

CAYMAN ISLANDS



DEFENCE LAW, 2020

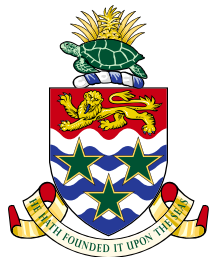
(Law 49 of 2020)

Supplement No. 3 published with Legislation Gazette No. 87 dated 1st December, 2020.

PUBLISHING DETAILS



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CAYMAN ISLANDS

(Law 49 of 2020)

I Assent,

**Martyn Roper**
Governor

Date: 30th day of November, 2020

DEFENCE LAW, 2020

(Law 49 of 2020)

A LAW TO PROVIDE FOR THE ESTABLISHMENT OF A REGIMENT FOR THE ISLANDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY**Short title and commencement**

1. (1) This Law may be cited as the Defence Law, 2020.
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

Interpretation

2. In this Law —

“**Armed Forces Act**” means the *Armed Forces Act 2006* (UK), or any Act replacing that Act;

“**arms**” includes batons, handcuffs and other means of restraints, protective vests, tasers and pepper spray;

“**Board**” means the Defence Board established under section 9;

“**Cayman Islands Regiment**” means the military force established under section 4 and referred to as the Regiment;

“**Commanding Officer**” means the officer in command of the Cayman Islands Regiment;

“**days’ pay**” shall be calculated by reference to the basic pay scale for a soldier;

“**Defence Medical Officer**” means the medical officer appointed under section 11;

“**embodied**”, in relation to the Regiment or a part thereof, means embodied under section 28;

“**exempted person**” means a person exempted under section 18;

“**firearm**” has the meaning assigned by section 2(1) of the *Firearms Law (2008 Revision)*;

“**Governor’s Orders**” means orders made by the Governor under section 13;

“**Her Majesty’s armed forces**” means the regular and reserve forces of the Royal Navy, Her Majesty’s air forces and Her Majesty’s military forces;

“**Her Majesty’s air forces**” and “**Her Majesty’s military forces**” do not include any Commonwealth or British Overseas Territory Force;

“**Her Majesty’s regular forces**” means the Royal Navy and Her Majesty’s regular military and air forces, and includes any similar naval, military or air forces raised in any part of Her Majesty’s dominions, but does not include reservists;

“**military offence**” means an offence specified in Schedule 2;

“**Minister**” means the Minister to whom functions relating to the operations of the Regiment are delegated under section 8(b);

“**officer**” means a commissioned officer in the Regiment;

“**prescribed**” means prescribed by or under *Governor’s Orders*;

“**soldier**” means a member of the Regiment below the rank of Lance Corporal; and

“**summary court**” means a court of summary jurisdiction constituted in accordance with the *Summary Jurisdiction Law (2019 Revision)*.

Military service to be performed in and outside of the Islands

3. A member of the Regiment may be required to perform military services, including training and non-combatant services, both in and outside of the Islands in accordance with this Law.



Continuation of the Regiment

4. Subject to, and in accordance with this Law, there continues to be raised and maintained in the Islands a reserve military force known as the Cayman Islands Regiment consisting of a reserve force and shall comprise such number of officers and persons as may from time to time be determined by the Governor.

Duties of the Regiment

5. (1) The Regiment is responsible for —
- (a) the defence of the Islands;
 - (b) assisting the Royal Cayman Islands Police Service and the Coast Guard when called upon to do so by the Governor; and
 - (c) providing such humanitarian assistance and disaster relief and other duties as the Governor, after consultation with the Premier, determines.
- (2) In the performance of their duties, members of the Regiment may, with the authority of the Commanding Officer or the delegate of the Commanding Officer, carry firearms.

Voluntary enlistment

6. The Regiment shall be raised and maintained by means of voluntary enlistment.

Governor acts in the Governor's discretion

7. Except as provided otherwise in this Law, in the exercise of the Governor's powers and duties under this Law and any other enactment relating to matters of defence, including armed forces, the Governor shall act in the Governor's discretion.

Delegation of Governor's functions relating to enlistment and other duties

8. The Governor, acting in the Governor's discretion, may —
- (a) delegate functions under this Law to the Deputy Governor;
 - (b) delegate functions relating to the operations of the Regiment to any Minister after consultation with the Premier; and
 - (c) by written notice to the Deputy Governor or to the Minister, at any time, revoke any functions so delegated.

PART 2 – DEFENCE BOARD; DEFENCE MEDICAL OFFICER**Defence Board**

9. (1) The Governor shall, by notice, appoint a Board called the Defence Board which shall comprise nine members and —
- (a) two of the members shall be appointed on the advice of the Premier; and



- (b) one of the members shall be appointed on the advice of the Leader of the Opposition,
and the notice shall be published in the *Gazette*.
- (2) A person appointed to be a member of the Board shall hold office for a term of three years and shall be eligible for re-appointment.
- (3) There shall be a chairperson and a deputy chairperson of the Board, each of whom shall be appointed by the Governor from among the members of the Board and each of whom shall hold office as such during the Governor's pleasure.
- (4) Notwithstanding subsections (1) to (3), the Board shall be deemed to be properly constituted even though there is a vacancy in the office of chairperson or deputy chairperson or of any other member of the Board.
- (5) At any meeting of the Board the meeting shall be presided over by —
- (a) the chairperson;
 - (b) in the absence of the chairperson, the deputy chairperson; or
 - (c) in the absence of both the chairperson and the deputy chairperson, such other member of the Board as the members present elect to act as chairperson at that meeting.
- (6) At every meeting of the Board, a quorum shall consist of four members and decisions shall be adopted by a simple majority of the votes of the members present and voting except that, in the case of an equality of votes, the chairperson of the meeting shall, in addition, have a casting vote.
- (7) The Board may appoint sub-committees from among its members and every such sub-committee shall consist of a chairperson and such number of sub-committee members as the Board may, in each case, determine, and the members of a sub-committee shall hold office on the sub-committee for such period and on such terms as the Board may determine.
- (8) A quorum of a sub- committee shall consist of a simple majority of the members, and decisions shall be adopted by a simple majority of the votes of the members present and voting except that, in the case of an equality of votes, the chairperson of the meeting shall, in addition, have a casting vote.
- (9) The Board may, with the consent in writing of the Governor, authorize a sub-committee appointed under subsection (7) to perform any of its functions under this Law or other statutory provisions; and the act of any sub-committee so authorized to perform any function of the Board shall be deemed to be an act of the Board when the sub-committee is acting within the scope of its authority.



