



BERMUDA

DEFENCE ACT 1965

1965 : 165

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PART I

Interpretation

- 1 In this Act, unless the context otherwise requires—
- “the Armed Forces Act” means the Armed Forces Act 2006 (UK), or any Act replacing that Act;
 - “the Board” means the Defence Board established under section 6;
 - “calling up notice” means the notice to be served by the Governor in accordance with section 17;
 - “Commanding Officer” means the officer in command of the Royal Bermuda Regiment;
 - “days’ pay” shall be calculated, in relation to a person who is not a member of the regiment, by reference to the basic pay scale for a private soldier;
 - “embodied”, in relation to the regiment or a part thereof, means embodied under section 32;
 - “exempted person” has the meaning given in section 12;
 - “the Exemption Tribunal” means the tribunal established under section 8;
 - “Governor’s Orders” means orders made by the Governor under section 11;
 - “Her Majesty’s armed forces” means the regular and reserve forces of the Royal Navy and Her Majesty’s military and air forces, and includes any similar naval, military or air forces raised in any part of Her Majesty’s dominions, including reservists;

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

“in camp” means any time when a soldier or officer is under orders;

“man of the regiment” or “man” includes—

- (a) a volunteer who is a woman;
 - (b) a warrant officer and a non-commissioned officer of the regiment,
- but does not include an officer;

“Minister” means the Minister responsible for defence;

“the medical board” means the standing medical board established under section 10;

“member of the regiment” includes an officer;

“military eligibility register” has the meaning given in section 13;

“officer” means a commissioned officer in the regiment;

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

“the regiment” means the military force raised under the authority of this Act and called the Royal Bermuda Regiment;

“soldier” means a man of the regiment below the rank of LanceCorporal;

“volunteer” means—

- (a) a person who has voluntarily enlisted in the regiment and was not selected by ballot under section 16; or
- (b) a person who was selected by ballot under section 16 if he has chosen to stay in the regiment after completing his period of compulsory service.

[Section 1 amended by 1998:31 effective 13 July 1998; Section 1 amended by 2015 : 48 s. 2 and s. 24 effective 1 November 2017]

Military service to be performed in Bermuda, except annual camp

2 Subject to section 21(1), nothing in this Act shall require any person to perform any military service, or any non-combatant duty connected with military service, outside Bermuda.

Raising of regiment

3 Subject to and in accordance with this Act, there shall be raised and maintained in Bermuda one military force to be called the Royal Bermuda Regiment, consisting of such number of officers and men as may from time to time be determined by the Governor after

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consultation with the Minister; and such military force is in this Act referred to as the regiment.

[Section 3 amended by 2015 : 48 s. 3 effective 1 November 2017]

Voluntary enlistment; in case of shortfall Governor to revise role and responsibilities of regiment or authorize compulsory military service

4 (1) Subject to this section, the regiment shall be raised and maintained by means of voluntary enlistment.

(2) In the event that voluntary enlistment proves to be inadequate for the purposes of—

- (a) raising the required number of members of the regiment; or
- (b) maintaining the required number of members of the regiment,

the Commanding Officer shall advise the Governor of the shortfall in the required number of members.

(3) On being notified of the shortfall in the required number of members of the regiment, the Governor shall consult the Minister and the Defence Board, and may either—

- (a) revise the role and responsibilities of the regiment to take account of the shortfall; or
- (b) authorize the compulsory enlistment, in accordance with this Act, of the number of persons required to make up the shortfall.

(4) In this section, “required number of members” means the required number of members of the regiment set by the Governor in directions to the Commanding Officer, after consultation with the Minister.

[Section 4 repealed and replaced by 2015 : 48 s. 4 effective 1 November 2017]

Governor acts in his discretion

5 In the exercise of his powers and duties under this Act and any other enactment relating to matters of defence, including armed forces, the Governor shall act in his discretion.

Delegation of Governor’s functions relating to enlistment

5A The Governor, acting in his discretion, may delegate functions relating to enlistment to—

- (a) the Deputy Governor; or
- (b) the Commanding Officer.

[Section 5A inserted by 2015 : 48 s. 5 effective 1 November 2017]

Defence Board

6 (1) The Governor shall by notice in the Gazette appoint annually a Board to be called the Defence Board which shall consist of such number of persons, being not less than five nor more than eleven, as the Governor may determine.

(2) Any person appointed to be a member of the Board shall hold office during the Governor's pleasure and unless his appointment is earlier terminated it shall be deemed to terminate one year from the date upon which such appointment took effect.

(3) There shall be a Chairman and a Deputy Chairman of the Board each of whom shall be appointed by the Governor from among the members of the Board and each of whom shall hold office as such during the Governor's pleasure:

Provided that the Board shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of Chairman or Deputy Chairman or of any member.

(4) At any meeting of the Board the Governor may preside over the meeting if, acting in his discretion, he decides to do so but unless the Governor so decides the meeting shall be presided over by—

- (a) the Chairman; or
- (b) in the absence of the Chairman, the Deputy Chairman; or
- (c) in the absence of both the Chairman and the Deputy Chairman, such member of the Board as the members present elect to act as Chairman at that meeting.

(5) Every question or matter to be determined by the Board at any meeting shall be decided by a majority of the votes of the members present and voting on the question or matter:

Provided that in the event of an equal division of votes the person presiding at the meeting may, if he thinks fit, give a second or casting vote.

(6) Fees shall be paid to members of the Board in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

(7) The Board may appoint sub-committees from among their members and every such sub-committee shall consist of a Chairman and such number of sub-committee members as the Board may, in each case, determine, who shall hold office on the sub-committee for such period and on such terms as the Board may determine.

(8) The Board may, with the consent in writing of the Governor, authorize a sub-committee appointed under subsection (7) to perform any of their functions under this Act or other statutory provisions; and the act of any sub-committee so authorized to perform any function of the Board shall be deemed to be an act of the Board when such subcommittee are acting within the scope of their authority.

Governor may consult Board

7 (1) In the exercise of his powers and duties under this Act and any other enactment which relates to matters of defence, including armed forces, the Governor may consult with

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or take the advice of the Board from time to time as he thinks fit and, without derogation from the generality of the provisions of this section, he shall consult with the Board on the following matters—

- (a) *[Deleted]*
- (b) training;
- (c) *[Deleted]*
- (d) *[Deleted]*
- (e) civil defence contingency planning,

but, notwithstanding that the Governor has consulted or taken the advice of the Board on any matter, he may act in his discretion on such matter.

(2) In the exercise of his delegated responsibilities for regiment matters the Minister for the time being responsible for defence may consult the Board.

[Section 7 amended by 1998:31 effective 13 July 1998; subsection (2) amended by BR 5/2011 para.5 effective 25 February 2011]

Exemption Tribunal

8 (1) For the purposes of this Act there shall be established a tribunal to be called the Exemption Tribunal who shall have the powers and discharge the duties conferred or imposed upon the Exemption Tribunal by or under this Act.

(2) The provisions of Part 1 of the First Schedule shall have effect with respect to the constitution and procedure of the Exemption Tribunal, to certain powers, duties and immunities of the Tribunal as therein mentioned, to appeals from decisions of the Tribunal, and to the remuneration of members of the Tribunal.

Witnesses before Board

9 (1) The Exemption Tribunal shall have the like powers as a court of summary jurisdiction to summon witnesses and to examine applicants and witnesses on oath.

