (Control) Act

Cap. 100:01