Governor may consult Board

10. (1) In the exercise of the powers and duties of the Governor under this Law and any other enactment which relates to matters of defence, the Governor may consult with or take the advice of the Board as the Governor thinks fit; but, notwithstanding that the Governor has consulted or taken the advice of the Board on any matter, the Governor may act in the Governor's discretion on such matter.
- (2) In the exercise of the Governor's delegated responsibilities for Regiment matters, the Minister and the Deputy Governor may consult the Board.

Defence Medical Officer

11. The Governor may appoint a Defence Medical Officer whose duties include the examination of any person for the purposes of this Law and such others duties as may be conferred or imposed upon the Defence Medical Officer by or under this or any other Law.

PART 3 - RECRUITMENT, ORGANIZATION, GOVERNMENT, TRAINING, PAY AND ALLOWANCES OF THE REGIMENT**Command of Regiment**

12. (1) The Governor shall appoint an officer, known as the Commanding Officer, who is a member of the Regiment in whom the command of the Regiment will be vested, and that officer is responsible for the control and administration of the Regiment, subject to the Governor's directions and to the provisions of this Law.
- (2) Subject to this Law and the *Governor's Orders*, the Commanding Officer may —
- (a) make standing orders for the control, administration and general government of the Regiment; and
 - (b) issue a handbook, a code of practice or such other guidelines as the Commanding Officer may see fit, for the guidance, government and regulation of members of the Regiment.

Governor's Orders

13. (1) Subject to this Law, the Governor may make general or special orders, to be called *Governor's Orders*, with respect to the administration, recruitment, organization, government, training, pay and allowances of the Regiment and with respect to any matter and thing relating to the Regiment, including any matter —
- (a) which is expressed by this Law to be a matter for which provision may be made by *Governor's Orders*; and



- (b) which under this Law may be or is to be prescribed by *Governor's Orders*.
- (2) Without prejudice to the generality of the powers conferred upon the Governor by subsection (1) provision may be made by *Governor's Orders* for the following —
- (a) the members of the Regiment in whom command over any part of the Regiment or members thereof is vested and as to the circumstances in which such command is to be exercised;
 - (b) the formation of members of the Regiment into sub-units;
 - (c) for posting, attaching or otherwise dealing with such members within the Regiment;
 - (d) for attaching members of the Regiment for service with a cadet corps established in the Islands by or under any Law;
 - (e) for the constitution of a permanent staff, including officers, adjutants, warrant officers and non-commissioned officers who may be members of the Regiment;
 - (f) for regulating the appointment, and retirement of the Commanding Officer, other officers and members of the Regiment and their numbers, ranks and duties; and
 - (g) for the constitution and functions of a promotions board.
- (3) *Governor's Orders* may take the form of applying to the Regiment, with such modifications, exceptions or variations as are specified in the *Governor's Orders*, the provisions of any order, regulation, or instruction made or issued in respect of Her Majesty's armed forces.
- (4) *Governor's Orders* may take the form of authorizing the Deputy Governor to issue instructions providing for any matter with respect to which, by virtue of this section, *Governor's Orders* may be made.
- (5) The Governor shall consult with the Minister of Finance prior to making orders relating to the pay and allowances of the Regiment.
- (6) *Governor's Orders* shall not be inconsistent with any of the provisions of this Law.
- (7) The power of the Governor to make *Governor's Orders* under this section shall include a power to revoke or vary any *Governor's Orders* so made.
- (8) In making *Governor's Orders* in respect of Regiment matters responsibility for which has been delegated to the Minister for the time being responsible for defence, the Governor may act on the advice of the Deputy Governor or Minister.



Enlistment and period of service

- 14.** (1) Subject to directions of the Governor and section 15, a person who is eighteen years of age or no more than fifty years of age and who is either a Caymanian or a permanent resident within the meaning of the *Immigration (Transition) Law, 2018*, may be enlisted into the Regiment in such manner and subject to such conditions as are provided under this Law and as prescribed.
- (2) Upon enlistment, a soldier shall serve a minimum period of two years and an officer a minimum period of three years.
- (3) The Governor may consult the Premier and may allow persons not meeting the requirements of subsection (1) to be enlisted into the Regiment if the Governor considers this to be in the best interests of the Regiment.

PART 4 - COMMISSIONS**Governor's commission, and the appointment and transfer of officers**

- 15.** (1) The Governor may, in the Governor's discretion, by commission, appoint a person, who is eligible to enlist in accordance with section 14, to a rank of officer listed in Schedule 1 in the Regiment where that person fulfils the prescribed conditions as to age, physical fitness, educational qualifications or other conditions as the Governor may determine.
- (2) A commission may be granted either for an indefinite period or for a specified period.
- (3) Every officer, upon being granted a commission, is entitled to be issued with a commission in the form set out in the *Governor's Orders*, and the commission shall be signed by the Governor.
- (4) Every officer, upon being granted a commission, shall be appointed by the Governor to the Regiment.
- (5) The Governor may make *Governor's Orders* —
- (a) respecting the commissioning of officers, their terms of service, appointment, transfer, promotion, retirement, resignation, removal from office, and such other matters concerning officers as the Governor considers necessary; and
- (b) for the better carrying into effect of this Part.

Relinquishment of commission

- 16.** (1) An officer may at any time apply in the prescribed manner to the Governor for permission to relinquish the officer's commission; and the Governor after considering the circumstances may grant the application.
- (2) Subject to subsection (3), if the Governor is satisfied that —



- (a) an officer is inefficient;
- (b) an officer has been guilty of neglect of duty or misconduct; or
- (c) for any other cause, an officer should no longer be an officer,

the Governor may, by notice in writing, under the Governor's hand require that officer to relinquish the officer's commission or may, by the notice to the officer, dismiss that officer.

