

LAWS OF GUYANA

DEFENCE ACT

CHAPTER 15:01

**Act
24 of 1966A**
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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]

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—

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- (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;

“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 adjectively, 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

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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 carcase 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 carcase.

(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;

- (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.
- (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. (l) 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 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.

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

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

(a) a regular Force; and

(b) a reserve Force.

Employment of
Defence 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.

Formation into
units.

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

Employment of
Defence Force
outside
Guyana.

7. The Ministry 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:

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.

Overseas
training.

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.

(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.

(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.

Secretary of
Defence Board
[O. 80/1980]

Performance of
functions of
Defence Board.

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.

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

- (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

Power to grant
commissions.

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

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

(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.

First Schedule.

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—

(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.

c.2:01

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

Recruiting
officers.

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 officers in the prescribed manner.

Enlistment.
[32 of 1975
1 of 2011]

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.

(2) A recruiting officer shall not enlist a person under the age of eighteen 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 power 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 sixteen 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.

Prolongation of
service.

21. Any soldier of the regular Force whose term of colour service Prolongation 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.

Discharge and Transfer to the Reserve

Discharge.

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.

(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.

(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 herein before 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

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

proceedings
for offences,
etc.

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.

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

25. (1) A warrant officer or non-commissioned officer of regular force whose ranks 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 Bond or of an officer not below the rank of major or corresponding rank, authorised by regulations to act for the purposes of this subsection.

(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.

Right of
warrant officer
to discharge on
reduction in
rank.

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

Discharge
upon
prescribed
grounds.

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

Right of soldier
to purchase
discharge.

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.

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.

False answers
in attestation
papers.
[6 of 1997]

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.

(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.

Interpretation.

32. In this part, "Reserve" means the second class of the Reserve.

PART V
DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY
OFFENCES

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

Aiding the
enemy.

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

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

Communication 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.

Cowardly behaviour. **35.** (l) Every person subject to military law under this Act who when before the enemy—

- (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 (l) 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 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 or 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 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—

- (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.

Obstruction of
provost
officers.

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

(a) obstructs; or

(b) when called on, refuses to assist, any person known to him to be a provost officer, or to be a person (whether subject to 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.

Disobedience
to standing
orders.

46. (1) Every person subject to military law under this Act who contravenes or fails to comply with any provision of orders to which he might reasonably be expected to know, shall, on conviction by court martial, be liable to imprisonment for two years or any years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature made for 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.

Desertion.

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

- (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 sub-section (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.

Assisting
and concealing
desertion and
absence
without leave.

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,

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

Amnesty
granted to
soldiers.
[17 of 1992]

49A. (1) Notwithstanding anything in this Act, any person subject to military law under this Act who deserts in contravention of section 47 or who is absent without leave in contravention of section 48 shall not be arrested or charged or tried by court martial or by a civil court under this Act for any such desertion or absence without leave if, during the period commencing on 1st August, 1992 and ending on the 31st October, 1992 –

- (a) he reports at the location and to the person, notice whereof shall be given in a daily newspaper published in Guyana; and

(b) at the same time, he delivers up all clothing, kit or any part thereof, arms, ammunition or other equipment or property issued to him or entrusted to his care under the Act which are still in his position.

(2) The President may, by order, describe any other period during which the person, who deserts or absents himself without leave, shall not be arrested, charged or tried by court martial or a civil court for desertion or absence without leave in contravention of this Act.

(3) Any person subject to military law under this Act, who deserts in contravention of section 47 or is still absent without leave in contravention of section 48 and complies with the provision of subsection (1) shall, notwithstanding anything in this Act, be treated as properly discharged under this Act and shall be issued with a certificate of discharge.

Failure to
perform
military duties.

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.

Malingering and Drunkenness

Malingering.

51. (l) 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,

shall be guilty of malingerer 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.

Offences in
relation to
property of
members of
forces.

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

- (a) steals or fraudulently misapplies any property belonging members of 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.

Miscellaneous
offences
relating to
property.

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

- (a) loses any public or service property of which he has the relating to property 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.

Annoyance by flying.

59. Every person subject to military law under this Act who, being the pilot of any aircraft belonging to the force, files it so as to cause, or to flying 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.

Offences Relating to, and by, Persons in Custody

Irregular arrest and confinement.

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

- (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.

Escape from confinement.

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.

Offences in relation to Courts-Martial and Civil Authorities

Offences in relation to courts – martial.

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

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

shall 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

Injurious disclosures.

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.

(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.

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.

Disgraceful conduct.

72. Every person subject to military law under this Act 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.

False accusation.

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

(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.

Attempts to commit military offence.

74. Every person subject to military law under this Act attempts to commit an offence against any of the foregoing provisions of this part shall, on conviction by court martial, be

liable to the like punishment as for that offence:

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

Conduct to
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

Punishment of
officers.
(O.15/1970)

77. (1) The punishment 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 court martial, those set out in the following scale; and in relation to an officer, references to those punishments.

(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;
- (l) 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.

(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.

Provisions for avoiding delay after 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 proceeding shall be taken for punishing his offence or he shall be released from 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 accused¹¹) 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.

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

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.

(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.

Further
proceedings
on charges
against officers
and warrant
officers.

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 no power, and purpose to direct trial by field court martial, submit it in the prescribe manner to higher authority and thereupon it shall be determined by such authority how the charge is to be proceed with in accordance with subsections (2) and (3).

(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.

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

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 that the officer commanding that unit cannot effectively exercise his powers as commanding officer over it, the officer commanding over that person as may be determined by regulations.

(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.

Limitation on
powers of
summary
dealing with
charges.

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 powers of superior authority and the charges which may not be dealt with summarily by a commanding officer or an appropriate superior authority dealing with 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.

(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 anybody 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.

Constitution of
ordinary
courts-martial.
(O.15/1970)

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

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.

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.

Administration
of oaths.

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, short hand writer or interpreter.

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

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he 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.

Courts-martial
to sit in open
court.

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

(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 (l), 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 (l), 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.

Decisions of
Courts-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.

(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.

Finding and sentence.

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

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

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

Power to convict of offence other than that charged.

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.

(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.

Second
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 in 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.

Affirmations.

107. If—

- (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to being sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
- (b) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief, he 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*

Confirmation
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 the finding and sentence of the court on that charge.

(2) A finding of guilty or sentence of a court martial shall not be treated as a finding or sentence of the court 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.

Petition against
finding or

109. At any time after a court martial has sentenced

sentence.

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.

Revision of
findings of
courts-martial.

110. (1) A confirming authority may direct that a court martial shall revise any finding come to by the court in case where it appears to him –

- (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.

Powers of confirming authorities.

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.

(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 specific 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.

Approval of
death sentence
by President.

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.

Review of
findings and
sentences of
courts-martial.

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 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.

(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

Reviewing 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 anytime review the finding or award.

(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.

Provisions
where accused
found insane.

Findings of Insanity, etc

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

Commencement 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.

Duration of sentences of imprisonment or detention.

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:

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.

Special provisions as to civil prisons in Guyana.

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 confined therein under a like sentence of a civil court.

Special provisions as to carrying out or serving of sentences outside 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 establishment under the control of those

authorise and military sentences of imprisonment or detention may in accordance with Imprisonment and Detention regulation be served wholly or partly in such establishments.

Country in
which sentence
of imprison-
ment or
detention to be
served.

123. (1) A person who is serving a military sentence of imprisonment or detention in Guyana may (in so far may be specified by 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.

(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

Trial and punishment of offences under this Act

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

notwithstanding offender ceasing to be subject thereto.

person while subject to military law by 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 charge, 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 anytime 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*

Powers of civil courts.

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.

(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.

Persons not to be tried under this Act for

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

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.

Boards of Inquiry.

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 –

- (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.

Inquiries into absence.

130. (1) Where a board of inquiry inquiring into the absence 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.

(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.

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(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.

Promulgation.

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 maybe, may direct.

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

134. (1) The record of the proceeding 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.

(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.

Rules of
Procedure.
[4 of 1972]

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.

(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 joined 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.

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

(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.

Miscellaneous
Regulations.

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

- (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.

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.

Determination
of appeal in
ordinary cases.

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 think 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:

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.

Powers of
Court of
Appeal in
special cases.

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 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.

Commencement of sentence.

146. The term of any sentence passed by the Court of Appeal, un 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 sentenced that has been confirmed.

Appeals to be final.

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.

Proceedings may be heard in absence of appellants.

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.

Defence of appeal.

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

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.

Furnishings 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.

Saving of powers of reviewing authorities.

155. Nothing in this Part shall effect 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.

Supplementary powers of the Court of Appeal.

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

- (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.

Interpretation
of part VI

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

PART VII FORFEITURES AND DEDUCTIONS

Forfeitures and
deduction;
general
provisions

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 unless so authorised or authorised by regulations.

(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.

Deductions for payment of civil penalties.

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 cost in consequences 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.

Compensation for loss occasioned by wrongful act of 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.

Review of
orders and
remission of
forfeiture and
deductions.

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 officer 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.

(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.

Enforcement of
maintenance
and affiliation
orders by
deduction from
pay.

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 –

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

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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.

- (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.

Deductions
from pay for
maintenance
of wife or child.

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 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 appropriate toward the maintenance of the wife, husband or child of the officer or soldier as the authorised officer thinks reasonable in the circumstances.

(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.

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.

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

Command and
precedence
[O.15/1970]

168. (1) Officers and soldiers of the Force shall stand with each other in such order of precedence as may be prescribe by the Defence Board.

(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.

Command of
Force
[O.15/1970]

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.

Regulations as
to command.
[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.

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, anybody 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.

Complaints by
soldiers.

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.

(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.

Exemptions for officers and soldiers

Restriction on
composition of
Defence Board
dealing with
complaint.

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.

Exemptions
from jury
service.

175. An Officer or soldier of the Force shall be except from serving on any jury.

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

176. (1) Duties, tolls or dues for embarking from or disembarking on any pier, wharf, quarry 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 –

- (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 execution.
[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
deserts 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.

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

179. (1) Where a person who is brought before a magistrate's 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.

- (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 48 –

- (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.

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

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.

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being 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

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

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
procuring and
assisting
desertion.
[6 of 1997]

184. Any persons 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

- (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.

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

Unlawful
purchases etc.
of military
stores.

indictment to a fine of one hundred and sixty-two thousand five hundred dollars and to imprisonment for two years.

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.

Unauthorised

- 189.** (1) Any person who –

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

- (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), 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.

Provisions as to evidence

General 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

Temporary
reception in
civil custody of
persons under
escort.

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 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.

(2) In this section, "civil prison" has the meaning ascribed to it in section 136.

Avoidance of
assignment of
or charge on
military pay,
pension, etc,
[O.15/1970]

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.

(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.

Statutory
declarations
taken outside
Guyana.
[O.15/1970]

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 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 of 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.

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.

Training of
Reserve.

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.

(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).

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.

Effective time
of call out.

202. Where an officer or soldier of the Reserve is called out on temporary service or on permanent service he shall, for the purpose of section 208 be deemed to be so called out with effect from either –

- (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.

Termination of
service.

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.

Posting or attachment of members of Reserve.

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.

Punishment for non-attendance.

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 201 (2) shall –

(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.

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.

Discharge from
Reserve.

207. (1) A soldier of the Reserve may be discharged by the competent military authority at anytime during the currency of any term of service in the Reserve upon such grounds as may be prescribed.

(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.

Application of
Part V and VII
of this Act.

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.

PART IXA

THE COAST GUARD

Establishment
and special
duties of Coast
Guard.
[4 of 1990
18 of 2010]

208A. (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.

(2) The members of the Coast Guard shall be

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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 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 internal waters, territorial sea, continental shelf, exclusive economic zone and fishery zone of Guyana;
- (vi) safety at sea;
- (vii) narcotic drugs and psychotropic substances, including the provisions of the laws mentioned in the Third schedule;

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]

208B. (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;

(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 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.

(3) Subject to section 208A (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
officer or
soldier of the
Force.
[4 of 1990]

208C. 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]

208D. (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.

208E. 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]

208F. 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 X
APPLICATION OF THE LAW AND SUPPLEMENTARY PROVISIONS

Persons subject to military law.

209. (1) subject to section 211 the following persons are subject to military law under this Act –

- (a) officers and soldiers of the regular Force;
- (b) officers and soldiers when attached to the Force or any part thereof in accordance with paragraph (a) of section 168(2);
- (c) officers and soldiers of the Reserve

when called out on permanent service or temporary service or when undergoing or performing any training or other duty (whether in pursuance of an obligation or not) or when serving under permanent staff of the Reserve.

(2) This Act shall only apply to persons subject thereto under this section and in relation to the Force as well outside as within Guyana.

Application of
Act to civilians.

210. (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.

(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;
- (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;
- (h) 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
[O.15/1970
14 of 1972]

211. (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.

Powers to
make
regulations.
[15 /1970
12 of 1974]

212. (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

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necessary 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.

Powers
exercisable in
subsidiary
legislation.

213. (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.

214. 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.

215. {Repealed by 4 of 1990]

FIRST SCHEDULE

s. 13(3)

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
of20.....

You are therefore carefully and diligently to discharge your
duty as such an officer in the rank of
.....or 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 20.....
..... President.

*to be omitted in case of a commission granted for an indefinite period.

s. 103

SECOND SCHEDULE

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. |
| 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 willfulness. | 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.
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THIRD SCHEDULE

Laws to be enforced and administered

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. 82:01
14. Customs Act	S.I. 1965, No.
15. The Collision RegU.K. Order 1965	1525, UK
16. Maritime Zones Act	Cap. 63:01
Narcotic Drugs and psychotropic Substances (Control) Act	Cap. 63:01

SUBSIDIARY LEGISLATION

Reg. 7/1967
25/1969
O 80/1980

DEFENCE (OFFICERS) REGULATIONS

made under section 16 of the Defence Act and section 2 of the British Guiana (Special Service Unit) Order 1967

Citation.

1. These Regulations may be cited as the Defence (Officers) Regulations.

Appointment of Officers.
[O.80/1980]

2. Officers may be appointed to the ranks set out in the Schedule or any corresponding ranks by the President acting on the recommendation of the Board.

Qualification for promotion to lieutenant captain and major.
[Reg. 25/1969]

3. (1) Officers of the regular Force will be eligible for promotion to higher substantive rank on completion of the following periods of commissioned service:

to lieutenant after 2 years;
to captain after 6 years;
to major after 12 years.

Provided that an officer who has not completed any such period of service may be promoted, in special circumstances and after he has attained the age of –

- (a) 23 years, to lieutenant;
- (b) 27 years to captain;
- (c) 34 years to major.

(2) Anything in paragraph (1) of this regulation to the contrary notwithstanding, an officer who has neither completed any such period of service nor attained any such age is prescribed therein may in special circumstances, be promoted:

Provided that an officer shall not be promoted pursuant to the foregoing provisions of this paragraph of this regulation unless the Defence Board concurs with the recommendation of the Commissions Board.

(3) For the purposes of this regulation periods of commissioned service shall include—

- (a) any period of full-time commissioned service in a Commonwealth force immediately prior to the grant of a commission in the Guyana Defence Force;
- (b) any such period of ante-date as may be granted by the Commissions Board.

Conferment of
acting and local
rank.

4. (1) An officer may be promoted to act in any rank to fill a vacancy in the establishment of a unit by the same authority, acting in the like manner, as is required by these Regulations for the purpose of making a substantive appointment to that rank.

(2) Local rank may, for the convenience of the service, be conferred on an officer for such period as may be necessary. Local rank shall not carry any pecuniary benefits.

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Defence

[Subsidiary]

Defence (Officers) Regulations

reg. 2.
reg. 8/1985

SCHEDULE

Ranks to which officers may be appointed:

Major General
Brigadier
Lieutenant- Colonel
Major Captain
Lieutenant
Second Lieutenant.

Reg. 22/1974

GUYANA DEFENCE FORCE (OATHS OF OFFICERS) REGULATIONS

made under section 16

Citation.

1. These Regulations may be cited as the Guyana Defence Force (Oaths of Officers) Regulations.

Oath.

2. (1) Subject to regulation 3, every officer shall on being granted a commission take and subscribe the following oath—

I.....do swear (or solemnly affirm) that I will bear true faith and allegiance to the State of Guyana; that I will support and defend the State against all enemies whomsoever; that I will faithfully discharge the functions of an officer in the Guyana Defence Force without fear or favour, affection or ill-will and that in the discharge of those functions I will honour, uphold and preserve the

Guyana Defence (Oath of Officers) Regulations
Guyana Defence (Oath of Soldiers) Regulations

Constitution of Guyana.

So help me God. [To be omitted in affirmation].

(2) Such oath shall be taken and subscribed—

- (a) by the Chief of Staff, before the President;
- (b) by every other officer, before the President or the Chief of Staff.

Exemption.

3. An officer shall not be required to take and subscribe the oath as prescribed in regulation 2 on his appointment on promotion to another rank.

Reg. 24/1972

**GUYANA DEFENCE FORCE (OATHS OF
SOLDIERS) REGULATIONS**

made under section 212

Citation.

1. These Regulations may be cited as the Guyana Defence Force (Oaths of Soldiers) Regulations.

Oath.

2. (1) Every soldier shall on his enlistment into the Force take and subscribe the following oath—

I do swear (or solemnly affirm) that I will bear true faith and allegiance to the State of Guyana, that I will serve the State honestly and faithfully against all enemies whomsoever, and that I will obey the orders of the President of Guyana and of

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[Subsidiary]	<i>Guyana Defence (Oath of Soldiers) Regulations</i>
	<i>Guyana Defence (Pensions and Gratuities) Regulations</i>

the officers appointed over me, according to law.

So help me God. [To be omitted in affirmation].

(2) The oath shall be taken and subscribed before an officer not below the rank of Major.

Reg. 14/1974

GUYANA DEFENCE (PENSIONS AND GRATUITIES) REGULATIONS

made under section 212

Citation.

1. These Regulations may be cited as the Guyana Defence Force (Pensions and Gratuities) Regulations.

PART I GENERAL

Interpretation.

2. (1) In these Regulations—

“pensionable emoluments” includes—

- (a) salary;
- (b) personal allowance; and
- (c) ration allowance,

but does not include entertainment allowance or any

other emoluments whatever;

“public claim” means—

- (a) any public debt or disallowance of expenditure, including any over issue or advance of pay, pension, gratuity or other emoluments made through an error as to the facts; or
- (b) the sum required to make good any loss, shortage, damage or destruction of public property of which, after due investigation, no explanation satisfactory to the Defence Board is given by the person who is responsible for the same;

“service claim” means any service debt or the sum required to make good any loss, deficiency or irregular expenditure of service money of which after due investigation no explanation satisfactory to the Defence Board is given by the person who is responsible for same;

“substantive rank” does not include honorary, acting or local rank.

(2) References in these Regulations to officers and soldiers shall be construed as being references to the body of officers and soldiers of the regular Force of the Guyana Defence Force established under section 4(a) of the Act.

No right to pensions and gratuities or other grants.

No payment out of the Consolidated

3. No person shall have an absolute right to compensation for past services in the Force or to any pension, gratuity or other grant under these Regulations.

4. When the computation of a pension, or gratuity which may be awarded under these Regulations includes a

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Fund in respect
of other service
unless
arrangements
made for
reimburse-
ments.

period of reckonable service otherwise than in the South Caribbean Regiment or as mentioned in regulation 20(2), no payment shall be made out of the Consolidated Fund in respect of such other service unless arrangements have been made to the satisfaction of the Defence Board for the reimbursement of the Consolidated Fund by or on behalf of the Government or other authority for whose benefit such service was given.

Revision of
provisions
relating to
pensions and
protection of
pension rights.

5. (1) The law applicable to any benefits conferred by these Regulations shall, in relation to any person who is eligible for the grant of such benefits, be these Regulations as they are in force on the relevant date or any later law that is not less favourable to that person.

(2) Where a person is entitled to exercise an option as to which of two or more laws apply in his case, the law specified by him in exercising the option shall, for the purposes of this regulation, be deemed to be more favourable to him than the other law or laws.

(3) In this regulation—

(a) “the relevant date” means—

- (i) in relation to any benefits granted or to be granted on or after 22nd May, 1966 to or in respect of any person who was an officer or soldier on that date, 22nd May, 1966;
- (ii) in relation to any benefits granted or to be granted to or in respect of any person who becomes an officer or soldier on or after 22nd May 1966, the date on which he becomes an

officer or soldier;

- (b) the reference to the law applicable to any benefits conferred by these Regulations includes (without prejudice to their generality) a reference to any law relating to the time at which and the manner in which an officer or soldier may retire in order to become eligible for these benefits.

Compulsory deductions.

6. Any pension or gratuity awarded under these Regulations to any person shall be liable to deductions on the order of the Defence Board to meet any public claim or service claim.

Payment of pension or gratuity.

7. The payment of any pension or gratuity under these Regulations may be awarded provisionally or upon any other basis and for such period as the Defence Board may think fit and, either generally or in any particular case or class of case, any pension or gratuity awarded may be paid in monthly amounts in arrears.

Power of Defence Board to withhold or reduce pension or gratuity in certain cases.

8. (1) The Defence Board may withhold or reduce any pension or gratuity awarded under these Regulations if any of the following circumstances arise—

- (a) if the Board is satisfied that it was obtained by the willful suppression of material facts or granted in ignorance of facts, which, had they been known at the time of the grant, would have justified the withholding or reduction thereof; or
- (b) if the person to, or in respect of, whom such pension or gratuity is

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awarded is sentenced to death or to any term of imprisonment by any court of competent jurisdiction whether in Guyana or elsewhere for any offence or, is in the opinion of the Defence Board unworthy of a grant from public funds.

(2) Where any pension or gratuity has been withheld or reduced under these Regulations, the Defence Board may, at any time, if in any case it considers it equitable to do so—

- (a) grant or restore the whole pension or gratuity or a portion thereof;
- (b) cause all or any part of the pension or gratuity to which the officer or soldier would have been entitled to be paid to or applied for the benefit of any wife, child or children of the officer or soldier or any other person whom the Defence Board is satisfied was wholly or partially maintained by him or after the expiration of his sentence also for the benefit of the officer or soldier himself in the same manner and subject to the same qualifications and restrictions as in the case of bankruptcy or insolvency as hereinafter provided.

(2) In this regulation and regulation 9—

“child” includes—

- (a) a step-child;

- (b) a child born out of wedlock who was wholly or partially dependent on the officer or soldier for support; and
- (c) an adopted child, adopted in a manner recognised by law; and “children” shall be construed accordingly;

“wife” includes a single woman or widow who was living with a single officer or soldier, or with a widower who is an officer or soldier, as the case may be, as his reputed wife at the time of the commission of the offence or at the time he is adjudicated a bankrupt or is declared insolvent and dependent upon him for support.

Effect of insolvency on the payment of pension or other grants.

9. (1) If any person to whom a pension or gratuity has been awarded under these Regulations is adjudicated a bankrupt or is declared insolvent by a court of competent jurisdiction, then the payment of such pension or gratuity shall cease forthwith.

(2) Notwithstanding paragraph (1), it is lawful for the Defence Board from time to time, during the remainder of the life of such person as aforesaid or during such shorter periods either continuous or discontinuous as the Defence Board thinks fit, to cause all or any part of the monies to which such person would have been entitled by way of pensioner gratuity had he not been adjudged a bankrupt or declared an insolvent, to be paid to, or applied for, the maintenance and personal support or benefit of all, or any to the exclusion of the other or other of the following persons namely, such person as aforesaid and any wife, child or children of his or any other person whom the Defence Board is satisfied was wholly or partially maintained by him in such proportion and manner as the Defence Board thinks proper,

and such monies shall be paid or applied accordingly; monies applied for the discharge of the debts of the person aforesaid shall, for the purpose of this paragraph, be regarded as applied for his benefit.

(3) When a person whose pension or gratuity has ceased to be payable under this regulation obtains a discharge from his bankruptcy or insolvency, such pension or gratuity may be awarded or restored to him, as the case may be, by the Defence Board, with effect from the date of such discharge.

Power to make payments to certain persons on death of officer.

10. Where a person to whom any payment could have been made under these Regulations before his death dies before payment is made the amount so unpaid may be paid or distributed to or among those persons whom the Defence Board is satisfied were wholly or partially maintained by the deceased person or if there is no such person, to the person entitled to the grant of probate of the will of the deceased person or letters of administration of the estate of the deceased person and in determining the persons to whom and the proportions in which the amount so unpaid shall be paid or distributed the Defence Board may have regard to any payment made or expenses incurred by any person for or on account of medical treatment administered to the deceased person before his death or on account of his funeral.

Service of a foreign power.

11. If a person to whom an award of pension or gratuity has been made under these Regulations enters the service of a Foreign Power without the consent of the Defence Board, or if after having entered the service of a Foreign Power with the consent of the Defence Board he continues in such service after the consent is withdrawn, he is liable to have his pension or gratuity, as the case may be, suspended, withheld or forfeited as the Defence Board may decide.

PART II
OFFICERS AND SOLDIERS

Compulsory
retirement.
[Reg. 22/1981]

12. (1) It is compulsory for officers and soldiers to retire on attaining the following ages in their substantive ranks, that is to say—

- (a) officers of or above the rank of Lieutenant Colonel, at the age of fifty-five years;
- (b) Majors and Captains, at the age of fifty years;
- (c) Lieutenants, Second Lieutenants and Warrant Officers, at the age of forty-five years;
- (d) any soldier at the age of forty years;

Provided that no such approval shall be required when the President is the competent appointing authority in relation to any officer.

(2) Where an officer or soldier has attained the age at which he is required by paragraph (1) to retire he may be permitted by the competent appointing authority to continue as a member of the Force for such period as may be agreed with the officer or soldier, as the case may be, with the approval of the Board.

(3) In paragraph (2) “competent” appointing authority means –

- (a) in relation to an officer, the Minister;
- (b) in relation to a soldier, the Chief of Staff or any other officer of the Force

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duly authorized by the Chief of Staff.

(4) Without prejudice to the provisions of paragraph (2), the approval required under that paragraph for permitting an officer or soldier to continue as a member of the force may be given also by –

- (a) the President in the case of an officer or soldier; and
- (b) the Head of the Presidential Secretariat in the case of a soldier.

Retirement at the full rate of pension.

13. (1) An officer or soldier who retires on or after attaining the compulsory age for retirement in his rank, and whose qualifying service is not less than the minimum period of service specified in paragraph (3), may be granted pension calculated in accordance with paragraph (2).

(2) Pension shall be calculated at the rate of one six-hundredth of the final pensionable emoluments of the officer or soldier in respect of each completed month of service except that a pension granted to an officer or a soldier under these Regulations shall not exceed two-thirds of the highest pensionable emoluments drawn by him at any time in the course of his service in the regular Force of the Guyana Defence Force established under section 4(a) of the Act.

(3) The minimum period of service for the purpose of qualifying for pension is fourteen continuous years of service.

(4) Every officer or soldier with at least eight continuous years of service who has reached the compulsory age of retirement for his rank but has not completed the minimum period of service qualifying for a pension under this regulation may be granted on retirement a gratuity not

exceeding five times the annual amount of the pension which, if there had been no qualifying period, might have been granted to him under paragraph (2).

Retirement at pension equivalent to the highest annual rate of salary.
[Reg. 16/1981].

13.A Where an officer or soldier continues as a member of the Force in accordance with regulation 12(2) at the request of the competent appointing authority, that officer—

(a) notwithstanding anything in these Regulations, shall have the entire period of service rendered by him taken into account in computing his pension whether or not the pension so computed exceeds the limits prescribed in regulation 13(2):

Provided that the pension granted him under this regulation shall not exceed the highest annual rate of salary payable to him at any time in a pensionable office in Guyana;

(b) although still in the Force may, at his option exercisable in accordance with regulation 14 (without the right of revocation granted thereby) be paid an amount not exceeding the amount which would have been payable as gratuity to him had he retired on attaining the age specified for his rank in regulation 12(1) and any amount so paid shall be set off against his superannuation benefits granted to him on his retirement or against any gratuity payable on his death to his legal personal representative.

Option to take reduced pension with

14. (1) An officer or soldier to whom a pension is granted under these Regulations may, at his option exercisable as hereinafter provided, be paid in lieu of such

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gratuity.

pension a pension at the rate of three- fourths of such pension together with a gratuity equal to twelve and one-half times the amount by which such pension is reduced.

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

- (a) shall be exercised or revoked by notice in writing addressed to the Chief of Staff not later than the date of the retirement of the officer or soldier;
- (b) may, notwithstanding subparagraph (a), be exercisable, and if exercised, may be revoked, on or before the date of the final award.

Early
retirement at
the request of
an officer or a
soldier.

15. An officer or a soldier permitted to retire at his own request before he has attained the age at which he is required by regulation 12 to retire from the force may, at the discretion of the Defence Board, if he is within two years of that age, and has completed the minimum period of service qualifying for a pension be granted a pension as specified in regulation 13(2).

Retirement in
the interest of
the Force.

[Reg. 22/1981]

16. An officer or soldier who is retired or is called upon to retire or to resign on the grounds of the interest of the Force and who—

- (a) has completed the minimum period of service qualifying for a pension; or
- (b) has not completed the minimum period of service qualifying for a pension,

may, at the discretion of the Defence Board, be granted pension or gratuity, as the case may be, as if he had retired in

the circumstances mentioned in regulation 13, and an officer or soldier to whom paragraph (b) applies shall be deemed to have completed at least eight continuous years of service.

Retirement for misconduct.

17. An officer or soldier who is required to retire or to resign for misconduct or who is cashiered or dismissed from the Force and who has completed the minimum period of service qualifying for a pension may, if the Defence Board so decide, be granted a compassionate award of a pension at such rate as the Board may determine but not in any event exceeding ninety per cent of the pension which would have been payable to him if he had retired at his own request.