- (1A) Subject as hereinafter provided, if any person—
 - (a) without reasonable cause fails to attend as a witness in accordance with the terms of a summons; or
 - (b) refuses to make an oath when required to do so by the Tribunal; or
 - (c) refuses to answer any question put to him by a member of the Tribunal

he commits an offence:

Provided that, in respect of a refusal to answer a question, a person shall not be guilty of an offence if he refuses to answer any question which he could not be required to answer in proceedings before a court of Bermuda.

- (2) Where a person commits an offence under this section:

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Punishment on summary conviction: imprisonment for 3 months or a fine equal to 7 days' pay or both such imprisonment and fine.

[Section 9 amended by 2015 : 48 s. 23 effective 1 November 2017]

Defence Medical Board

10 (1) For the purposes of this Act there shall be established a standing medical board, to be called the Defence Medical Board, who shall have the powers and discharge the duties conferred or imposed upon the medical board by or under this Act.

(2) The provisions of Part II of the First Schedule shall have effect with respect to the constitution of the medical board, and to the remuneration of the members of the medical board.

Governor's Orders

11 (1) Subject to this Act, the Governor may make general or special orders, to be called Governor's Orders, with respect to the recruitment, organization, government, training, pay and allowances of the regiment and with respect to all other matters and things relating to the regiment, including any matter—

- (a) which is expressed by any provision of this Act to be a matter for which provision may be made by Governor's Orders; and
- (b) which under any provision of this Act may be or is to be prescribed by Governor's Orders.

(2) Without prejudice to the generality of the powers conferred upon the Governor by subsection (1) provision may be made by Governor's Orders for the formation of members of the regiment into sub-units and for posting, attaching or otherwise dealing with such members within the regiment; and for attaching members of the regiment for service with a cadet corps established in Bermuda by or under any Act; and for the constitution of a permanent staff, including adjutants, warrant officers and non-commissioned officers who may be members of Her Majesty's armed forces; and for regulating the appointment, and retirement of officers and men of the regiment and their numbers, ranks and duties; and for the constitution and functions of a promotions board.

(3) Governor's Orders may take the form of applying to the regiment, with such modifications, exceptions or variations as are specified in the Orders, the provisions of any order, regulation or instruction made or issued in respect of Her Majesty's armed forces or of the Territorial Army in the United Kingdom.

(4) Governor's Orders may take the form of authorizing the Deputy Governor to issue instructions providing for any matter with respect to which, by virtue of this section, Governor's Orders may be made.

(5) Governor's Orders shall not be inconsistent with any of the provisions of this Act.

(6) The power of the Governor to make Governor's Orders under this section shall include a power to revoke or vary any Orders so made.

(7) In making Governor's Orders in respect of regiment matters responsibility for which has been delegated to the Minister for the time being responsible for defence, the Governor shall act on the advice of the Minister.

[Section 11 amended by 1992:69 effective 16 July 1992; and by 1998:31 effective 13 July 1998; subsection (7) amended by BR 5/2011 para. 5 effective 25 February 2011; Section 11 amended by 2015 : 48 s. 24 effective 1 November 2017]

PART II

Interpretation of Part II

12 (1) In this Part unless the context otherwise requires—

“deferred person” means a person who has been selected for military service but is not immediately required to serve by virtue of section 15(2);

“exempted person” means a person who—

- (a) has served for two years or longer as a member of Her Majesty's armed forces or for three years or longer as a volunteer in the regiment; or
- (b) is a member of Her Majesty's armed forces; or
- (ba) is a member of the Bermuda Fire and Rescue Service; or
- (c) is a member of the Bermuda Police Service (including the Reserve Police); or
- (d) is a prison officer within the meaning of the Prisons Act 1979 [*title 10 item 32*]; or
- (e) is in the service of the Government of a part of Her Majesty's dominions outside Bermuda, being a person whose presence in Bermuda is occasioned solely by his employment in that service; or
- (f) is a person in holy orders or a regular minister in any religious denomination recognized by the Governor as such for the purposes of this Act;
- (g) *[repealed by 2015 : 48 s. 6]*
- (h) *[repealed by 2015 : 48 s. 6]*

(2) For the purposes of this Part every male Commonwealth citizen who possesses Bermudian status for the purposes of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*] shall, while he is over the age of eighteen years and under the age of twenty-three years, be a specified person.

(3) For the purposes of this Part, and for the avoidance of doubt, all male persons who hold Bermudian status or who hold a permanent resident's certificate, under and in accordance with the Bermuda Immigration and Protection Act 1956, are eligible to be

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selected to serve in the regiment irrespective of whether they hold dual nationality with a non-Commonwealth country.

[Section 12 amended by 1997:37 effective 6 May 1999; and by 1998:32 effective 13 July 1998; Section 12 subsection (1) amended and subsection (3) inserted by 2015 : 48 s. 6 effective 1 November 2017; Section 12 amended by 2015 : 48 s. 24 effective 1 November 2017]

Priority of exempted services

12A (1) Where a member of the regiment is employed both by the regiment and by an exempted service, his employment obligations to the exempted service take priority over his employment obligations to the regiment.

(2) For the purpose of subsection (1), an “exempted service” means—

- (a) Her Majesty’s armed forces;
- (b) Bermuda Fire and Rescue Service;
- (c) Bermuda Police Service;
- (d) Bermuda Prison Service;
- (e) Bermuda Hospitals Board emergency medical technician or paramedic; or
- (f) a person in holy orders or a regular minister in any religious denomination recognized by the Governor as such for the purposes of this Act.

[Section 12A inserted by 2015 : 48 s. 7 effective 1 November 2017]

Registration of persons for military service

13 There shall be maintained in such manner and in such form as the Deputy Governor shall determine a register of specified persons (hereinafter referred to as the military eligibility register) showing which of those persons are liable to be selected for military service.

[Section 13 amended by 2015 : 48 s. 24 effective 1 November 2017]

Liability to military service

13A (1) Every specified person—

- (a) on attaining the age of eighteen years; or
- (b) if he does not become a specified person until he is over the age of eighteen years, then on becoming a specified person,

shall be liable to be selected for military service unless he is and remains an exempted person.

(2) Every specified person on becoming such a person including persons claiming to be exempted or deferred persons and every exempted or deferred person on ceasing to be such a person shall report to such person at such time and place and in such manner as may be required by Governor’s Orders.

(3) Every specified person on reporting in accordance with subsection (2) shall furnish in such form as shall be prescribed by Governor's Orders the particulars required in such form.

(4) Every specified person who claims to be an exempted or deferred person shall make available when reporting under subsection (2), or if a member of the regiment on becoming an exempted or deferred person, such information relating to his claim for exemption or deferment as may be required.

(5) Any person claiming to be an exempt or deferred person when reporting pursuant to subsection (2) whose claim is not accepted may apply to the Exemption Tribunal for exemption or deferment, as the case may be.

(6) Notwithstanding the other provisions of this section no person who is a patient in a hospital receiving treatment for mental disorder or is, under any law, treated as a person of unsound mind nor any person who is detained in a prison or in the senior training school shall be required to report while he is such a patient or is treated as a person of unsound mind or is so detained.

(7) If at any time including any proceedings against a person for a failure to comply with the requirements of this section any question arises as to whether a person is an exempted or deferred person the burden of proof shall be upon him.

(8) Any person who without reasonable excuse, the proof of which shall be upon him who fails to report under subsection (2) commits an offence against this Act:

Punishment on summary conviction: imprisonment for 14 days or a fine equal to 5 days' pay or both such imprisonment and fine.