- (3) The Governor shall not require an officer to relinquish the officer's commission or dismiss an officer until the Governor has consulted the Commanding Officer; and, where the officer is charged with misconduct or neglect of duty, unless the officer has been given full opportunity to exculpate himself or herself before a Court of Inquiry, consisting of officers each of whom is an officer either of Her Majesty's armed forces or of the Regiment appointed by the Governor to inquire into and report on all the circumstances of the case.
- (4) The relinquishment by an officer of the officer's commission or the dismissal of an officer shall not of itself operate so as to absolve the person who has been an officer from any liability under this Law or so as to preclude the acceptance of the person's services as a volunteer.
- (5) Without prejudice to anything in the foregoing provisions of this section, provision may be made by *Governor's Orders* for fixing age limits at which officers, or officers of a particular rank, shall or may be required to relinquish their commissions, and for matters incidental thereto.
- (6) Nothing in this section shall be construed so as to affect any liability to which an officer may be subject under the *Armed Forces Act* while the Regiment or the sub-unit of the Regiment in which he or she is an officer is embodied.

Relinquishment of commission - retention of rank title

17. (1) Where —

- (a) the commission of an officer of the substantive rank of Major or above has been relinquished in accordance with section 16(1) or where the officer has retired; and
 - (b) the officer has not been dishonourably discharged,
the officer shall be entitled to retain the officer's rank title.
- (2) Where an officer chooses to retain the officer's rank title in accordance with this section, such rank title shall have affixed immediately after it the word "(Retired)" or "(Retd)".
 - (3) In this section, "**rank title**" means the last substantive rank held by an officer, prior to the officer's commission being relinquished.



PART 5 - EXEMPTED SERVICES

Priority of exempted services

18. (1) Subject to subsection (3), where a member of the Regiment is employed both by the Regiment and by an exempted service, the member's employment obligations to the exempted service take priority over the member's employment obligations to the Regiment.
- (2) For the purpose of subsection (1), an “**exempted service**” means —
- (a) Her Majesty's armed forces;
 - (b) the Fire and Rescue Service;
 - (c) the Police Service;
 - (d) the Prison Service;
 - (e) the Coast Guard;
 - (f) the Customs and Border Control Service;
 - (g) an officer of the Hazard Management Cayman Islands;
 - (h) service as an emergency medical technician or paramedic for a hospital; or
 - (i) a person in holy orders or a minister in any religious denomination recognized by the Governor as such for the purposes of this Law.
- (3) Where necessary, in order to ensure the sufficient staffing of the Regiment at any time, an exempted service specified in subsection (2)(b) to (h) and the Commanding Officer shall consult with the Governor and act in accordance with any direction given by the Governor in respect of priority of employment of a member of the Regiment.

Exemption from jury duty

19. A member of the Regiment is exempt from serving on a jury when the Regiment is embodied.

PART 6 - MILITARY TRAINING

Obligation to undergo military training

20. Subject to the provisions of this Part, every member of the Regiment shall for the purpose of completing annual military training during each year of the person's enlistment —
- (a) undergo military training for fifteen days in annual camp at such time and at such place in or outside the Islands as may be notified by the Commanding Officer;



- (b) attend at least forty drills on such days and at such times and places as may be-notified by the Commanding Officer; and
- (c) fulfil such other conditions relating to military training as may be notified by the Commanding Officer.

Power to dispense with military training

21. The requirements of section 20 may be dispensed with in whole or in part —

- (a) in respect of any sub-unit of the Regiment, by the Governor; and
- (b) in respect of individual members of the Regiment, by the Governor, or, subject to *Governor's Orders*, by the Commanding Officer.

Commanding Officer may excuse from military training

- 22.** (1) A member of the Regiment may apply to the Commanding Officer to be excused from undergoing all or any of the military training required by section 20, on the ground that the person would thereby be caused undue hardship.
- (2) The Commanding Officer shall hear the application under subsection (1) and shall make such directive as appears to Commanding Officer to be just and where a member of the Regiment is excused, the Commanding Officer shall issue to the person a certificate accordingly.
- (3) Where the Commanding Officer makes a directive excusing in whole or in part the attendance of a member of the Regiment at annual camp the directive may contain a condition that the person so excused shall undergo additional military training by way of additional drills, and any such condition shall be included in the certificate referred to in subsection (2).

Commanding Officer may excuse from military training on application of employer

- 23.** (1) An employer of a person who is a member of the Regiment may apply to the Commanding Officer for the person employed to be excused in whole or in part from attendance at annual camp as required by section 20, on the ground that the employer would thereby be caused undue hardship.
- (2) The Commanding Officer shall hear the application under subsection (1), and shall make such directive as appears to the Commanding Officer to be just and, where a person is excused, the Commanding Officer shall issue certificates to the person and to the person's employer accordingly.
- (3) Where the Commanding Officer makes a directive under this section excusing a person in whole or in part from attendance at annual camp, the directive may contain a condition that the person so excused shall undergo additional military training by way of additional drills, and any such conditions shall be included in the certificates referred to in subsection (2).



Deferment of military training

24. (1) Where a member of the Regiment —

- (a) becomes enrolled as a pupil or student in any school, college or university outside the Islands or as a full-time student at a college in the Islands;
- (b) is absent from the Islands; or
- (c) is a medically unfit person who is likely to cease to be a medically unfit person,

then the military training which the person is required to undergo by virtue of this Part may be deferred for any period or periods and from time to time according to the circumstances of the case.

(2) The *Governor's Orders* may regulate the deferment of military training under this section.

Offence of failure to complete military training

25. A member of the Regiment who without reasonable excuse, the proof of which shall be upon the person, fails —

- (a) to complete the annual training which by or under this Law the person is required to undergo; or
- (b) to attend the number of drills during any particular period in accordance with the directions of the Commanding Officer given under this Law,

commits an offence and is liable on summary conviction to a fine equal to twenty eight days' pay or to imprisonment for a term of three months, or to both.