Pension on being invalidated out.

18. An officer or soldier with at least eight years' pensionable service who produces medical evidence from a Medical Board consisting of at least two duly qualified medical practitioners appointed for the purposes of this regulation by the Defence Board that he is incapable by reason of some infirmity of mind or body of discharging his duties and that such infirmity of mind or body is likely to be permanent may be invalidated from the Force before he has attained the age at which he is required by regulation 12 to retire from the Force and may be awarded a pension or a gratuity, as the case may be, under regulation 13.

Special allowances for injury or death in the discharge of duties.

19. (1) Where an officer or soldier has been permanently injured—

- (a) in the actual discharge of his duty;
- (b) without his own default; and
- (c) by some injury specifically attributable to the nature of his duty,

and his retirement is thereby necessitated or materially accelerated, he may if he is qualified for a pension under regulation 13, be granted in addition to the pension granted

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him under that regulation, an additional pension at the rate of the proportion of his annual pensionable emoluments at the date of his injury appropriate to his case as shown in the following table:

When his capacity to contribute to his own support is –

Slightly impaired - five-sixtieths;

Impaired - ten-sixtieths;

Materially impaired - fifteen- sixtieth;

Totally destroyed - twenty- sixtieths.

(2) Where an officer or soldier is injured under the circumstances as specified in paragraph (1) before he has completed fourteen years pensionable service, the officer or soldier may be awarded a special pension at the same rate as the additional pension which he might have been granted under paragraph (1) if he had been so qualified.

(3) The Defence Board may, before deciding whether or not to make an award under paragraph (1) or (2), require the officer or soldier to submit himself for a medical examination by a Medical Board consisting of at least two duly qualified medical practitioners appointed for the purposes of this regulation by the Board.

(4) The total amount of pension awarded to an officer or soldier shall not in any case exceed the maximum pension prescribed by the exception in regulation 13 (2).

(5) Where an officer or soldier dies while in the service of the Force, and has completed eight years pensionable service there shall be paid or distributed to or among those persons whom the Defence Board is satisfied were wholly or partially maintained by the deceased person or, if there is no such person to his legal personal representative, a gratuity of an amount not exceeding either his annual pensionable emoluments if the officer or soldier

had retired at the date of his death, or his commuted pension gratuity (if any) granted to the officer or soldier under regulation 13(4), whichever is the greater.

(6) Where an officer or soldier dies while in the service of the Force but before he has completed eight years' pensionable service there shall be paid or distributed to or among those persons whom the Defence Board is satisfied were wholly or partially maintained by the deceased person or, if there is no such person to his legal personal representative, a special gratuity equal to six months final pensionable emoluments of such officer or soldier.

(7) Where an officer or soldier dies as a result of injuries received—

- (a) in the actual discharge of his duty;
- (b) without his own default;
- (c) on account of circumstances specifically attributable to the nature of his duty,

while in the service of the Force, it shall be lawful for the Defence Board to grant, in addition to the grant, if any, made under paragraph (5) or (6)—

- (i) if the deceased officer or soldier leaves a widow, a pension to her, while unmarried at the rate not exceeding ten-fiftieths of his annual pensionable emoluments at the date of the injury or seven hundred and twenty dollars a year, whichever is the greater;
- (ii) if the deceased officer or soldier

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- leaves a widow to whom a pension is granted under the preceding paragraph and a child or children, a pension in respect of each child until the child attains the age of eighteen years of an amount not exceeding one-eighth of the pension prescribed by the preceding paragraph;
- (iii) if the deceased officer or soldier leaves a child or children but does not leave a widow or no pension is granted to the widow, a pension in respect of each child until such child attains the age of eighteen years of double the amount prescribed by the preceding paragraph;
- (iv) if the deceased officer or soldier leaves a child or children and a widow to whom a pension is granted under subparagraph (i) and the widow subsequently dies, a pension in respect of each child as from the date of the death of the widow until such child attains the age of eighteen years of double the amount prescribed by subparagraph (ii);
- (v) the deceased officer or soldier does not leave a widow, or if no pension is granted to his widow, and if his mother was wholly or partially dependent

on him for her support a pension to the mother whilst without adequate means of support in the opinion of the Defence Board, of an amount not exceeding the pension which might have been granted to his widow;

(vi) if the deceased officer or soldier does not leave a widow or mother, or if no pension is granted to his widow or mother, and his father were wholly or partially dependent on him for his support, a pension to the father while of good character and without adequate means of support in the opinion of the Defence Board, of an amount not exceeding the pension which might have been granted to his widow:

Provided that:

(A) in the case of a pension granted under subparagraph (v), if the mother is a widow at the time of the grant of the pension and subsequently remarries, such pension ceases as from the date of re-marriage and if it appears to the Defence Board at any time that the mother is adequately

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provided with other means of support, such pension ceases as from such date as the Defence Board may determine; and

- (B) a pension granted to a female child under this regulation ceases upon her marriage under the age of eighteen years.

(8) For the purposes of this regulation—
“child” includes—

- (a) a posthumous child;
- (b) a step-child or a child born out of wedlock or an adopted child adopted in a manner recognised by law, born or adopted before the date of the injury and living with the officer or soldier, as the case may be, or wholly or partially maintained by him;

“commuted pension gratuity” means the gratuity, if any, which might have been granted to the officer or soldier under regulation 14 if he had retired at the date of his death and had elected to receive a gratuity and a reduced pension;

“father” includes any person who, for the purpose of establishing that the relationship of father and child existed between himself and an officer or soldier, produces evidence to the satisfaction of the Defence Board that during the lifetime of the officer or soldier he

had acknowledged that he was the father of that officer or soldier;

“widow” includes a single woman or widow who was living with a single officer or soldier or with a widower who is an officer or soldier, as the case may be, as his reputed wife to the date of the injury and whom the Defence Board treats as if she were in law his widow.

c. 36:01

Qualifying service for computing pension and gratuity.

(9) This regulation applies to an officer or soldier notwithstanding the fact that by reason of his injury or death he or his dependants as defined under the National Insurance and Social Security Act are entitled to benefits under that Act.

20. (1) For the purposes of computing the amount of pension or gratuity of an officer or soldier, the following periods after the officer or soldier has attained the age of eighteen years shall be taken into account as qualifying service—

- (a) any period during which he has been on duty in the Force;
- (b) any period during which he received no pay but was considered to be a member of the Force when absent without leave;
- (c) any period not exceeding twelve months during which a female officer or soldier, because of her pregnancy, is disembodied or struck off strength;
- (d) any period during which he has been absent from duty on vacation leave, or on leave with pay otherwise than at the full rate in the interest of the Force with the approval of the Defence Board and during which he has not

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qualified for pension or gratuity in respect of any other service:

Provided that the periods of absence in the circumstances mentioned in subparagraphs (b) and (c) shall not be taken into account as reckonable service in the computation of pension or gratuity.

(2) Reckonable service for the purposes of these Regulations shall be service which is taken into account when computing the pension and gratuity of an officer or soldier and shall include—

- (a) the period of his service in the Force;
- (b) service to which the Pensions Act applies;
- (c) service in the Special Service Unit;
- (d) service on the permanent staff of the former British Guiana Volunteer Force;
- (e) a continuous period of embodiment of not less than six months in the former British Guiana Volunteer Force;
- (f) service in the Guyana Police Force;
- (g) service to which the Teacher's Pension Act applies;
- (h) any other service which the Defence Board by order published in the *Gazette* determines to be reckonable service:

c. 27:02

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Defence Rules of Procedure*

Provided that such service shall be continuous service immediately preceded or followed by enlistment or transfer to the Force.

Payment of
Pension of
person of
unsound mind.

21. If any officer or soldier to whom a pension is granted under these Regulations is or becomes of unsound mind the Defence Board may direct that his pension, or such part of it as appears necessary for his care and maintenance, be paid to the person in the opinion of the Defence Board in whose care he may be or who may be responsible for the cost of his care and maintenance; and the receipt of the person to whom the amount of pension is so paid is a sufficient discharge for such money as is stated thereon to have been paid.

Settlement of
questions
arising under
these
regulations.
[22 of 1981]

22. (1) The Defence Board has full power and authority to decide all questions that may arise in respect of or in connection with the administration of these Regulations.

(2) Without prejudice to the provisions of paragraph (1), the functions conferred on the Defence Board by regulations 15 to 22 inclusive may be exercised also by the head of the Presidential Secretariat.

DEFENCE RULES OF PROCEDURE

ARRANGEMENT OF RULES

RULE

1. Citation.

DEFINITIONS AND INTERPRETATIONS

2. Definitions

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17. Action by higher authority on receipt of a charge.

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33. Oaths and solemn affirmation.

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RULE

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37. Plea to bar of trial.
38. Application by an accused at a joint trial to be tried separately.
39. Application by an accused at a trial to have a charge tried separately.
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61. Closing address.
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**DELIBERATION ON, AND ANNOUNCEMENT OF,
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3. Manner of administering oaths.
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1. Petitions.
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R. 1/1977

DEFENCE RULES OF PROCEDURE

made under section 137

Citation.

1. These Rules may be cited as the Defence Rules of Procedure.

DEFINITION AND INTERPRETATION

Definitions.

2. In these Rules—

“convening a fresh court” includes dissolving the existing court;

“member” when used in relation to a court-martial does not include the president;

“section” means a section of the Act;

“special finding” means when used in relation to:—

- (a) section 103, any finding which a court-martial may make in accordance with that section;
- (b) section 117, a finding in accordance with subsection (2) of that section that the accused is guilty but insane;
- (c) Rule 65(3), a finding that the accused is guilty of the charge subject to the exception of variation specified in the finding.

ARREST AND AVOIDANCE OF DELAY

Avoidance of delay by commanding officers in investigating charges.

3. (1) When a person is detained by military authority in Avoidance arrest, his commanding officer shall, unless it is impracticable within forty-eight hours of becoming aware that he is so detained have such person brought before him, inform him of the charge against him and begin to investigate it.

(2) Every case of such a person being detained in arrest beyond the period of forty-eight hours referred to in this rule without such investigation having begun and the

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reason therefor shall be reported by his commanding officer to the higher authority.

Eight day delay reports.

4. The report required by subsection (2) of section with regard to the necessity for further delay in bringing an accused to trial shall be in the form set out in the First Schedule and shall be signed by his commanding officer. The report shall be sent to the officer who would be responsible for convening, a court-martial for the trial of the accused.

First schedule.

Arrest not to exceed 72 days without permission from higher authority.

5. An accused shall not be held in arrest for more than seventy-two consecutive days without a court-martial being convened for his trial, unless the officer who would be responsible for convening the court-martial directs in writing that he shall not be released from arrest. When giving such a direction such officer shall state his reasons for giving it.

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

Methods of investigating charges.

6. (1) Subject to paragraph (3), when a commanding officer investigates a charge he shall first read and, if necessary, explain the charge to the accused and shall then:—

- (a) hear the evidence himself in accordance with rule 7; or
- (b) cause the evidence to be reduced to writing, in accordance with paragraph (2) and read and consider it:

Provided that—

- (a) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced

to writing;

- (b) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7; and
- (c) before he submits to higher authority a charge against an officer or warrant officer, soldier or civilian to whom Part V is applied by section 210 or remands a non-commissioned officer or private soldier for trial by court-martial he shall cause the evidence to be reduced to writing.

(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9:

Provided that a summary of evidence must be taken if:—

- (a) the maximum punishment for the offence with which the accused is charged is death; or
- (b) the accused, at any time before the charge against him is referred to higher authority in accordance with rule 12, requires in writing that a summary of evidence be taken; or
- (c) the commanding officer is of the opinion that the interests of justice require that a summary of evidence be taken.

(3) Where the evidence taken in accordance with

paragraph (1) discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these Rules, as the investigation of the added or substituted charge.

(4) Where a civilian, to whom Part V of the Act is applied by section 210 is charged with an offence with which an appropriate superior authority can deal summarily, it shall not be necessary for his commanding officer to read the charge to the accused; but it shall be a sufficient compliance with the provisions of this Rule if his commanding officer causes to be delivered to the accused a copy of the charge and of the abstract of evidence and considers them together with any statement made by the accused under rule 10.

Hearing of
evidence by
commanding
officer.

7. When a commanding officer investigates a charge during hearing himself:—

(a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness;

Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

(b) the accused shall be allowed to cross-examine any prosecution witness;

(c) the accused may on his own behalf, give evidence on oath or may make a

statement without being sworn;

- (d) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;
- (e) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;
- (f) if the evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 33.

Summary of
evidence.

First Schedule.

8. A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in the First Schedule—

- (a) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if a person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved, the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written

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Statement of his evidence, purporting to be signed by him, maybe read to the accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination:

- (c) A child shall not be called as a prosecution witness in any case where the charge being investigated is for a sexual offence and any statement made in writing by or taken in writing from the child which would be admissible if given orally may be read to the accused and included in the summary of evidence:

Provided that this paragraph shall have no application where the child can be compelled to attend and the accused objects to the application of this paragraph or the officer taken the summary of evidence requires the attendance of the child for the purpose of establishing the identity of any person or is satisfied it has not been possible to obtain from the child a statement that may be given in evidence under this paragraph;

- (d) after all the evidence against the accused has been given, the accused shall be asked:

“Do you wish to say anything? You are not obliged to do so but if you wish you may give evidence on oath or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence.”

Any evidence given or statement made by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence or statement shall be read over to him

and corrected where necessary, and he shall sign it unless he declines to do so;

- (e) the accused may call witnesses in his defence, who shall give their evidence orally;

Provided that, if a person cannot be compelled to attend as a defence witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any defence witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend.

- (f) neither the accused nor the witnesses for the defence shall be subject to cross-examination;

- (g) the evidence of each witness (other than the accused) who gives evidence orally shall be recorded in writing and, immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him;

- (h) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused and the answer thereto, shall be recorded verbatim if the accused so requires;

- (i) the oath shall be administered in

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[Subsidiary]

Defence Rules of Procedure

accordance with rule 33 by the officer taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter:

Provided that, where any child of tender years, called as a witness, does not, in the opinion of the officer taking the summary understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the Officer taking the summary, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

- (j) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with the provision of this rule.

Abstract of
evidence.

First Schedule.

9. (1) An abstract of evidence shall be made in the following way and shall be in accordance with the form set out in the First Schedule—

- (a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the accused should not be present while the abstract of evidence is being made;
- (c) it shall consist of signed statements by such witnesses as are necessary to prove the charge:

Provided that if, in the case of any witness, a signed statement is not readily procurable, a précis of the evidence to

be given by that witness may be included instead of a signed statement; and

- (d) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with paragraph (1), a copy of it shall be handed to the accused and he shall then be cautioned in the following terms—

“This is a copy of the abstract of evidence in your case; you are not obliged to say anything with regard to it unless you wish to do so but you should read it, and, when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence.”

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it.

(3) After the accused has been given an opportunity of making a statement in accordance with paragraph (2) and after his statement (if any) has been recorded, he may submit to the officer making the abstract the statements of any witnesses he wishes to be attached to the abstract of evidence.

(4) Any statement made by the accused in accordance with paragraph (2) and any statements of witnesses submitted by him in accordance with paragraph (3) of this Rule shall be attached to the abstract of evidence.

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Defence Rules of Procedure

First Schedule.

Investigation
before
summary
dealing by
commanding
officer.

(5) A certificate by the person who recorded the statement made by the accused in accordance with paragraph (2) stating that the accused was duly cautioned in accordance with this Rule, shall be attached to the abstract of evidence and shall thereafter form part of it. This certificate shall be in the form set out in the First Schedule.

10. Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing—

- (a) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and
- (b) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

Dismissal of
charge by
commanding
officer.

11. (1) A commanding officer may dismiss a charge at any time during his investigation if he is of the opinion that it ought by not to proceeded with further.

(2) After a commanding officer has referred a charge to higher authority in accordance with rule 12, he shall not dismiss it unless it has been referred back to him with a direction that it shall be dismissed in accordance with the provisions of section 87.

Reference of
charges to
higher
authority.

12. When a commanding officer submits to higher authority a charge against an officer or warrant officer or a civilian to whom Part V is applied by section 210 or has remanded, a non-commissioned officer or private soldier for trial by court-martial, he shall send to higher authority:—

- (a) a copy of the charge on which the accused is held;
- (b) a draft charge-sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court martial;
- (c) the summary or abstract of evidence;
- (d) a statement of the character and service record of the accused; and
- (e) a recommendation as to how the charge should he proceeded with.

Charge-sheets.

13. (1) A charge sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character:

Provided that charges under section 47 (1) (a) section 48 (a), section 54 (a) (where the charge is connected with a charge under either of the before- mentioned sections or section 63 may be included in any charge-sheet, notwithstanding that other charges in that charge-sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

Second Schedule.

(2) Every charge-sheet shall in its layout follow the appropriate illustration given in the Second Schedule.

Second Schedule.

(3) The commencement of each charge-sheet shall be in the appropriate form set out in the Second Schedule and shall state the number, rank, name and unit of the accused and show by the description of the accused or directly by an

express averment that he is subject to military law under the Act or otherwise liable to trial by court-martial.

Charges. **14.** (1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges but in no case shall they be charged in the alternative in the same charge When charges are laid in the alternative they should be set out in order of gravity commencing with the most serious.

(3) Each charge shall consist of two parts namely –

- (a) the statement of the offence; and
- (b) the particulars of the act, neglect or commission constituting the offence.

Second
Schedule.

(4) The statement of an offence, if it is not a civil offence, shall be in the appropriate form set out in the Second Schedule if it is a civil offence in such words as sufficiently described that offence.

(5) The particulars shall state –

- (a) such circumstances respecting the alleged offences as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;
- (b) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a lesser degree of

punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted; and

- (c) any additional facts which it is intended to prove as rendering the accused liable to the punishment of stoppages if convicted.

Joint charges.

15. (1) Any number of the accused may be charged in the same charge-sheet with offences alleged to have been committed by them separately if the acts on which the charges are founded are so connected that it is in the interests of justice that they be tried together.

- (2) (a) Any number of accused may be charged jointly in one charge for an offence alleged to have been committed by them jointly.

- (b) Where so charged any one or more of such accused may at the same time be charged in the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly, provided that such charges could, if the accused to whom they relate had been tried separately, have been included under Rule 13 (1) in the same charge sheet as the other charges against him.

Construction of
charge-sheets
and charges.

16. In the construction of a charge-sheet or charge there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence

Action by
higher
authority on
receipt of a
charge.

shall be read and construed together.

17. When a higher authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or himself convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that that authority, may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send to the appropriate superior authority or other officer concerned the documents mentioned in rule 12 together with his own recommendation as to how the case should be proceeded with.

**INVESTIGATION OF, AND SUMMARY DEALINGS
WITH CHARGE BY AN APPROPRIATE SUPERIOR
AUTHORITY.**

Documents to
be given to
officers,
warrant officers
and civilians
dealt with
summarily.

18. An appropriate superior authority shall ensure before to investigating and dealing summarily with a charge that the warrant accused is given, not less than twenty-four hours before the charge is so investigated and dealt with, a copy of the charge- sheet containing the charge upon which he will be so dealt with and a copy of the summary or abstract of evidence.

Investigations
of and
summary
dealing with
charges against
officers,
warrant officers
and civilians.

19. When an appropriate superior authority investigates and deals summarily with a charge—

- (a) he shall first read the charge to the accused;
- (b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing

but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them. If the witnesses against the accused do not give their evidence orally the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;

- (c) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;
- (d) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;
- (e) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 33;
- (f) a record shall be made of the proceedings in accordance with, the form set out in the Third Schedule to these Rules.

Third Schedule.

Alternative
courses open to
an appropriate
superior
authority.

20. An appropriate superior authority shall, if an accused elects to be tried by court-martial or the appropriate superior authority in the course of investigating a charge determines that, it is desirable that the charge should be tried by court-martial, either himself convene the court-martial or

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refer the charge to higher authority in accordance with rule 17.

CONVENING OF COURTS-MARTIAL

Duties of
convening
officer when
convening a
court Martial.
Fourth
Schedule.

21. (1) Subject to paragraph (2) when an officer convenes a court-martial he shall—

- (a) issue a convening order in the appropriate form set out in the Fourth Schedule;
- (b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them;
- (c) if he is of the opinion that charges should be put in separate charge-sheets, so direct and direct the order in which they are to be tried;
- (d) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;
- (e) appoint the president and members of the court and any waiting members in accordance with rule 22;
- (f) if convening—
 - (i) an ordinary court-martial

where the maximum or only punishment for the offence is death; or

(ii) any other court-martial at which he considers there should be a judge advocate, appoint a suitable person to act as judge advocate unless such appointment has been made or is to be made by the Defence Board;

(g) appoint an officer subject to service law or counsel assisted by such an officer to prosecute or detail a commanding officer to appoint an officer subject to service law to prosecute:

Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;

(h) appoint the date, time and place for the trial;

(i) send to the president the charge-sheet, the convening order and a copy of the summary or abstract of evidence from which any evidence which in his opinion would be inadmissible under the Act at the court-martial has been expurgated;

(j) send to each member of the court and to each waiting member a copy of the charge- sheet;

(k) send to the prosecutor copies of the

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charge-sheet and convening order and the original summary or abstract of evidence together with an unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copy sent to the president;

- (l) send to the judge advocate (if any) copies of the charge-sheet and convening order and an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the president;
- (m) ensure that the accused is given proper opportunity to prepare his defence in accordance with rule 24; and
- (n) take steps in accordance with rule 89 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24;

Provided that the convening officer may require the accused to defray or undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be such cost, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

(2) When an officer convenes a field court-martial he shall not be obliged to comply with sub-paragraph (g), (i) (in so far as it relates to the copy of the summary or abstract of evidence sent to the president being expurgated), (j), (k) and (l) of paragraph (1) if, in his opinion, it is impracticable to do so.

Appointment
of president
and members.

22. The convening officer shall—

- (a) appoint the president of a court-martial by name and appoint the members either by name or by detailing a commanding Officer to appoint an officer of a specified rank; and
- (b) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of a specified rank.

Officers under
instruction.

23. (1) Subject to rule 79, any officer subject to service law may, by direction of the convening officer or at the discretion of the president remain with a court-martial throughout the proceedings as an officer under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

Preparation of
defence.

24. (1) Subject to paragraph (2) of this rule—

- (a) an accused who has been remanded for trial by court-martial shall be afforded a proper opportunity for preparing his defence and shall be allowed proper communication with

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his defending officer or counsel and with his witnesses;

- (b) a defending officer or counsel shall be appointed to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an appointment to be made;
- (c) if the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him;
- (d) as soon as practicable after an accused has been remanded for trial by court-martial and in any case not less than twenty-four hours before his trial he shall be given—
 - (i) a copy of the charge-sheet;
 - (ii) an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the president;
 - (iii) notice of any additional evidence which the prosecution intends to adduce; and
 - (iv) if the accused so requires, a list of the ranks, names, and units

of the president and members who are to form the court and of any waiting members;

- (e) when an accused is given a copy of the charge-sheet and of the summary or abstract of evidence in accordance with this rule he shall—
 - (i) if necessary, have the charge explained to him; and
 - (ii) be informed that, upon his making a written request to his commanding officer not less than twenty-four hours before his trial requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these Rules to procure the attendance of any such witness at his trial;
- (f) when an accused is served with a copy of a statutory declaration which the prosecutor proposes to hand to the court in accordance with section 104 (2) and rule 56 he shall be informed of his right under the said section to require that oral evidence shall be given in lieu of such statutory declaration.
- (g) when it is intended to try two or more accused jointly, notice of this fact shall

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be given to each such accused when he is given a copy of the charge-sheet, any such accused may, before trial, by written notice to the convening officer claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall if he is of the opinion the interest of justice so require, direct that the accused who has so claimed shall be tried separately.

- (h) when a charge-sheet contains more than one charge, the accused may, before trial, by written notice to the convening officer claim to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

(2) In the case of a field court-martial tire provisions of paragraph (1) need only he complied with so far as it is practicable to do so.

ASSEMBLY AND SWEARING OF COURT

Preliminary
matters to be
considered by
court at

25. (1) Upon a court-martial assembling, the court shall, before beginning the trial, satisfy themselves in closed court—

beginning of
trial.

- (a) that the court has been convened in accordance with court at the Act and these Rules;
 - (b) that the court consists of not less than the legal minimum of officers;
 - (c) that the president and members are of the required rank;
 - (d) that the president and members have been duly appointed and are not disqualified under the Act;
 - (e) if there is a judge advocate, that he has been duly appointed;
 - (f) that the accused appears from the charge-sheet to be subject to military law under the Act or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and
 - (g) that each charge is on its face correct in law and framed in accordance with these Rules.
- (2) (a) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may; appoint a duly qualified waiting member to fill that vacancy.
- (b) The president may, if the interests of

justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(3) If the court is not satisfied on any of the matters mentioned in paragraph (1), and is not competent to rectify such matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereon.

(4) When the court has complied with this rule and is ready to proceed with the trial, the president shall open the court and the trial shall begin.

Objections to
the court.

26. (1) The order convening the court and the names of the court officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section 97.

(2) When a court is convened to try more than one accused whether separately or jointly, each accused shall be given an opportunity to object to any officer on the court in accordance with paragraph (1) and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the officer- to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to, the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers on the court including any officer who has been appointed by the president in accordance with paragraph (9) in place of an officer who has retired.

(8) When an objection to an officer is allowed that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to (other than the president) retires and there is a duly qualified waiting member in attendance, the president should immediately appoint him to take the place of the officer who has retired.

(10) The court shall satisfy themselves that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this rule.

(11) If an objection to the president is allowed the court shall report to the convening officer without proceeding further with the trial.

(12) If as the result of the allowance of an objection to a member there are insufficient officers available to form a court in compliance with the Act the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint an officer as a

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member to fill the vacancy or convene a fresh court to try the accused.

Swearing of court.

27. (1) Immediately after rule 26 has been complied with, an oath shall be administered president d each member of the court in accordance with rule 33 and in the presence of the accused.

(2) If there is a judge advocate, the oath shall be administered by him to the president first and afterwards to each member of the court, if there is no judge advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn.

(3) A court may be sworn at one time to try any number of accused then presented before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if they think fit, proceed to determine that objection in accordance with rule 26 or postpone the trial of that accused and swear the court for the trial of the other accused only.

Swearing of judge advocate.

28. After the court have been sworn, an oath shall be swearing administered to the judge advocate (if any) in accordance with rule 33 and in the presence of the accused.

Swearing of officers under instruction.

29. After the court and judge advocate (if any) have been sworn, an oath shall be administered to any officer under instruction under in accordance with rule 33 and in the presence of the accused.

Appointment and swearing

30. (1) A competent and impartial person may be appointed at any time to act as an interpreter or shorthand

of, and
objections to
interpreters
and shorthand
writers.

writer at a trial by court-martial and before he so acts an oath shall be administered to him in accordance with rule 33 and in the presence of the accused.

(2) Before a person is sworn as an interpreter or as a short hand writer, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court think that the objection is reasonable, that person shall not act as interpreter or shorthand writer.

No right of
objection to
judge advocate,
prosecutors
and officer
under
instruction.

31. The accused shall have no right to object to a judge advocate, prosecutor or any officer under instruction.

Order of trials.

32. (1) When a court has been convened to try two or more accused separately and has been sworn in accordance with rule 27(3) the court shall try them in the order indicated by the convening officer or where he has given no such indication, then in such order as the court think fit.

(2) When a court has been convened to try an accused on charges which are included in more than one charge-sheet, the court shall take the charge-sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as the president thinks fit.

Oaths and
solemn
affirmation.
Sixth Schedule.

33. (1) An oath which is required to be administered under these rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule.

Provided that the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be

binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 27 (2) every oath shall be administered at a court-martial by the president, a member of the court or the judge advocate.

Sixth Schedule. (3) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in the Sixth Schedule.

(4) The provisions of section 107 shall apply to proceedings before a commanding officer, the taking of summaries of evidence and proceedings before an appropriate superior authority as they apply to proceedings before a court-martial.

ARRAIGNMENT OF ACCUSED

Arraignment of accused.

34. (1) When the court and judge advocate (if any) have been sworn the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there is more than one charge-sheet against the accused before the court, the court shall arraign and try the accused upon the charge in the first of such charge-sheets and shall announce their finding thereon and if the accused has pleaded guilty the court may either proceed to comply with paragraphs (1) and (2) of rule 44 before they arraign him upon the charge in any subsequent charge-sheet or they may defer compliance with those paragraphs until after the accused has been re-arraigned and tried upon such charge.

Plea to the jurisdiction of the court.

35. (1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court. If he does so—

- (a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and
- (b) the prosecutor may address the court in answer, to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea they shall adjourn and report to the convening officer.

(3) When a court report to the convening officer under this rule, the convening officer shall—

- (a) if he approves the decision of the court to allow the plea, dissolve the court;
- (b) if he disapproves the decision of the court—
 - (i) refer the matter back to the court and direct them to proceed with the trial; or
 - (ii) convene a fresh court to try the accused.

Objection to charge.

36. (1) An accused before pleading to a charge may object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules, and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

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(2) If the court uphold the objection, they shall either amend the charge, if permissible under rule 82, or adjourn and report to the convening officer:

Provided that if there is another charge or another charge-sheet before the court the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this rule, the convening officer shall—

(a) if he approves the decision of the court to allow the objection:—

- (i) dissolve the court; or
- (ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
- (iii) amend the charge to which the objection relates if permissible under rule 83, and direct the court to try it as amended;

(b) if he disapproves the decision of the court to allow the objection —

- (i) direct the court to try the charge; or
- (ii) where there is another charge or another charge-sheet before

the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or

- (iii) convene a fresh court to try the accused.