[Section 13A amended by 1998:32 effective 13 July 1998; Section 13A amended by 2015 : 48 s. 23 effective 1 November 2017]

13B *[Section 13B repealed by 1998:32 effective 13 July 1998]*

Enlistment and period of service of volunteers

14 (1) Volunteers of any nationality who are ordinarily resident in Bermuda may be enlisted into the regiment by such persons and in such manner and subject to such conditions as may be prescribed.

(2) Subject to this Part, a volunteer enlisted into the regiment—

- (a) shall be enlisted to serve for a period of three years and two months reckoned from the date of his attestation;
- (b) may re-engage before the end of his current term of service for such period as may be prescribed by Governor's Orders but not exceeding four years at a time from the end of that term, and on re-engagement shall make the prescribed declaration before an officer, and so from time to time:

Provided that where a volunteer would, if he had been called up for compulsory service, have been entitled to have the period for which he is liable to serve to be reduced under section 19, then there shall be a

corresponding reduction in the period for which he shall be enlisted pursuant to paragraph (a):

Provided further that nothing in this subsection shall entitle a person to re-engage without the approval of the Commanding Officer, or for a period extending beyond a prescribed compulsory retirement age applicable to him:

Provided further that nothing in this subsection shall apply in the case of a volunteer enlisted or to be enlisted to serve in the local permanent staff of the regiment upon a full-time basis.

(3) In subsection (2)(a), “attestation” means the taking of an oath or affirmation acknowledging service.

[Section 14 amended by 1992:69 effective 16 July 1992; Section 14 amended by 2015 : 48 s. 8 effective 1 November 2017]

Liability of person registered in the military eligibility register to be selected for military service

15 (1) Subject to this section, any person registered in the military eligibility register shall, while he is over the age of eighteen years and under the age of twenty-three years, be liable to be selected for military service under this Act.

(2) A person, although he is registered as liable to military training in the military eligibility register and is liable to be selected for military service, shall not be required to serve under this Act if selected—

- (a) while he is a volunteer in the regiment; or
- (b) while he is enrolled as a full-time student in any school, college or university;
- (c) while he is a medically unfit person; or
- (ca) while he is a patient in a hospital receiving treatment primarily for mental disorder or is, under any law, treated as a person of unsound mind; or
- (cb) while he is detained in a prison in Bermuda; or
- (d) while he is an exempted person such as described in section 12(1), having become such an exempted person after registration; or
- (e) after he has been discharged from the regiment in accordance with this Part.

[Section 15 amended by 1998 : 31 effective 13 July 1998; Section 15 subsection (2)(ca) and (cb) inserted by 2015 : 48 s. 9 effective 1 November 2017; Section 15 amended by 2015 : 48 s. 24 effective 1 November 2017]

Admission to the holding company: suspension of time to be served

15A (1) Except for registered persons whose period of service has been deferred by the Exemption Tribunal, where a registered person has been transferred into the holding

company, the required time period for military service shall be suspended until the person has been—

- (a) transferred back onto regular strength; or
- (b) discharged.

(2) In this section—

“holding company” means the group to which persons are transferred due to—

- (a) illness or infirmity; or
- (b) reasons which, in the opinion of the Commanding Officer, reasonably necessitate such a transfer;

“registered” means registered in the military eligibility register.

[Section 15A inserted by 2015 : 48 s. 10 effective 1 November 2017]

Method of selection for service

16 (1) The system by which persons registered as liable to military training in the military eligibility register are to be selected to fill vacancies shall be by ballot.

(2) Provision may be made by Governor’s Orders with respect to the method of taking ballots for the purpose of selecting persons as aforesaid and with respect to all matters relating to the selection of persons by ballot.

(3) In this section “vacancies” means any vacancies which from time to time occur in the establishment of the regiment.

[Section 16 amended by 2015 : 48 s. 24 effective 1 November 2017]

Reporting for medical examination; calling up

17 (1) The Deputy Governor shall prior to the issue of any notices under subsection (2) publish notices in the Gazette and in a newspaper containing lists of persons selected for military service under section 16 requiring such persons to present themselves at such time and place as shall be specified in the notices for medical examination by the medical board and for enlistment.

(2) The Governor shall cause to be served on each person selected for military service under section 16 a notice requiring him to present himself at the time and place specified in the notices published under subsection (1) for medical examination by the medical board and for enlistment.

(3) Where a person selected for military service has been medically examined after presenting himself pursuant to subsection (2) and has been found to be fit for military service he shall in accordance with Governor’s Orders be enlisted and served with a written notice, to be called a calling up notice, requiring him to present himself at such place and time, not earlier than the seventh day after the date of the notice, and to such authority as may be specified in the notice.

(4) Notices provided for in subsections (2) and (3) shall be served not less than seven days prior to the date the person served is required to present himself for medical examination and enlistment or call up, as the case may be. In the case of medical examination service shall be by registered post to the last address known to the Deputy Governor of the person to be served or in the case of a calling up notice be hand delivered at the time of enlistment or in the same manner as a notice for medical examination:

Provided that any person who without reasonable excuse fails to report under section 13A(2) or fails to notify a change of address as required by Governor's Orders shall be deemed to have been served with a calling up notice on the publication thereof in the Gazette.

(5) Where a person selected for military service and duly served or deemed to have been served with a notice under this section, becomes before the date on which he is required to present himself not then required to serve by virtue of section 15, then, the military service which he is required to undergo by virtue of this Part may be deferred for any period or periods and from time to time according to the circumstances of the case.

(6) Provision may be made by Governor's Orders for regulating the deferment by the Exemption Tribunal of military service under subsection (5) and section 17B(8).

[Section 17 amended by 2002:31 s.2 effective 9 September 2002]

Requirement to serve if selected for military service

17A Notwithstanding anything in this Act contained, any person selected for military service under this Act shall be required to serve in the regiment for a period of three years and two months:

Provided that no person shall be required to serve in the regiment after he attains the age of thirty-three years.

Special provisions relating to enlistment

17B (1) Where—

- (a) a person has been selected for military service; and
- (b) the Governor is satisfied that the notices referred to in subsection (1) of section 17 have been published as required by that subsection; and
- (c) the Governor is satisfied—
 - (i) that the person has, pursuant to section 17(2), been served with a notice requiring him to present himself at the time and place specified in the notices published under section 17(1) for medical examination by the medical board and for enlistment; and the person has failed so to present himself; or
 - (ii) that everything that could reasonably be done in the circumstances of a particular case to effect such service has, in fact, been done and it has not been possible to effect service,

the Governor shall authorise that person to be enlisted, *in absentia*, for military service.

(2) Where, pursuant to subsection (1), a person is enlisted for military service, the Governor shall cause a calling up notice to be served on him requiring him to present himself at such place and time, not earlier than the seventh day after the date of the notice, and to such authority as may be specified in the notice.

(3) The Deputy Governor shall, prior to the issue of any notice under subsection (2), publish notices in the Gazette and in a newspaper containing lists of persons who have been enlisted *in absentia* and requiring such persons to present themselves at such time and place as shall be specified in the notice.

(4) A notice referred to in subsection (2) shall be sent by registered post to the last address known to the Deputy Governor of the person referred to in that subsection or be hand delivered to that person and shall be served not less than seven days prior to the date the person served is required to present himself.

(5) A person referred to in this section who, without reasonable excuse, fails to report under section 13A(2) or fails to notify a change of address as required by Governor's Orders shall be deemed to have been served with a calling up notice on the publication thereof in the Gazette under subsection (3).