PART 7 - DISCHARGE

Grounds for discharge

26. (1) A member of the Regiment shall, except when the Regiment or the sub-unit of the Regiment of which the person is a member is embodied, or when the Governor otherwise directs, be entitled to be discharged on the expiration of the period for which under this Law the person is required to serve.

(2) Where the time at which a member of the Regiment would be entitled to be discharged under subsection (1) occurs while the Regiment or the sub-unit of the Regiment of which the person is a member is embodied, then the person's right to be discharged shall, unless the Governor otherwise directs, be suspended until the termination of the period for which the Regiment or the sub-unit, is embodied.

- (3) A member of the Regiment shall be discharged at any time if the Defence Medical Officer certifies that the person is medically unfit for further service in the Regiment.
- (4) Subject to subsection (5), a member of the Regiment who becomes an exempted person by reason of the person's entry or enlistment in any of Her Majesty's armed forces shall, except when the Regiment or sub-unit of the Regiment of which the person is a member is embodied, be entitled to be discharged.
- (5) The Governor, after consultation with the Premier, may grant permission to a member of the Regiment to enter or enlist in any of Her Majesty's armed forces notwithstanding that the Regiment or the sub-unit of the Regiment of which the person is a member is embodied.
- (6) In this section "**discharged**" in relation to a member of the Regiment, means discharged from the Regiment.

Discharge on cause being shown

- 27.** (1) Without prejudice to section 26, a member of the Regiment may at any time be discharged from the Regiment —
- (a) by the Commanding Officer, on good and sufficient cause being shown to the Commanding Officer why the person should be discharged; or
 - (b) by the Governor, after a recommendation by the Commanding Officer that it is in the public interest for the member to be discharged.
- (2) The *Governor's Orders* may regulate the discharge of persons under this section and in particular appeals to the Governor against a refusal to discharge or against a discharge.

PART 8 - EMBODIMENT OF THE REGIMENT

Embodiment of the Regiment

- 28.** (1) If the Governor considers it necessary to do so —
- (a) in the interests of public safety;
 - (b) for the defence of the Islands;
 - (c) to assist with public safety in another British Overseas Territory or foreign state; or
 - (d) for any other reason as the Governor sees fit,
- the Governor may, by Order published in the *Gazette*, or otherwise made known to members of the Regiment in such manner as may seem to the Governor best suited to the circumstances, direct that the Regiment or any part of the Regiment be embodied.



- (2) The Governor shall consult the Premier before making an Order under subsection (1).
- (3) The Governor shall obtain the agreement of the Premier before embodying the Regiment for a deployment to a foreign state or to another British Overseas Territory, but the Governor does not require such agreement for deployment of the Regiment within the Islands.
- (4) Subject to this section, upon the making of an Order under subsection (1) every member of the Regiment affected by the Order shall report at such place and at such time as may be specified in the Order or made known to the member by or through any of the member's officers or otherwise duly made known to the member.
- (5) A member of the Regiment who without reasonable excuse, the proof of which shall be upon the person, fails to report as required by this section commits an offence and is liable on summary conviction to a fine equal to twenty-eight days' pay or to imprisonment for a term of six months, or to both.
- (6) A police officer or any member the Regiment —
 - (a) may arrest without warrant any member of the Regiment whom the police officer or the member believes on reasonable grounds to have committed an offence under this section;
 - (b) shall convey a member who is arrested to the Commanding Officer, or to such place as is appointed by Commanding Officer, to be dealt with according to law; and
 - (c) may convey under arrest any person convicted of an offence to such place as may be appointed by any officer of designated by the Commanding Officer, by the Governor or by the court.

Armed Forces Act applies when undertaking duty with or training with UK regular or reserve forces

- 29.** (1) Subject to section 28, every member of the Regiment shall, while undertaking any duty or training with regular or reserve forces outside the Islands, be subject to this Law and military law under the *Armed Forces Act*, and the *Armed Forces Act* shall apply to such member of the Regiment as if the member were a member of the regular or reserve forces.
- (2) For the purposes of this section and section 30 —
- (a) a member of the Regiment shall be deemed to be undertaking any duty with or training with any reserve or regular forces when so ordered to act by the Governor; and
 - (b) “**regular forces**” and “**reserve forces**” have the meanings assigned by section 374 of the *Armed Forces Act*.

General command when undertaking duty with or training with UK regular or reserve forces

30. (1) The Regiment or any part thereof shall, while undertaking any duty with or training with a body of regular or reserve forces, be under the general command of the officer commanding that body if the officer is of senior equivalent rank to the officer commanding the Regiment or that part thereof.
- (2) The extent of command to be exercised over a member of the Regiment while undertaking any duty with or training with a body of regular or reserve forces shall be at the Governor's discretion.

Period of embodiment of the Regiment

31. The period of embodiment of the Regiment, or part of the Regiment, shall be of such duration as the Governor, after consultation with the Premier, may determine and shall not terminate until the Governor orders that the Regiment or the part of the Regiment, shall cease to be embodied.

PART 9 - DISCIPLINE, TRIAL AND PUNISHMENT OF MILITARY AND OTHER OFFENCES**Military offences and other offences: arrest**

32. (1) A member of the Regiment, if authorized in writing by the Commanding Officer to arrest offenders, may arrest without warrant —
- (a) any member of the Regiment whom the member believes on reasonable grounds to have committed a military offence; or
 - (b) any member of the Regiment who commits an offence under section 25 or section 28(5).
- (2) A member of the Regiment arrested for committing a military offence or an offence under section 25 or section 28(5) shall be taken forthwith to the Commanding Officer, or to such other officer as the Commanding Officer shall appoint for the purpose.
- (3) Any member of the Regiment brought before the Commanding Officer or other officer appointed under subsection (2) shall, unless the member's case is completed at the time of being brought before the Commanding Officer or other officer so appointed, be released on giving an undertaking that the member will appear before the officer trying the member's case when called upon, unless the Commanding Officer or other officer is satisfied that the member will not so appear, in which case the member shall be kept in civilian custody.
- (4) A member of the Regiment shall not be kept in civilian custody under subsection (3) for a period longer than seventy-two hours.