Plea to bar of trial.

37. (1) An accused before pleading to a charge may offer a plea of trial in reliance upon section 126 or section 128. If he does so —

- (a) the accused may adduce evidence in support of the pies and the prosecutor may adduce evidence in answer thereto; and
- (b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea they shall adjourn and report to the convening officer:

Provided that if there is another charge or another charge-sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this rule, the convening officer shall:—

- (a) if he approves the decision of the court to allow the plea:—
- (i) dissolve the court; or
- (ii) where there is another charge

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or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only;

- (b) if he disapproves the decision of the court to allow the plea:
- (i) direct the court to try the charge; or
 - (ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
 - (iii) convene a fresh court to try the accused.

Application by
an accused at a
joint trial to be
tried
separately.

38. Where two or more accused are charged jointly, any one the accused may, before pleading to the charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. If the accused makes such an application the prosecutor may address the court in answer separately thereto and the accused may reply to the prosecutor's address. If the court are of the opinion that the interests of justice so require they shall allow the application and try separately the accused who made it.

Application by
an accused at a

39. Where a charge-sheet contains more than one charge the accused may, before pleading to the charges, apply

trial to have a charge tried separately.

to the court to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court are of the opinion that the interests of justice so require they shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

Pleas to the charge.

40. (1) After any pleas under rules 35 and 37 any objection under rule 36 and any application under rules 38 and 39, have been dealt with, the accused shall be required (subject to paragraph (2)) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where the court are empowered by section 103 to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where they could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 65, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

Acceptance of pleas of guilty.

41. (1) If an accused pleads guilty to a charge under either paragraph (1) or paragraph (2) of rule 40 the president or judge advocate shall, before the court decide to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept plea of guilty under either paragraph (1) or paragraph (2) of rule 40 is—

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- (a) the court are not satisfied that the accused under stands nature of the charge or the effect of his plea, or
- (b) the president having regard to all the circumstances, consider, that the accused should plead not guilty; or
- (c) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under paragraph (2) of rule 40, a court shall also not accept the plea unless the convening officer concurs and they are satisfied of the justice of such course. The concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under either paragraph (1) or paragraph (2) of rule 40 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When the court are satisfied that they can properly accept a plea of guilty under either paragraph (1) or paragraph (2) of rule 40 they shall record a finding of guilty in respect thereof,

Pleas on
alternative
charges.

42. (1) When an accused pleads guilty to the first of two or more alternative charges, the court, if they accept the accused's plea of guilty shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the

first of such charges, the court may:—

- (a) proceed as if the accused had pleaded not guilty to all the charges; or
- (b) with the concurrence of the convening officer (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge-sheet. Where the court record such findings, the prosecutor shall before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the court have found the accused guilty and which is placed after it in the charge- sheet.

PROCEDURE AFTER RECORDING A FINDING OF GUILTY

Order of trial
where pleas of
guilty and not
guilty.

43. After the court have recorded a finding of guilty, if there is no other charge in the same charge-sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge-sheet, they shall proceed with the trial as directed by rule 44. If there is another charge in the charge-sheet to which the accused who has pleaded not guilty to a charge in that charge-sheet, the court shall not comply with rule 44 until after they have dealt with such other charge or tried such other accused and have announced and recorded their funding in respect thereof.

Procedure on
finding of

44. (1) After the court have recorded a finding of guilty in respect of a charge to which an accused pleaded

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guilty after plea guilty, the prosecutor shall, subject to rule 43, read the summary or abstract of evidence to the court or inform the court of the facts contained therein:

Provided that if an expurgated copy of the summary or abstract was sent to the president, the prosecutor, it or shall not read to the court those parts of the summary or abstract which have been expurgated or inform the court of the facts contained in those parts, and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

(3) After paragraphs (1) and (2) have been complied with, the accused may:—

- (a) adduce evidence of character and in mitigation of punishment; and
- (b) address the court in mitigation of punishment.

(4) After paragraph (3) has been complied with, the court shall proceed as directed in paragraphs (1), (2), (3) and (4) of rule 70.

CHANGES OF PLEA

Changes of
Plea.

45. (1) An accused who has pleaded not guilty may at any time before the court close to deliberate on their finding withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 40 (2) and in such case

the court shall, if they are satisfied that they can accept the accused's changed plea under these Rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 44.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under paragraph (2), they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 42, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

PROCEDURE ON PLEAS OF NOT GUILTY

Application for adjournment of trial.

46. After a plea of not guilty to any charge has been entered—

(a) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these Rules relating to procedure before trial have not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence—

(b) if the accused applies for an adjournment—

(i) the accused may adduce

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evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;

(c) the court may grant an adjournment if they think the interests of justice so require.

Case for the prosecution.

47. (1) The prosecutor may, if he desires, and shall, if required by the court, make an opening address explaining the charge, where necessary and the nature and general effect of the evidence which he proposes to adduce.

(2) The witnesses for the prosecution shall then be called and give their evidence.

Calling of
witnesses
whose evidence
is not contained
in summary or
abstract of
evidence.

48. If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused, notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused a reasonable time before the evidence is adduced. If such evidence is adduced without such notice or particulars having been given, the court may, if the after receiving the evidence or any cross-examination arising out of the evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

Notice to an
accused that a
witness will not
be called by the

49. The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the summary or that abstract of evidence nor a witness whom

prosecutor. he has notified the accused witness that he intends to call under rule 48, but if the prosecutor does not intend to call such a witness to give evidence he shall either tender by him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

CALLING AND EXAMINATION OF WITNESSES

Swearing of
witnesses.

50. Save as otherwise provided by the Act an oath shall be administered to each witness in accordance with rule 33 before he gives evidence and in the presence of the accused.

Exclusions of
witnesses from
court.

51. During a trial a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not witnesses under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence the court may direct the witness to withdraw during such discussion.

Examination of
witnesses.

52. (1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness, court judge advocate, prosecutor or by the accused, the witness shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or

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re-examination of a witness to be postponed.

Examination of
witnesses by
court.

53. (1) The president, the judge advocate and, with permission of the president, any member of the court may put questions to a witness.

(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given or seem proper to the court.

Reading back
of evidence to
witnesses.

54. (1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may ask for the record to be corrected or explain the evidence which he has given. If any such correction is made or explanation given, the prosecutor and the accused may put such questions to the witness respecting the correction or explanation as seem proper to the court.

(2) When a shorthand writer is employed it shall not be necessary to comply with paragraph (1), if, in the opinion of the court and the judge advocate, (if any), it is unnecessary to do so:

Provided that if any witness so demands paragraph (1) shall be complied with.

Calling of
witnesses by
court and
recalling of
witnesses.

55. (1) The court may, at any time before they close to deliberate on their finding or if there is a judge advocate before he begins to sum up, call a witness or recall a witness, if in the opinion of the court it is in the interests of justice to do so. If the court call a witness or recall a witness under this rule, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any

time before the court close to deliberate on their finding if there is a judge advocate before he begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

Statutory declaration.

56. A statutory declaration which is admissible in accordance with the provisions of section 104 shall be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASES

Submission of no case to answer and power of court to stop a case.

57. (1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge. If the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless they are satisfied that:—

- (a) the prosecution has not established a *prima facie* case on the charge as laid; and
- (b) it is not open to them on the evidence adduced to make a special finding under either section 103 or rule 65(3).

(3) If the court allow the submission they shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith; if the court

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disallow the submission they shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor find the accused not guilty of a charge, and if they do so they shall also announce such finding in open court forthwith.

CASE FOR THE DEFENCE

Explanation to accused of his rights when making his defence.

58. (1) After the close of the case for the prosecution, the president or judge advocate (if any) should explain to the accused of that—

- (a) if he wishes, he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;
- (b) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate (if any), but that, if he makes a statement without being sworn, no one will be entitled to ask him any questions; and
- (c) whether he gives evidence or makes a statement or remains silent, he may call witness on his behalf both to the facts of the case and to his character.

(2) After the president or judge advocate has complied with paragraph (1) he shall ask the accused if he

intends to give evidence on oath or to make a statement without being sworn and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself he may make an opening address outlining the case for the defence before the evidence for the defence is given.

Evidence for
the defence.

59. (1) After rule 58 has been complied with the witnesses for defence (if any) shall be called and give their evidence.

(2) Rules 50, 51, 52, 53, 54, 55 and 56 shall apply so the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

Evidence in
rebuttal.

60. After the witnesses for the defence have given their evidence the prosecutor may, by leave or the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

Closing
addresses.

61. (1) After all the evidence has been given the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor unless the accused has called a witness to fact other than himself, in which case the prosecutor shall be entitled, subject to paragraphs (3) and (4), to make his closing address after the closing address by the accused.

(3) Where two or more accused are tried jointly,

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any one of them who has called a witness to fact other than himself shall make his closing address before the closing address by the prosecutor, and any one of them who has called no such witness shall be entitled to make his closing address after the closing address by the prosecutor.

(4) Where two or more accused are represented by the same defending officer or counsel he may make one closing address only. If any one of the accused for whom he appears has called no witness to fact other than himself such defending officer or counsel shall be entitled to make his closing address after the closing address by the prosecutor.

Handing in of a statutory declaration by accused.

62. For the purposes of rules 58 and 61, the handing in by the accused of a statutory declaration shall be treated as the calling of a witness by him.

SUMMING UP BY JUDGE ADVOCATE

Summing up by Judge Advocate.

63. After the closing address, if there is a judge advocate, he shall sum up the evidence and advise the court on the law relating advocate, to the case in open court.

DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON THE CHARGE

Deliberation on finding on the charge.

64. (1) After the closing addresses, or if there is a judge advocate after his summing up, the court shall close to deliberate on their finding on finding on a charge.

(2) While the courts are deliberating on their finding on the charge no person shall be present except the president and members of the court and any officer under instruction.

(3) If there is a judge advocate and the court, while deliberating on their finding on the charge require further advice from him, the court shall suspend their deliberation and ask and be given such advice in open court.

Expression of
opinions on,
and form of
finding.

65. (1) The opinion of the president and each member as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank.

(2) Save as is otherwise provided in paragraph (4) the court shall record on every charge on which a plea of not guilty has been recorded:—

- (a) a finding of guilty or a special finding in accordance with section 103 or section 117(2) or paragraph (3) of this rule; or
- (b) a finding of not guilty or of not guilty and honourably acquitted of the charge.

(3) Where the court are of the opinion as regards any charge that the facts which they find to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation which they shall specify in the finding.

(4) Where the court have recorded a finding of guilty on a charge which is laid in the alternative they shall find the accused not guilty of any charge alternative thereto which placed before it in the charge-sheet and record no finding on any charge alternative thereto which is placed after

it in the charge-sheet.

Announcement
of finding.

66. (1) The finding on each charge shall be announced in open court forthwith.

(2) Every finding which requires confirmation shall be announced as being subject to confirmation.

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(3) The finding shall be in the appropriate form set out in the Fourth Schedule.

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

Completion of
procedure on
plea of guilty
before
deliberation on
sentence.

67. After the court have announced their finding on any charge on which the court have entered a plea of not guilty, if there is another charge in the same charge-sheet on which the court have accepted a plea of guilty, the court shall comply with paragraphs (1) and (2) of rule 44 in respect of that charge before proceeding further with the trial.

Trial of charges
in other
charge-sheets
before
deliberation on
sentence.

68. Where there is another charge-sheet against the accused before the court, the court shall not comply with rules 69 and 70 until they have arraigned and tried the accused and have complied with rule 66 and, if necessary, with rule 67, in respect of each charge in such other charge-sheet unless the charge-sheet is withdrawn under rule 80.

Release of
accused.

69. If the findings on all charges against the accused are not guilty the court shall order the accused to be released and the president and judge advocate (if any) shall date and sign the record of the proceedings. The president or the judge advocate shall then forward it as directed in the convening order.

Accused's
record and plea

70. (1) if the finding on a charge against the accused is guilty or the court makes a special finding in accordance with

in mitigation. section 103 or paragraph (3) of rule 65, the court before deliberating on their sentence shall whenever possible take evidence of his age, rank and service record. Such service record shall include—

- (a) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decorations to which he is entitled; and
- (b) particulars of any offence of which the accused has been found guilty during his service and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

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Schedule.

(2) Evidence of the matters referred to in paragraph (1) may be given by a witness producing to the court a written statement containing a summary of the entries in the service books relating to the accused, after the witness has in court verified such statement and indentified the accused as the person to whom it relates. Such statement shall be in the form set out in the Fourth Schedule.

(3) In addition to the evidence contained in the statement referred to in paragraph (2). it shall be the duty of the prosecutor whenever possible to call as a witness an officer to give the court any information in the possession of the military authorities regarding —

- (a) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;
- (b) his general conduct in the service; and

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- (c) particulars of offences which do not appear in the statement above referred to of which the accused has been found guilty by a civil court not being offences of which he was found guilty while under the age of fourteen years.

Provided that the court shall not be informed of any such civil offence unless the finding is proved in accordance with section 191 or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with paragraphs (2) and (3) and if the accused so requires the service books, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service books or such certified copy the court shall cause the form to be corrected accordingly.

(5) After paragraphs (1), (2), (3) and (4) have been complied with the accused may —

- (a) give evidence on oath and call witnesses in mitigation of punishment and to his character; and
- (b) address the court in mitigation of punishment.

Request by
accused for
other offences
to be taken into

71. (1) Before the court close to deliberate on their sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a

consideration. similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the president or judge advocate, who shall ask the accused if he admits having committed them. The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration. This list shall be signed by the president or judge advocate and be attached to the record of the proceedings as an exhibit.

DELIBERATION ON SENTENCE

Persons entitled to be present during deliberation on sentence.

72. While the court are deliberating on their sentence no person shall be present except the president, members, judge advocate (if any) and any officer under instruction.

Sentence and recommendation to mercy.

73. (1) The court shall award one sentence in respect of all the offences of which the accused is found guilty. The sentence shall be in the appropriate form set out in the Fifth Schedule.

(2) The opinion of the president and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

(3) When the court have agreed to take into consideration an offence which is not included in the charge-sheet, the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which they are taking into consideration, but not greater than the maximum sentence which may be

awarded under the Act for the offence of which the accused has been found guilty, save that they may include in their sentence a direction that such deductions shall be made from the pay of the accused as they would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

(4) The court may make a recommendation to mercy and, if they do so, shall record in the proceedings their reasons for making it.

Postponement
of deliberation
on sentence.

74. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if they think that the interests of justice so require, postpone their deliberation upon the sentence to be awarded to any one or more of such accused until they have recorded and announced their findings in respect of all of such accused.

ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

Announcement
of sentence and
conclusion of
trial.

75. (1) The sentence, and any recommendation to mercy together with the reasons for making it, shall be announced in open court. The sentence shall also be announced as being subject to confirmation.

(2) When paragraph (I) has been complied with the president shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the president and judge advocate (if any) shall date and sign the record of the proceedings. The president or the judge advocate shall then forward it as directed in the convening

order.

GENERAL DUTIES OF THE PRESIDENT, PROSECUTOR AND THE DEFENDING OFFICER OR COUNSEL

General duties
of the
president.

76. It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice, and in particular –

- (a) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these Rules;
- (b) to ensure that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;
- (c) to ensure that an officer under instruction does not express an opinion to the court on any matter relating to the trial before the court have come to their finding, nor on sentence before the court have decided upon the sentence;
- (d) when there is no judge advocate present to ensure that a proper record of the proceedings is made in accordance with rule 91 and that the record of the proceedings and exhibits are properly safeguarded in accordance with rule 93.

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General duties
of prosecutor
and defending
officer or
counsel.

77. (1) It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court and judge advocate with due respect and to present their cases fairly, and in particular—

- (a) to conform with these Rules and the practice of the civil courts in Guyana relating to the examination, cross-examination and re-examination of witness;
- (b) not to refer to any matter not relevant to the charge before the court; and
- (c) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of any of the provisions of paragraph (1) it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of the accused.

Counsel.

78. (1) Subject to these Rules the following persons shall be allowed to appear as counsel at a court-martial:—

- (a) every attorney-at-law who has a right of audience before, and every attorney-at-law who is entitled to practice in, the Supreme Court of Guyana;
- (b) with the consent of the convening

officer, any person who is recognised by him as having in any Commonwealth country or territory outside Guyana rights, and duties similar to those of an attorney-at-law in Guyana, and as being subject to punishment or disability for a breach of professional rules.

(2) Any right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by rules 24(1) (e), (g) and (h), 26, 30, 35, 36, 37, 38, 39, 46, 57, 71, 79(2), 91 and 93(2) may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than twenty-four hours before his trial.

POWERS AND DUTIES OF THE JUDGE ADVOCATE

General duties
of the judge
advocate.

79. (1) The prosecutor and the accused respectively are at all times after the judge advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial whether he is in or out of court, subject when he is in court to the permission of the court.

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(2) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge-sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise. The court shall accept his advice on all such matters unless they have weighty reasons for not doing so, and if the courts do not accept it their reasons for not doing so shall be recorded in the proceedings.

(3) After the closing addresses, the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court close to deliberate on their finding. If in the course of deliberating on their finding the court require advice from the judge advocate, they shall suspend their deliberation and ask and be given such advice in open court.

(4) If when the court announce a finding of guilty or a special finding under either section 103 or rule 65(3) the judge advocate is of the opinion that such finding or special finding is contrary to the law relating to the case, he shall once more, but not more than once more, advise the court what findings are, in his opinion, open to them. The court shall then reconsider their finding in closed court. The record of the proceedings relating to such reconsideration shall be in the form set out in the Fourth Schedule.

(5) The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(6) The judge advocate has equally with the president the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear

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and intelligible, or otherwise.

(7) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 91 and responsible for the safe custody of the record of the proceedings under rule 93.

Judge advocate
sitting alone.

80. Where there is a judge advocate and —

- (a) an accused before pleading, to a charge offers a plea in bar of trial; or
- (b) during the course of a trial any question as to the admissibility of evidence arises; or
- (c) during a joint trial an application is made by any of the accused for a separate trial; or
- (d) an application is made by an accused that a charge should be tried separately; or
- (e) an application is made by a party calling a witness for permission to treat that witness as hostile; or
- (f) a submission is made to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer;

the president may direct that the point at issue shall be determined by the judge advocate in the absence of the president and the members of the court and of any officer under instruction. Where the president so directs the members of the court and any officer under instruction shall

withdraw from the court.

(2) The judge advocate shall, when the president and members of the court and any officer under instruction have withdraw in accordance with paragraph (1), hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary. After the judge advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this rule the proceedings before him shall form part of the proceedings of the court, and subsection (1) of section 64, sections 65 and 98, subsections (1) and (2) of section 99, and sections 100, 104, 105, 106, and 107 and rules 33, 50, 51, 52, 53, 54, 55, 56, 77, 78, 84, 85, 86, 90, 91, 92; 93; 96; 97; and 106 shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorised by those sections and those rules to be done by the court or by the president may be done by the judge advocate when sitting alone.

(4) When a judge advocate is sitting alone in accordance with this rule and a person subject to military law under the Act commits an offence against section 64(1) the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(5) The judge advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

WITHDRAWAL AND AMENDMENT OF CHARGE-SHEETS AND CHARGES

Withdrawal of charge-sheets and charges.

81. A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge-sheet before the accused is arraigned on any charge therein.

Amendment of charge-sheets and charges by the court.

82. (1) At any time during a trial if it appears to the court that there is in the charge-sheet:—

- (a) a mistake in the name or description of the accused;
- (b) a mistake which is attributable to a clerical error or omission;

the court may amend the charge-sheet so as to correct the mistake.

(2) If at any time during a trial at which there is a judge advocate it appears to the court, before they close to deliberate on their finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under paragraph (1) they may, if such addition, omission, or alteration can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

(3) If at any time during a trial at which there is no judge advocate it appears to the court before they close to deliberate on their finding, that in the interests of justice it is desirable to make any addition to, omission from or alteration in a charge which cannot be made under paragraph (1) they may adjourn and report their opinion to the convening officer, who may—

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- (a) amend the charge if permissible under rule 83 and direct the court to try it as amended after due notice of the amendment has been given to the accused: or
- (b) direct the court to proceed with the trial of the charge without amending it; or
- (c) convene a fresh court to try the accused.

Amendment of charges by convening officer.

83. When a court report to the convening officer under either rule 36(2) or rule 82(3), he may amend the charge in respect of which they have reported to him by making any addition to omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

SITTINGS AND ADJOURNMENT OF THE COURT

Sittings of the court.

84. Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day and the court shall sit for such time each day as may be reasonable in the circumstances:

Provided that the court shall not sit on any day which is a public holiday within the meaning of the Public Holidays Act, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

Adjournment.

85. (1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

(2) A court may adjourn at any time to consult the convening officer on a point of law.

(3) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the Convening officer.

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

View by court.

86. If at any time during a trial before the Court close to deliberate on their finding it appears to the court that they should, in the interests of justice, view any place or thing, they may adjourn for this purpose. When the court view any place or thing the president, members of the court, judge advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

Absence of
president,
members or
judge advocate.

87. (1) If after the commencement of a trial the president dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening officer.

(2) If after the commencement of a trial any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum the court shall adjourn and the president shall report to the convening officer.

(3) If a judge advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court shall adjourn and report to the convening officer.

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(4) If the president or a member of the court is absent during any part of a trial, he shall take no further part in it and the like steps shall be taken as if the president or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

INSANITY

Insanity.

88. (1) If at any time during a trial it appears to the court that the accused may be unfit to stand his trial by reason of insanity, they shall take evidence as to his mental condition. If the court after considering the evidence are of the opinion that the accused is fit to stand his trial they shall proceed with the trial; but if they are of the opinion that the accused is unfit to stand his trial by reason of insanity they shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of their deliberation on their finding on a charge find pursuant to section 117(2) that the accused was guilty of the offence but was insane at the time of the act or omission which constituted it, their finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under either paragraph (1) or paragraph (2) the president shall announce in open court that the proceedings are terminated and thereupon the president and the judge advocate (if any) shall date and sign the record of the proceedings. The president or judge advocate shall then forward it as directed in the convening order.

INTERVIEWING AND ATTENDANCE OF WITNESSES

Interviewing of
witnesses.

89. (1) The prosecution shall not without the consent of the convening officer, or after the trial has begun, without the consent of the president, interview any witness who was called for the defence at the taking of the summary of evidence whose statement of evidence was included in the summary of evidence or attached to the abstract of evidence or whose attendance at the trial the accused has requested in accordance with rule 24(1) (e), or who has made a statutory declaration, a copy of which the accused has served on the prosecution in accordance with section 104.

(2) Except as provided in rule 49, neither the accused nor any person on his behalf shall without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the prosecution at the taking of the summary of evidence or whose evidence is included in the abstract of evidence, or in respect of whom the prosecution have given the accused notice under rule 48 that they intend to call him as a witness at the trial or who has made a statutory declaration a copy of which the prosecution have served on the accused in accordance with section 104.

Procuring
attendance of
witnesses.

90. (1) A witness who is subject to military law under the Act may be ordered by the proper military authority to attend at the taking of a summary of evidence or a trial by court-martial.

(2) A witness who is not subject to military law under the Act may be summoned to attend—

(a) the taking of a summary of evidence by an order under the hand of the commanding officer of the accused; or

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- (b) a trial by court-martial by an order under the hand of an officer authorised to convene a court-martial or of a staff officer on his behalf, or, after the assembly of the court, of the president.

(3) The summons referred to in paragraph (2) shall, when it relates to the taking of a summary of evidence be in the appropriate form set out in the First Schedule, and, when

First Schedule.

Fourth
Schedule.

it relates to a trial by court-martial be in the appropriate form set out in the Fourth Schedule, and shall be served on the witness either personally or by leaving it with some person at the witness' normal place of abode, and at the time of such service there shall be paid or tendered any sum of money necessary to enable such witness to attend the taking of the summary of evidence or the trial, as the case may be, and to return.

(4) The provisions of section 106 shall apply in relation to proceedings at the taking of a summary of evidence as they apply in relation to proceedings at a court-martial, and when so applied they shall be construed as though the words "officer taking the summary of evidence" were substituted for the words "president of the court-martial".

Record of
proceedings.

91. (1) The proceedings of general and district courts-martial shall be recorded in accordance with the following provisions —

Fourth
Schedule.

- (a) the proceedings of a court-martial shall be recorded in writing in accordance with the appropriate form set out in the Fourth Schedule and in sufficient detail to enable the confirming officer to follow the course

of the proceedings and to judge of the merits of the case;

- (b) when there is no shorthand writer present the evidence should be taken down in narrative form as nearly as possible in the words used:

Provided that if the court, judge advocate, prosecutor or accused consider it necessary, any particular question and answer shall be taken down verbatim;

- (c) when an objection, submission or application is made during a trial at which there is no shorthand writer, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or judge advocate thinks fit:

Provided that if the prosecutor or accused so requests a note shall be made of the objection, submission or application, the grounds therefor, the advice of the judge advocate (if any) thereon and the decision of the court;

- (d) when an address by the prosecutor or the accused or summing up of the judge advocate is not in writing and there is no short hand writer present, it shall only be necessary to record so much of such address or summing up as the court or judge advocate thinks proper:

Provided that if the prosecutor or accused so requests a note shall be made of any particular point in such address or summing up;

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- (e) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but if any comment or report seems to the court to be necessary, the president may forward it to the proper military authority in a separate document.

(2) The proceedings of a field court-martial shall so far as is practicable be recorded in accordance with the provisions of paragraph (1) and the record must in any event contain the names of the president and members constituting the court and the judge advocate (if any), the name and description of the accused, the charge-sheet, all pleas, a brief summary of the evidence and the finding and sentence.

Exhibits.

92. (1) Subject to paragraph (2), any document or thing admitted in evidence shall be made an exhibit.

(2) When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after they have satisfied themselves that such copy or extract is correct and the president or the judge advocate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall —

- (a) be marked with a number or letter and be signed by the president or have a label bearing a number or letter and the signature of the

president affixed to it;

- (b) be attached to or kept with the record of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under paragraph 3(b), the president shall ensure that proper steps are taken for its safe custody.

Custody and inspection of record of proceedings during trial.

93. (1) During a trial at which there is no judge advocate, the record of the proceedings and the exhibits shall be deemed to be in the custody of the president. During a trial at which there is a judge advocate the record and the exhibits shall be deemed to be in the custody of the judge advocate, save when he is not present in closed court when they shall be deemed to be in the custody of the president.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him, and, if proper precautions are taken for its safety, inspect any exhibit.

CONFIRMATION, REVISION AND PROMULGATION

Confirmation and promulgation.

Fourth Schedule.

94. (1) When a confirming authority receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision thereon and on any sentence and any order which the court may have made under section 131 on the record of the proceedings in the appropriate form set out in the Fourth Schedule, and such record of his decision shall form part of the record of the proceedings.

(2) When the court have accepted a plea of guilty made under paragraph (2) of rule 40, the confirming authority may confirm their finding notwithstanding that the court have accepted the plea without the concurrence of the convening officer if, in the opinion of the confirming authority it is in the interests of justice to do so.

(3) When the court have rejected a plea to the jurisdiction of the court or a plea in bar of trial or have overruled an objection to a charge, it shall not be necessary for the confirming authority to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates. If he disapproves the decision of the court to reject the plea or to overrule the objection, he shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(4) A confirming authority may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court have rejected a plea to the jurisdiction or a plea in bar of trial or have overruled on objection to the charge, because he disapproves this decision of the court, he shall when recording his decision under paragraph (1) state that he has withheld confirmation for this reason.

(5) If the sentence of a court-martial is informally expressed, the confirming authority may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears that there is sufficient evidence or a plea of guilty under either paragraph (1) or paragraph (2) of rule 40 to justify the finding of the court, such finding and any lawful sentence consequent thereon

may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

Fourth
Schedule.

(7) When a confirming authority has confirmed a finding and sentence of a court or has withheld confirmation thereof, he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be. The fact of promulgation shall be recorded on the record of the proceedings in the form set out in the Fourth Schedule. If confirmation has been withheld because the confirming authority disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

Revision.
Fourth
Schedule.

95. (1) The proceedings and decision of a court on revision shall be recorded on the record of the proceedings in the appropriate form set out in the Fourth Schedule, and the president shall date and sign such record and decision and return it to the confirming authority, after it has been signed by the judge advocate (if any).

(2) When an accused is acquitted on revision the revised finding shall be communicated to the accused in such manner as may be specified by the confirming authority.

LOSS OF PROCEEDINGS

Loss of original
record of
proceedings
before
confirmation.

96. (1) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy exists, such copy may, if the president or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

(2) If before confirmation the whole or any part of

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the original record of the proceedings of a court-martial is lost and no copy thereof exists but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming authority to follow the course of the proceedings and to judge of the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used in lieu of the original.

Provided that where part only of the original record of the proceedings of a court-martial has been lost, and the part which remains is sufficient to enable the confirming authority to follow the course of the proceedings and judge of the merits of the case, such remaining part may, with the consent of the accused, be accepted and used as if it were the complete record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and such loss cannot be made good under either paragraph (1) or paragraph (2), the confirming authority shall withhold confirmation and shall record his decision in the appropriate form set out in the Fourth Schedule.

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Schedule.

Loss of original
record of
proceedings
after
confirmation.

97. If after confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the president or the judge advocate to be correct, or a sufficient record of the charge finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

CUSTODY OF THE RECORD AFTER CONFIRMATION

AND COST OF COPIES THEREOF

Custody and
preservation of
record of
proceedings
after
confirmation.

Cost of copies
of record of
proceedings.

98. For the purposes of section 134 (1) of the Act the prescribed period during which the record of the proceedings of a court-martial shall be kept in the custody of the Force Records Office shall be six years from the conclusion of the trial.