(6) A person enlisted for military service under this section shall, as soon as is reasonably practicable after he presents himself pursuant to subsection (2), or is otherwise brought before the authority, be medically examined to determine whether he is fit for such service.

(7) Where a person referred to in subsection (6) is found to be unfit for military service, then, notwithstanding such enlistment, he shall not be required to serve under this Act while he is medically unfit.

(8) Where a person enlisted under this section becomes before the date on which he is required to present himself not then required to serve by virtue of section 15, then, the military service which he is required to undergo by virtue of this Part may be deferred for any period or periods and from time to time according to the circumstances of the case.

[Section 17B inserted by 2002:31 s.3 effective 9 September 2002]

Failure to report an offence

18 Any person selected for military service who without reasonable excuse, the proof of which shall be upon him, fails to present himself in accordance with a notice duly served on him under section 17(2) or (3) or section 17B(2) commits an offence:

Punishment on summary conviction: imprisonment for 3 months or a fine equal to 14 days' pay or both such imprisonment and fine.

[Section 18 amended by 2002:31 s.4 effective 9 September 2002; Section 18 amended by 2015 : 48 s. 23 effective 1 November 2017]

Period of compulsory service

19 (1) Every person upon whom a calling up notice is duly served shall, on the day on which he is required by the notice to present himself, be deemed to have been duly enlisted in the regiment for a period of three years and two months as if he had been enlisted as a volunteer under section 14.

(2) A person who by virtue of subsection (1) is deemed to have been duly enlisted in the regiment is hereinafter in this Part referred to as a person who has been called up for military service.

(3) Where a person who has been called up for military service has previously served for any period—

- (a) in any of Her Majesty's armed forces or as a volunteer in the regiment or in the regular military, naval or air forces of the United States of America; or
- (b) in any of Her Majesty's armed forces or the forces of the United States of America, not being such a force as is referred to in paragraph (a),

then the period of three years and two months for which, by virtue of subsection (1), a person is liable to serve in the regiment shall in his case be reduced by the period of his said previous service:

Provided that—

- (i) nothing in this subsection shall be construed so as to derogate from the status or privileges of a person who, under section 12(1)(a), is an exempted person by reason of his having served for two years or longer as a member of Her Majesty's armed forces or for three years or longer as a volunteer in the regiment; and
- (ii) in the case of a person whose previous service is such as is mentioned in paragraph (b), the reduction shall not exceed two years.

(4) For the avoidance of doubt, a person becomes a member of the regiment and subject to required military service when compulsorily enlisted—

- (a) in person; or
- (b) in absentia.

[Section 19 subsection (4) inserted by 2015 : 48 s. 11 effective 1 November 2017; Section 19 amended by 2015 : 48 s. 24 effective 1 November 2017]

Computation of period of service

20 Where a man of the regiment—

- (a) becomes an exempted person such as described in section 12(1)(c), (d), (e), (f), (g) or (h), but is not discharged under section 28; or
- (b) becomes enrolled as a pupil or student in any school, college or university outside Bermuda or as a full-time student at the Bermuda College; or

- (c) is absent from Bermuda; or
- (d) is a medically unfit person who is likely to cease to be a medically unfit person,

and his military training is deferred as provided in section 25, then any period for which his military training is so deferred shall not count as a period of service for the purpose of computing the total period for which he is to serve in the regiment:

Provided that no person shall be required, by reason only of this section, to serve as a man of the regiment after he attains the age of thirty three years.

Obligation to undergo military training

21 (1) Subject to the succeeding provisions of this Part, every man of the regiment shall by way of annual military training during each year of his enlistment—

- (i) undergo military training for fifteen days in annual camp at such time and at such place in or outside Bermuda as may be prescribed by the Governor; and
- (ii) attend at least forty drills on such days and at such times and places as may be prescribed, and fulfil such other conditions relating to military training as may be prescribed:

Provided that the drills referred to in this section may, at the discretion of the Commanding Officer and with the approval of the Governor, be increased by such number of drills as, in the opinion of the Commanding Officer, may be necessary in the interests of training or military efficiency and, in respect of any such drills a member of the regiment shall be paid such remuneration as may be fixed by Governor's Orders.

(2) Subject to subsection (1) the Commanding Officer shall have power by order to direct that the men of the regiment or any particular man of the regiment shall attend a specified number of drills during any period specified in the order.

[Section 21 amended by 2015 : 48 s. 24 effective 1 November 2017]

Power to dispense with military training

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

- (a) as respects any sub-unit of the regiment, by the Governor; and
- (b) as respects individual men of the regiment, by the Governor, or, subject to Governor's Orders, by the Commanding Officer.

[Section 22 amended by 2015 : 48 s. 24 effective 1 November 2017]

Exemption Tribunal may excuse from military training

23 (1) A man of the regiment may apply to the Exemption Tribunal to be excused from undergoing all or any of the military training required by section 21, on the ground that he would thereby be caused undue hardship; and the Exemption Tribunal shall hear the application and shall make such order as appears to them just, and shall inform the

Governor by notice of their decision; and where a man of the regiment is excused as aforesaid the Tribunal shall issue to him a certificate accordingly.

(2) Where the Exemption Tribunal make an order excusing in whole or in part the attendance of a man of the regiment at annual camp the order may contain a condition that the man so excused shall undergo additional military training by way of additional drills and any such condition shall be included in the certificate referred to in subsection (1).

(3) Where the Exemption Tribunal makes an order under subsection (1) excusing a person from undergoing all military training, it may instead require the person to perform approved alternative community service for a minimum period of three years and two months.

(4) "Approved alternative community service" means service on a regular basis with any of the following organizations willing to accept the person—

- (a) the Reserve Police;
- (b) the St John Ambulance Bermuda;
- (c) the Bermuda Red Cross;
- (d) the Bermuda Sea Cadets.

(5) The Minister may by order published in the Gazette amend the list of organizations in subsection (4).

[Section 23 subsections (3), (4) and (5) inserted by 2015 : 48 s. 12 effective 1 November 2017]

Exemption Tribunal may excuse from military training on application of employer

24 (1) An employer of a person who is a man of the regiment may apply to the Exemption Tribunal for the person employed to be excused in whole or in part from attendance at annual camp as required by section 21, on the ground that the employer would thereby be caused undue hardship; and the Exemption Tribunal shall hear the application and shall make such order as appears to them just and shall inform the Governor by notice of their decision; and, where a man is excused as aforesaid, the Tribunal shall issue certificates to him and to his employer accordingly.

(2) Where the Exemption Tribunal make an order under this section excusing a man in whole or in part from attendance at annual camp, the order may contain a condition that the man so excused shall undergo additional military training by way of additional drills, and any such conditions shall be included in the certificates referred to in subsection (1).

Deferment of military training

25 (1) Where a man of the regiment—

- (a) becomes an exempted person such as described in section 12(1)(c), (d), (e), (f), (g) or (h) but is not discharged under section 28; or
- (b) becomes enrolled as a pupil or student in any school, college or university outside Bermuda or as a full-time student at the Bermuda College; or

- (c) is absent from Bermuda; or
- (d) is a medically unfit person who is likely to cease to be a medically unfit person,

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

(2) Provision may be made by Governor's Orders for regulating the deferment by the Exemption Tribunal of military training under this section.