Commanding Officer to ensure the Commissioner of Police is aware of the possibility that a criminal offence has been committed

- 33.** (1) If the Commanding Officer becomes aware of an allegation or circumstances within subsection (2), the Commanding Officer shall as soon as is reasonably practicable ensure that the Commissioner of Police is advised of the matter.
- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a civil offence has or may have been committed by a member of the Regiment.

Duty of Commanding Officer with respect to investigation of military offences

- 34.** (1) This section applies where —
- (a) the Commanding Officer becomes aware of an allegation or circumstances within subsection (2); and
- (b) the Commanding Officer is not required by section 33 to ensure that the Commissioner of Police is aware of the matter.
- (2) An allegation is, or circumstances are, within this subsection if it or they would indicate to a reasonable person that a military offence or an offence under section 25 or 28(5) has or may have been committed by a member of the Regiment.
- (3) The Commanding Officer shall —
- (a) ensure that the matter is investigated in such way and to such extent as is appropriate; or
- (b) ensure, as soon as is reasonably practicable, that the Commissioner of Police is aware of the matter as required by section 33.
- (4) Subsection (3) does not apply if the matter has already been investigated in such way and to such extent as is appropriate.

Circumstances in which Commanding Officer has power to charge etc.

- 35.** (1) Where the Commanding Officer becomes aware of an allegation which indicates, or circumstances which indicate, that the person has or may have committed a military offence or an offence under section 25 or 28(5), the Commanding Officer has initial powers in respect of the case.
- (2) Subsection (1) does not apply if the allegation or circumstances —
- (a) give or have given rise to the duty under section 33; or
- (b) are being or have been investigated by a police force.
- (3) If an allegation or circumstances mentioned in subsection (1) relate to —
- (a) two or more incidents or alleged incidents, or
- (b) the conduct or alleged conduct of two or more persons,

each person's conduct in relation to each incident is to be regarded as giving rise to a separate case.

Power of Commanding Officer to charge etc.

36. Where under section 35 the Commanding Officer has initial powers in respect of a case —

- (a) the Commanding Officer may bring one or more charges; or
- (b) the Commanding Officer may refer the case to the Director of Public Prosecutions; and

a charge brought under paragraph (a) shall be regarded for the purposes of this Part as allocated for the summary hearing of the Commanding Officer or by a subordinate commander.

Powers of Commanding Officer after charge

37. (1) Where a charge against a person ("the accused") is for the time being to be dealt with by a summary hearing by the Commanding Officer or by a subordinate commander, the Commanding Officer or the subordinate commander may —

- (a) amend the charge;
- (b) substitute for the charge another charge against the accused;
- (c) bring an additional charge against the accused;
- (d) discontinue proceedings on the charge; or
- (e) refer the charge to the Director of Public Prosecutions.

(2) The powers under subsection (1) may be exercised before or after the start of any summary hearing of the charge.

(3) Any amended, substituted or additional charge under subsection (1)(a), (b) or (c) must be capable of being heard summarily by the Commanding Officer or by a subordinate commander.

(4) Any additional charge brought under subsection (1)(c) shall be in respect of the case with respect to which the charge mentioned in subsection (1) was brought.

(5) Any amended, substituted or additional charge under subsection (1)(a), (b) or (c) shall be regarded for the purposes of this Part as allocated for a summary hearing by the Commanding Officer or by a subordinate commander.

(6) Where a charge is referred under subsection (1)(e) to the Director of Public Prosecutions, the charge and any other charge brought in respect of the same case are to be regarded for the purposes of this Part as allocated for trial by a summary court.



Right to elect trial by a summary court

- 38.** (1) The Commanding Officer, before hearing a charge summarily, shall give an accused the opportunity of electing for the charge to be tried by a summary court.
- (2) If an accused elects a summary trial of the charge by the court —
- (a) the Commanding Officer shall refer the charge to the Director of Public Prosecutions; and
 - (b) the charge shall be regarded as allocated for trial by a summary court.
- (3) Where two or more charges against the accused are to be heard summarily together, an election for summary trial by the court in respect of any of the charges takes effect as an election in respect of all of them.
- (4) The Director of Public Prosecutions may not without the written consent of the accused refer the charge to the Commanding Officer whether or not amended by the Director of Public Prosecutions.

Powers of Director of Public Prosecutions in respect of charge allocated for trial by summary

- 39.** Where a charge against an accused is to be dealt with by a summary court, the Director of Public Prosecutions may —
- (a) amend the charge;
 - (b) substitute for the charge another charge against the accused;
 - (c) bring an additional charge against the accused;
 - (d) discontinue proceedings on the charge; or
 - (e) subject to section 38(4), refer the charge to the Commanding Officer, but only if the charge is capable of being heard summarily by the Commanding Officer.

Penalty on summary conviction

- 40.** (1) Where a member of the Regiment elects a hearing before a summary court in accordance with this Part, the member of the Regiment shall be liable on conviction to a fine equal to twenty eight days' pay or to imprisonment for a term of three months, or to both.
- (2) Where a member of the Regiment is convicted by a summary court, the Commanding Officer may recommend to the Governor that the member should be dishonourably discharged from the Regiment.
- (3) The Governor, on receiving a recommendation from the Commanding Officer that a member of the Regiment who is convicted by a summary court should be dishonourably discharged, may —
- (a) so discharge the member; or

- (b) remit the case to the Commanding Officer requiring the Commanding officer to reconsider the Commanding Officer's recommendation.

Hearing by Commanding Officer or subordinate commander

- 41.** (1) This section applies where the Commanding Officer or a subordinate commander hears a charge.
- (2) If the Commanding Officer or the subordinate commander determines that the charge has not been proved the Commanding Officer or subordinate commander shall dismiss the charge.
 - (3) If the Commanding Officer or the subordinate commander determines that the charge has been proved the Commanding Officer or the subordinate commander shall —
 - (a) record a finding that the charge has been proved; and
 - (b) impose any one or more of the punishments in section 42.
 - (4) Notwithstanding subsection (3) or section 32(3), after investigating the charge —
 - (a) the Commanding Officer; or
 - (b) the subordinate commander after consulting the Commanding Officer,may remand any person so charged for prosecution before a court of summary jurisdiction, and such court of summary jurisdiction shall thereafter deal with the matter *de novo*.