99. The rate at which copies of the record of the proceedings of a court-martial shall be supplied in accordance with subsections (2) and (3) of section 134 shall be the estimated cost of the copy required not exceeding twenty-five cents for every folio of 72 words.

PETITIONS

Petitions.

Seventh
Schedule.

Seventh
Schedule.

Seventh
Schedule.

100. (1) If an accused who has been sentenced by a court-martial wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming authority in the appropriate form set out in the Seventh Schedule.

(2) If an accused who has been sentenced by court-martial wishes to petition after promulgation against the finding he shall present a petition to a reviewing authority at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule.

(3) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to a reviewing authority or an officer authorised to reconsider a sentence of a court-martial under section 115 of the Act at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule.

MISCELLANEOUS PROVISIONS

Notice
requiring oral
evidence in
place of
statutory
declaration.
Fourth
Schedule.

Exceptions
from Rules on
account of the
exigencies of
the service.

101. A notice under proviso (c) of subsection (2) of section 104 requiring that oral evidence shall be given in lieu of a statutory declaration shall be in the appropriate form set out in the Fourth Schedule.

102. (1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the Rules mentioned in paragraph (4) impracticable, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot as the case may be, may make a declaration to that effect in the appropriate form set out in the Fourth Schedule.

(2) Any declaration made under paragraph (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under paragraph (1) it shall not be necessary to comply with any provision of these Rules which is mentioned in such declaration and these Rules shall be construed accordingly.

(4) The provisions of these Rules in respect of which a declaration may be made under paragraph 1) are:—

- (a) provisos (a) and (b) to rule 6(2);
- (b) rule 8(b) insofar as it relates to the accused right to insist that a witness

shall be compelled to attend the taking of a summary of evidence for cross-examination;

- (c) rule 18 insofar as it provides that the documents specified therein must be given so the accused not less than twenty-four hours before the appropriate superior authority investigates and deals summarily with the charge;
- (d) rule 24(1) paragraphs (b) and (c), and paragraph (d) insofar as it provides that the documents specified therein shall be given to the accused not less than twenty-four hours before his trial.

(5) If an accused is brought to trial by court martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under paragraph (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Exceptions
from Rules in
the interests of
security.

Fourth
Schedule.

103. (1) When in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or, if he is not available, of the senior officer on the spot, a charge-sheet, summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to an enemy, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot as the case may be, may make a declaration to that effect in the appropriate form set out in the Fourth Schedule specifying the document concerned.

(2) Any declaration made under paragraph (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under paragraph (1) it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his care under paragraph (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority as the case may be.

Order to
inspect
banker's books.

104. The provisions of sections 10-13 (inclusive) of the Evidence Act shall mutatis mutandis apply to proceedings by a court martial save that the references in those provisions to an order of a court or judge shall be construed and have effect as reference to an order of the convening officer.

Deviations
from the forms
in the
Schedules.

105. A deviation or omission from a form of words set out in a schedule to these Rules shall not, by reason only of such deviation or omission render any document, act or proceeding invalid.

Cases not
covered by
Rules.

106. In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

FIRST SCHEDULE

FORMS FOR COMMANDING OFFICERS

- 1) DELAY REPORT.
 - 2) SUMMARY OF EVIDENCE.
 - 3) ABSTRACT OF EVIDENCE.
 - 4) CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED.
 - 5) SUMMONS TO WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE.
-

(1) DELAY REPORT

Unit Address:

.....
.....

Tel.....

To:.....
(Convening officer)

¹EIGHT DAY DELAY REPORT

pursuant to Defence Act, section 81 (2)

Number, rank, name of accused

.....
.....

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Date placed in arrest.....20.....

Alleged Offence(s)	Date of Alleged Offence(s)
---	---

close

²The accused is in-----arrest.

open

The reasons for his retention in arrest are.....

.....

²The-----of evidence Abstract $\left\{ \begin{array}{l} \text{was taken on.....20.....} \\ \text{has not yet been} \\ \text{made because.....} \end{array} \right.$

²Application for trial Summary $\left\{ \begin{array}{l} \text{was made on20....} \\ \text{has not yet been} \\ \text{made because.....} \end{array} \right.$

²Legal Advice $\left\{ \begin{array}{l} \text{was received on.....20....} \\ \text{has not yet been received.} \end{array} \right.$

²Action $\left\{ \begin{array}{l} \text{is being taken} \\ \text{has been taken} \end{array} \right\} \begin{array}{l} \\ \text{as follows.....} \end{array}$

²Date of trial has not yet been fixed
has been fixed as.....20...

Reasons for delay since last report.....
.....

.....
.....
Date.....20.....

Officer commanding accused's unit
(To be signed personally by the C.O.)

¹Insert "1st", "2nd", "3rd", "Final" or as the case may be.

²Strike out words not applicable.

(2) SUMMARY OF EVIDENCE

Summary of evidence in the case of.....
(number, rank, name, unit, or other description).

Taken by [the commanding officer of the accused] [.....
(rank, name, unit) on the direction of the commanding officer
of the accused.].....
(number, rank, name, unit, or other description),

.....witness
having been duly sworn¹ states:—
for the
prosecution.

(Cross-examined by the accused)

²Question 1.....

Answer 1.....

or

(The accused declines to cross-examine this witness)

.....
(Signature and rank (if any) of witness)

or

.....
(number, rank, name, unit, or other description)

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.....witness
for the
prosecution.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page..... Having regard to..... (insert grounds for non-attendance of witness—see rule 8 (b)) the attendance of this witness cannot in my opinion be readily procured.

[The accused does not demand the attendance of this witness for cross-examination.] [The accused demands the attendance of this witness for cross-examination by the witness is not compellable and has refused to attend.]

.....
(Signature of officer taking the summary of
evidence)

The accused having been duly cautioned in accordance with Rule of Procedure 8 (d) elects [to give evidence on oath] [to make a statement without being sworn] and to call a witness(es).³

The accused.....(number,
rank, name, unit or other description) having been duly sworn¹ states—

.....witness
for the
defence.

(Signature and rank (if any) of accused if he signs)
.....(number, rank, name, unit, or
other description) having been duly sworn¹ states—

.....witness
for the
defence.

(Signature and rank (if any) of witness)

Certified that Rule of Procedure 8 has been complied with.
This summary of evidence was taken by me at.....
in the presence and hearing of the accused on the.....
day(s) of.....20....

.....
(Signature and rank of officer taking
the summary of evidence)

1. When a witness or the accused affirms the words "duly affirmed" should be substituted for the words "been duly sworn" and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words "without being sworn" should be substituted for the words "having been duly sworn."
 2. See however rule 8(g).
 3. Omit the words "and to call a witness(es)" if they are not applicable.
-

(3) ABSTRACT OF EVIDENCE

Abstract of evidence in the case of.....(number, rank, name, unit or other description) consisting of the.....(insert the number of statements) attached statements and.....(insert the number of precis) precis of evidence¹ of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [.....]² on the direction of the commanding officer of the accused].

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Date.....20.....

.....
Signature and rank

- ¹ Strike out any reference to statements or precis which are not applicable.
 - ² insert name and rank of the officer making the abstract.
-

(4) CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Certified that I.....¹ today handed to the accused².....the abstract of evidence relating to him dated the.....day of.....20....and duly cautioned him in accordance with Rule of Procedure 9(2) and that he [elected to make and sign the statement dated the.....day of.....20... which is marked.....and attached to this certificate][did not make a statement].

Dated.....20...

.....
(Signature of certifying officer)

¹ Insert rank, name and unit of officer signing the certificate.

² Insert the number, rank, name, unit or other description of the accused.

(5) SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE

To¹

WHEREAS a charge has been preferred against.....

.....²

AND WHEREAS I have directed a summary of the evidence
to be taken³on the
.....day of.....20....

YOU ARE PURSUANT TO SECTION 137 OF THE
DEFENCE ACT AND RULE 90 OF THE DEFENCE RULES
OF PROCEDURE, 1977, MADE I HEREUNDER HEREBY
SUMMONED and required to attend as a witness

the taking of the said summary of evidence at.....³
on theday of.....20.....at.....
o'clock in the..... noon and to bring with you the
documents hereinafter mentioned, viz :⁴.....
.....
.....

Whereof you shall fail at your peril.

Given under my hand aton the
day of20.....
.....

(Signature, rank and unit)
Commanding officer of the accused.

¹ Insert name and address of the person to whom the summons is to be sent.

² Insert the number, rank, name, unit or other description of the accused.

³ Insert the place where the summary of evidence is to be taken.

⁴ Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any

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documents, strike out the words relating to documents.

SECOND SCHEDULE CHARGE-SHEETS

- (1) COMMENCEMENT OF CHARGE-SHEETS
- (2) STATEMENTS OF OFFENCES.
- (3) ILLUSTRATIONS OF CHARGE-SHEETS.

(1) COMMENCEMENT OF CHARGE-SHEETS

SECTION 209

- | | | |
|---------|---|-----|
| (1) (a) | The accused (number, rank, name and unit)
being subject to military law under
section 209 (1) | (a) |
| (1) (b) | | |
| (1) (c) | Defence Act is charged with— | |
- | | |
|-----|-----|
| (b) | (c) |
|-----|-----|

SECTION 210

The accused.....(name and brief description)
being liable to trial by court-martial under section 210 (1) of
the Defence Act is charged with –

SECTION 215

The accused.....(name) formerly.....
.....(former military description including
the manner in which the accused was formerly subject to

military law set out in accordance with the appropriate form in this Schedule) and now liable to trial by court-martial under the provisions of

section 125 { (1)
 (2)} of the Defence Act is charged with –

(2) STATEMENTS OF OFFENCES

Treachery, cowardice and offences arising out of military service.

SECTION 33

$(1) \left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \end{array} \right\}$	<p>Aiding the enemy with intent contrary to section 33 (1)</p>	$\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \end{array} \right\}$ of the Defence Act
---	--	--

$\left\{ \begin{array}{l} \text{Mutiny} \\ \text{Incitement} \\ \text{to mutiny.} \end{array} \right\}$	<p>contrary to section 41 (2) of the Defence Act.</p>
---	---

SECTION 42

- (a) Failing to suppress or prevent mutiny contrary to section 42, (a) of ,the Defence Act.
- (b) Failing to report mutiny contrary to section 42 (7) (b) of the Defence Act.

SECTION 43

$(1) (a) \left\{ \begin{array}{l} \text{Striking} \\ \text{Using} \\ \text{Offering} \end{array} \right\}$	<p>violence to</p>	<p>his superior officer contrary to section 43 (1) (a) of the Defence Act.</p>
--	--------------------	--

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Defence

[Subsidiary]

Defence Rules of Procedure

- (1) (b) Using threatening language to his superior
Offering insubordinate contrary to section 43 (1)
(b) of the Defence Act.

SECTION 44

Disobeying a lawful command with wilful defiance of authority contrary to section 44 (1) of the Defence Act.

Disobeying a lawful command contrary to section 44 (2) of the Defence Act.

SECTION 45

- (a) Obstructing a provost officer
person exercising authority
under or on behalf of a provost officer contrary to section 45 (a) of the Defence Act.
- (b) Refusing to assist a provost officer
person exercising authority under or on behalf of a provost officer contrary to section 45 (b) of the Defence Act.

SECTION 46

Disobedience to standing orders contrary to section 46 (1) of the Defence Act.

DESERTION, ABSENCE WITHOUT LEAVE, ETC.

SECTION 47

- (1) (a) Desertion contrary to section 47 (1) (a) of the Defence Act.
- (1) (b) $\begin{cases} \text{Persuading} \\ \text{Procuring} \end{cases}$ a person to desert contrary to section (1) (b) of the Defence Act.

SECTION 48

- (a) Absence without leave contrary to section 48 (a) of the Defence Act.
- (b) $\begin{cases} \text{Persuading} \\ \text{Procuring} \end{cases}$ a person to absent himself contrary to section 48 (b) of the Defence Act.

SECTION 49

- (a) Assisting a person to desert or absent himself contrary to section 49 (a) of the Defence Act.
- (b) Failing $\begin{cases} \text{to report without delay} \\ \text{take steps to cause} \\ \text{the apprehension of} \\ \text{himself} \end{cases}$ $\begin{cases} \text{a deserter absentee} \\ \text{a person attempting} \\ \text{to desert or absent} \end{cases}$ contrary to section 49 (b) of the Defence Act.

SECTION 50

- Failing to attend for a military duty
- Leaving a military duty without permission
- $\left. \begin{array}{l} \text{contrary to section} \\ \text{50 of the Defence} \\ \text{Act.} \end{array} \right\}$

MALINGERING AND DRUNKENNESS

SECTION 51

- (1) (a) (a)
- (b) Malingering contrary to section 51(1) (b) of the Defence Act
- (c) (c)
- (d) (d)

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Defence

[Subsidiary]

Defence Rules of Procedure

SECTION 52

(1) Drunkenness contrary to section 52(1) of the Defence Act.

OFFENCES RELATING TO PROPERTY

SECTION 53

- (a) $\left\{ \begin{array}{l} \text{Stealing} \\ \text{Fraudulently} \\ \text{misapplying} \\ \text{Being concerned} \\ \text{in Conniving at} \end{array} \right\} \left\{ \begin{array}{l} \text{the} \\ \text{Stealing of} \\ \text{fraudulent} \\ \text{misapplic-} \\ \text{ation of} \end{array} \right\} \left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\} \left\{ \begin{array}{l} \text{property} \\ \text{contrary to} \\ \text{section 53} \\ \text{(a) of the} \\ \text{Defence} \\ \text{Act.} \end{array} \right\}$
- (b) Receiving $\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$ property contrary to section 53(b) of the Defence Act.

SECTION 54

- (a) $\left\{ \begin{array}{l} \text{Stealing} \\ \text{Fraudulent misapplying} \\ \text{Being concerned in} \\ \text{Conniving at} \end{array} \right\} \left\{ \begin{array}{l} \text{the} \\ \text{stealing of} \\ \text{fraudulent} \\ \text{misapplic-} \\ \text{ation of} \end{array} \right\} \left\{ \begin{array}{l} \text{property} \\ \text{contrary to} \\ \text{section 54} \\ \text{(a) of the} \\ \text{Defence} \\ \text{Act.} \end{array} \right\}$
- (b) Receiving property contrary to section 54(b) of the Defence Act.
- (c) $\left\{ \begin{array}{l} \text{Wilfully damaging} \\ \text{Being concerned in the willful} \\ \text{damage of} \end{array} \right\}$ property contrary to section 54(c) of the Defence Act.

SECTION 55

- (a) Losing $\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$ property contrary to section 55 (a) of the Defence Act.
- (b) Negligently damaging $\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$ property contrary to section 55 (b) of the Defence Act.
- (c) Negligently damaging $\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$ property contrary to section 55 (c) of the Defence Act.
- (d) Neglect of $\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$ property contrary to section 55 (d) of the Defence Act.
- (e) Making away with $\left\{ \begin{array}{l} \text{a decoration granted} \\ \text{to him his equipment} \end{array} \right\}$ contrary to section 55(e) of the Defence Act.
- (f) By willful neglect damaging $\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$ property contrary to section 55 (b) of the Defence Act.

FLYING OFFENCES**SECTION 56**

Doing an act } in } flying } causing } loss of life } to a person
 Neglect } relation to } the use of aircraft } bodily injury } contrary to
 } } aircraft } likely to cause loss of } section 56
 } } aircraft } life or bodily injury } of the
 } } material } Defence Act

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Defence

[Subsidiary]

Defence Rules of Procedure

SECTION 57

Signing a certificate relating to $\left\{ \begin{array}{l} \text{aircraft} \\ \text{aircraft} \\ \text{material} \end{array} \right\}$ without ensuring its accuracy contrary to section 57 of the Defence Act.

SECTION 58

Unlawful low flying contrary to section 58 of the Defence Act.

SECTION 59

Flying an aircraft in a manner causing or likely to cause unnecessary annoyance contrary to section 59 of the Defence Act.

OFFENCES RELATING TO AND BY PERSONS IN CUSTODY

SECTION 60

- (1) (a) Delaying $\left\{ \begin{array}{l} \text{an investigation} \\ \text{a trial (a)} \end{array} \right\}$ contrary to section 60 (1) of the Defence Act.
- (1) (b) Failing to release a person in arrest contrary to section 60 (1) (b) of the Defence Act.
- (2) Failing to report the offence for which a person has been placed in custody contrary to section 60 (2) of the Defence Act.
- (3) (a) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 60 (3) (a) of the Defence Act.

(3) (b) Failing to hand in a report relating to a person in custody received by him as guard commander contrary to section 60 (3) (b) of the Defence Act.

SECTION 61

(1) Wilfully allowing a person to escape contrary to section 61 (1) of the Defence Act.

(2) (a) Releasing a person without authority contrary to section 61(2) (a) of the Defence Act.

(2) (b) Allowing a person to escape contrary to section 61 (2) (b) of the Defence Act.

SECTION 62

(1) $\left\{ \begin{array}{l} \text{Refusing to obey} \\ \text{Striking} \\ \text{Using} \\ \text{Offering} \end{array} \right\}$ violence to } an officer who orders him into arrest
contrary to section 62(1)
of the Defence Act.

(2) $\left\{ \begin{array}{l} \text{Striking} \\ \text{Using} \\ \text{Offering} \end{array} \right\}$ violence to } to a person whose duty it
is to apprehend } contrary to section
him in whose } 62(2) of the
custody he is } Defence Act.

SECTION 63

Escaping from custody to section 63 of the Defence Act.

OFFENCES IN RELATION TO COURTS-MARTIAL AND CIVIL AUTHORITIES

SECTION 64

$\left\{ \begin{array}{l} (a) \\ (b) \end{array} \right\}$

$\left\{ \begin{array}{l} (a) \\ (b) \\ \quad \quad \quad \end{array} \right\}$

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Defence

[Subsidiary]

Defence Rules of Procedure

- (1) (c) Contempt of a court-martial (c) of the Defence
(d) contrary to section 64(1) (e) Act.
(f) (f)

SECTION 65

- (1) Making a false statement contrary to section 65 (1) of the Defence Act.

SECTION 66

- (a) Obstructing a constable contrary (a) of the Defence
Preventing to section 66 (b) Act.
an arrest by

MISCELLANEOUS OFFENCES

SECTION 67

- (1) Disclosing information contrary to section 67 (1) of the Defence Act.

SECTION 68

Making a false answer on enlistment contrary to section 68 of the Defence Act.

SECTION 69

- (a) Making a false service document contrary to section 69(b) of the
Signing a false Defence Act.
entry in a

- Altering

(b) Altering an entry in a service document contrary to section 69(b) of the Defence Act.

Suppressing
Defacing

(c) Failing to make an entry in a service document with intent to defraud contrary to section 69(c) of the Defence act.

(d) Being party to

Making	a false entry
Signing	
making a false entry in a	service document
altering a	
altering an entry in a	
making away with a	
suppressing a	
defacing a	contrary to section 69(d) of Defence Act.
failing to make an entry in a service document with intent to defraud	

SECTION 70

Scandalous conduct unbecoming the character of an officer and a gentleman contrary to section 70 of the Defence Act.

SECTION 71

(a)	Striking	a person of inferior rank or less seniority contrary to section 71	(a)	of the Defence Act.
(b)	Ill-treating			

SECTION 72

Disgraceful conduct of	a cruel an indecent an unnatural	kind contrary to section 72 of the Defence Act
------------------------	--	---

LAWS OF GUYANA

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Defence

[Subsidiary]

Defence Rules of Procedure

SECTION 73

- (a) Making a false accusation contrary to section 73 (a) of the Defence Act.
- (b)
$$\left\{ \begin{array}{l} \text{Making a false statement} \\ \text{Wilfully suppressing a material fact} \end{array} \right. \left\{ \begin{array}{l} \text{in a complaint contrary to} \\ \text{section 73 (b) of the Defence Act.} \end{array} \right.$$

SECTION 74

Attempting to commit a military offence contrary to section 74 of the Defence Act, that is to say.....
.....(set out the offence).

SECTION 75

Conduct } to the prejudice of good order and military discipline
Neglect } contrary to section 75 of the Defence Act.

CIVIL OFFENCES

SECTION 76

Committing a civil offence contrary to section 76 of the Defence Act,
that is to say (**here describe the civil offence in such words as sufficiently describe the offence**).

(3) SPECIMENS OF CHARGE-SHEETS

CHARGE-SHEET

The accused No. 5432] Private John Smith, 1st Battalion, The Guyana Defence Force being subject to military law under section 209 (1) (a) of the Defence Act, is charged with—
1st charge.

**STEALING PUBLIC PROPERTY CONTRARY TO
SECTION 53 (a) OF THE DEFENCE ACT**

2nd charge
(Alternative to
the 1st charge)

in that he
at Kingston on 22nd May 1977 did receive a pair of
binoculars, public property.

**RECEIVING PUBLIC PROPERTY CONTRARY TO
SECTION 53 (b) OF THE DEFENCE ACT**

in that he
at Kingston on 22nd May, 1977 did receive a pair binoculars,
public property, knowing them to have been stolen or
fraudulently misapplied.

Lieutenant-Colonel
Commanding 1st Battalion. The Guyana Defence Force,
Commanding officer of the accused.

Tacama Camp

May, 1977.

To be tried by ordinary¹ court-martial.

Brigadier²

Chief of Staff, Guyana Defence Force

Tacama Camp

May, 1977.

¹ The type of court will be an ordinary or a field court-martial according to the circumstances.

² The order for trial may be signed by a staff officer "authorised to sign for" the convening officer as in the second illustration charge- sheet.

CHARGE-SHEET

The accused No. 12345, Corporal Peter Brown, and No. 10000, Private Thomas Jones, both of the 3rd Battalion, The

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Defence

[Subsidiary]

Defence Rules of Procedure

Guyana Defence Force (The Reserve), being subject to military law under section 209 (1) (of the Defence Act, are charged with—
1st charge.

COMMITING A CIVIL OFFENCE CONTRARY TO SECTION 76 OF THE DEFENCE ACT, THAT IS TO SAY, COMMON ASSAULT

in that they
at Linden on 22nd May, 1977 assaulted Jack Sprat.
Corporal Brown only
2nd charge.

STRIKING HIS SUPERIOR OFFICER CONTRARY TO SECTION 43 (1) (a) OF THE DEFENCE ACT

in that he
when on active service at Linden on 22nd May, 1977, struck
No. 98765 Sergeant V. Blue. 3rd Battalion. The Guyana
Defence Force (The Reserve)

Private Jones only
3rd charge.

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER CONTRARY TO SECTION 43 (1) (b) OF THE DEFENCE ACT

in that he
when on active service at Linden on 22nd May, 1977 said to
No. 98765 Sergeant V. Blue, 3rd Battalion, The Guyana
Defence Force (The Reserve) when asked by him for his (the
accused's) particulars "Don't be nosey" or words to that
effect.

Lieutenant-Colonel,
Commanding 3rd Battalion, The Guyana Defence Force
(The Reserve)
Commanding officer of the accused.

Linden

May, 1977.

To be tried by ordinary¹ court-martial

Captain.

Staff Captain A, authorised to sign for Chief of Staff,
Guyana Defence Force.

Georgetown.

May, 1977.

- ¹ The type of court will be an ordinary or a field court-martial according to the circumstances.
-

THIRD SCHEDULE
RECORD OR PROCEEDINGS BEFORE AN
APPROPRIATE SUPERIOR AUTHORITY

ACCUSED'S NUMBER, RANK AND NAME.....
UNIT.....

1. Questions to be put to the accused by the officer dealing with the case before the charge is read.

Q. Have you received a copy of the charge-sheet and [summary] [abstract] of evidence not less than 24 hours ago

A

Q. Have you had sufficient time to prepare your defence
A

2. The officer dealing with the case shall then read the charges) to the accused and ask him the following question:—

Q. Have you agreed in writing that the witnesses against, you need not give their evidence in person?

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Defence

[Subsidiary]

Defence Rules of Procedure

A

3. If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

4. After the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused:—

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.

A

Q. Do you wish to adduce any other evidence in your defence?

A

5. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then:

- (i) consider all the evidence and determine whether the accused is guilty of the offence or not; and
- (ii) if he determines that the accused is guilty examine and consider the accused's record of

service. If he intends to award the punishment of stoppages or the finding will involve a forfeiture of pay or; in the case of a civilian, if he intends to award any punishment, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.

Q. Will you accept my award or do you elect to be tried by court-martial?

A

6.

FINDING.....

AWARD.....

Date.....20...

(Signature, rank and appointment
of appropriate superior authority)

FOURTH SCHEDULE

Court-Martial Forms

- (1) CONVENING ORDERS.
- (2) DECLARATIONS UNDER RULES 102 AND 103.
- (3) SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL.
- (4) NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION.

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Defence

[Subsidiary]

Defence Rules of Procedure

- (5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL.
- (6) FINDINGS.
- (7) RECORD OF RECONSIDERATION OF FINDING UNDER RULE 79 (4).
- (8) SERVICE RECORD OF ACCUSED.
- (9) RECORD OF PROCEEDINGS ON REVISION UNDER SECTION 110.
- (10) CONFIRMATION.
- (11) DIRECTION UNDER SECTION 123 (3).
- (12) RESTITUTION ORDER.
- (13) PROMULGATION.

**(1) CONVENING ORDERS
CONVENING ORDERS FOR AN ORDINARY COURT
MARTIAL¹**

ORDERS BY.....

* [Chief of Staff Guyana
Defence Force * [Commanding.....]]

(Place and date).....

The detail of officers as mentioned below will assemble at.....at..... hours on the.....day of.....Name, etc.. of* accused
20.....for the purpose of trying by an ordinary court-martialthe accused persons) named in the margin.....

PRESIDENT

.....

.....

MEMBERS²

.....

.....

.....
.....
WAITING MEMBERS³
.....
.....

JUDGE ADVOCATE*

The judge advocate has been appointed by the Defence Board

or

.....⁴ is hereby appointed judge advocate.

*In the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service.

*A field officer having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.

The record of the proceedings will be forwarded to

.....
Signed this.....day of.....20....

.....
**(Signature, rank and appointment of the
convening officer)**

or

.....
**(Signature, rank and appointment of the
Appropriate staff officer)**

Authorised to sign for.....
(appointment held by the convening officer)

LAW OF GUYANA

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Defence

[Subsidiary]

Defence Rules of Procedure

***Strike out if not applicable**

1. Insert rank and name of convening officer.
 2. Insert number, rank, name, unit or other description of the accused
 3. A member or a waiting member may be described either by giving his rank, name and unit or thus:
A.....(rank) to be detailed by the officer commanding.....(unit), see Rule of Procedure 22 (a).
 4. Insert the judge advocate's name and any legal qualifications which he has.

**CONVENING ORDER FOR A FIELD COURT-MARTIAL
ORDERS BY.....**

Commanding.....
(Place and date).....

In the opinion of the convening officer it is not possible without serious detriment to the public service that the accused should be tried by an ordinary court-martial.

PRESIDENT

MEMBERS²

.....
WAITING MEMBERS³
.....

JUDGE ADVOCATE*

The judge advocate has been appointed by the Defence Board
or
.....⁴ is hereby appointed judge advocate.

*In the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service.

*Three officers having suitable qualifications are not in the opinion of the convening officer available without serious detriment to the public service.

*It is not in the opinion of the convening officer practicable to appoint an officer other than himself as president.

The record of the proceedings will be forwarded to.....

Signed this.....day of.....20....

.....
(Signature, rank and appointment of the convening officer)

or

.....
(Signature, rank and appointment of the appropriate staff officer)

LAWS OF GUYANA

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Defence

[Subsidiary]

Defence Rules of Procedure

.....
Authorised to sign for.....
(appointment held by convening officer)

* Strike out if not applicable.

1. Insert rank and name of convening officer.
2. Insert number, rank, name, unit or other description of the accused.
3. A member or a waiting member may be described either by giving his rank, name, and unit or thus: “.....(rank) to be detailed by the officer commanding.....(unit)”, see Rule of Procedure 22 (a).
4. Insert the judge advocate's name and any legal qualifications which he has.

(2) DECLARATIONS UNDER RULES 102 AND 103

Declaration under Rule of Procedure 102

In the case of.....¹

I.....² [the officer who
[is] [would be] responsible for convening a court-martial to
try the accused] [the senior officer on the spot] hereby declare
that in my opinion the following exigencies of the service,
namely.....
render compliance with the following provisions of the Rules
of Procedure.....
.....impracticable

Signed at.....this.....day of.....20.....

.....
(Signature)

¹ Insert number, rank, name, unit or other description of accused.

- ² Insert rank, name and appointment of officer making the declaration.

Declaration under Rule of Procedure 103

In the case of.....¹

I.....² [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the³.....
.....contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

Signed at.....this.....day of.....20...

.....
(Signature)

¹ Insert number, rank, name, unit or other description of accused.

² Insert rank, name and appointment of officer making the declaration.

³ Here indicate the document(s).

(3) SUMMONS TO A WITNESS TO ATTEND A COURT MARTIAL

To.....¹

To.....¹

WHEREAS a court-martial [has been ordered to assemble at.....] [has assembled at.....] on the.....day of.....20.....for the trial of.....²

YOU ARE PURSUANT TO SECTION 137 OF THE DEFENCE ACT AND RULE 90 OF THE DEFENCE RULES OF PROCEDURE, 1977, MADE THEREUNDER HEREBY

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Defence

[Subsidiary]

Defence Rules of Procedure

SUMMONED and required to attend as a witness at the sitting of the said court at.....on the..... day of.....20...at.....o' clock in the.....noon and to bring with you the documents hereinafter mentioned, viz.³.....
.....

and so to attend from day to day until you shall be duly discharged; whereof you shall fail at your peril.

Given under my hand at.....on the
day of.....20...