Offence of failure to complete military training

26 Any man of the regiment who without reasonable excuse (the proof of which shall be upon him) fails—

- (i) to complete the annual training which by or under this Act he is required to undergo; or
- (ii) to attend the number of drills during any particular period in accordance with the directions of the Commanding Officer given under section 21(2),

commits an offence:

Punishment on summary conviction: imprisonment for 3 months or a fine equal to 28 days' pay or both such imprisonment and fine.

[Section 26 amended by 2015 : 48 s. 23 and s. 24 effective 1 November 2017]

Conscientious objectors

27 (1) Notwithstanding anything in the foregoing provisions of this Part, a person may, at any time after reporting under subsection 13A(2), apply to the Exemption Tribunal to be registered as a conscientious objector on the grounds that—

- (a) he conscientiously objects to performing combatant duties; or
- (b) he conscientiously objects to performing any kind of military service.

(2) The Exemption Tribunal, if satisfied upon an application under subsection (1) that the ground on which the application was made is established, shall inform the Governor accordingly, and the Governor shall cause the name of the conscientious objector to be entered in a register of conscientious objectors to be kept by the Governor.

(3) If the Exemption Tribunal are not so satisfied they shall inform the Governor accordingly.

(4) The Governor shall make arrangements for securing that a person registered in the register of conscientious objectors shall during the period for which he serves, or would have served, by virtue of being called up for military service,—

- (a) if an objector referred to in subsection (1)(a), be employed only on non-combatant duties; and

(b) if an objector referred to in subsection (1)(b), be required to perform approved alternative community service.

(5) In subsection (4)(b), “approved alternative community service” has the meaning given in section 23(4).

[Section 27 repealed and replaced by 1998:31 effective 13 July 1998; Section 27 amended by 2015 : 48 s. 13 effective 1 November 2017]

Grounds for discharge

28 (1) A man of the regiment shall, except when the regiment or the sub-unit of the regiment of which he is a member is embodied, or when the Governor otherwise directs, be entitled to be discharged on the expiration of the period for which under this Part he is required to serve.

(2) Where the time at which a man of the regiment would be entitled to be discharged under subsection (1) occurs while the regiment or the sub-unit of the regiment of which he is a member is embodied, then his right to be discharged shall, unless the Governor otherwise directs, be suspended until the termination of the period for which the regiment or the sub-unit, as the case may be, is embodied.

(3) A man of the regiment shall be discharged at any time if the medical board certify that he is medically unfit for further service in the regiment.

(4) A man of the regiment who becomes an exempted person within the meaning of section 12(1)(a), by reason of his entry or enlistment in any of Her Majesty’s armed forces shall, except when the regiment or sub-unit of the regiment of which he is a member is embodied, be entitled to be discharged:

Provided that the Governor may grant permission to a man of the regiment to enter or enlist in any of Her Majesty’s armed forces notwithstanding that the regiment or the sub-unit of the regiment of which he is a member is embodied.

(5) A man of the regiment who becomes an exempted person as described in section 12(1)(c), (d), (e), (f), (g) or (h) may, subject to the approval of the Governor, be discharged by the Commanding Officer:

Provided that in any case where a man of the regiment is not discharged by the Commanding Officer on becoming an exempted person as described in section 12(1)(c), (d), (e), (f), (g) or (h) the Commanding Officer shall as soon as may be report the circumstances to the Governor, for the information of the Governor, and the Governor may give such decision in the matter as he thinks fit.

(6) In this section “discharged” in relation to a man of the regiment, means discharged from the regiment.

[Section 28 amended by 2015 : 48 s. 24 effective 1 November 2017]

Discharge on cause being shown

29 (1) Without prejudice to section 28, a man of the regiment may at any time be discharged from the regiment by the Commanding Officer on good and sufficient cause being shown to the Commanding Officer why the man should be discharged.

(2) Provision may be made by Governor's Orders for regulating the discharge of men under this section and in particular for appeals to the Governor against a refusal to discharge or against a discharge.

[Section 29 subsection (1) amended by 2015 : 48 s. 24 effective 1 November 2017]

Governor's commission

30 The Governor may by commission appoint any person in the lowest rank of officer in the regiment where that person fulfils all the prescribed conditions as to age, physical fitness, educational qualifications and otherwise.

Relinquishment of commission

31 (1) An officer may at any time apply in the prescribed manner to the Governor for permission to relinquish his commission; and the Governor after considering the circumstances may grant the application.

(2) If the Governor is satisfied that an officer is inefficient or that he has been guilty of neglect of duty or misconduct or that for any other cause he should no longer be an officer, he may by notice in writing under his hand require that officer to relinquish his commission or may by like notice dismiss that officer:

Provided that the Governor shall not require an officer to relinquish his commission or dismiss an officer—

- (a) until he has consulted the Governor's Council; and
- (b) where the officer is charged with misconduct or neglect of duty, unless the officer has been given full opportunity to exculpate himself before a Court of Enquiry, consisting of officers each of whom is an officer either of Her Majesty's armed forces or of the regiment appointed by the Governor to enquire into and report on all the circumstances of the case.

(3) The relinquishment by an officer of his commission or the dismissal of an officer shall not of itself operate so as to absolve the person who has been an officer from any liability under this Act to be called up for military service or so as to preclude the acceptance of his services as a volunteer.

(4) Without prejudice to anything in the foregoing provisions of this section, provision may be made by Governor's Orders for fixing age limits at which officers, or officers of a particular rank, shall or may be required to relinquish their commissions, and for matters incidental thereto.

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(5) Nothing in this section shall be construed so as to affect any liability to which an officer may be subject under the Armed Forces Act while the regiment or the sub-unit of the regiment in which he is an officer is embodied.

[Section 31 amended by 2015 : 48 s. 24 effective 1 November 2017]

Relinquishment of commission – retention of rank title

31A (1) Where the commission of an officer of the substantive rank of major or above has been relinquished in accordance with section 31(1), and where the officer has not been dishonourably discharged, the officer shall be entitled to retain his rank title.

(2) Where an officer chooses to retain his rank title in accordance with this section, such rank title shall have affixed immediately after it the word “(Retired)” or “(Retd)”.

(3) In this section “rank title” means the last substantive rank held by an officer, prior to his commission being relinquished.

[Section 31A inserted by 2015 : 48 s. 14 effective 1 November 2017]

Embodiment of regiment

32 (1) The Governor, if it appears to him to be necessary to do so in the interests of public safety or the defence of Bermuda, may by order published in the Gazette, or otherwise made known to members of the regiment in such manner as may seem to him best suited to the circumstances, direct that the regiment or any part of the regiment be embodied; and upon the making of such an order every member of the regiment affected by the order shall report at such place and at such time as may be specified in the order or made known to him by or through any of his officers or otherwise duly made known to him:

Provided that the Governor shall, prior to exercising his functions under this subsection as read with section 35, consult the Governor’s Council unless the exigencies of any situation render such prior consultation impracticable, in which case the Governor shall consult the Governor’s Council as soon as possible thereafter.

(2) Any person who without reasonable excuse (the proof of which shall be upon him) fails to report as aforesaid commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine equal to 28 days’ pay or both such imprisonment and fine.

(3) Any police officer and any member of Her Majesty’s armed forces or of the regiment—

- (a) may arrest without warrant any member of the regiment whom he believes on reasonable grounds to have committed an offence as aforesaid; and
- (b) may convey under arrest any person convicted of an offence as aforesaid to such place as may be appointed by any officer of the regiment.