Punishments which may be imposed by Commanding Officer or subordinate commander

- 42.** (1) The punishments which may be imposed by the Commanding Officer or the subordinate commander are —
- (a) a fine not exceeding twenty-eight days' pay;
 - (b) the carrying out of additional fatigue duties or other duties;
 - (c) admonition;
 - (d) reprimand;
 - (e) severe reprimand; and
 - (f) in the case of a non-commissioned officer only, reduction to the ranks or lower grade.
- (2) The Commanding Officer may, in addition to or in place of any other punishment imposed under this section on a member of the Regiment, recommend to the Governor that the member be dishonourably discharged from the Regiment.



- (3) The Governor, on receiving a recommendation from the Commanding Officer that a member should be dishonourably discharged, may —
 - (a) so discharge the member; or
 - (b) remit the case to the Commanding Officer requiring the Commanding Officer to reconsider the recommendation and any other punishment that the Commanding Officer has imposed.
- (4) When the Commanding Officer is required to reconsider a recommendation for dishonourable discharge under subsection (3), the Commanding Officer shall not impose or alter any other punishment without giving the member in respect of whom the order for dishonourable discharge was made an opportunity to be heard.
- (5) A fine imposed on a member of the Regiment under this section shall be paid to the adjutant of the Regiment within seven days, and shall be recoverable —
 - (a) from any sums due under this Law; or
 - (b) before a court of summary jurisdiction in the manner provided by the *Summary Jurisdiction Law (2019 Revision)* for the recovery of a debt or liquidated demand.

Restitution if offence involves property

- 43.** (1) When a member of the Regiment is found guilty of an offence under paragraph 8 of Schedule 2, the court or officer finding the member guilty may make an order providing for the restitution of the property in respect of which the member has been found guilty or providing for the payment by the member of a sum not exceeding the cost to replace the public property lost or damaged.
- (2) Any order under subsection (1) may be enforced as if it were an order made by a court of summary jurisdiction in a civil cause or action.

Appeal to the Grand Court and Court of Appeal

- 44.** (1) Where a member of the Regiment has received a disciplinary punishment under this Part, including one imposed by a summary court, with which the member of the Regiment is aggrieved, the member of the Regiment may, within fourteen days of receiving notice of the disciplinary punishment, appeal to the Grand Court.
- (2) Appeals from the Grand Court lie to the Court of Appeal in accordance with the *Court of Appeal Law (2011 Revision)* and appeals to the Court of Appeal shall be final.
- (3) The Rules Committee of the Court may make such Rules of Court as it considers necessary to regulate procedure under this Part.

False statements

45. A person —

- (a) who, in giving any information for the purposes of this Law, knowingly or recklessly makes any statement which is false in a material particular; or
- (b) who, with intent to deceive —
 - (i) forges or uses, or lends or allows to be used by any other person, any certificate under this Law; or
 - (ii) makes, or has in the person's possession, any document so closely resembling any certificate under this Law as to be calculated to deceive,

commits an offence and is liable —

- (iii) on summary conviction to a fine equal to twenty-eight days' pay or to imprisonment for a term of six months, or to both; and
- (iv) on indictment to a fine equal to two months' pay or to imprisonment for a term of two years, or to both.

Offences outside the Islands

46. Sections 32 to 45 and Schedule 2 shall apply in relation to the Regiment and the officers and members of the Regiment when they are outside the Islands as when they are in the Islands.

Civil offences

47. (1) An officer or a member of the Regiment who, while either in or outside of the Islands —

- (a) during any period of military training under this Law; or
 - (b) while on service with the Regiment or any part thereof,
- commits a civil offence, commits an offence.

- (2) An offence created by this section shall be triable either summarily or on indictment according to whether the corresponding civil offence is triable summarily or on indictment.

- (3) A person convicted of an offence created by this section shall be liable to such punishment as is specified by law for the corresponding civil offence.

- (4) In this section —

“civil offence” means any act or omission punishable by the law of the Islands which, if committed in the Islands, would be punishable by that law; and

“corresponding civil offence” means the civil offence the commission of which constitutes the offence created by this section.



Contravention of certain provisions not to be criminal offences

- 48.** (1) A person found guilty of contravening any provision of this Law at any time other than when the Regiment is embodied, shall not be deemed to have been convicted of a criminal offence.
- (2) Subsection (1) does not apply to any conviction involving dishonesty, to a conviction under section 40 or to a conviction for a civil offence committed either in or outside the Islands.

Saving for Armed Forces Act

- 49.** Nothing in sections 40, 41 or 42 shall affect any liability to which a member of the Regiment may be subject under section 29 of the *Armed Forces Act*.

Trial of offences

- 50.** (1) Except as expressly provided in this Law, offences against this Law shall be prosecuted before a court of summary jurisdiction.
- (2) Subject to this Law, summary courts and the Grand Court shall have jurisdiction to try a person for any offence against this Law which, by reason of section 46 or 47, may be committed outside the Islands notwithstanding that the offence would, but for this subsection, have been committed outside the jurisdiction of the court.

Who may bring and conduct criminal proceedings

- 51.** (1) Criminal proceedings in respect of an offence against this Law shall not, without the written consent of the Director of Public Prosecutions, be instituted by any person other than the Governor or by an officer or other person duly authorized by the Governor in that behalf.
- (2) A prosecution for an offence against this Law may be conducted before a court of summary jurisdiction by an officer duly authorized by the Governor in that behalf.
- (3) In this section “**officer**” means —
- (a) an officer of Her Majesty’s armed forces; or
 - (b) any officer of the Regiment.

PART 10 - GENERAL**Service pension if killed or disabled**

- 52.** Where a person who is a member of the Regiment —
- (a) suffers disablement or is killed as a result of undergoing military training under this Law; or



- (b) suffers disablement or is killed as a result of service in the Regiment when embodied,

that person or the person's dependants, shall be eligible for the grant of such pension as the Governor may determine after consultation with the Minister responsible for finance.