.....
(Signature, rank and appointment)

An officer authorised to convene a court-martial*
President of the court *

.....⁴ Authorised to sign for.....⁵
An officer authorised to convene a court-martial.*

***Strike out if not applicable.**

¹ Insert name and address of the person to whom the summons is to be sent.

² Insert number, rank, name, unit or other description of the accused.

³ Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents strike out the words relating to documents.

⁴ Insert appointment of staff officer who signs.

⁵ Insert the appointment of the officer for whom the staff officer is signing.

(4) NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION

Notice by a Commanding Officer

To.....¹
I.....² commanding.....³
hereby given notice that I require that.....⁴ shall
give oral evidence in lieu of [his] [her] statutory declaration
dated.....at your forthcoming trial by court-
martial.

Date.....20....

.....
(Signature and rank)
Commanding officer of the accused.

Notice by an Accused

To.....² commanding.....³
I.....¹ hereby give notice that I require that
.....⁴ shall give oral evidence in lieu of
[his] [her] statutory declaration dated.....at my
forthcoming trial by court-martial.

Date.....20....
(Signature)

1. Insert number, rank, name, unit or other description of the accused.
2. Insert rank and name of commanding officer.
3. Insert unit.
4. Insert name of witness.

(5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL

A

PAGE 1

LAWS OF GUYANA

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Defence

[Subsidiary]

Defence Rules of Procedure

RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Proceedings of a.....¹ court-martial held aton the.....day of20.... by order of.....

⁴[Chief of Staff Guyana Defence Force]

*Commanding.....dated the..... day of20....

PRESIDENT

MEMBERS

Judge Advocate

Trial of.....²

The court comply with Rule of Procedure 25.not being available owing to.....the president appoints.....a qualified waiting member to take his place.

The accused is brought before the court.

Prosecutor.....

Defending [officer] [counsel].....

At.....hours the trial begins.

The convening order is read in the hearing of the accused, marked.....signed by the president and attached to the record.

The names of the president and members of the court are read in the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as president, or by any of the officers whose names you have heard read?

A.....

The proceedings relating to the objection(s) are recorded on...³

- ¹ Insert "ordinary" or "field" as the case may be.
- ² Insert the number, rank, name, unit or other description of the Reused as given in the charge-sheet.
- ³ Strike out if not applicable.

B

PAGE 2

SWEARING

The president, members of the court and judge advocate are duly sworn. The [following] officers under instruction [listed on page.....] are duly sworn.

Q. Do you object to.....as shorthand writer?
A.....¹

(Name).....is duly sworn as shorthand writer.

Q. Do you object to.....as shorthand writer?
A.....²

(Name).....is duly sworn as interpreter.

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under Rule of Procedure 35. The proceedings relating to his plea are recorded on page.....²

The accused objects to the.....charge(s) under Rule of Procedure 36. The proceedings relating to his objections) are recorded on page.....²

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Defence

[Subsidiary]

Defence Rules of Procedure

The accused offers (a) plea(s) in bar of trial under Rule of Procedure 37 in respect of the charge(s). The proceedings relating to his plea(s) are recorded on page.....²

The accused.....applies under Rule of Procedure 38 to be tried separately The proceedings relating to his application are recorded on page.....²

The accused applies under Rule of Procedure 39 to have charges.....andtried separately. The proceedings relating to his application are recorded on page.....²

¹ If there is an objection the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.

² Strike out if not applicable.

C1

Page.....

ARRAIGNMENT

The charge-sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the president and inserted in the record immediately before this page as page(s).....

Q. Are you guilty or not guilty of the first charge against you which you have heard read?

A.....

Q. Are you guilty or not guilty of the second charge against you which you have heard read?

A.....

Q. Are you guilty or not guilty of the third charge against you which you have heard read?²

A.....

Q. Are you guilty or not guilty of the fourth charge against you which you have heard read?²

A.....

Q. Are you guilty or not guilty of the fifth charge against you which you have heard read?²

A.....

Q. Are you guilty or not guilty of the sixth charge against you which have heard read?²

A.....

The accused having pleaded guilty to thecharge(s) Rule of Procedure 41 is duly complied with in respect of [this] [these] charge(s)²

The accused's pleas to the remaining charges are recorded overleaf².

¹ Strike out "first" if there is only one charge.

² Strike out if not applicable.

C2

Page.....

Q. Are you guilty or not guilty of the seventh charge against you which you have heard read?¹

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Defence

[Subsidiary]

Defence Rules of Procedure

A.....

Q. Are you guilty or not guilty of the eighth charge against you which you have heard read?¹

A.....

Q. Are you guilty or not guilty of the ninth charge against you which you have heard read?¹

A.....

Q. Are you guilty or not guilty of the tenth charge against you which you have heard read?¹

A.....

Q. Are you guilty or not guilty of the eleventh charge against you which you have heard read?¹

A.....

Q. Are you guilty or not guilty of the twelfth charge against you which you have heard read?¹

A.....

¹ Strike out if not applicable.

D1

Page.....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY¹

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial has not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A²

The prosecutor [makes an opening address shortly outlining the facts] [makes an opening address which is

summarised below] [hands in a written address which is read, signed by the president, marked..... and attached to the record.]

- ¹ Remove this page if there are no pleas of not guilty.
- ² If the accused asks for an adjournment, the proceedings relating to his application should, if necessary, be recorded or a separate page and a record made here that this has been done.

D2

Page.....

The witnesses for the prosecution are called
.....
being duly sworn¹ says:

First witness
for the
prosecution

Continued on page.....

- ¹ When a witness affirms, the words "having duly affirmed" should be substituted for the words "being duly sworn" and where a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

D3

Page.....

Proceedings on Pleas) of Not Guilty (continued)¹

The prosecution is closed

The accused submits under Rule of Procedure 57 that there is no case for him to answer in respect of the charge(s). The proceedings relating to this submission are recorded on pages

Defence

LAWS OF GUYANA

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Defence

[Subsidiary]

Defence Rules of Procedure

Rule of Procedure 58 is complied with.

Q. Do you apply to give evidence yourself on oath or do you wish to make a statement without being sworn?

A.....

Q. Do you intend to call any other person as a witness in your defence?

A.....

Q. Is he a witness as to fact or to character only?

A.....

3 { Q. Do you wish to make an opening address?
A.....
The accused (makes an opening address which is summarised below) (hands in a written address which is read, signed by the president, marked and attached to the record).

¹ Remove this page if there are no pleas of guilty.

² . Strike out this paragraph if not applicable.

³ Strike out if the accused does not intend to call witnesses as to fact, other than himself.

D4

Page

(Where the accused makes a statement without being sworn)

The accused (makes a statement, which is recorded on page) (hands in a written statement which is read, marked signed by the president, and attached to the record).

(Where evidence on oath is given for the defence)
The witnesses for the defence (including the accused if sworn)

are called.

First witness
for the
defence
being duly sworn² says:—
Continued on page

1. Strike out this paragraph if not applicable.
2. When a witness or the accused affirms, the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

D5

Page

PROCEEDINGS ON PLEA(S) OF NOT GUILTY
(continued)

The[makes a closing address which is summarised on page.....] [hands in a closing address which is read, marked signed by the president and attached to the record.]

The[makes a closing address which is summarised on page.....] [hands in a closing address which is read, marked signed by the president and attached to the record].

The note of the summing-up of the judge advocate is recorded on page²

FINDINGS(S)

The court close to deliberate on their finding(s).

The court find that the accused³.....

.....is:⁴

LAWS OF GUYANA

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Defence

[Subsidiary]

Defence Rules of Procedure

ANNOUNCEMENT OF FINDING(S)

The court being re-opened the accused is again brought before it.

The finding(s) [is] [are] read and (with the exception of the finding(s) of "not guilty")² [is] [are] announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES²

The accused is released.

Signed atthis..... day of 20....

.....
Judge Advocate

.....
President

1. Strike out this page if not applicable.
- 2 Strike out if not applicable.
- 3 Insert the number, rank, name, unit or other description of the accused as given on the charge-sheet.
- 4 Set out the finding on each charge in the appropriate form set out in the fourth Schedule to the Rules of Procedure.

E

Page.....

PROCEEDINGS ON PLEA(S) OF GUILTY¹

The accused²

.....
is found guilty of²

The finding(s) [is] [are] read in open court and [is] [are] announced as being subject to confirmation.

The [summary] [abstract] of evidence is read to the court by the prosecutor, markedsigned by the president and attached to the record.⁴

or

The prosecutor informs the court of the facts contained in the [summary] [abstract] or evidence which is marked.....signed by the president and attached to the record.⁴

1. Strike out this page if not applicable.
- 2 Insert number, rank and name, unit or other description of the accused as given on the charge-sheet.
- 3 Record the finding on each charge of which the accused is found guilty in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.
- 4 Strike wit if not applicable. If this paragraph is struck out. Rule of Procedure 44(2) must be complied with.

F1

Page.....

PROCEEDINGS ON CONVICTION

NOTE: F2 should be completed before F1 if the accused has pleaded not guilty to all charges. F1 should normally be completed before F2 if the accused has pleaded guilty to any charge but the president may in his discretion complete F2 before F1 if there is no danger of the accused making an inconsistent plea.

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A

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Defence

[Subsidiary]

Defence Rules of Procedure

The evidence for the defence as to the accused's character and in mitigation of punishment, is recorded on pages¹

Q. Do you wish to address the court in mitigation of punishment?

A

The [makes an address in mitigation of punishment, which is summarised [below] [on page.....] [hands in an address in mitigation of punishment, which read, marked..... signed by the president and attached to the record]¹

Final question addressed to the accused personally.
Q. Is there anything further that you wish to say to the court?
A
The accused makes a statement which is recorded on page.....
The court close to deliberate on sentence.

***Strike out if F1 is completed before F2**

- 1 Strike out this paragraph if not applicable.
- 2 Strike out this paragraph if the accused has not requested other offences to be taken into consideration.

F2

Page.....

PROCEEDINGS ON CONVICTION

NOTE: F2 should be completed before F1 if the accused has pleaded not guilty to all charges.

The prosecutor calls evidence as to the accused's

character and record.....
is duly sworn.

Q. Do you produce the service record of the accused?
A. I produce

Q. Have you compared it with the service books?
A.

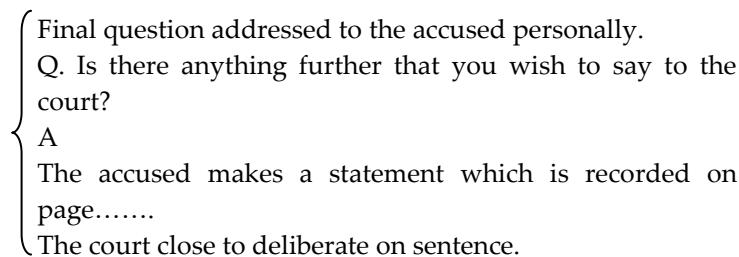
Q. Do the entries on it correspond with the entries in the service books?

A

Theis read, marked..... signed
by the president and attached to the record.

The accused [declines] [elects] to cross-examine this witness
[and the cross-examination is recorded on pages,]

The prosecutor adduces evidence under Rule of Procedure 70(3) which is recorded on pages.....¹


Final question addressed to the accused personally.
Q. Is there anything further that you wish to say to the court?
A
The accused makes a statement which is recorded on page.....
The court close to deliberate on sentence.

***Strike out if F2 is completed before F1**

1 Strike out this paragraph if the prosecutor does not adduce evidence under the Rule of Procedure 70(3).

LAWS OF GUYANA

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Defence

[Subsidiary]

Defence Rules of Procedure

SENTENCE¹

The court summonses the accused.....
.....
to³

ANNOUNCEMENT OF SENTENCE

The court being re-opened, the accused is again brought before it.

The sentence (and recommendation to mercy⁴) (is) (are) announced in open court; the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at..... this.....day of.....20.....

.....

President

¹ Remove this page if not applicable

2 Insert the number, rank, name, unit or other description of the accused as given on the charge sheet.

3 Record the sentence in the appropriate form of words set out in the Fifth Schedule to the Rules of Procedure Any recommendation to mercy (see Rule of Procedure 73(4), recommendation under section 123(3) of the Defence Act restitution order (see section 131 of the Defence Act.

4 Strike out if not applicable

H

Page.....

CONFIRMATION¹

- 1 For minutes of confirmation see the Fourth Schedule to the Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with Rule of Procedure 94(7)

**(6) FINDING(S)
ACQUITTAL ON ALL CHARGES**

not guilty of (the charge) (all the charges)

guilty of (the charge) (all the charges), and honourably acquit him thereof.

ACQUITTAL ON SOME BUT NOT ALL CHARGES

not guilty of the.....¹ charge(s) but is guilty of the¹ charge(s).

not guilty of the.....¹ charge(s) and honourably acquit him thereof but is guilty of the.....¹ charge(s).

Conviction on all Charges

guilty of [the charge] [all the charges].

Special findings

guilty of the.....¹ charge [with the exception of the words.....² [with the exception that.....²]]

not guilty of the offence charged but is guilty of.....³

Where the accused is unfit to stand his trial by reason of insanity, by reason of insanity unfit to stand his trial.

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Defence

[Subsidiary]

Defence Rules of Procedure

Accused guilty but insane at the time when the offence was committed guilty but insane.

- ¹ Insert the number of the charge or charges as numbered in the charge-sheet.
- ² Specify the exception in detail. This form is appropriate when a special hearing is made under Rule of Procedure 65(3).
- ³ State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 103(2). (5) or (6) of the Defence Act.

(7) RECORD OF RECONSIDERATION OF FINDING UNDER RULE 79(4)

The judge advocate advises the court that the finding(s) on the.....¹ charge(s) (is) (are) contrary to the law relating to the case, and that in his opinion the following finding(s) (is) (are) open to them:—

.....
.....

The court is closed for reconsideration of finding.
The court on reconsideration find that the accused is³

.....
.....
.....

The finding(s) on reconsideration (are) read in open court and with the exception of the finding(s) of “not guilty” (is) (are) announced as being subject to confirmation.

- ¹ Insert number of charge as numbered in the charge-sheet.
- ² insert the advice given by the judge advocate.
- ³ Set out the finding(s) of the court in the appropriate form(s).

- ⁴ Strike out the words relating to findings of "not guilty" if there is no such finding.

(8) SERVICE RECORD OF ACCUSED
Service Record of Accused

Number	Rank	Name	Regiment or Corps
.....			

1. ¹He was enlisted on..... 20..... and commissioned on..... 20.....

2. He is serving on a²

3. His age is..... years.

4. He is single/married/divorced/widowed and has..... children under the age of 16 years.

5. His gross rate of pay is..... per day, but he is.....

6. ³His reckonable service towards discharge or transfer to the reserve is.....years.

7. ³His reckonable service towards pension, gratuity, etc. is.....years.

8. (I) He is entitled to the following decorations and awards:

(II) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet:—

.....
.....
.....
.....

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9. He holds the substantive rank of.....with seniority from20.... and has held the acting rank of.....continuously since.....20.....

10. ¹He has been awaiting trial for.....was first, in connection with the matters for which he is before the court, charged or placed in arrest, of which.....days were spent in civil custody.....days were spent in close arrest and..... days were spent in open arrest.

11. ¹ (he is not now under sentence) (he is now under sentence of.....beginning on20....)

12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandant of a military establishment of the following offences:—⁴

	In the last 12 months	During his service
For	times	times

13. The details, according to his conduct sheets, of offences of which he has been convicted by court-martial or of which he has been found guilty during his service by a civil court, offences of which he has been found guilty by an appropriate superior authority are set out⁴ in the Schedule hereto.

¹ Delete inapplicable wording.

² Insert the type and length of the commission or nature and length of the engagement.

³ To be deleted in the case of an officer.

- ⁴ If there are no entries in his conduct sheets, enter "nil".

THE SCHEDULE HEREINBEFORE REFERRED TO¹

No.	Rank	Name	of	Regiment or Corps
Description of Court or appropriate superior Authority	Date and Place of Trial Summary Dealing	Charges on which convicted or found Guilty	Sentence or Order of the Court as confirmed or Award of Appropriate superior Authority	Punishment remitted on Review or re-consideration ²
.....
.....
.....
.....
.....
.....

I HEREBY CERTIFY that this form and schedule contains a summary of entries in the service books relating to the accused.

Signed this _____ day of _____ 20____

.....
(Name, rank and appointment, of Officer signing)

¹ A verbatim extract from the service books, stating these convictions, etc., must be inserted.

² Omit automatic remission under Imprisonment and

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Defence

[Subsidiary]

Defence Rules of Procedure

Detention Rules.

(9) RECORD OF PROCEEDINGS ON REVISION UNDER SECTION 110 OF THE ACT

At.....¹ on the.....day of.....
at.....hours the court re-assembled by order of
.....²the confirming authority for the purpose of re-
considering their finding(s) on the.....³
charge(s).

Present⁴
.....
.....
.....

The order directing the re-assembly of the court arid giving
the reasons therefor is read, marked.....signed
by the president and attached to the record.

The court having considered the observations of the
confirming authority and the whole of the record of the
proceedings do now revoke their finding(s) on
the.....³ charge(s) and find that the
accused⁵.....
is⁶,.....
.....
.....

and (adhere to their sentence) (sentence the accused) to⁷
.....
in the substitution for the original sentence.)

or

The court having considered the observations of the
confirming authority respectfully adhere to their finding(s) on

the³ charge(s)
 (and to their sentence) (but sentence the
 accused.....
 to⁷.....

 in substitution for the original sentence).

or

The court having considered the observations of the confirming authority and the whole of the record of the proceedings do now revoke their finding(s) on the.....³ charge(s) and find the accused⁵ not guilty of (that) (those) charge(s).

Signed at.....¹ this.....day of.....20.....

.....
 Judge Advocate

.....
 President

- ¹ Insert the name of the place.
- ² Insert the rank, name, appointment, etc. of the confirming authority.
- ³ Specify the numbers) of the chargers) concerned, e.g., the 5th charge.
- ⁴ Give the name of the president and members of the court who are present. If the president is absent the senior member must report to the confirming authority. If a member is absent and the court is thereby reduced below the legal minimum the president must report to the confirming authority.
- ⁵ Insert accused's number, rank, name, unit, or other description as given in the charge-sheet.
- ⁶ Set out the finding in the appropriate form of words given in this Schedule.
- ⁷ Set out the new sentence in accordance with the appropriate form set out in the Fifth Schedule.

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Defence

[Subsidiary]

Defence Rules of Procedure

(10) CONFIRMATION

Note: These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.

I confirm the court's finding(s), sentence and order under section 131 of the Defence Act but [remit.....¹] [commute.....²]

I confirm the court's finding(s) sentence and order under section 131 of the Defence Act but mitigate the sentence so that it shall be as follows:—

I vary the sentence so that it shall be as so varied.⁴

I confirm the finding(s) but substitute the sentence of.....for the sentence of the court.⁶

I substitute a finding of.....for the finding of the court and confirm the sentence but [remit.....¹] [commute.....²].

I substitute a finding of.....for the finding of the court on the.....charge and confirm the finding(s) of the court on the.....charge(s)) and the sentence.

Not confirmed (on the grounds that⁷).

I confirm the finding(s) of the court on the charge(s) but do not confirm their finding(s) on the.....charge(s) (on the grounds that.....⁷). I confirm the sentence but [remit.....¹] [commute.....²]

I refer the finding(s) and sentence to.....⁸
for confirmation.

I confirm the finding(s) of the court on
the.....charges) and refer the finding(s) on
the.....charge(s) and the sentence
to.....⁸ for confirmation.

I confirm the finding(s) of the court but refer the sentence
to⁸ for confirmation.

[The Record] [Part of the record] of the proceedings of the
.....court-martial which tried.....
at.....on the.....day of.....20.....
having been lost I do not confirm the finding(s) of the court.

Signed at.....this.....day of.....20.....

.....⁹
(Signature, rank and appointment
of confirming authority)

- 1 State what part of the sentence is remitted.
- 2 State what the sentence is commuted to.
- 3 This form of words may be used when it is impracticable to use either "remit" or "commute".
- 4 This form of words is appropriate when the court have expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.
- 5 Insert the date or event to which the carrying out of the sentence is postponed.
- 6 This form of words is appropriate when the court have passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.
- 7 Where a confirming officer withholds confirmation

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Defence

[Subsidiary]

Defence Rules of Procedure

because he disapproves of the decision of the court on a plea to the jurisdiction in bar of trial or on an objection to a charge, he should specifically state that he is withholding confirmation for this reason. In other cases the confirming officer is not bound to give his reasons for withholding confirmation.

- ⁸ Insert the appointment of the higher authority to whom the matter is to be referred.
- ⁹ The rank and appointment of the confirming officer should be clearly stated after or under his signature.

(11) DIRECTION UNDER SECTION 123(3) OF THE ACT ¹

I.....[confirming authority]
[reviewing authority] hereby direct that the accused
.....(number, rank, name or other description)
shall not be required to be returned to Guyana until he has
served [.....months] [.....years] of the sentence
of [imprisonment] [detention] passed on him.

.....
.....
.....

(Signature)

Dated.....20.....

¹ When the confirming authority is making the direction this form of words should be inserted in the record of the proceedings of the court-martial in the confirming authority's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.

(12) RESTITUTION ORDER

In accordance with subsection.....of section 131 of the Defence Act, I.....² hereby order that.....³ be carried [paid] to.....⁴ and I direct that this order shall be carried out forthwith.

Dated.....,20.....

.....
(Signature)

[Confirming authority]
[Reviewing authority]

- 1 When the confirming authority is making the order this form of words should be inserted in the record of the proceedings of the court-martial in the confirming authority's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.
- 2 Insert the rank, name and appointment of confirming or reviewing authority as the case may be.
- 3 Insert description of article or amount of money, as the case may be.
- 4 Insert name of person to whom restitution is being made.

(13) PROMULGATION

Promulgated and extracts taken at.....(place)
this.....day of.....20.....

.....
(Signature, rank and appointment of officer
making the promulgation).

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Defence

[Subsidiary]

Defence Rules of Procedure

FIFTH SCHEDULE

SENTENCES

- (1) Sentences
- (2) Recommendation under section 123(3) of the Act.
- (3) Restitution Order.

(1) SENTENCES

Note. The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.

OFFICERS

Death.

To suffer death.

Imprisonment
and cashiering.

To be imprisoned for.....and to be cashiered.

Cashiering.

To be cashiered.

Dismissal.

To be dismissed from the Guyana Defence Force.

Fine.

To be fined

[Severe
reprimand.]
[Reprimand]

To be [severely reprimanded] [reprimanded].

Stoppages.

To be put under stoppage of pay until he has made good the sum of.....¹ in respect of.....²

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

Death.

[Subsidiary]

Defence Rules of Procedure

Imprisonment and reduction to the ranks.	To suffer death.
Discharge with ignominy.	To be imprisoned for.....and to be reduced to the ranks.
Dismissal.	To be discharged with ignominy from The Guyana Defence Force.
Detention and reduction to the ranks.	To be dismissed from the Guyana Defence Force
Field punishment and reduction to the ranks.	To undergo detention for.....and to be reduced to the ranks.
[Reduction to the ranks. Reduction to.....]	To undergo field punishment for.....days and to be reduced to the ranks.
Forfeit.	To be reduced to [the ranks] [to the rank of.....]
[Severe reprimand.]	To forfeit.....service.
[Reprimand.]	To be [severely reprimanded] [reprimanded].
Fine.	
Stoppages.	To be fined.
	To be put under stoppages of pay until he has made good the sum of..... ¹ in respect of
Death.	SOLDIERS
Imprisonment.	To suffer death.
Discharge with ignominy.	To be imprisoned for.....

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Defence

[Subsidiary]

Defence Rules of Procedure

To be discharged with ignominy from Her Majesty's service.

Detention.

To undergo detention for.....

Forfeiture of
service.

To undergo field punishment for.....days.....

To forfeit.....service.

Fine.

To be fined.

Stoppages.

To be put under stoppages of pay until he has made good the
stoppage sum of.....¹ in respect of.....

- ¹ Insert the amount which has to be made good by stoppages in respect of the charge or article specified.
- ² Specify the charge or article in respect of which the stoppage is to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

(2) RECOMMENDATION UNDER SECTION 123(3) OF THE ACT¹

The court recommends that the accused
(number, rank, name or other description) shall not be required to be returned to Guyana until he has served [.....months] [.....years] of his sentence.

- ¹ This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

(3) RESTITUTION ORDER

In accordance with subsection.....of section 131
of the Defence Act, the court hereby order
that.....² be [delivered] [paid]
to.....³

The court further order that this order shall be carried
out forthwith.

- ¹ This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.
 - ² Insert the description of the article or the amount of money, as the case may be.
 - ³ Insert name of person to whom restitution is to be made.
-

SIXTH SCHEDEULE

Quotes and Affirmations

- (1) Oaths at Investigations by Commanding Officers and appropriate superior Authorities.
 - (2) Oaths at Court-Martial.
 - (3) Manner of Administering Oaths.
 - (4) Solemn Affirmations.
-

**(1) OATHS AT INVESTIGATIONS BY COMMANDING
OFFICERS AND APPROPRIATE SUPERIOR**

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Defence

[Subsidiary]

Defence Rules of Procedure

AUTHORITIES.

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

Witness

I swear by Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

(2) OATHS AT COURT-MARTIAL

President and Members

I swear by Almighty God that I will well and truly try the [accused] [accused persons] before the court according to the evidence, and that I will duly administer justice according to the Defence Act without partially, favour or affection and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto require in due course of law.

Judge Advocate

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Defence Act and the Rules made thereunder and without partially, favour or affection and I do further swear that I will not on any account at any time whatsoever disclose

or discover the vote or opinion of the president or any member of this court-martial unless thereunto require in due course of law.

Office under Instruction

I swear by Almighty God that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto require in due course of law.

Shorthand writer

I swear by Almighty God that I will truly take down to the best of my power the evidence given before this court-martial and such other matters as may be required and will when required deliver to the court a true transcript of the same.

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter being this court-martial.

Witness

I swear by Almighty God that the evidence which I shall give before the court-martial shall be the truth, the whole truth and nothing but the truth.

(3) MANNER OF ADMINISTERING OATHS

Christians taking the oath shall, unless female, remove

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Defence

[Subsidiary]

Defence Rules of Procedure

their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the oath of words.

(4) SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that the words "I swear by Almighty God" he shall substitute the words "I (name in full) do solemnly affirm" and for the word "swear" wherever it occurs the words "solemnly affirm".

SEVENTH SCHEDULE

Petitions

Petition to confirming authority (before confirmation)
To the confirming authority.

I.....¹ having been convicted by court-martial on.....² at.....³ and having been sentenced to..... hereby petition against the finding(s) on the charge(s)⁴ and sentence⁵ on the following grounds: -

.....
.....
.....

Signed.....
Dated.....

Petition to reviewing authority (after promulgation)

To.....

I.....¹ having been convicted by court-martial on.....² at.....³ and having been sentenced to..... and having had the finding(s) and sentenced promulgated to me on.....⁷ hereby petition against the finding(s) on the..... charge(s)⁴ and sentence⁵ on the following grounds:-

.....
.....
.....

Signed.....

Dated.....

- ¹ Insert the accused's number, rank, name, unit or other description.
 - ² Insert the date when accused was convicted.
 - ³ Insert the place where the trial was held.
 - ⁴ the words "finding(s) on the..... charge(s)" should be omitted if the accused is petitioning against sentence.
 - ⁵ The words "and the sentence" should be omitted if the accused is not petitioning against sentence.
 - ⁶ Petitions should be signed by the accused personally but may if necessary, be signed on his behalf by his representative.
 - ⁷ Insert the date when the findings and sentence were promulgated.
 - ⁸ Here state the reviewing authority whom it desired to petition.
-

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Defence

[Subsidiary]

Defence Rules of Procedure

Defence (Imprisonment and Detention) Regulations

DEFENCE (IMPRISONMENT AND DETENTION) REGULATIONS

made under section 138

Citation. **1.** These Regulations may be cited as the Defence (Imprisonment and Detention) Regulations

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

“commandant” means—

- (a) in relation to a military establishment, being a military prison or military detention barracks, the officer appointed as commandant or superintendent thereof, and any officer from time to time acting in his place;
- (b) in relation to a military establishment, being unit detention rooms, the commanding officer of the unit providing the rooms in accordance with these Regulations;

“confirming authority” means, in relation to a person under a sentence of imprisonment or detention passed by court-martial, the authority by whom that sentence was confirmed;

“legal adviser” means, in relation to a soldier under sentence, any person duly admitted before the High Court to practise law in Guyana; in the opinion of the

Defence (Imprisonment and Detention) Regulations

commandant a person who enjoys in any country or territory outside Guyana rights and privileges and carries out functions similar to those of a person so admitted; a clerk in the full-time employment of any such person as aforesaid authorised by that person to interview a soldier under sentence; and any officer of the Force representing or assisting a prisoner for the purposes of his defence or in connection with a petition or an appeal;

“local commander” means, in relation to a military establishment, the Chief of Staff or any officer not below the rank of major or corresponding rank superior in command to the commandant;

“overseas establishment” means, an establishment under the control of the authorities of a country or territory outside Guyana in which military sentences of imprisonment or detention may be served wholly or partly in accordance with arrangements made by the President with those authorities pursuant to section 122:

“reconsidering authority” means, in relation to a person under a military sentence of imprisonment or detention, an officer by whom such sentences may be reconsidered;

“reviewing authority” means, in relation to a person under a military sentence of imprisonment or detention, the authority responsible for reviewing that sentence;

“room” means any cell or room and any other place of confinement within any premises and any premises comprised of huts or tents or any part of such premises;

“section” means a section of the Act;

“soldier” includes any man or woman who is subject to military law under the Act and is not an officer or a person subject to Part V thereof by virtue of section 210;

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“superintendent” means any officer of field rank or corresponding rank appointed to superintend a military establishment in respect of which the senior full-time member of the staff is not an officer;

“unit” includes a detachment of a unit.