[Section 32 amended by 2015 : 48 s. 23 effective 1 November 2017]

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

33 (1) Subject to section 32, every member of the regiment shall, while undertaking any duty with or training with any regular or reserve forces outside Bermuda, be subject to military law under the Armed Forces Act, and the Armed Forces Act shall apply to such member of the regiment as if he were a member of the regular or reserve force.

(2) For the purposes of this section and section 34—

- (a) a member of the regiment shall be deemed to be undertaking any duty with or training with any reserve or regular forces when so ordered to act by the Governor;
- (b) “regular forces” and “reserve forces” have the meanings given in section 374 of the Armed Forces Act.

[Section 33 repealed and replaced by 2015 : 48 s. 15 effective 1 November 2017]

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

34 (1) The regiment or any part thereof shall, while undertaking any duty with or training with a body of regular or reserve forces, be under the general command of the officer commanding that body if the officer is of senior equivalent rank to the officer commanding the regiment or that part thereof, as the case may be.

(2) The extent of command to be exercised over a member of the regiment while undertaking any duty with or training with a body of regular or reserve forces shall be at the Governor’s discretion.

[Section 34 repealed and replaced by 2015 : 48 s. 15 effective 1 November 2017]

Period of embodiment of the regiment

35 The period of embodiment of the regiment, or part thereof, shall be of such duration as the Governor may determine and shall not terminate until the Governor orders that the regiment or the part thereof, shall cease to be embodied.

PART III

Military offences: arrest

36 (1) Any member—

- (a) of Her Majesty’s armed forces; or
- (b) of the regiment,

if authorized in writing by the Commanding Officer to arrest offenders, may arrest without warrant any member of the regiment whom he believes on reasonable grounds to have committed a military offence set out in the Second Schedule or any man of the regiment who commits an offence under section 26 (failing to complete military training).

(2) Any person arrested by a person other than a police officer for committing a military offence or for an offence under section 26 shall be taken forthwith to the Commanding Officer, or to such other officer as the Commanding Officer shall appoint.

(3) Any person brought before the Commanding Officer or other officer under subsection (2) shall, unless his case is completed at the time of being brought before the Commanding Officer or other officer, be released on giving an undertaking that he will appear before the person trying his case when called upon, unless the Commanding Officer or other officer is satisfied that he will not so appear, in which case he shall be kept in military custody.

(4) No person shall be kept in military custody under subsection (3) for a period longer than 72 hours.

[Section 36 repealed and replaced by 2015 : 48 s. 16 effective 1 November 2017]

Military offences: mode of trial

36A (1) This section applies where a member of the regiment has been charged with a military offence set out in the Second Schedule, other than a minor offence.

(2) In subsection (1), "minor offence" means an offence committed by a man of the regiment which the officer commanding his sub-unit considers can be suitably dealt with under section 37(1) or (2).

(3) The member of the regiment shall, for the purpose of having the charge determined, have the right to elect a hearing before—

- (a) a court of summary jurisdiction;
- (b) the Commanding Officer; or
- (c) a company commander, in the case of a private, lance-corporal or corporal only.

(4) Nothing in this section shall preclude the Commanding Officer from having the right to remand into military custody a member of the regiment, pending final determination of the offence so charged.

[Section 36A inserted by 2015 : 48 s. 16 effective 1 November 2017]

Penalty on summary conviction

36B (1) Where a member of the regiment elects a hearing before a court of summary jurisdiction in accordance with section 36A(3)(a), he shall be liable on conviction to a fine equal to 28 days' pay or to imprisonment for three months or to both.

(2) Where a member of the regiment is convicted by a court of summary jurisdiction, the Commanding Officer may recommend to the Governor that the member should be dishonourably discharged from the regiment.

(3) The Governor, on receiving a recommendation from the Commanding Officer that a member should be dishonourably discharged, may—

- (a) so discharge the member; or

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- (b) remit the case to the Commanding Officer requiring him to reconsider his recommendation.

[Section 36B inserted by 2015 : 48 s. 16 effective 1 November 2017]

Hearing by Commanding Officer or company commander

36C (1) This section applies where the Commanding Officer or company commander hears a charge.

(2) If the Commanding Officer or company commander determines that the charge has not been proved he must dismiss the charge.

(3) If the Commanding Officer or company commander determines that the charge has been proved he must—

- (a) record a finding that the charge has been proved; and
- (b) award any one or more of the punishments in section 36D.

(4) Notwithstanding subsection (3) or section 36A(3), after investigating the charge—

- (a) the Commanding Officer; or
- (b) the company commander after consulting the Commanding Officer,

may remand any person so charged for prosecution before a court of summary jurisdiction, and such court of summary jurisdiction shall thereafter deal with the matter *de novo*.

[Section 36C inserted by 2015 : 48 s. 16 effective 1 November 2017]

Punishments which may be awarded by Commanding Officer or company commander

36D (1) The punishments which may be awarded by the Commanding Officer or company commander are—

- (a) a fine not exceeding 28 days' pay;
- (b) if the unit is embodied or in camp, detention for a period not exceeding 28 days;
- (c) if the unit is embodied or in camp, confinement to barracks for any period not exceeding fourteen days;
- (d) the carrying out of additional fatigue duties or other duties;
- (e) admonition;
- (f) severe reprimand;
- (g) reprimand;
- (h) in the case of a non-commissioned officer only, reduction to the ranks or lower grade.

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(2) The Commanding Officer may, in addition to or in place of any other punishment imposed under this section on a member of the regiment, recommend to the Governor that the member be dishonourably discharged from the regiment.

(3) The Governor, on receiving a recommendation from the Commanding Officer that a member should be dishonourably discharged, may—

- (a) so discharge the member; or
- (b) remit the case to the Commanding Officer requiring him to reconsider his recommendation and any other punishment that he has imposed.

(4) When the Commanding Officer is required to reconsider a recommendation for dishonourable discharge under subsection (3), he shall not impose or alter any other punishment without giving the member in respect of whom the order for dishonourable discharge was made an opportunity to be heard.

(5) A fine imposed on a member of the regiment under this section shall be paid to the adjutant of the regiment within seven days, and shall be recoverable—

- (a) from any sums due under this Act; or
- (b) before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 for the recovery of a debt or liquidated demand.

(6) Any sentence of detention imposed under this section shall be of full force and effect notwithstanding that the regiment or sub-unit has ceased to be embodied or in camp since its imposition, and the sentence shall be served in the barracks or camp area as the Commanding Officer may direct.

[Section 36D inserted by 2015 : 48 s. 16 effective 1 November 2017]

Restitution if offence involves property

36E (1) When a member of the regiment is found guilty of an offence under paragraph 8 of the Second Schedule, the court or officer finding him guilty may make an order providing for the restitution of the property in respect of which he has been found guilty or providing for the payment by him of a sum up to the cost of replacing the public property lost or damaged.

(2) Any such order may be enforced as if it were an order made by a court of summary jurisdiction in a civil cause or action.

[Section 36E inserted by 2015 : 48 s. 16 effective 1 November 2017]

Minor offences: punishment or referral to Commanding Officer

37 (1) Subject to subsections (2) and (3), where a man of the regiment is charged with committing an offence under the Second Schedule, the officer commanding the sub-unit of which the man is a member, or such other officer as the Commanding Officer may appoint, shall investigate the charge and if he considers that the circumstances are such that the charge may suitably be dealt with by him, he may dismiss the charge or, if he is satisfied that the charge has been proved, he may impose any one of the following punishments—

- (a) fine not exceeding seven days' pay;
- (b) if the unit is in camp, confinement to barracks for any period not exceeding seven days;
- (c) the carrying out of additional fatigue duties or other duties;
- (d) admonition.