Attendance; pay and allowances

- 53.** Where a member of the Regiment is required to attend drills, annual camp, or is embodied, then, in respect of the member's attendance, the member shall be paid such remuneration by way of pay and allowances as may be fixed by the *Governor's Orders* in accordance with section 13.

Duty of employer

- 54.** (1) An employer shall not prevent an employee from —
- (a) enlisting in the Regiment;
 - (b) undergoing military training, attending drills or annual camp; or
 - (c) subject to section 18, being in active service of the Regiment when the Regiment is embodied.
- (2) Where a member of the Regiment is in the regular employment of another person and is required to undergo military training, attend drills, attend annual camp or to be in active service when the Regiment is embodied then the employer of the member shall allow the member to undertake such activities and —
- (a) the employer shall ensure that any leave or holiday to which the member would ordinarily be entitled or for which the member would ordinarily be eligible shall not be prejudiced or restricted by reason of the member undertaking such activities; and
 - (b) the employer shall ensure that any promotion, privilege, benefit or advantage in connection with the employment of the member to which the member would ordinarily be entitled or for which the member would ordinarily be eligible shall not be prejudiced by of undertaking such activities.
- (3) An employer who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of five thousand dollars; and where an employer is convicted of an offence under this section, the court by which the employer is convicted may make such order giving effect to any provision of subsection (1) as the court thinks just.
- (4) Where an offence under this section is committed by a body corporate, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary



or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

- (5) This section and section 51 apply in respect of a member of the Regiment, at any time during the period of the member's enlistment when the Regiment is embodied or the member is otherwise called out for service in the Regiment.

Equipment to be returned on discharge

- 55.** (1) Where a member of the Regiment is discharged, relinquishes the member's commission or is dismissed, it shall be that person's duty to deliver up in good order, fair wear and tear only excepted, all arms, including firearms, clothing and equipment, being public property, issued to the person or in the charge of the person, or, in any case where the delivery of the property is impossible, it shall be the person's duty to pay into the revenue of the Government the value thereof.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine equal to seven days' pay or to imprisonment for a term of one month, or to both.
- (3) Where a person is convicted of an offence under this section, the court by which the person is convicted may make an order providing for the payment of compensation by the person convicted or such other order as the court determines appropriate, and any such order may be enforced as if it were an order made by the court in a civil cause or action.

Notices

- 56.** (1) All notices, orders and instructions required in connection with the administration of this Law shall, except where otherwise expressly provided, be in writing.
- (2) Forms may be prescribed in respect of any notice, order, certificate or other document to be used for giving effect to any of the provisions of this Law.
- (3) Notices of persons appointed to and discharged from the Regiment shall be published in the *Gazette*.

Service of notices

- 57.** Any notice or other document which is required or authorized by or under this Law or by or under any order or instruction made or issued thereunder to be given or served on any person may, in any case for which no other provision is made by this Law, be given or served —
- (a) by delivering it to that person's last known address or by email or other electronic mailing method;

- (b) in the case of the Governor, the Deputy Governor, the Board, the Minister the office of the Defence Medical Officer, by leaving it at the office of the Deputy Governor or sending it by prepaid letter addressed to the appropriate authority at the office of the Deputy Governor;
- (c) in the case of any other person, by leaving it or by sending it in a prepaid letter addressed to the person, at the person's usual or last known place of residence; or
- (d) in the case of a corporate body or other body of persons, other than those mentioned in paragraph (b), by delivering it to the secretary or clerk thereof at their registered or principal office, or by sending it in a prepaid letter addressed to the secretary or clerk at that office.

Immunity

- 58.** No person shall be liable in damages for anything done or omitted in the discharge or purported discharge of the person's respective functions or duties under this Law, or Orders or regulations made under this Law unless it is shown that the act or omission was in bad faith.

Vesting of property

- 59.** Upon the commencement of this Law, all property of, or assigned to, the Regiment prior to the date of the commencement of this Law shall be deemed to have been transferred, conveyed or assured to the Regiment and to be vested in the Regiment.

General offences and powers of arrest

- 60.** (1) A person who wilfully obstructs or otherwise interferes with a member of the Regiment acting in the execution of the member's duty commits an offence.
- (2) A member of the Regiment, while carrying out duties, may arrest without warrant —
- (a) any person whom the member of the Regiment believes on reasonable grounds to have committed an offence under subsection (1); and
 - (b) any person whom the member of the Regiment believes on reasonable grounds is about to or has committed an offence,
- (3) A person arrested for committing an offence in accordance with subsection (2) shall be taken by a member of the Regiment as soon as possible to a police officer.
- (4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of six months, or to both.



Application of Law to civilians

- 61.** (1) Subject to the modifications specified in subsection (2), where the Regiment, or any part thereof is embodied, deployed or on active duty, Part 9 applies to any person who is employed in the service of, or accompanies the Regiment or any member or part of the Regiment and who is not otherwise subject to service law.
- (2) The modifications referred to in subsection (1) are the following —
- (a) the punishment which may be awarded under Part 9 includes a fine and imprisonment only; and
 - (b) the provisions of this Law relating to the investigation of, and summary dealing with, offences, except as otherwise expressly provided, apply as they apply to soldiers.
- (3) Any fine awarded by virtue of this section by the Commanding Officer is recoverable as a debt due to the government.

Other Laws not applicable to terms and conditions of service

- 62.** The terms and conditions of service of members of the Regiment are governed only by this Law, regulations made under the Law and the *Governor's Orders*.

Transitional provisions

- 63.** (1) A person who is appointed or purported to be appointed to any position in the Regiment by the Governor prior to the date of the commencement of this Law shall be deemed on that date to have been appointed by the Governor in accordance with this Law.
- (2) All other acts done or purported to be done by the Governor and the Regiment in furtherance of the establishment and operation of the Regiment prior to the date of the commencement of this Law shall be deemed on that date to have been done by the Governor and the Regiment in accordance with this Law.