PART II CONTROL AND INSPECTION OF MILITARY ESTABLISHMENTS

Inspectors of
military
establishments.

3. The Defence Board may appoint one or more inspectors of military establishments.

Inspection of
military
establishments.

4. (1) It shall be the duty of an inspector of military establishments to inspect military establishments and to report to the Defence Board on all military establishments at least once in every year. Inspectors of military establishments shall also be responsible to the Defence Board for the training of staff for employment in military establishments and for advising on the appointment and posting of officers for employment on the staffs of military establishments.

(2) In the case of military establishments outside Guyana the local commander shall from time to time inspect, or arrange for the inspection on his behalf, of any military establishment in the area of his command in addition to the inspection of those establishments by inspectors of military establishments.

PART III PROVISION CLASSIFICATION AND USE OF MILITARY ESTABLISHMENTS

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Places in which persons may be required to serve military sentences of imprisonment or detention.

5. Subject to and in accordance with the provisions of 'these Regulations the places in which persons may be required to serve the whole or any part of military sentences of imprisonment or detention passed upon them shall be military establishments, civil prisons, and overseas establishments;

Provided that, save for the purposes of temporary custody in accordance with regulation 18, no person on whom a military sentence of detention has been passed shall be required to serve any part of such sentence in a prison.

Classification of military establishment.

6. (1) Military establishments shall consist of establishments of the following classes —

- (a) military prisons;
- (b) military detention barracks; and
- (c) unit detention rooms.

(2) Combined military establishments may be provided consisting of two or more military establishments of different classes.

Provision of military establishments other than unit detention rooms.

7. Military prison, military detention barracks and combined military establishments may be provided —

- (a) in Guyana, only by the Defence Board; and
- (b) outside Guyana, by the Defence Board, or by the officer commanding an independent command.

Provision of unit detention rooms.

8. Unit detention rooms may be provided by the commanding officer of any unit being an officer not below the

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rank of major or corresponding rank, and shall be provided by the commanding officer of any unit, whatever his rank, if required to do so by higher authority.

Places where
Officers and
certain civilians
may serve
military
sentences of
imprisonment.

9. An officer or a person to whom Part V of the Act applies by virtue of section 210, upon whom a military sentence of imprisonment has been passed shall be required to serve that sentence in a civil prison in Guyana:

Provided that —

(a) where the sentence was for a term of more than twelve months and was passed outside Guyana, he shall be required to serve in a military establishment or an overseas establishment that part of his sentence which he is required to serve outside Guyana in pursuance of a direction given by the confirming or reviewing authority under section 123; and

(b) where the sentence was for a term not exceeding twelve months and was passed outside Guyana, he may, if the confirming or the reviewing authority so directs, be required to serve the whole or any part thereof in a military establishment or an overseas establishment.

Soldiers
sentenced in
Guyana.

10. Save as provided in regulation 17, a soldier upon whom a military sentence of imprisonment or detention has been passed in Guyana shall be required to serve that sentence in Guyana.

Soldiers
sentenced

11. A soldier upon whom a military sentence of

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outside
Guyana.

imprisonment or detention has been passed outside Guyana shall be outside required to serve that sentence —

- (a) if the sentence is for a term of more than twelve months, in Guyana:

Provided that he shall be required to serve outside Guyana that part of his sentence which he is required to serve in pursuance of a direction given by the confirming or reviewing authority under section 123;

- (b) if the sentence is for a term not exceeding twelve months, outside Guyana unless the confirming or reviewing authority otherwise directs.

Place in which sentence shall be served.

12. In the absence of a military prison, a soldier shall serve the whole of any part of a military sentence of imprisonment which he is required to serve in Guyana in a civil prison be served.

Place where military sentence of imprisonment may be served.

13. A soldier shall serve the whole or any part of a military sentence of imprisonment which he is required to serve in Guyana in a military establishment or an overseas establishment.

Places in which military sentences of detention may be served in Guyana.

14. A soldier shall serve the whole or any part of a military sentence of detention which he is required to serve in Guyana in a military establishment, not being a military prison.

Places in which military sentences of detention may be served outside

15. A soldier, other than a woman, shall serve the whole or any part of a military sentence of detention which he is required to serve outside Guyana in a military establishment not being a military prison or, if his sentence is for a term exceeding twelve months and no suitable military

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Guyana.

establishment is available, in an overseas establishment, not being a prison.

Places in which women may serve military sentences of imprisonment or detention.

16. (1) In the absence of a military prison, a woman shall serve the whole or any part of a military sentence of imprisonment in a civil prison or an overseas establishment or in unit detention rooms of a unit of the quarters provided for female soldiers.

(2) A woman shall serve the whole or any part of a military sentence of detention in unit detention rooms of a unit of the quarters provided for female soldiers.

(3) Notwithstanding anything to the contrary in the foregoing regulations, the quarters which female persons are confined pursuant to sentences of imprisonment or detention shall be separate and without access into those provided for male persons.

Removal from Guyana of persons serving sentences there.

17. A person who is serving a military sentence of imprisonment or detention in Guyana may, by order of the confirming authority, reviewing authority or reconsidering authority be removed to any place outside Guyana 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.

Temporary custody of persons under sentence.

18. Notwithstanding anything hereinbefore contained of and subject to section 121, where a person on whom a military sentence of imprisonment or detention has been passed—

(1) is awaiting admission to any prison or other establishment or is in transit from one prison or establishment to another or

(2) is being removed from one country or place to

another: or

(3) has appealed against his conviction to the Court of Appeal, and is entitled or ordered to be present at any place for the purposes of Part VI of the Act; or

(4) is required or entitled to be present at any civil court, court-martial, or inquiry; or

(5) is for any other reason connected with military duty required to be removed temporarily from the prison or other establishment where he is or for the time being serving his sentence to some other place:

he may be detained temporarily —

(a) on the written order of his commanding officer in civil custody for a period not exceeding seven days in accordance with subsection (2) of section 124; or

(b) on the written order of his commanding officer or the commandant or other person in charge of the establishment or prison where he is for the time being —

(i) in any military establishment:

Provided that a person on whom a military sentence of detention has been passed shall not be detained in a military prison for longer than seven days on any one occasion; or

(ii) in such other form of military

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Committal to
and removal
from prisons
and other
establishments.

First Schedule.

Release from
military
sentences of
imprisonment
or detention.

custody as may be determined by his commanding officer or the commandant or other person in charge of the said establishment or prison.

19. Subject to the provisions of section 121, no person under military sentence of imprisonment or detention shall be committed to a civil prison or overseas establishment, or to a military establishment or form of custody, or removed from one country or place to another or from one prison or establishment or form of custody to another, save in pursuance of an order made on one of the forms specified in Part I of the First Schedule which is appropriate to the circumstances of the case, and every such order shall be duly completed in accordance with the instructions contained in that behalf in the said Part I and signed by an officer of such rank and appointment as are therein specified.

20. No person under military sentence of imprisonment or detention shall be released from a military or overseas establishment or form of custody otherwise than—

- (a) in accordance with an order of the Court of Appeal or other civil court of competent jurisdiction;
- (b) in accordance with an order made in the form specified in Part II of the First Schedule and signed by an officer of such rank and appointment as are herein specified or
- (c) on the expiration of his sentence, less any remission allowed in accordance with these Regulations:

Provided that where the sentence expires as aforesaid on a Sunday, Christmas Day or Good Friday the person shall be released on the previous day and the uncompleted day of his sentence shall be deemed to be remitted.

No release.

21. A soldier under sentence shall not be released from imprisonment or detention in a military establishment except in accordance with the provisions of regulation 20 or—

- (a) in accordance with any provision of these Regulations under which a soldier may be removed from places, establishments, or forms of custody to any other place, establishment or form of custody; or
- (b) for the purpose of medical examination, observation or treatment for such period and subject to such conditions as the commandant, acting on the advice of the medical officer, may determine.

Temporary release.

22. (1) The commandant of a military establishment may authorise the temporary release from a military establishment on compassionate grounds of a soldier under sentence in the cases and subject to the conditions set out in this regulation.

(2) The cases in which a soldier under sentence may be released temporarily under paragraph (1) of this regulation are—

- (a) where the death or dangerous illness of a near relative occurs and the commandant is satisfied that the

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presence of the soldier under sentence is desirable,

- (b) where damage has been suffered by any premises occupied by the soldier's family or near relatives, and the commandant is satisfied that the presence of the soldier under sentence is desirable;
- (c) where the soldier under sentence could not make arrangements preliminary to or consequent upon the birth of a child, and the commandant is satisfied that the presence of the soldier under sentence is desirable for that purpose;
- (d) where the soldier under sentence has requested facilities to enable him to marry a woman who is expecting a child;
- (e) where there are domestic difficulties concerning the soldier under sentence or his family and the commandant is satisfied that the personal attendance of the soldier under sentence is desirable.

(3) The conditions subject to which the commandant of a military establishment may authorise the temporary release of a soldier under sentence are —

- (a) that the soldier under sentence shall comply with any conditions laid down by the commandant and to be

observed by or in relation to the soldier under sentence during the period of his temporary release, including any conditions as to custody during the period of temporary release and as to the place or places where the soldier may or may not go during that period;

- (b) that if the soldier under sentence fails to comply with any condition subject to which he was temporarily released the period of his temporary release shall thereby be terminated, and it shall be the duty of the soldier under sentence to return forthwith to the military establishment.

(4) The period of temporary release shall not count as part of the sentence served by the soldier.

Detention of
soldiers in safe
custody.

23. On the receipt by the commandant of a military establishment of an order in writing made by the commanding officer of a soldier who has been remanded for trial by court safe custody, martial, or has been tried and is awaiting promulgation of the finding and sentence of a court-martial or is awaiting investigation or disposal of a charge against him, the commandant may detain him in safe custody in the military establishment if —

- (a) there is accommodation available in the military establishment in which the soldier may be segregated from soldiers under sentence; and
- (b) the commandant can make arrangements for the soldier to be

supplied with the ordinary rations of a soldier, not being a soldier under sentence.

PART IV
REMISSION

24. (1) Subject to the provisions of any of these Regulations sentence which provide for or authorise the forfeiture of remission, a soldier under sentence in a military establishment or an overseas establishment shall be entitled to have part of his sentence remitted in accordance with the following provisions —

- (a) if his sentence does not exceed twenty-four days — nil;
- (b) if his sentence exceeds twenty-four days but does not exceed twenty-eight days — a period equal to the number of days by which the sentence exceeds twenty-four days;
- (c) if his sentence exceeds twenty-eight days, one day for every seven days of his sentence except in the case where this would result in the soldier under sentence serving less than twenty-four days when the period of remission shall be such period as will reduce the period of his sentence which he is required to serve to twenty-four days.

(2) For the purpose of calculating remission in accordance with paragraph (1) fractions of a day shall be ignored.

Records of
remission.

25. (1) The commandant of a military establishment shall maintain a record of the remission to which the soldier is entitled in accordance with the last foregoing regulation, and of any remission forfeited in accordance with any of these Regulations.

(2) The commandant or an officer authorised by him shall verify at frequent intervals the records maintained in accordance with this Regulation.

(3) The records maintained in accordance with this regulation shall be produced to a board of visitors, the commandant, and any company commander to whom the commandant has delegated jurisdiction under these Regulations, on each occasion when the soldier under sentence has been brought before them or him on a charge that the soldier under sentence has committed an offence against these regulations, but the said records shall not be so produced until there has been a finding that the soldier under sentence is guilty of an offence with which he has been charged, or a decision has been reached that the alleged offence shall be reported to the local commander, or the commanding officer of the soldier under sentence disposes of the charge otherwise than in accordance with any jurisdiction conferred by these Regulations.

Automatic
forfeiture of
remission.

26. One day's remission of the sentence of a soldier under sentence in a military establishment or an overseas establishment shall be forfeited in respect of each period of two days and in respect of each odd day on which the soldier under sentence is unable to carry out the work of training which could otherwise be required of him by reason of —

(a) his sickness occasioned by his own misconduct;

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- (b) his undergoing a sentence of a civil court; or
- (c) his being in the lawful custody of any civil authority.

Restoration of
forfeited
remission.

27. Remission forfeited under these Regulations may be Restoration restored by order of —

- (a) the reviewing authority;
- (b) the reconsidering authority; or
- (c) the commandant with the approval of the reviewing authority or the reconsidering authority.

Effect on
remission of
subsequent
sentences.

28. (1) If, while a soldier under sentence is serving a military sentence of imprisonment or detention in a military establishment (in this regulation referred to as "the earlier sentence"), subsequent a further sentence of imprisonment or detention has been passed on or awarded to him (in this regulation referred to as "the later sentence") the remission to which he is entitled shall be calculated as follows — 'a new record of remission calculated in accordance with the foregoing regulations shall be prepared, and the date of his release shall be the date on which he would be released on the earlier sentence, or the date on which he would be released on the later sentence, whichever is the later.

(2) For the purpose of calculating the remission in respect of the earlier sentence under paragraph (1) the date on which the soldier under sentence would be released shall be the date on which he would be released having regard to the period of remission to which he was entitled on the date of the passing or award of the later sentence less, in a case of a sentence passed by court-martial, a period equal to any

period of remission forfeited between the date of the passing of the later sentence and the promulgation thereof.

(3) Any reference in this regulation to the date on which a sentence by court-martial is passed shall include, in a case where the Court directs pursuant to sub-section (5) of section 141 that a sentence shall begin to run from the day on which the Court dismisses an application for leave to appeal, that day.

PART V

TREATMENT, EMPLOYMENT, DISCIPLINE AND CONTROL OF SOLDIERS UNDER SENTENCE

Application of Part V of these Regulations.

Regulations to be brought to the notice of soldiers under sentence.

Purposes of training and treatment.

Corporal punishment and the use of force.

Admission to military

29. This part of these Regulations shall apply, except where otherwise stated or the context otherwise requires, to all soldiers under sentence in military establishments.

30. A copy of this Part of these Regulations, or a sufficient abstract thereof in a form approved by the Defence Board, shall be displayed conspicuously in every military establishment in such places that it can be seen from time to time by every soldier under sentence.

31. The purposes of the training and treatment of soldiers under sentence are to establish in them the will, and to fit them, to become better soldiers and citizens.

32. (1) Corporal punishment shall not be inflicted on soldiers under sentence.

(2) In the treatment of a soldier under sentence force shall not be used unnecessarily, but if the use of force is necessary no more force shall be used than is necessary.

33. On admission to a military establishment the following procedure shall be observed—

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establishment.

- (a) the order or warrant of committal shall be examined and the attention of the commandant shall be directed to any omission or Irregularity;
- (b) except for that amount of his clothing and other articles which a soldier under sentence is authorised to have in his possession, his equipment and every other article or thing which accompanies the soldier on admission (whether the same is his own property or not) shall be taken from him. Clothing, equipment, arid any other public or service property shall be dealt with in accordance with the regulations or instructions of the Service to which the soldier under sentence belongs, and the remainder shall be retained by the commandant for safe custody. A record of such property shall be kept and the said record shall be signed by the soldier under sentence and by a member of the staff of the military establishment. The said property (other than perishable articles) shall be returned to the soldier under sentence on release if he is willing to acknowledge its return by signing a record that it has been delivered up to him. Money shall be kept in safe custody or paid into an account at a bank and the equivalent amount paid to the soldier on release or disposed of at the discretion of the commandant by

sending it to any person at the request of the soldier. Perishable articles shall be disposed of at the discretion of the commandant who shall, so far as practicable, take account of the soldier's wishes in relation to them:

- (c) at the discretion of the commandant, any property which he holds in safe custody on behalf of a soldier under sentence may be delivered or sent to a relative or friend of the soldier under sentence;
- (d) the soldier under sentence shall be searched in accordance with these Regulations to ensure that he has not in his possession any article or thing which he is not authorised to have;
- (e) the soldier under sentence shall be weighed and his weight recorded;
- (f) within twenty-four hours of admission (or within forty-eight hours in a case where the soldier under sentence has been medically examined and certified as fit to undergo his sentence either on the day of admission or the previous day) the soldier under sentence shall be medically examined by a medical officer;
- (g) the religious denomination (if any) of a soldier under sentence shall be recorded and a chaplain or priest of

that denomination shall be informed of his admission. If no chaplain or priest of that denomination has been appointed in respect of the military establishment, notification of the soldier's admission shall be given to a chaplain or priest of a denomination other than that of the soldier under sentence;

- (h) within twenty-four hours of admission the commandant or a member of the staff of the military establishment shall satisfy himself that a soldier under sentence has read, or has had explained to him, the regulations governing his conduct, treatment, employment and discipline, and the means by which he may bring complaints to the notice of his commanding officer, the commandant and visiting officers, in accordance with the Act and these Regulations.

Accommodation of soldiers under sentence.

34. (1) No room shall be used for the confinement of a soldier under sentence unless it is certified by a medical officer that its size, lighting, heating, ventilation and fittings are adequate for health, and that it allows the soldier under sentence to communicate at any time with a member of the staff of the military establishment, and any certificate so given in relation to a room in which more than one soldier may be accommodated shall state the maximum number of soldiers under sentence who may be confined therein.

(2) The size of rooms intended for occupation by soldiers under sentence shall be such as to provide at least 600

cubic feet capacity for each soldier under sentence accommodated therein unless in any particular case, having regard to the exigencies of the service, the local commander authorises the temporary accommodation of soldiers under sentence in accommodation of smaller capacity.

(3) In every military establishment special rooms shall be provided for the temporary confinement of soldiers under sentence who are refractory or violent.

(4) Every soldier under sentence shall be provided with separate bedding and, where circumstances are such that beds can be provided, with a separate bed.

(5) Two soldiers shall never be confined in one room. The confinement must be solitary or at least three men in the room.

(6) In every military establishment separate facilities shall be provided for females.

35. The commandant shall set aside within a military establishment the following accommodation —

Provision of
miscellaneous
accommo-
dation to military
establishments.

(a) a medical detention room or rooms where soldiers under sentence may be given medical examinations, observation, treatment and attention on the occasions when in the opinion of the medical officer any such examination, observation, treatment or attention is required, and the soldier under sentence is not sufficiently ill to necessitate his admission to hospital;

(b) a room or rooms where soldiers under

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Daily routine.

sentence may receive visits authorised by or under these Regulations.

36. Subject to the provisions of these Regulations with reference to the number of hours of work or training to be done by persons under sentence therein the daily routine of a military establishment shall be determined by the commandant in accordance with any instructions issued from time to time by or under the authority of the Defence Board.

Work and
training of
soldiers under
sentence.

37. (1) Subject to the provisions of paragraph (3) and regulation 38, during the whole of his sentence a soldier under sentence shall be engaged in work or training for not more than thirteen, nor less than nine hours a day (excluding times for meals), but a soldier shall not be engaged in work or training until he has been examined by a medical officer and certified as fit for the type of work and training which it is intended that he shall do.

(2) Training in military prisons and detention barracks shall consist of periods of physical training for the preservation of health.

(3) Nothing in this regulation shall require that a soldier shall be engaged in work or training at any time when he is—

- (a) in close confinement;
- (b) undergoing restricted diet as a punishment;
- (c) excused work or training on medical grounds on the advice of a medical officer;
- (d) excuse work by the commandant or

Sundays and
public
holidays.

engaged in some other activity authorised by or under these Regulations.

38. (1) On Sundays, Christmas Day and Good Friday a soldier shall not be engaged on any work or training except work which is necessary for the service of the military establishment or save where in special circumstances, the commandant or the commanding officer directs.

(2) A soldier under sentence whose sabbath is on a day other than a Sunday shall not be required to do more work or training on that day than other soldiers are required to do on a Sunday, but notwithstanding paragraph (1) such a soldier may be required to do work or training on Sundays.

Work in
association.

39. (1) Subject to the following paragraphs of this regulation a soldier under sentence who is employed in productive work shall work in association with other soldiers under sentence.

(2) If it appears to the commandant of a military establishment that it is desirable —

- (a) in the interests of the soldier under sentence; or
- (b) for the maintenance of good order and discipline, 'that during any period a soldier under sentence should not work in association with others, he may arrange for that soldier to work in a room or place apart from other soldiers under sentence:

Provided that a soldier under sentence shall not be required to work apart from other soldiers under sentence

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under the provisions of this regulation for more than seven days or, if authorised by a board of visitors, fourteen days.

(3) In deciding whether a soldier under sentence shall work apart from other soldiers under sentence, and whether such a soldier ought to resume work in association with others, the commandant shall take into consideration any advice which he may be given by a medical officer.

Unauthorised work.

40. A soldier under sentence shall not be employed directly or indirectly for the private benefit or advantage of any person, or in any way contrary to these Regulations or the orders of the commandant.

Earnings schemes.

Second schedule.

41. (1) In military establishments where productive work is done a soldier under sentence shall be credited with weekly or daily sums of money related to the length of sentence which he has completed, as provided in the Second Schedule. He shall not be entitled to payment of the said sums in cash until his release, but during his sentence he may be provided from the canteen of the military establishment with tobacco, cigarettes, and other articles of a retail value equal to the credits earned by him.

(2) The Defence Board may from time to time issue instructions for the increase of the scales of earnings authorised by this regulation.

(3) No soldier under sentence shall be entitled to be credited with earnings in accordance with this regulation unless he is of good conduct and does the work assigned to him to the satisfaction of the commandant. He may also be deprived of earnings as a punishment in accordance with these Regulations.

(4) This regulation shall apply only to military establishments designated by the Defence Board as

Rations for soldiers under sentence.

establishments to which the earnings scheme shall apply.

42. (1) The food provided for soldiers under sentence shall be of a nutritional value adequate for health and strength and of wholesome quality, well prepared and served, and reasonably varied.

(2) The commandant and members of the staff of a military establishment shall endeavour to ensure that every soldier under sentence (other than a soldier undergoing restricted diet as a punishment) receive the rations to which he is entitled. A soldier under sentence may complain if he believes that he is not getting the rations to which he is entitled, but he shall have no right to have his ration or any part of it weighed.

Smoking by soldiers under sentence.

43. (1) A soldier under sentence in a military establishment shall be asked as soon as practicable after his admission whether he is a smoker or a non-smoker. If he states that he is a smoker he will be required to sign a certificate to that effect. If he states that he is a smoker he may smoke tobacco and cigarettes to the extent authorised by this regulation.

(2) Soldiers under sentence shall be authorised to smoke any cigarettes issued to them free or obtained by them from the canteen of the military establishment as a result of any credit to which they may be entitled from earnings authorised by these Regulations. No soldier under sentence shall be entitled to smoke tobacco or cigarettes obtained in any other manner.

(3) No soldier under sentence shall smoke or have in his possession any tobacco, cigarettes or matches or lighter, or any naked light for the purpose of igniting tobacco or cigarettes, except at such times as are authorised in accordance with the standing orders or other orders of the

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commandant.

(4) The scales of cigarettes which may be issued free to soldiers under sentence shall be laid down in ration scales or other instructions issued from time to time by the Defence Board and the first day of issue shall be the day after the admission of the soldier to the military establishment.

(5) No soldier under sentence who has signed a certificate that he is a non-smoker shall be entitled either to a free issue of cigarettes or to purchase tobacco or cigarettes with his earnings.

(6) No soldier under sentence shall be entitled to smoke cigarettes issued free on any day other than the day of issue.

(7) Forfeiture of tobacco or cigarettes (whether free issue or by withdrawing the right to purchase them with earnings from a canteen) may not be ordered as a punishment, but it may be ordered on the advice of a medical officer during any period of sickness, and soldiers under sentence who are in close confinement or on restricted diet as a punishment shall not be entitled to smoke or have in their possession any tobacco or cigarettes.

Letters. 44. (1) A soldier under sentence shall be allowed to write letters as follows —

(a) on admission to a military establishment — one letter; and

(b) in every week of his sentence following the week in which he was admitted — one letter.

(2) Writing paper, envelopes and other materials

required to enable a soldier to write the letters permitted by these Regulations shall be provided and, subject to the provisions of regulation 46, the letters shall be posted free of expense to the soldier under sentence.

(3) A soldier under sentence may receive —

- (a) any number of letters; and
- (b) newspapers, journals and periodicals at the discretion of the commandant.

45. (1) A parcel addressed to a soldier under sentence Parcels. shall be opened and examined by or under the authority of the commandant in the presence of the soldier to whom it is addressed. Any article which the soldier under sentence is prohibited from receiving or not authorised to receive shall be retained in safe keeping by the commandant and handed to the soldier on his release, except in the case of perishable articles which may be disposed of in accordance with the directions of the commandant by returning them to the sender or otherwise.

(2) A soldier under sentence is prohibited from receiving any article but with the consent and at the discretion of the commandant he may receive toilet requirements, books, newspapers and other articles.

46. (1) The commandant of a military establishment or Censorship. any officer deputed by him may scrutinise letters written by or addressed to soldiers under sentence.

(2) The commandant may withhold from a soldier under sentence the whole or any part of a letter addressed to that soldier, but he shall communicate to 'the soldier any part of the letter which is unobjectionable.

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(3) The commandant may withhold a letter written by a soldier under sentence, but in that case he shall give the soldier an opportunity of writing in its place another letter which does' not contain the material to which the commandant objects. If any letter contains a complaint relating to the military establishment or the treatment of the soldier under sentence the commandant shall draw the attention of the soldier to his rights as to complaints.

(4) In any case where the commandant withholds a letter written by or addressed to a soldier under sentence he shall record the fact and his reasons for so acting in a journal.

47. (1) A soldier under sentence may receive visits from his relatives and friends at the discretion of the commandant, and such visits shall take place within the military establishment at times and places determined by the commandant.

(2) Any visit authorised under this regulation shall be within the sight and hearing of the commandant or a member of the staff of the military establishment.

48. (1) The commandant shall 'provide reasonable facilities Visits by for a soldier under sentence who is interested in legal proceedings or proposed legal proceedings to be visited by his legal adviser. At the discretion of the commandant he may also be visited by his legal adviser with reference to other legal business

(2) Any visit authorised by or pursuant to this regulation shall be within the sight, but not the hearing of the commandant or a member of the staff of the military establishment.

49. (1) The commandant may permit a soldier under sentence the purpose to be visited by a police officer or, on the

Visits by
relatives and
friends.

Visits by legal
adviser.

Visits for the
purpose of

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investigating
offences.

written order of a staff officer a provost officer, by any officer or other person whose duty it is to investigate the commission, or suspected commission of an Offence.

(2) The commandant shall permit any person to visit a soldier under sentence if that person is authorised to visit him by a warrant or an order of a court.

Medical
attention.

50. The commandant shall ensure that every soldier under sentence who is —

- (a) in close confinement; or
- (b) subject to any form of mechanical restraint; or
- (c) undergoing restricted diet as a punishment; or
- (d) sick, or complains of sickness,

shall be seen by a medical officer at least once every day. The medical officer shall also see daily every soldier under sentence to whom his attention is especially directed by the commandant.

Functions of
medical officer.

51. The medical officer shall have the care of the medical and physical health of soldiers under sentence, and the commandant shall act in accordance with his advice in relation to those matters unless to do so would be contrary to any enactment or these Regulations, or the officer in charge of the medical services of the command in which the military establishment is situated otherwise directs.

Attendance by
medical officer.

52. The medical officer shall attend at once or as soon as occasion requires on receiving from the commandant information of the illness of a soldier under sentence.

Appeals.

53. The manner in which a soldier under sentence in a military establishment or an overseas establishment who has appealed or desires to appeal to the Court of Appeal against his Conviction by court-martial may 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 Part VI of the Act, or any place to which the Court of Appeal or a Judge thereof may order him to be taken for the purposes of any proceedings of that Court, shall be as follows —

- (a) he may be taken to, kept in custody at, and brought back from any such place as aforesaid in service custody;
- (b) he may be kept in custody at any such place as aforesaid in any manner ordered by the Court of Appeal or a Judge thereof, or in a service establishment, in a civil prison, or in a police station:

Provided that he shall not be kept in a civil prison or in a police station for periods exceeding seven days at any one time.

Facilities for soldiers under sentence who wish to petition or appeal.

54. (1) The commandant of a military establishment shall bring to the notice of soldiers under sentence therein their rights to petition or appeal. In addition to any other means chosen by them who the commandant for this purpose a notice shall be exhibited in such places as to be seen by all soldiers under sentence.

(2) The commandant of a military establishment shall permit a soldier under sentence who intends to petition or appeal or whose appeal is pending, for the purposes of the petition or appeal, to receive visitors, to be provided with

reasonable quantities of writing materials, to write and receive letters, and to prepare and hand personally or to send by post to his legal adviser confidential written communications as instructions in connection with the petition or appeal. Any such confidential written communication shall be exempt from censorship unless the commandant has reason to believe that it obtains material unrelated to the purposes of the petition or appeal when it may be subject to censorship in accordance with these Regulations.

(3) For the purposes of a petition or an appeal a soldier under sentence may receive a visit from a medical adviser, being a registered medical practitioner, selected by him or on his behalf by relatives or friends.

Complaints.

55. (1) A soldier under sentence who considers himself wronged in any matter may complain to the commandant of the military establishment in which he is serving his sentence or to a visiting officer on the occasion of a visit by him.

(2) In a case where there is a company commander of a soldier under sentence he shall forward any complaint which he wishes to make to the commandant through his company commander.

(3) It shall be the duty of the commandant of a military establishment to investigate any complaint made to him in accordance with this rule and to take any steps for redressing the matter complained of which appear to him to be necessary.