(2) Where a non-commissioned officer of the rank of corporal or below is charged with an offence under the Second Schedule, the officer commanding the sub-unit shall investigate the charge and if he considers that the circumstances are such that the charge may suitably be dealt with by him, he may dismiss the charge or, if he is satisfied that the charge has been proved,—

- (a) in the case of a lance-corporal or acting corporal, may impose any one or more of the following punishments—
 - (i) in the case of an acting corporal, reduction to substantive rank or to the ranks;
 - (ii) in the case of a lance-corporal, reduction to the ranks;
 - (iii) reprimand;
 - (iv) admonition;
 - (v) a fine not exceeding 7 days' pay;
- (b) in the case of a corporal, may impose any one or more of the following punishments—
 - (i) reprimand;
 - (ii) admonition;
 - (iii) a fine not exceeding 7 days' pay.

(3) In addition to any punishment under subsection (1) or (2), an order of restitution under section 36E may be made if the charge proved is one under paragraph 8 of the Second Schedule.

(4) Where an officer has investigated the charge against a man of the regiment under subsection (1) or (2) and considers the circumstances are such that the charge may not suitably be dealt with by him, he shall remand the man of the regiment to appear before the Commanding Officer.

(5) Subject to section 36A(3) (right to elect trial), the Commanding Officer shall deal with the charge under section 36C.

[Section 37 amended by 1998:31 effective 13 July 1998; Section 37 repealed and replaced by 2015 : 48 s. 17 effective 1 November 2017]

Appeal to the Board

37A (1) Where a man of the regiment (“the appellant”) has received a disciplinary punishment under section 36D, 36E or 37 (other than one imposed by a court of summary jurisdiction) with which he is aggrieved, he may, within fourteen days of receiving notice of the disciplinary punishment, appeal to the Board by giving notice in writing to the Board and to the person who made the disciplinary award.

(2) The appellant may include with the notice referred to in subsection (1) any representations he wishes to bring to the attention of the Board but, unless the Board otherwise orders, neither the appellant nor the person who made the disciplinary award shall be entitled to appear before the Board.

(3) The Board may call for a report from the person who made the disciplinary award and shall at a meeting determine the appeal.

(4) The Board may—

- (a) affirm, reverse or vary any disciplinary punishment imposed by the disciplinary award; or
- (b) remit the matter for determination on rehearing by the person who made the disciplinary award with or without any observations the Board thinks fit to make.

(5) The decision of the Board on an appeal shall be final.

(6) Where the Board decides an appeal, it shall forward to the Governor its recommendation with regard to the disciplinary punishment to be imposed, together with the record of the proceedings.

[Section 37A inserted by 1998:31 effective 13 July 1998; Section 37A subsection (1) amended by 2015 : 48 s. 18 effective 1 November 2017]

False statements

38 Without prejudice to anything in the Criminal Code [*title 8 item 31*], any person—

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

commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine equal to 28 days' pay or both such imprisonment and fine.

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Punishment on conviction on indictment: imprisonment for 2 years or a fine equal to two months' pay or both such imprisonment and fine.

[Section 38 amended by 2015 : 48 s. 23 effective 1 November 2017]

Offences outside Bermuda

39 Sections 36 to 38 and the Second Schedule shall apply in relation to the regiment and the officers and men of the regiment as well when they are outside as when they are within the limits of Bermuda.

[Section 39 amended by 2015 : 48 s. 24 effective 1 November 2017]

Civil offences

40 (1) Any officer or man of the regiment who, while outside the limits of Bermuda—
(a) during any period of military training under this Act; or
(b) while on service with the regiment or any part thereof,

commits a civil offence, commits an offence against this Act.

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

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

(4) In this section—

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

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

[Section 40 subsection (3) amended by 2015 : 48 s. 19 effective 1 November 2017]

Certain offences not to be criminal offences

40A (1) Any person found guilty of contravening any provision of this Act other than when the regiment is embodied, shall not be deemed to have been convicted of a criminal offence.

(2) Subsection (1) shall not apply to any conviction involving dishonesty, to a conviction under section 38 or to a conviction for a civil offence either inside or outside the limits of Bermuda.

Saving for Armed Forces Act

41 Nothing in sections 38, 39 or 40 shall affect any liability to which a member of the regiment may be subject under the Armed Forces Act under section 33.

[Section 41 amended by 2015 : 48 s. 24 effective 1 November 2017]

Trial of offences

42 (1) Without prejudice to anything in the Criminal Code [*title 8 item 31*] and except as expressly provided in this Act, offences against this Act shall be prosecuted before a court of summary jurisdiction.

(2) Subject to this Act, courts of summary jurisdiction and the Supreme Court shall have jurisdiction to try a person for any offence against this Act which, by reason of section 39 or 40, may be committed outside the limits of Bermuda notwithstanding that the offence would, but for this subsection, have been committed outside the jurisdiction of the court.

Direction for sentence to be served in Warwick Camp

42A (1) Where a court of summary jurisdiction imposes on a man of the regiment a sentence of imprisonment for a period not exceeding 28 days in respect of an offence under this Act committed when the regiment was not embodied or in camp, the court may direct that the sentence be served in Warwick Camp rather than in prison.

(2) The Commanding Officer shall make arrangements to give effect to the direction of the court under subsection (1).

(3) A man of the regiment who is the subject of a direction of the court under subsection (1) shall be detained at Warwick Camp in the same manner as if he had been ordered to be detained by the Commanding Officer under section 37(3)(b).

[Section 42A inserted by 1998:31 effective 13 July 1998]

Who may bring and conduct criminal proceedings

43 (1) Criminal proceedings in respect of an offence against this Act shall not, without the written consent of the Director of Public Prosecutions, be instituted by any person other than the Governor or by an officer duly authorized by the Governor in that behalf.

(2) A prosecution for an offence against this Act may be conducted before a court of summary jurisdiction by an officer duly authorized by the Governor in that behalf.

(3) In this section "officer" means—

- (a) an officer of Her Majesty's armed forces; and
- (b) any officer of the regiment.

[Section 43 subsection (1) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; Section 43 amended by 2015 : 48 s. 20 effective 1 November 2017]

PART IV

Service pension if killed or disabled

44 (1) Where a person who is a member of the regiment suffers disablement or is killed as a result of undergoing military training under this Act, or where a person who is a member of the regiment suffers disablement or is killed as a result of service in the regiment

when embodied, that person or, as the case may be, his dependants, shall be eligible for the grant of such pension as the Governor may determine after consulting the Minister.

(2) *[Repealed by 2015 : 48 s. 21]*

[Section 44 amended by 2015 : 48 s. 21 effective 1 November 2017]

Attendance; pay and allowances

45 (1) Subject to this section, where a member of the regiment is required to attend drills, annual camp, or is embodied, then in respect of his attendance he shall be paid such remuneration by way of basic pay and allowances as may be fixed by the Governor after consultation with the Minister of Finance.

(2) Provision may be made in Governor's Orders for regulating the payment of additional remuneration in exceptional cases.

Duty of employer

46 (1) Where a member of the regiment (not being a person to whom section 47 applies) is in the regular employment of another person and is required by virtue of Part II to undergo military training, or being an officer is required in the course of his duty as such to undergo military training, then his employer shall allow him to undergo military training and—

- (a) his employer shall ensure that any leave or holiday to which he would ordinarily be entitled or for which he would ordinarily be eligible shall not be prejudiced or restricted by reason of his undergoing military training; and
- (b) his employer shall ensure that any promotion, privilege or advantage in connection with his employment to which he would ordinarily be entitled or for which he would ordinarily be eligible shall not be prejudiced by reason of his undergoing military training.