SCHEDULE 1

(Section 15)

OFFICER RANKS IN THE REGIMENT

Colonel
Lieutenant Colonel
Major
Captain
I Lieutenant
II Lieutenant

SCHEDULE 2

(Sections 2 and 32)

MILITARY OFFENCES

1. **Neglect of duty**, that is to say, if a member of the Regiment, while on duty —
 - (a) fails to attend for any duty;
 - (b) leaves any duty before the member of the Regiment is permitted to do so;
 - (c) fails to perform any duty; or
 - (d) performs any duty negligently.
2. **Violence against any person on guard**, that is to say, if a member of the Regiment —
 - (a) uses force against another member of the Regiment or a member of any force co-operating with them, who is —
 - (i) on guard duty and posted or ordered to patrol;
 - (ii) on watch; or
 - (iii) under orders to regulate traffic by land, water or air; or
 - (b) by the threat of force, compels such a person to let him or her or any other person pass.
3. (1) **Insubordinate behaviour**, that is to say —
 - (a) if a member of the Regiment uses violence against a superior officer; and the member of the Regiment knows or has reasonable cause to believe that the other member of the Regiment is a superior officer; or
 - (b) the behaviour of a member of the Regiment towards a superior officer is threatening or disrespectful; and that member of the Regiment believes or has reasonable cause to believe that the other member of the Regiment is a superior officer.
 - (2) For the purposes of this paragraph, the behaviour of a member of the Regiment towards a superior officer includes any communication made by the member of the Regiment to the superior officer, whether or not in the presence of the superior officer.
 - (3) In this paragraph, “**superior officer**”, in relation to a member of the Regiment, means an officer, warrant officer or non-commissioned officer of the Regiment, or of Her Majesty’s armed forces, of superior rank.
4. **Disobedience**, that is to say, if a member of the Regiment —
 - (a) disobeys a lawful command; and



- (b) intends to disobey, or is reckless as to whether he or she disobeys, the command.
- 5. (1) **Disobedience to standing orders**, that is to say, if a member of the Regiment contravenes a lawful order to which this paragraph applies, being a provision known to the member or which the member might reasonably be expected to know.
 - (2) The orders to which this paragraph applies are standing orders or other orders of a continuing nature made by the Commanding Officer or by the officer commanding any sub-unit of the Regiment.
- 6. (1) **Absence without leave**, that is to say, if a member of the Regiment, while attending annual camp or while the Regiment, or any part thereof of which the member is a member, is embodied —
 - (a) absents himself or herself intentionally or negligently without leave; or
 - (b) does an act, being reckless as to whether it will cause him or her to be absent without leave; and it causes him or her to be absent without leave.
 - (2) In subparagraph (1)(b), “act” includes an omission and the reference to the doing of an act is to be read accordingly.
- 7. (1) **Unfitness or misconduct through alcohol or drugs**, that is to say, if a member of the Regiment, due to the influence of alcohol or any drug —
 - (a) is unfit to be entrusted with his or her duty or any duty which he or she might reasonably expect to be called upon to perform; or
 - (b) is disorderly or likely to bring discredit to Regiment.
 - (2) For the purposes of subparagraph (1) a member of the Regiment shall be taken to be unfit to be entrusted with his or her duty, or a duty which he or she might reasonably expect to be called upon to perform, if his or her ability to carry out the duty in question is impaired.
 - (3) Subparagraph (1) does not apply to the influence of a drug on a member of the Regiment if —
 - (a) the drug was taken or administered on medical advice and the member of the Regiment complied with any directions given as part of that advice;
 - (b) the drug was taken or administered for a medicinal purpose, and the member of the Regiment had no reason to believe that the drug might impair his or her ability to carry out the duties mentioned in paragraph (1)(a) or result in his or her behaving in a way mentioned in paragraph (1)(b);
 - (c) the drug was taken on the orders of a superior officer of the member of the Regiment; or
 - (d) the drug was administered to the member of the Regiment on the orders of a superior officer of the person administering it.



- (4) In this paragraph —
- (a) “**drug**” includes any intoxicant other than alcohol; and
 - (b) “**behaviour**” of a member of the Regiment includes anything said by him or her.
- (5) In proceedings for an offence under this paragraph, any sub sub-paragraph of subparagraph (3) shall be treated as not having applied in relation to the defendant unless sufficient evidence is adduced to raise an issue as to whether it did.
8. (1) **Loss of or damage to public or service property**, that is to say, if a member of the Regiment —
- (a) does an act that causes damage to or the loss of any public or service property or any property belonging to another person subject to service law; and
 - (b) either —
 - (i) intends to cause damage to or the loss of the property, and there is no lawful excuse for his or her act; or
 - (ii) is reckless as to whether he or she causes damage to or the loss of the property;
 - (c) negligently does an act that causes damage to or the loss of any public or service property; or
 - (d) does an act that is likely to cause damage to or the loss of any public or service property and —
 - (i) the member of the Regiment is reckless as to whether he or she causes damage to or the loss of the property; or
 - (ii) the member of the Regiment is negligent.
- (2) For the purposes of this paragraph —
- (a) “**act**” includes an omission and references to the doing of an act are to be read accordingly;
 - (b) references to causing include allowing;
 - (c) “**loss**” includes temporary loss; and
 - (d) “**property**” means property of a tangible nature, and references to public or service property are to be read accordingly.
9. **Ill-treatment of subordinates**, that is to say, if a member of the Regiment who is an officer, warrant officer or non-commissioned officer —
- (a) ill-treats another member of inferior rank or less seniority (“a subordinate”);
 - (b) intends to ill-treat a subordinate or is reckless as to whether he or she is ill-treating a subordinate; and



- (c) knows or has reasonable cause to believe that the person is a subordinate.
10. (1) **Conduct to the prejudice of good order and military discipline**, that is to say, if a member of the Regiment does an act that is prejudicial to good order and service discipline or that would tend to bring the Regiment into disrepute.
- (2) In this paragraph, “**act**” includes an omission and the reference to the doing of an act is to be read accordingly.

Passed by the Legislative Assembly the 30th day of October, 2020.

Hon. W. McKeever Bush
Speaker

Zena Merren-Chin
Clerk of the Legislative Assembly