(4) A soldier under sentence may complain to his commanding officer as provided in section 173 and it shall be the duty of his company commander, if any, to forward the said complaint to the commandant, and of the commandant

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to forward it to the commanding officer of the soldier under sentence.

(5) In addition and without prejudice to the rights of a soldier under sentence to make a complaint in accordance with the Act and the foregoing provisions of this regulation a soldier under sentence who has not in his opinion received redress for any complaint made by him to the commandant or in accordance with section 173, may complain to the visiting officer, who shall deal with any such complaint as provided in regulation 95.

(6) Without prejudice to the duties of a commandant and a company commander under this regulation, a commandant or company commander who believes that, in making a complaint where he thinks himself wronged, a soldier under sentence has made a statement affecting the character of an officer, warrant officer, non-commissioned officer or soldier subject to military law under the Act, which he knows to be false or does not believe to be true, or has wilfully suppressed any material facts, may call the attention of the soldier under sentence to the provisions of section 73, so that the soldier under sentence may, if he so wishes, withdraw his complaint or any such statement as aforesaid.

Searching
soldiers under
sentence.

56. (1) On admission to a military establishment a soldier soldiers under sentence shall be searched in accordance with regulation 57.

(2) The commandant of a military establishment may order that a soldier under sentence shall be searched at any time while he is serving his sentence.

Method of
searching.

57. The following provisions of this regulation shall be observed in relation to the search of any person in a military establishment pursuant to this regulation —

- (a) every search shall take place in the presence of at least two members of the staff;
- (b) no person shall be present at any search except the commandant or members of the staff of the military establishment and, in particular, no soldier under sentence shall be present at the search of any other soldier under sentence;
- (c) no female shall be searched except by a female, and no female shall be searched in the presence of any male person.

Persons of
unsound mind.

58. If a person serving military sentence of imprisonment or detention is a person of unsound mind, the commandant shall notify the Defence Board so that on discharge that person may' be received into a mental hospital.

Escape.

59. (1) Any member of the staff of a military establishment who discovers that a soldier under sentence has escaped shall immediately report the fact to the commandant.

(2) If a soldier under sentence in a military establishment escapes, the commandant shall immedately inform the authorities and persons specified below in the cases therein specified —

- (a) the chief officer of police in the area in which the military establishment is situated (if in Guyana) or the local police of the said area (if outside Guyana);

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- (b) the nearest unit, detachment or other body of the Military Police;
- (c) the local commander;
- (d) the officer in charge of records;
- (e) the unit paymaster;
- (f) an inspector of military establishments.

Duration of sentences of persons who escape.

60. The following shall be the authorities specified under these Regulations for the purposes of the proviso to subsection (1) of section 119 —

- (a) in the case of a person upon whom a military sentence of imprisonment or detention was passed by court-martial, the reviewing authority or the reconsidering authority;
- (b) in the case of a person to whom a military sentence of detention has been awarded by his commanding officer, that officer.

Deaths.

61. (1) If a soldier under sentence in a military establishment dies the commandant shall —

- (a) if the death occurs in Guyana, immediately report the matter to the coroner having jurisdiction in the place where the military establishment is situated or to the nearest police station;

- (b) if the death occurs outside Guyana, report the matter either —
- (i) to any local civil authority authorised or required to inquire into the cause of death or, if there is no such authority;
 - (ii) to a higher military authority, requesting that a Board of Inquiry may be convened with reference to the death, in accordance with Rules made pursuant to section 139.

(2) Nothing in these Regulations shall affect the duty of the commandant or any other military authority to record or report the death in accordance with the requirements of any other law or instructions.

Offences
against
discipline.

62. A soldier under sentence commits an offence against these Regulations if he —

- (a) commits an offence of a nature which might be dealt with summarily by the commanding officer of a soldier of the regular Force;
- (b) treats with disrespect any member of the staff of a military establishment, any visitor thereto or any person employed thereat;
- (c) is idle, careless or negligent;
- (d) behaves irreverently at divine service;

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- (e) use any abusive, indecent, threatening or other improper language;
- (f) is indecent in any act or gesture;
- (g) communicates with any other soldier under sentence without authority;
- (h) leaves his room or place of work or other appointed place without permission;
- (i) commits any nuisance;
- (j) has in his room or possession any unauthorised article, or attempts to obtain such an article;
- (k) gives to or receives from any person any unauthorised article;
- (l) makes repeated and groundless complaints;
- (m) fails to observe or comply with any conditions as to parole;
- (n) attempts to commit any of the offences referred to in paragraphs (b), (g), (h), (i), (j) and (k).

Jurisdiction of
commandant
and company
commander.

63. (1) The commandant of a military establishment shall have jurisdiction to punish a soldier under sentence who commits an offence against these Regulations.

(2) A company commander under the command of the commandant of a military establishment may have

Procedure for
dealing with
offences.

jurisdiction delegated to him by the commandant to punish a soldier under sentence who commits an offence against these Regulations.

64. (1) A soldier under sentence who, while serving his sentence commits any offence against the Act or against these Regulations shall be dealt with in accordance with the following provisions of this regulation.

(2) When any member of the staff of a military establishment reports to the commandant the commission of such an offence as is referred to in paragraph (1) by a soldier under sentence the commandant shall deal with it as follows, that is to say, if the alleged offence is one which the commandant has no jurisdiction to punish or if, although the commandant has jurisdiction, it appears to him that the punishment he might award would be inadequate, he shall report the alleged offence to the local commander with a request that the soldier shall be dealt with under regulation 67 or under military law (as the case may be). In any other case the procedure set out in paragraph (3) shall be observed.

(3) The commandant shall ensure that a soldier under sentence who is alleged to have committed an offence against these Regulations shall be informed of the offence which he is alleged to have committed. He shall then be brought before the commandant, and the evidence against him shall be heard in the presence of the soldier under sentence unless he agrees that written evidence may be used. If written evidence is used punishment shall not be awarded unless he has been given an opportunity of questioning the accuracy of any written statement. The soldier under sentence shall be given a proper opportunity of hearing the facts against him and of presenting his case. The commandant shall inform the soldier under sentence whether he finds him guilty or not guilty of committing any offence which he is alleged to have committed.

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Punishments
which may be
awarded by a
commandant.

65. (1) The commandant of a military establishment may award any of the punishments set out in paragraph (2) to a soldier under sentence who has been found by him to have committed any offence against these Regulations.

(2) The punishments referred to in paragraph (1) are—

- (a) close confinement for a period not exceeding three days;
- (b) restricted diet No. 1 for a period not exceeding three days;
- (c) restricted diet No. 2 for a period not exceeding fifteen days;
- (d) deprivation of mattress for a period not exceeding three days;
- (e) forfeiture of remission of sentence for a period not exceeding fourteen days;
- (f) deprivation of library books;
- (g) forfeiture or reduction of earnings;
- (h) extra military instruction;
- (i) admonishment.

Punishment
which may be
awarded by a
company
commander.

66. The commander of a military establishment may delegate to a company commander under his command, being a member of the staff of a military establishment, jurisdiction to award the following maximum punishments to a soldier under sentence who is found by the company

commander to have committed an offence against these Regulations—

- (a) restricted diet No. 2 for a period not exceeding seven days;
- (b) deprivation of mattress for one day;
- (c) forfeiture of remission of sentence for a period not exceeding fourteen days;
- (d) deprivation of library books for a period not exceeding fourteen days;
- (e) extra military instruction, not exceeding three periods of 45 minutes each;
- (f) admonishment.

Board of visitors.

67. (1) The local commander may from time to time appoint boards of visitors to exercise disciplinary powers at any military establishment within the area of his command.

(2) A board of visitors shall consist of three officers one of whom shall be not below the rank of major (or corresponding rank) unless the exigencies of the service make it impracticable, when the board may consist of two officers only, one of whom shall be not below the rank of major or corresponding rank.

(3) A board of visitors shall have the same jurisdiction as a commandant, and may award the punishments which may be awarded by a commandant, subject to the following modifications —

- (a) the maximum period of close

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confinement which they may award shall be fourteen days;

- (b) the maximum period which they may award on restricted diet No. 1 shall be fourteen days, with the intervals prescribed by regulation 70;
- (c) the maximum period which they may award on restricted diet No. 2 shall be twenty-one days;
- (d) the maximum period of forfeiture of remission which they may award shall be the whole of the period of remission, but if they award forfeiture of remission which exceeds twenty-eight days the commandant shall report the matter to the reviewing authority who may mitigate or remit the award.

(4) A board of visitors shall investigate and deal with every charge brought against a soldier under sentence which they are required and have jurisdiction to hear and determine in accordance with these Regulations. When they are satisfied that the soldier under sentence has had the charges sufficiently explained to him, that all the oral evidence has been heard in his presence, that he has had an opportunity of reading and questioning the accuracy of any documentary evidence and that he has had proper opportunity of presenting his case and questioning any witnesses, they may —

- (a) dismiss any charge which they find not to have been proved;

- (b) record a finding of guilty and award any punishment which they are authorised by these Regulations to award in respect of any charge which they find to have been proved.

68. The commandant and members of the staff of a military establishment shall not inflict or cause to be inflicted corporal punishment on any soldier under sentence.

Corporal punishment prohibited.

Restricted diets No. 1 and No. 2.

69. (1) Restricted diet No. 1 shall consist of 1 lb. of bread diets per day with unrestricted water.

(2) Restricted diet No. 2 shall consist of —

- (a) Breakfast —
Porridge, 1 pint, containing 3 oz. cereal; Bread, 8 oz. Margarine, oz. Cocoa, 1 pint, containing 3/4 oz. cocoa, 1 fluid oz. milk (or 4/5 oz. Tinned milk) and 1/2 oz. sugar.

- (b) Dinner —
Bread, 4 oz., Soup, 1 pints, containing 3 oz., peas; 3 oz., dried beans, 4 oz., plantains, 4 oz., eddoes, salt, and, on Wednesdays and Saturdays only, 4 oz. meat (bone in).

- (c) Supper —
Bread, 8 oz., margarine 1/2 oz. Cocoa, 1 pint containing oz. cocoa, 1 fluid oz. milk (or 4/5., oz. tinned milk), and 1/2 oz. sugar.

70. (1) A soldier under sentence shall not undergo restricted diet No. 1 for any consecutive period exceeding

Conditions with reference

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to the award of
restricted diet
No. 1.

three days at a award of re-time, and if he is awarded restricted diet No. 1 for a period exceeding eight days his diet shall consist for alternate and equal periods not exceeding three days of —

- (a) 1 lb. of bread per day with unrestricted water; and
- (b) the ordinary ration for soldiers under sentence.

(2) On the days on which a soldier is undergoing restricted diet No. 1 he shall not attend parades, nor shall he be required to undertake any task of labour, but he may be permitted to carry out very light work in his room.

(3) A soldier under sentence who has undergone restricted diet No.1 shall not be required to undergo any further period on that diet in respect of any other offence until an interval has elapsed equal to the period of restricted diet No, 1 already undergone.

(4) Every soldier under sentence undergoing restricted diet No. 1 shall be visited every day by the commandant or his deputy and by the medical officer.

Conditions
with reference
to the award of
restricted diet
No. 2

71. (1) A soldier under sentence undergoing restricted diet Condition No. 2 shall attend parades and carry out work and training at the discretion of the commandant, but he shall not be required award of re to do any heavy work.

(2) If a soldier under sentence who is undergoing restricted diet No. 2 is found guilty of an offence against these Regulations, he may, notwithstanding the provisions of regulation 70, be required to undergo restricted diet No. 1 for a period not exceeding three days, and on the expiration of that period he may be required to undergo the remainder of

the period on restricted diet No. 2:

Provided that the period spent on restricted diet No. 1 shall count as part of the period originally ordered on restricted diet No. 2.

Conditions
affecting
restricted diet
No. 1 and
restricted diet
No. 2

72. (1) A soldier who has undergone restricted diet for a consecutive period of twenty-one days shall resume the ordinary ration for soldiers under sentence for a period of at least seven days before any further period of restricted diet may commence.

(2) A soldier under sentence undergoing restricted diet shall not be issued with or permitted to have in his possession tobacco or cigarettes.

(3) No soldier under sentence shall be required to undergo restricted diet No. 1 or restricted diet No. 2 unless the medical officer has certified that he is fit to do so.

Close
confinement.

73. (1) No soldier under sentence shall be placed in close confinement unless he has been certified by the medical officer as fit to undergo that punishment.

(2) A soldier in close confinement shall not be permitted to attend divine service and, except on the recommendation of the medical officer, shall not be permitted any exercise.

(3) A soldier under sentence in close confinement shall not be deprived of his room furniture or books, nor be subjected to any form of discipline which has not been lawfully ordered in accordance with these Regulations.

(4) A soldier under sentence undergoing close confinement shall be visited at least once every day by the commandant or his deputy and the medical officer and, in

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addition, at least once every three hours, by a member of the staff of the military establishment who shall be detailed to do so.

Mechanical restraint.

74. (1) No soldier under sentence shall be subjected to any form of mechanical restraint as a punishment.

(2) Mechanical restraint of soldiers under sentence may be used for the purposes of safe custody during the removal of a soldier under sentence from one place of establishment to another and in the circumstances and under the conditions authorised by these Regulations.

Authorisation of mechanical restraint.

75. (1) If it appears to the commandant of a military establishment that a soldier under sentence ought to be placed under mechanical restraint to prevent him from injuring himself or others or damaging property or creating a disturbance, he may issue a written order that mechanical restraint shall be applied to a soldier under sentence, specifying the date and hour when restraint is to be applied, and the period, not exceeding twenty-four hours, during which it shall be applied. Immediately thereafter he shall notify the local commander and the medical officer that he has made the said order and the terms thereof.

(2) On receiving the said notification the medical officer shall examine the soldier under sentence and inform the commandant if, in his opinion, there is any objection on medical grounds to application of the mechanical restraint ordered. If he makes any such objection the commandant shall revoke or modify his order in accordance with the recommendation of the medical officer.

(3) The commandant of a military establishment shall ensure that no soldier is kept under mechanical restraint for any period longer than is necessary, nor for any period exceeding twenty-four hours unless the local commander

orders in writing that the mechanical restraint shall continue for a longer period not exceeding forty-eight hours.

(4) No type of mechanical restraint shall be used except a type authorised by these Regulations.

(5) Whenever mechanical restraint is applied or removed an officer or senior member of the staff of a military establishment shall be present and the name of the officer and any other member of the staff present on every occasion shall be recorded.

76. (1) The articles referred to in sub-paragraphs (a), (b) and (c), which shall conform with patterns approved by the Defence Board, may be used as instruments of restraint—

Types of
mechanical
restraint.

- (a) handcuffs — figure of eight, swivel or curb chain, not exceeding for the pair twenty-two ounces in weight;
- (b) strait waistcoat — stout white duck lined with swansdown, fastened at the back by lacing with strong webbing tapes through eleven eyelets on each side, the sleeves covering the entire arms and hands, and being secured by strong webbing tapes laced through the three eyelets on each side of the cuffs, the upper parts of the arms being tied round with three sets of strong webbing tapes sewn to the back of the sleeves;
- (c) body belt—fastened by a lock at the waist, with steel wrist-lets at equal distances at the sides in which the wrists may be locked, the whole not

exceeding four pounds in weight.

(2) Nothing in this Regulation shall preclude the use of a canvas suit in those cases where its use is authorised by regulation 80.

The use of handcuffs.

77. The commandant of a military establishment who orders the use of handcuffs on a soldier under sentence shall state in his written order authorising their use whether they are to be placed with the hands to the front or to the rear of the body. When they are placed to the rear of the body they shall be moved to the front during meals and for sleeping.

The use of the strait waistcoat.

78. (1) The strait waistcoat shall not be used except under the direction of a medical officer. It may be used only when restraint is necessary to prevent a soldier under sentence from injuring himself or others or to prevent him from destroying clothing or other articles.

(2) The medical officer shall visit every soldier restrained in a strait waistcoat at least once in every twenty-four hours, and more often if he thinks it necessary. He shall record in his journal all such visits, the periods of restraint and the reasons for its application.

(3) A strait waistcoat shall never be applied for more than twenty-four hours consecutively. If at the end of that period the medical officer considers that it must necessarily be continued he shall so order, but the restraint shall not be applied until the soldier under sentence has been free of any form of mechanical restraint for at least one hour.

(4) The medical officer shall inform the commandant in writing when the restraint is discontinued.

The use of the body belt.

79. (1) The body belt may be used only for restraining a soldier under sentence who is of violent conduct and for

whom no other means of restraint is appropriate.

(2) Subject to paragraph (1) the provisions of regulation 78 as to the use of a strait waistcoat shall apply in relation to the use of body belt.

The use of the
canvas suit.

80. (1) The commandant of a military establishment may order a soldier under sentence to wear a canvas suit, consisting of frock and trousers made of canvas sail-cloth, not exceeding twelve pounds in weight. Such an order may be made only in cases where the soldier under sentence destroys or attempts to destroy his clothing or refuses to wear uniform.

(2) The commandant shall report to the visiting officer on the occasion of every visit any subsisting orders made by him under paragraph (1) and shall arrange for the visiting officer to see every soldier under sentence who is wearing a canvas suit.

(3) The commandant shall record every order made under this regulation, the date from which the soldier under sentence is required to wear a canvas suit and the date when he authorises its removal.

PART VI
RELIGION, EDUCATION AND WELFARE

Books of
religious
instructions

81. The commandant shall, so far as practicable, make available for the use of every soldier under sentence such books of religious observance or instruction as are recognised for the use of his denomination and approved by the Chief of Staff.

Chaplains.

82. (1) Chaplains when present in a military establishment for the purposes of their duties shall abide by these Regulations and the standing or other orders made for

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the regulation thereof and consult the commandant concerning the discharge of their duties.

(2) The commandant shall provide a book in which chaplains may record any matters which they wish to bring to the notice of the commandant.

(3) The commandant shall afford facilities to chaplains to have access to soldiers under sentence for the purpose of giving them religious instructions at times approved by him.

83. (1) A chaplain of the same denomination as a soldier under sentence shall visit him on admission, and thereafter from time to time at proper and reasonable times, and shortly before his release and references herein to include references to an official of a non-christian faith.

In a case where there is no chaplain of the same denomination as the soldier, the commandant shall arrange for the soldier to be visited by a minister of his own denomination, if (the soldier under sentence so wishes and it is practicable to make the arrangements. In such cases the soldier under sentence shall be informed of the provisions of this paragraph as soon as possible after his admission.

(2) The commandant shall daily make available to chaplains a list of soldiers under sentence who are sick, or undergoing punishment in pursuance of these Regulations, and shall afford facilities for them to be visited if requested by a chaplain or by the soldier under sentence.

(3) In appropriate cases a chaplain shall officiate at the burial of a soldier under sentence who dies in a milit.ary establishment.

Divine service.

84. (1) Chaplains shall, whenever possible conduct

divine service in military establishments on Sundays and on other customary days and on such other convenient occasions approved by the commandant as they may decide.

(2) A soldier under sentence shall be allowed to attend the divine service of his denomination as often as he wishes, and any soldier undergoing punishment under these Regulations may attend divine service unless he is in close confinement or excluded therefrom because of his disorderly conduct, or because it is considered that his conduct would be disorderly.

85. (1) The commandant of a military establishment Education. shall —

- (a) provide educational training at such times as are available, and in accordance with any syllabus laid down by the Chief of Staff;
- (b) where there is accommodation available, provide an information room in which soldiers under sentence, other than those in close confinement, may study current world affairs, read books, pamphlets and newspapers, and consult maps and books of reference. At the discretion of the commandant soldiers in close confinement may be permitted to use the information room at such times, and subject to such conditions, as he thinks fit;
- (c) where wireless sets and loud-speakers are provided, make full use of them for broadcasting news and

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educational matters to soldiers under sentence;

- (d) encourage soldiers under sentence to assist in the education of other soldiers under sentence;
- (e) take a special interest in providing the rudiments of education to any illiterate soldier under sentence;
- (f) encourage other educational activities when circumstances permit;
- (g) encourage soldiers under sentence to study any special subject in which they are interested and, at his discretion, allow them to be provided with the textbooks and reference books which will enable them to do so.

Welfare.

86. (1) The commandant of a military establishment shall appoint an officer to act as welfare officer, and afford facilities for soldiers under sentence to consult the welfare officer when occasion requires.

(2) The welfare officer shall keep written records of the matters on which he is consulted by soldiers under sentence and if he has not completed any correspondence or other dealings in connection therewith when a soldier under sentence who is returning to his unit is released from a military establishment, he shall send to the commanding officer of the soldier a report on those matters accompanied by any relevant papers and correspondence.

PART VII
MISCELLANEOUS REGULATIONS AND OFFENCES
RELATING TO MILITARY ESTABLISHMENTS

Unlawful
conveyance of
spirits or
tobacco into
military
establishments.

87. No person shall, without the authority of the commandant of a military establishment, bring or attempt to bring into a military establishment or to a soldier under sentence any spirituous or fermented liquor or tobacco, or place any such liquor or tobacco outside a military establishment with intent that it shall come into the possession of a soldier under sentence, nor shall any member of the staff of a military establishment allow any such liquor or tobacco to be sold or used in the military establishment.

Unlawful
introduction of
other articles.

88. No person shall without lawful authority convey or attempt to convey any letters or any other thing into or out of a military establishment or to a soldier under sentence, or place it anywhere outside a military establishment with intent that it shall come into the possession of a soldier under sentence.

Admission of
visitors and
others to
military
establishment.

89. (1) No unauthorised person shall enter a military establishment or make any sketch or take any photograph or communicate with any person under sentence therein, and no such person shall remain therein after being requested to leave by the commandant or any person acting under his authority. In deciding whether to grant, or grant subject to conditions, or refuse permission to enter a military establishment the commandant shall have regard to the orders of any court of competent jurisdiction, the provisions of these Regulations and the directions or instructions of any higher military authority.

(2) The commandant of a military establishment may grant permission to any person to enter a military establishment subject to any conditions and, without prejudice to the generality of the foregoing words, he may

make it a condition of granting permission to any person to enter or do anything within a military establishment that such a person agrees to being examined and searched if requested.

(3) The commandant may order the removal from a military establishment of any person who, without authority, enters a military establishment, or makes any sketch or takes any photograph therein, or refuses to be examined or searched or fails to comply with any condition imposed by the commandant under this regulation.

(4) Any member of the staff of a military establishment who suspects that a visitor or any other person has committed any offence against these Regulations or being in improper possession of any property used or intended for use in the military establishment shall stop that person and inform the commandant immediately, so that the commandant may, if he thinks fit, order that person to be examined and searched.

PART VIII

UNIT DETENTION ROOMS

Application of
these
Regulations to
unit detention
rooms.

90. (1) This Part of these Regulations shall apply in relation to unit detention rooms and, subject to the provisions of paragraph (2), all the provisions of these Regulations shall apply in relation to unit detention rooms.

(2) The provisions of the regulations specified below shall apply in relation to unit detention rooms subject to the modifications specified with reference thereto respectively –

- (a) regulation 65(2) sub-paragraphs (b), (c), (d) and (g), and regulations 69 to

72 inclusive (which relate to the punishment of offences against these Regulations) shall not apply in relation to unit detention rooms of a unit of the women's forces;

- (b) regulation 74 to 80 inclusive – (which relate to mechanical restraint) shall –
- (i) not apply in relation to unit detention rooms of a unit of female members; and
 - (ii) apply in relation to unit detention rooms (other than unit detention rooms of a unit of female members) only in so far as they relate to mechanical restraint by means of handcuffs.

Setting up unit
detention
rooms.

91. Unit detention rooms shall be under the control of commanding officer of the unit under whose authority they were set up, or of the commanding officer of another unit to which they are appropriated by order of the local commander.

Segregation in
unit rooms.

92. Soldiers under sentence in unit detention rooms shall be segregated from any soldiers confined therein awaiting trial by court-martial, or disposal by a commanding officer or appropriate superior authority, or awaiting promulgation of sentence.

PART IX

VISITING OFFICERS

Appointment

93. The local commander may order that an officer, in

of visiting officers.

these Regulations referred to as a “visiting officer”, visits each military establishment within his command once each week. A written order appointing him shall be given to each visiting officer.

Duties of visiting officers.

94. (1) A visiting officer ordered to visit a military establishment shall duly attend in accordance with the instructions contained in the order appointing him.

(2) On arrival at a military establishment a visiting officer shall, if required, produce the order appointing him to the commandant or any officer or other person acting on his behalf.

(3) The visiting officer shall not inspect the staff, buildings or premises of a military establishment.

(4) Subject to the provisions of paragraph (6), a visiting officer shall on the occasion of every visit see all the soldiers under sentence in the military establishment either on parade or in their rooms. Soldiers under sentence in close confinement or in a medical detention room shall be seen in their rooms or in the medical room, as the case may be.

(5) Subject to the provisions of paragraph (6) a visiting officer shall ask all soldiers under sentence if they have any complaints to bring to the notice of the visiting officer. This question shall be asked by him and not by any member of the staff on his behalf, and the question shall not be qualified in any way, nor shall a soldier’s right to complain be made subject to any condition. A soldier under sentence who wishes to complain shall be asked by the visiting officer if he wishes to make his complaint there and then or whether he wishes to see him privately. If the soldier under sentence wishes to make his complaint privately the commandant shall arrange that a room is placed at the disposal of the visiting officer in which he may hear any complaint made by the

soldier under sentence.

If the commandant thinks fit a member of the staff may be present to ensure that there is no breach of discipline by the soldier under sentence but, at the discretion of the visiting officer, that member of the staff shall remain within sight but out of hearing.

(6) A visiting officer shall satisfy himself that he has seen all soldiers under sentence in the military establishment except any whom he is requested not to see on the advice of the medical officer on medical grounds.

Investigation of
complaints by a
visiting officer.

95. (1) a visiting officer shall inquire fully into every complaint made to him, and the commandant shall place at his officers disposal any witness or evidence he requires. The visiting officer shall ascertain if any complaint made to him had previously been made to the commandant or other officer of the staff of the military establishment and of the nature of any action taken in relation thereto.

(2) On completion of the investigation of any complaint made to him a visiting officer shall deal with it in the following manner —

(a) if, in his opinion, the complaint was not justified, he shall so inform the soldier under sentence who made the complaint;

(b) if, in his opinion, the complaint was justified, he shall inform the soldier under sentence who made the complaint that he will report the matter to the local commander.

(3) A visiting officer shall not in any circumstances

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offer any redress to a soldier under sentence.

(4) On completion of each visit a visiting officer shall make a report to the local commander, including a full report of every complaint made to him and of the result of his investigation thereof.

96. On receipt of a complaint reported to him by a visiting officer the local commander shall investigate and take any steps for redressing the matter complained of which appear to him to be necessary.

Redress of
complaint
made to
visiting officer.

PART X STAFF OF MILITARY ESTABLISHMENTS

Duties of
commandant.

97.(1) The commandant of a military establishment shall—

(a) exercise a close and constant supervision of the military establishment and, if practicable, visit and inspect daily all parts of the establishment in which soldiers under sentence are working or training. He shall also visit the military establishment during the night at least once a week. He shall make frequent inspections of rooms occupied or used by soldiers under sentence and satisfy himself that foods intended for their consumption are properly stored, cooked and served;

(b) supervise and control the duties of the officers and other members of the staff of the military establishment, and satisfy himself that the details

and rosters of duties are prepared and maintained in accordance with any directions of the Defence Board and in a manner to ensure the efficiency of the establishment;

- (c) maintain discipline amongst the officers and other ranks who are appointed to serve under his command as members of the staff of the military establishment;
- (d) issue from time to time standing orders for the staff and for particular sections and members of the staff, and examine any orders so issued from time to time so that they may be revised and maintained in accordance with current requirements;
- (e) from time to time call the attention of all members of the staff to the provisions of the Official Secrets Act;
- (f) instruct the officers and staff of the military establishment to maintain discipline with firmness, but without more repression or restriction than is required for the safe custody of the soldiers under sentence in a well-ordered community life;
- (g) encourage members of the staff to enlist the willing co-operation of soldiers under sentence by their own example and leadership;

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- (h) interview every soldier under sentence as soon, as possible after his admission to a military establishment and shortly before his release therefrom;
- (i) provide a soldier under sentence who is discharged from the Force on release from a military establishment in Guyana with —
 - (i) a cash payment in respect of subsistence not exceeding five dollars;
 - (ii) the means of travelling at the public expense to a place of residence in Guyana selected by the soldier under sentence, in those cases where the commandant is satisfied that the soldier under sentence is without available means for that purpose;
 - (iii) civilian clothing on terms that the soldier under sentence shall pay the cost thereof, except in those cases where provision is made for the free issue of civilian clothing or the soldier under sentence can arrange for civilian clothing to be sent to him.

Duties of
members of the
staff of military
establishments.

98. Members of the staff of military establishments

shall —

- (a) carry out their duties in accordance

with these Regulations, the standing orders of the military establishment, and the orders of the commandant;

- (b) in relation to the soldiers under sentence, preserve an attitude of firmness tempered with understanding and avoid any form of harsh treatment, set an example of integrity and fairness; endeavour to create a feeling of respect and confidence among the soldiers in their charge, studying the characteristics of the soldiers under sentence and endeavouring to bring out the best in them;
- (c) direct the attention of the commandant to any soldier under sentence who may appear not to be in good health though he may not complain, or whose state of mind appears to be deserving of special notice or care, so that arrangements may be made for the soldier under sentence to be seen by the medical officer;
- (d) watch the soldiers under sentence in their various movements and employments throughout the day and use vigilance to prevent unauthorised communication between soldiers under sentence;
- (e) prevent prohibited articles from being secreted for the purpose of being

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conveyed to soldiers under sentence and immediately report any such occurrence;

- (f) ensure that nothing likely to facilitate escape is left in any place where it might be accessible to soldiers under sentence;
- (g) take the utmost care to guard against accidents by fire, report any apparent danger of such an accident;
- (h) call attention to any defect in the sanitation or ventilation in the establishment which may come to their notice;
- (i) satisfy themselves, when on night duty, as to the correctness of the number of soldiers in their charge, and that the rooms are securely locked for the night;
- (j) examine the state of the rooms, bedding, locks, and bolts under their charge from time to time, and report thereon as required;
- (k) seize all prohibited articles and deliver them forthwith to the commandant;
- (l) when on night watch, patrol the military establishment during the period of their duty, and record their patrols in the manner required;

- (m) when on gate duty, record the name of every person passing through the gate and keep a record of all stores that pass through the gate; examine all articles brought in or taken out of the military establishment and stop any person suspected of bringing in or attempting to bring in any prohibited article, or for carrying out or attempting to carry out any property intended to remain in the military establishment for the purposes thereof.
-

[marginal notes]

FIRST SCHEDULE

PART 1 FORM 1

Regulation 19

Order for the committal of a soldier to a military
establishment on an award of detention by his Commanding
Officer

To the Commandant or other person in charge of.....(a)
Whereas No.....Rank.....

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Name.....of the.....(Unit)
was on theday of.....20.....
awarded detention for a period of.....days
by his/her Commanding Officer for the offence(s)
of.....
.....
.....
.....

Now therefore, in pursuance of the Defence Act (Cap. 15:01) and of all other powers me enabling, I hereby order you to receive the said person into your custody and to retain him/her to undergo his/her sentence according to law and for so doing this shall be your warrant.

Signed at.....this.....day of.....20....

(Signature).....(c)

Rank and Appointment.....

- (a) Insert the name of the establishment.
- (b) Set out the statement (not the particulars) of the offence and the relevant sections of the Defence Act. Where there is more than one offence, the statement of each must be set out.
- (c) This form must be signed by the Commanding Officer of the person concerned.

FORM 2

Order for the committal of a person sentenced to imprisonment or detention by a court-martial to a civil prison,

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- (c) Here set out the statement (not the particulars) of the offence and the relevant sections of the Defence Act. Where there is more than one offence the statement of each must be set out.
- (d) If any part of the sentence has been remitted on confirmation insert "with a remission of....."
- (e) Where the original sentence was death and has been commuted to imprisonment or detention, for the words in brackets substitute the words "to suffer death which sentence has been duly confirmed in accordance with provisions of the Defence Act, but has been commuted into imprisonment/detention for a term of.....", or, where the original sentence was imprisonment and it has been commuted to one of detention substitute "to imprisonment for a term of....., which sentence has been duly confirmed in accordance with the provisions of the Defence Act, but has been commuted into a sentence of detention for.....".
- (f) The committal form must be signed by the Commanding Officer of the person concerned, any officer under whose command that person is for the time being or by an administrative staff officer not below the rank of major or corresponding rank.

FORM 3

Order for the committal of a person sentenced to imprisonment or detention by a Court-Martial held outside Guyana where all or part of the sentence is to be served in a civil prison or a military establishment in Guyana.

Whereas No Rank
Name of the.....(Unit) was by
a.....(a) Court-Martial held at.....
convicted at the offence(s) of.....
.....(b)
and by a sentence passed on the.....day
of.....20....
sentenced (to imprisonment (c) for a term of.....
detention
commencing on the said day, which sentence has been duly confirmed in accordance with the provisions of the Defence Act (Cap. 15:01)
(d) (e);

(And Whereas the confirming authority (c) has (under section 123 of the reviewing authority Defence Act, directed that the said person shall not be removed to Guyana until he has served years and days of his sentence) (under the Defence (Imprisonment and Detention) Regulations, directed that the said person shall serve days of his sentence in Guyana) (c).

Now, therefore, in pursuance of the Defence Act, and of all other powers enabling me I do hereby order the Director, Commandant or other person in charge of (g)
to receive the said person into his custody and to retain him/her to undergo years and days of his/her sentence according to law.

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And I do further order that the said person shall after completion of the said part of his/her sentence or at such earlier date as may be ordered be transferred to Guyana to undergo the remainder of his/her sentence according to law in such civil prison or military establishment as may be appointed on his/her arrival in Guyana.

- (a) And Whereas in accordance with the provisions of section 123 of the Defence Act, the said person is required to be removed to Guyana as soon as practicable after the confirmation of the sentence;

confirming authority

- (b) And Whereas the (c)
has, under the Defence;

reviewing authority

(Imprisonment and Detention) Regulations, directed that the sentence shall be served in Guyana.

(j) Now, therefore, in pursuance of the Defence Act, and of all other powers enabling me, I do hereby order that the said person shall be transferred to Guyana in military custody to undergo his/her sentence according to law in such civil prison or military establishment as may be appointed on his/her arrival in Guyana.

And I do further order that the Director, Commandant or other person in charge of any civil prison or military establishment, to which the said person may be brought in Guyana shall receive him/her into his custody and retain him/her to undergo his/her sentence according to law and for so doing -this shall be sufficient warrant; And I do further

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order that the said person shall be conveyed in military custody and detained in military or civil custody so far as appears necessary or proper for effecting his/her transfer to the said civil prison or military establishment in Guyana.

Signed at this day of 20

(Signature).....(k) Rank and
Appointment.....

In case of a Committal to any Intermediate Prison or Military Establishment being necessary.

For the purpose of carrying the above order into effect and in pursuance of the Defence Act, and of all other powers me enabling, I do hereby order the Director, Commandant or other person in charge (l) at

receive the abovenamed person into his custody and to detain him/her until he/she can be transferred in pursuance of the above order and to produce him/her when required for the purposes of transfer, and for so doing this shall be sufficient warrant.

This.....day of.....20

(Signature).....(k) Rank and
Appointment.....

Order on arrival in Guyana

In pursuance of the Defence Act, and of all other powers me enabling, I do hereby order the abovenamed person to be transferred to (m)

(j) Now, therefore, in pursuance of the Defence Act, and of all other powers enabling me, I do hereby order that the said person shall be transferred to Guyana in military custody to undergo his/her sentence according to law in such civil prison

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or military establishment as may be appointed on his/her arrival in Guyana.

And I do further order that the Director, Commandant or other person in charge of any civil prison or military establishment, to which the said person may be brought in Guyana shall receive him/her into his custody and retain him/her to undergo his/her sentence according to law and for so doing -this shall be sufficient warrant; And I do further order that the said person shall be conveyed in military custody and detained in military or civil custody so far as appears necessary or proper for effecting his/her transfer to the said civil prison or military establishment in Guyana.

Signed at..... this..... day of.....20
(Signature).....(k) Rank and
Appointment.....

- (a) Insert "Ordinary" or "Field," as the case may be.
- (b) Here set out the statement (not the particulars) of the offence and the relevant sections of the Defence Act. Where there is more than one offence the statement of each must be set out.
- (c) Delete as necessary.
- (d) If any part of the sentence has been remitted on confirmation insert "with a remission"
....."
- (e) Where the original sentence was for death and has been commuted to imprisonment or detention, for the

words in brackets substitute the words "to suffer death which sentence has been duly confirmed in accordance with the provisions of the Defence Act, but has been commuted into imprisonment/detention for a term of which sentence has been duly confirmed in accordance with the provisions of the Defence Act, but has been commuted into a sentence of detention for.....

- (f) These paragraphs must be used only where a part of the sentence is to be served overseas before return to Guyana.
- (g) Insert the name and location of the prison or other establishment where part of the sentence is to be served overseas.
- (h) This paragraph must be used where the sentence exceeds twelve months and no direction has been given for any part of it to be served out of Guyana.
- (i) This paragraph must be used where the sentence does not exceed twelve months but a direction has been given under the (Defence Imprisonment and Detention) Regulations that it shall be served wholly in Guyana.
- (j) This paragraph is to be used in

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conjunction with one or other of the two preceding paragraphs where the sentence is to be served wholly in Guyana.

- (k) This form must be signed by the Commanding Officer of the person concerned, any officer in or under whose command he/she is for the time being serving or by an administrative officer not below the rank of major or corresponding rank.
- (l) Insert the name and location of the prison or other* establishment where the person concerned is to be detained temporarily while awaiting transfer to Guyana.
- (m) Insert the name and location of the prison or other establishment where the person concerned is to serve his/her sentence on arrival in Guyana.
- (n) Omit these words where the whole sentence is to be served in Guyana.

FORM 4

Order for the removal out of Guyana of a person serving a military sentence of imprisonment or detention in Guyana

To the Director, Commandant or other person in charge of.....(a)

Whereas No

Rank

[Subsidiary]*Defence (Imprisonment and Detention) Regulations*

Name of the (Unit)
is now in your custody undergoing military sentence of
Imprisonment (b);
Detention

And Whereas the reviewing authority (b) has
reconsidering authority

ordered that the said person be removed out of Guyana to(c) being (territory) (the place where the (part of the) (d) unit to which he for the time being serving belongs is under orders to serve.

Now, therefore, in pursuance of the Defence Act (Cap. 15:01) and of all other powers me enabling I hereby order you to deliver up the said person to the officer, warrant officer or non-commissioned officer producing this Order.

And I do further order that the said person shall be transferred to

' (c) in military custody to undergo (the remainder of) (e) his/her sentence according to law in such military or overseas establishment as may be appointed on his/her arrival.

And I do further order that the Director, Commandant or other person in charge of the establishment to which the said person is brought on his/her arrival in (c) shall receive him/her into his custody and retain him/her to undergo (the remainder of) (e) his/her sentence according to law and for so doing this shall be sufficient warrant.

And I do further order that the said person shall be conveyed in military custody and detained in military or civil custody so far as appears necessary or proper for effecting his/her transfer.

FORM 5

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[Subsidiary]

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Order for the transfer of a person undergoing a military sentence of imprisonment or detention from one prison or other establishment to another.

To the Director, Commandant or other person in charge of

(a)

Whereas No. Rank. Name

of the (unit) is now in your custody undergoing a military sentence of imprisonment/detention.(b)

Now, therefore, in pursuance of the Defence Act, Cap. 15:01 and of all other powers me enabling, I hereby order you to deliver up the said person to the officer, warrant officer or non-commissioned officer producing this Order;

And I do further order that the said person shall be transferred in military custody to (c) and that the Director, Commandant or other person in charge thereof shall receive him/her into his custody and retain him/her to undergo his/her sentence according to law, and for so doing this shall be sufficient warrant;

And I do further order that the said person shall be conveyed in military custody and detained in military or civil custody so far as appears necessary or proper for effecting his/her transfer.

Signed at this day of 20....

(Signature) (d)

Rank and Appointment

(a) Insert the name and address of the prison or other establishment where the person concerned is undergoing sentence.

(b) Delete as necessary

(c) Insert the name and address of the prison or other establishment to which the person is to be transferred.

(d) This form must be signed by the Commanding Officer of the person concerned, any officer in or under whose

command he/she is for the time being serving or by an administrative staff officer not below the rank of major or corresponding rank.

FORM 6

Order for the temporary removal in custody of a person undergoing a military sentence of imprisonment or detention

To the Director, Commandant or other person in charge of.....
.....(a)

Whereas No.... Rank Name.

of the (Unit) who is now in your custody undergoing a military sentence of imprisonment/detention (b) is required to be present at

(c) on (d) for the purpose of (e);

Now therefore, in pursuance of the Defence Act, Cap. 15:01, and of all other powers me enabling. I hereby order you to deliver the said person to the officer, warrant officer or non-commissioned officer producing this order;

And I do further order the said officer, warrant officer or non-commissioned officer, and all other officers, warrant officer or non-commissioned officers into whose custody the said person may be delivered to keep him/her in military custody and bring him/her to on

(e) for the said purpose, and thereafter, unless he/she is released in due course of law, to return him/her to the above-named establishment or to such other establishment as may be appointed by proper military authority and for so doing this shall be sufficient warrant.

Signed at this day of 2 0

(Signature) (f)

Rank and Appointment

If the establishment to which the person is to be returned is

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altered.

In pursuance of the Defence Act, and of all other powers me enabling, I hereby order that the abovenamed person shall be returned in military custody to (g) there to undergo the remainder of his/her sentence according to law;

And I do further order the Director, Commandant or other in charge of the said (h) to receive the said person into his custody and to retain him/her accordingly and for so doing this shall be sufficient warrant.

Signed at this day of 20

(Signature) (i)

Rank and Appointment

(a) Insert name and address of the prison or other establishment where the person concerned is serving his/her sentence.

(b) Delete as necessary.

(c) Insert the place where the person concerned is required to attend.

(d) Insert the date or dates when attendance is required.

(e) Insert the purpose for which the person concerned is required to attend, e.g. "to give evidence before a Board of Inquiry into

" , or "to be present at the hearing by the Court of Appeal of his/her appeal to that Court" as the case may require.

(f) This form must be signed by the Commanding Officer of the person concerned, any officer in or under whose command he is for the time being, or by an administrative staff officer not below the rank of major or corresponding rank. This form must not be used by the Director, Commandant or other person in charge of the establishment where the person concerned is serving his/her sentence.

(g) Insert the name and location of the prison or other establishment to which the person is to be sent.

(h) Insert the name of the prison or other establishment.

(i) This form must be signed by the Commanding Officer of the person concerned, any officer in or under whose command he is for the time being, or by an administrative staff office not below the rank of major or corresponding rank.

FORM 7

Order for the temporary removal in custody of a person undergoing a military sentence of imprisonment or detention.

(Form for use by Director, Commandant or other person in charge of the establishment where the person concerned is serving his/her sentence).

To

Whereas No Rank Name
of the (Unit) is now in my custody undergoing a sentence of imprisonment/ detention (a) and is required to be present at (b) on , (c) for the purpose of (d);

Now therefore in pursuance of the Defence Act (Cap. 15:01) and of all other powers me enabling I hereby order you and every other officer, warrant officer and non-commissioned officer into whose custody the said person may be delivered, to keep him/her in military custody and bring him/her to

(b) on (c) for the said purpose, and thereafter, unless he/she is released in due course of law, to return him/her to my custody or to such other establishment as may be appointed by proper military authority and for so doing this shall be sufficient warrant.

Signed at this day of 20
(Signature) (e)
Rank and Appointment

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If the establishment to which the person is to be returned is altered.

In pursuance of the Defence Act, (Cap. 15:01) and of all other powers me enabling i hereby order that the abovenamed person shall be returned in military custody to (f) there to undergo the remainder of his/her sentence according to law;

And I do further order the Director, Commandant or other person in charge of the said (g) to receive the said person into his custody and to retain him/her accordingly and for so doing this shall be sufficient warrant.

Signed at this day of 20

(Signature) (h)

Rank and Appointment

(a) Delete as necessary.

(b) Insert the place where the person concerned is required to attend.

(c) L'sert the date or dates when attendance is required.

(d) Insert the purpose for which the person concerned is required to attend e.g., "to give evidence at a Board of Inquiry into ",

or "to be present at the hearing by the Court of Appeal of his/her appeal to that Court", or as the case may require.

(e) This form is for use only by the Director, Commandant or other person in charge of the establishment where the person concerned is serving his/ her sentence and must be signed by him or his deputy.

(f) Insert the name and location of the prison or other establishment to which the person is to be returned.

(g) Insert the name of the prison or other establishment.

(h) This form must be signed by the Commanding

Officer of the person concerned, any officer in or under whose command he is for the time being serving or by an administrative staff officer not below the rank of major or corresponding rank.

FORM 8

Order for the temporary committal to civil custody of a person under military sentence of imprisonment or detention.

To (a)
Whereas No Rank Name
of the (Unit) is a person in military custody in pursuance of a military sentence of imprisonment/ detention (b)
Now, therefore, in pursuance of section 124(2) of the Defence Act (Cap. 15:01) and of all other powers me enabling, I hereby order you to keep the said person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law, and for so doing this shall be your warrant.

Signed at this day of 20
(Signature) (c) Rank and Appointment

(a) Insert "the Director of Prisons ["The Superintendent of Prison"]
"The Officer in charge of Police Station"
or as the case may require.

(b) Delete as necessary.
(c) This form must be signed by the Commanding Officer of the person concerned.

FORM 9

Order for the return to military custody of a person under military sentence of imprisonment or detention who is

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temporarily detained in civil custody.

To..... (a)
Whereas No Rank Name
of the (Unit) is now in your custody in pursuance of
section 124(2) of the Defence Act (Cap. 15:01);

Now, therefore, in pursuance of the said Act and of all other powers me enabling, I hereby order you to deliver over the said person into military custody to the officer/ warrant officer /non-commissioned officer (b) producing this Order.

Signed at this day of 20
(Signature) (c)

FORM 10

Order for the Committal of a person ordered to undergo imprisonment or detention under section 64(2) of the Defence Act (Cap. 15:01) for contempt of a Court-Martial

To the Director, Commandant or other person in charge of.

(a)

And whereas No.

Rank _____ Name _____
..of the (Unit) was guilty of (e)

And Whereas the said Court-Martial did order the said person to be imprisoned/ undergo detention (f) for a period of days;

Now, therefore, in pursuance of subsection (2) of section 64 of the Defence Act (Cap. 15:01) and of all other powers them enabling the Court hereby order you to receive the said

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person into your custody to undergo imprisonment/detention (f) accordingly and for so doing this shall be your warrant.

Signed at this day of 20
Signature) (g)
Rank and Appointment

- (a) Insert the name and address of the prison or other establishment.
 - (b) Insert "Ordinary", or "Field", as the case may be.
 - (c) Insert the rank and name of the person being tried.
 - (d) Insert the place where the Court-martial was sitting.
 - (e) Insert the statement of the offence under section 64(1) (e) or (f).
 - (f) Delete as necessary.
 - (g) This form must be signed by the President of the Court-martial.

PART II

Regulation 20.

Order for the release of a person undergoing a military sentence of imprisonment or detention

To the Director, Commandant or other person in charge of
(a). Whereas No..... Rank
(Unit) is now in your custody undergoing a
sentence of imprisonment/ detention (b).

Awarded by his/her Commanding Officer/ passed by court-martial (b);

Now, therefore, in pursuance of the Defence Act (Cap. 15:01) and of all other powers me enabling I do hereby order you to

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release the said person from custody.

Signed at this day of 20

(Signature) (c)

Rank and Appointment

- (a) Insert the name and address of the establishment.

(b) Delete as necessary.

(c) This form must be signed by the reviewing or reconsidering authority or an officer authorised to do so by the Defence Board, and in the case of a soldier serving a sentence of detention awarded by his Commanding officer only by his Commanding Officer.

SECOND SCHEDULE

Regulation 41.

Earnings of Soldiers under Sentence

Soldiers under sentence —

Rates per week

1. (a) During the first week of sentence following the usual pay day, and during each of the following seven weeks \$ c. 30
(b) During the ninth week of sentence \$ c. 30
(c) During the tenth and subsequent weeks, at least \$ c.50
(d) During the said tenth week and subsequent weeks of his sentence a soldier under sentence who shows skills, diligence, and a sense of responsibility in carrying out the work required of him may, at the discretion of the commandant be

granted maximum weekly increments of 10c per week until he is earning a maximum of

\$ c.50

2. In respect of any part of a week before the first week of a sentence following a usual pay day a soldier under sentence may earn 5c a day, and during the last day of his sentence before release, following a usual pay day, he may earn for each day one-fifth of the rate of pay which he was earning in the week preceding the last usual pay day.

3. For the purposes of calculating a soldier's earning in accordance with this schedule, Sundays shall be included, and days during which a soldier is undergoing restricted diet as a punishment shall be excluded.

4. If the commandant considers that the skill, diligence and sense of responsibility shown by a soldier under sentence are less than they should be, the rate of earnings to which he is from time to time entitled in excess of 50c per week may be reduced by such amount as the commandant thinks fit, but so that it shall not be reduced below 50c per week.

5. A soldier under sentence who is in a medical detention room of a military establishment or in a hospital shall not be entitled to be credited with earnings greater than 50c. per week, or for any period less than a week, 10c a day.

6. When a soldier under sentence is admitted to hospital the commandant shall endeavour to arrange with the Commanding Officer of the hospital that goods may be issued each week to the soldier from the canteen to a maximum retail value of 50c. per week or such lower value equal to the rate of the weekly earnings of the soldier under sentence immediately before he was admitted to hospital and any sum standing to his credit, and the commandant shall pay to the

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Commanding Officer or the hospital from time to time sums equal to, the value of the goods so issued.

7. On the release of a soldier under sentence on completion of his sentence he shall be entitled to be paid in cash the balance of any earnings standing to his credit.

R. 1/1979

DEFENCE (BOARD OF INQUIRY) RULES

made under section 139.

Citation.

1. These rules may be cited as the Defence (Board of Inquiry) Rules.

Interpretations.

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

“authority” means the Defence Board or any officer empowered by these Rules to convene a board;

“board” means a board of enquiry;

“civil authority” includes a coroner and the police;

“civilian witness” means a person who gives evidence before a board and is either a person to whom section 210 of the Act applies, or person who is not subject to service law;

“president” means the president of a board;

“record of the proceedings” includes the report of a board and any opinion expressed by a board in accordance with any direction given by the authority;

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“represented” means represented by an officer or by an legal practitioner, and, outside Guyana, a person recognised by then authority as having rights and duties similar to those of a legal practitioner.

Duties of a Board.

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

Matters for reference to a board.

4. Subject to these Rules, a board may be convened with reference to –

(a) The absence of any person subject to service law has been continuously absent without leave for a period of not less than twenty one days, and the deficiency (if any) in the clothing, arms, ammunition or other equipment or any other public property or service property issued to him for his use;

(b) the capture of any person subject to service law by the enemy and his conduct in captivity, if there are reasonable grounds for suspecting –

- (i) that he was a prisoner of war through disobedience to orders or wilful neglect of his duty; or
- (ii) that having been made a prisoner of war; he failed to take any reasonable steps to rejoin the force; or
- (iii) that having been a prisoner of war, he served with and aided the enemy in prosecution of active hostilities or in execution

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or furtherance of measures calculated to influence morale, or in any other manner whatsoever not authorised by international conventions or customary international law;

- (c) the circumstances causing or attending the death of any persons in a military establishment where an inquiry into the cause of such death, or the circumstances attending it, is not required to be held by any civil authority;
- (d) any matter which the authority decides to refer to a board.

Defending and
staying
proceedings.

5. (1) Subject to paragraph (2), where any matter is the subject of investigation or inquiry under service law or by a civil authority, or of proceedings in a civil court (whether within or outside Guyana), if –

- (a) a board has not been convened with reference thereto, the authority may defer the convening of a board until the completion of such investigation, inquiry or proceedings and, upon completion thereof, the authority shall not be required to convene a board, if satisfied that a board is not necessary in relation to that matter; or
- (b) a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such investigation, inquiry or

proceedings have been completed and shall then dissolve the board if satisfied that a board is not necessary in relation to that matter.

(2) Paragraph (1) shall not apply to the convening of a board with reference to such absence or such deficiency (if any) as is mentioned in paragraph (a) of rule 4 but, where the authority is satisfied that the absence was terminated, or where the absence is attached to other legally constituted military forces and the authority is satisfied that an inquiry into the absence is being or will be held under service law, then –

- (a) if a board has not yet been convened with reference to such absence the authority shall not be required to convene a board; or
- (b) if a board has already been convened with reference thereto, the authority may forthwith dissolve the board.

Convening of Board.

6. (1) A board may be convened by order of the Defence Board; or

- (a) any officer not below the rank of Major; or
- (b) any officer commanding a unit or detachment or the Force
 - (i) with reference to such absence and such deficiency (if any) as are mentioned in paragraph (a) or rule 4;
 - (ii) if authorised by the Defence Board, or any such officer as is

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mentioned in subparagraph (b), with reference to any particular matter or to matters of any specified class or description.

(2) Then following provisions of this paragraph shall apply in relation to the order convening a board –

- (a) the order shall specify the composition of the board and the place and time at which the board shall assemble;
- (b) the order shall specify terms of reference of the board;
- (c) the order may direct the board to express an opinion on any question arising out of any matter referred to the board; and
- (d) the authority may at any time revoke, vary or suspend the order.

Constitution of
board.

7. (1) A board shall consist of a president who shall be an officer subject to service law not below the rank of lieutenant and not less than two other persons subject to service law, one of whom may be a warrant officer.

(2) The authority shall appoint the president by name and each remaining member of the board either by name, or by detailing a commanding officer to appoint from persons under his command an officer or warrant officer of a specified rank.

Assembly and
procedure

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

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

Oaths.

9. (1) Immediately after the convening of the board, an oath shall be administered to the president and the other members of the board in accordance with this rule in the presence of the person whose conduct is the subject matter of the inquiry.

(2) The oath shall be first administered by the president to the other members of the board and then to the president by any member already sworn.

(3) An oath shall be administered by the president or other member of the board to every witness, at any inquiry, and to every shorthand writer and interpreter in attendance there at.

(4) Every witness before the board shall be examined on oath:

Provided that where a child of tender years called as a witness does not in the opinion of the board understand the nature of an oath, his evidence may be received though not given on oath, in the opinion of the board he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth

Schedule.

(5) The oaths required to be administered under this rule shall be administered in the appropriate form and in the manner set out in the schedule.

Adjournment
and
reassembley.

10. (1) The president may adjourn the board on such occasions and to such places as he may, from time to time, direct.

(2) Without prejudice to paragraph (1), the authority may at any time, if it appears necessary or desirable, direct that the board shall reassemble for such purpose or purposes (in relation to the subject matter of the inquiry) as may be specified by the authority.

Witness.

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

(2) While a civilian witness is giving evidence before the board he may be represented, but, subject to rule 12, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive from the Defence Board the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

(4) A board may receive any evidence which it considers relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in proceedings in court of law in Guyana.

Persons who
may be affected
by the findings.

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

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

(3) This rule shall also apply to a witness or other person who, though not subject to service law, is in the service of the State and who may be affected in his character or professional reputation by the findings of the board.

Exhibits.

13. (1) Subject to paragraph (2), any document or thing produced to a board by a witness when giving evidence shall be made an exhibit.

(2) When an original document or book is produced to a board by a witness, the board may, at the request of the witness, compare a copy of it or an extract therefrom of the relevant part with the original, and after it has satisfied itself that such copy or extract is correct and the president has certified thereon that the board has compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall –

- (a) be marked with a reference number or letter and be signed by the president or have a label affixed to it bearing a reference number or letter and the signature of the president; and
- (b) be attached to, or kept with the record of the proceedings, unless in the opinion of the board it is not

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Report of
board.

expedient to attach it, or keep it with the record.

14. (1) The president shall record in writing or cause to be so recorded, the proceedings of the board and in sufficient detail as to constitute a true, full and correct record as will follow the course of the proceedings.

(2) Where there is no shorthand writer present, the evidence shall be taken down in narrative form recording as nearly as possible the words used:

Provided that, if the board considers it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2), shall be read over to him by a member of the board and shall be signed by him.

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

Rule 9.

15. Where a board reports that a person subject to service law has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty one days and there is a deficiency in any clothing, arms, ammunition or other equipment or other public property or service property issued to him for use, a record of the report shall be entered in the service books in addition to a record of the report of such absence required to be entered in the service books by section 130 of the Act.

SCHEME

PRESIDENT AND MEMBERS

1. I.....,

do swear that I will well and truly investigate the matter before this board of inquiry according to the Defence Act, without fear or favour, affection or ill will; and I do further swear that I will not on any account at any time whatsoever disclose the vote or opinion of the president/any member of this board of inquiry* unless thereunto required in due course of law.

So help me God.

SHORT HAND WRITER

2. I

do swear that I will to the best of my ability truly record the evidence to be given before this board of inquiry and such other matters as may be required, and will, when required, deliver to the board of inquiry a transcript of the same.

*Delete if not applicable,

INTERPRETER

3. I.....,

do swear that I will to the best of my ability interpret and translate as I shall be required to do touching the matter being investigated.

So help me God.

WITNESS

4. I,

do swear that the evidence which I shall give at this investigation shall be the truth and nothing but the truth.

So help me God.

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Defence (Compensation for loss of Property) Regulations

Reg. 1/1979

DEFENCE (COMPENSATION FOR LOSS OF PROPERTY) REGULATIONS

made under section 212

Citation.

1. These Regulations may be cited as the Defence (Compensation for Loss of Property) Regulations.

Definitions.

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

“board officers” means a board appointed by the Chief of Staff, consisting of not less than three officers, the president of which shall be of or above the rank of major;

“commanding officer” has the meaning assigned to it in section 88 of the Act;

“damage” includes destruction;

“prescribed rules” means the Defence (Board of Inquiry) Rules, made in pursuance of section 139 of the Act.

Investigation of
loss or damage
to public
property or
service
property by an
officer or
soldier.

3. (1) Where it is alleged that loss of, or damage to, public property or service property has been occasioned by the wrongful act or negligence of any officer or soldier, such an allegation shall be investigated by a board of enquiry convened by order of the commanding officer in accordance with the prescribed rules.

(2) If, after such investigation as is mentioned in

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paragraph (1), the commanding officer is satisfied that –

- (a) the loss or damage was occasioned by the officer or soldier; and
- (b) such officer or soldier will not be charged by a court martial or a civil court with an offence arising out of such loss or damage,

he may order deductions from the pay and allowances of such officer or soldier payable out of public funds of such amount not exceeding the value of the loss or damage as in the circumstances he may deem equitable compensation for such loss or damage.

(3) Any officer or soldier against whom an order is made under paragraph (2) may, within fourteen days after the order has been made, apply in writing to a board of officers for a further examination of his case, and the board of officers may give directions to the commanding officer as to the confirmation, modification or questioning of the order.

(4) Any sum of money deducted or otherwise paid by the person responsible under regulation 3 may be refunded by the Accountant General, acting on the recommendation of the Defence Board.