(2) Any person who, being an employer of any other person, contravenes any of the provisions of subsection (1), commits an offence:

Punishment on summary conviction: a fine equal to 28 days' pay; and where a person is convicted of an offence under this section, the court by which he is convicted may make such order giving effect to any provision of subsection (1) as the court thinks just.

(3) This section and section 47 apply in respect of a member of the regiment, including any volunteer, at any time during the period of his enlistment when the regiment is embodied or he is otherwise called-up for service in the regiment, and such service shall be deemed to be for the purpose of undergoing military training.

[Section 46 amended by 1998:31 effective 13 July 1998; Section 46 amended by 2015 : 48 s. 23 effective 1 November 2017]

Special leave; Government servant attending annual camp

47 (1) A person regularly employed by the Government of Bermuda, otherwise than as an established officer, may be granted special leave for the purpose of attending annual camp as a member of the regiment.

(2) Any period of special leave granted to any person as aforesaid shall not count against the grant of any other leave for which such person has become, or becomes, eligible.

Equipment to be returned on discharge

48 (1) Where a person (being a man of the regiment) is discharged, or (being an officer) relinquishes his commission or is dismissed, it shall be his duty to deliver up in good order (fair wear and tear only excepted) all arms, clothing and equipment, being public property, issued to him or in his charge, or, in any case where the delivery of the property as aforesaid is impossible, it shall be his duty to pay into the Consolidated Fund the value thereof.

(2) Any person who fails to comply with any of the foregoing provisions of this section commits an offence:

Punishment on summary conviction: imprisonment for one month or a fine equal to 7 days' pay or both such imprisonment and fine; and where a person is convicted of an offence under this section, the court by which he is convicted may make an order providing for the payment of compensation by the person convicted; and any such order may be enforced as if it were an order made by the court in a civil cause or action.

[Section 48 amended by 2015 : 48 s. 23 effective 1 November 2017]

Notices

49 (1) All notices, orders and instructions required in connection with the administration of this Act shall, except where otherwise expressly provided, be in writing.

(2) Forms may be prescribed in respect of any notice, order, certificate or other document to be used for giving effect to any of the provisions of this Act.

Service of notices

50 Any notice or other document which is required or authorized by or under this Act or by or under any order or instruction made or issued thereunder to be given or served on any person may, in any case for which no other provision is made by this Act, be given or served—

- (a) by delivering it to that person; or
- (b) in the case of the Governor, the Deputy Governor, the Exemption Tribunal, or the Medical Board, by leaving it at the office of the Deputy Governor or sending it by prepaid letter addressed to the appropriate authority at the office of the Deputy Governor; or
- (c) in the case of any other person, by leaving it or by sending it in a prepaid letter addressed to him, at his usual or last known place of residence; or

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- (d) in the case of a corporate body or other body of persons, other than those
aforementioned, by delivering it to the secretary or clerk thereof at their
registered or principal office, or by sending it in a prepaid letter addressed
to the secretary or clerk at that office.

Vesting of property on 23 August 1965

51 *[omitted]*

Transitional

52 *[omitted]*

Commencement

53 *[omitted.]*

Consequential amendments

54 *[omitted.]*

FIRST SCHEDULE

(Section 8)

PART I

EXEMPTION TRIBUNAL

1 The Exemption Tribunal shall consist of a Chairman and not more than five members who shall be appointed by the Governor and shall hold office during the Governor's pleasure; and the Tribunal shall at any sitting be deemed to be duly constituted when the chairman and at least two other members of the Tribunal are present as such:

Provided that if the chairman is unable by reason of illness or other cause to carry out his duties as such, the Governor shall appoint an acting chairman to hold office during the period of the chairman's incapacity.

1A (1) The Minister for the time being having delegated responsibility for defence may appoint a barrister as counsel to the Exemption Tribunal who shall provide legal advice to the Tribunal on the exercise of their functions.

(2) The person appointed under sub-paragraph (1) is not a member of the Exemption Tribunal.

2 (1) The public shall be admitted to all sittings of the Exemption Tribunal where the Tribunal are sitting for the purpose of hearing applications made under section 23, 24, 25 or 27:

Provided that the chairman (or, as the case may be, the acting chairman) may with the concurrence of not less than two other members of the Tribunal approve such an application without a sitting of the Tribunal and in such a case such application shall be deemed to have been approved by the Tribunal.

(2) Subject as aforesaid, the Exemption Tribunal may regulate their own procedure and may fix the times and places for their sittings and may from time to time adjourn as they think fit.

3 If the members of the Exemption Tribunal are equally divided in opinion with respect to any application made to them, the chairman of the Tribunal shall have and exercise a second or casting vote.

4 No member of the Exemption Tribunal shall be liable to any action or suit for anything done by him as such.

5 The Exemption Tribunal shall keep an adequate written record of their proceedings with respect to every application made to them, and shall include in such record a statement of the grounds on which the application is made and a statement of the reasons for their decision.

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6 Fees shall be paid to members of the Exemption Tribunal in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

7 (1) If any person is aggrieved by the decision of the Exemption Tribunal with respect to any application made by him under this Act, he may appeal to the Governor, whose decision in the matter shall be final.

(2) No appeal shall lie to the Governor unless—

(a) the aggrieved person gives notice of appeal to the Exemption Tribunal at the sitting of the Tribunal at which the decision of the Tribunal is communicated to him; and

(b) the grounds of appeal are submitted in writing to the Governor before the expiration of five days from the date of the decision of the Tribunal:

Provided that where an application made by any person has not been granted by the Tribunal, the chairman of the Tribunal shall forthwith inform that person of his right of appeal under this paragraph, and, if the chairman fails so to inform that person, that person, if aggrieved by the decision of the Tribunal, may appeal to the Governor on giving notice to the Tribunal and on submitting in writing to the Governor the grounds of appeal, so however, that if he is subsequently informed in writing by the chairman of the Tribunal of his right of appeal, then no appeal shall lie unless, before the expiration of five days from the date on which he has been so informed, he gives notice to the Tribunal and submits to the Governor in writing the grounds of appeal.

(3) When a notice of appeal is given to the Tribunal in accordance with the foregoing provisions of this paragraph, the Tribunal shall send to the Governor the record of the proceedings relating to the application of the appellant.

8 When an appeal is made to the Governor in accordance with paragraph 7 the Governor after considering the record of the proceedings and the grounds of appeal submitted by the appellant may—

(a) dismiss the appeal; or

(b) give such other direction as he thinks just.

PART II

DEFENCE MEDICAL BOARD

(section 10)

1 The medical board shall consist of seven medical practitioners each of whom shall be appointed by the Governor and shall hold office during the Governor's pleasure.

2 There shall be a Chairman of the medical board who shall be appointed by the Governor from among the members of the medical board and shall hold office during the Governor's pleasure:

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Provided that if the Chairman is unable by reason of illness or other cause to carry out his duties as such, the Governor shall appoint an acting chairman to hold office during the period of the Chairman's incapacity.

3 For the purpose of examining any person in pursuance of this Act, the medical board shall consist of the Chairman, or in the case of the incapacity of the Chairman, the acting chairman, and two other members nominated by the Chairman or acting chairman, as the case may be.

4 Fees shall be paid to members of the medical board in accordance with the Government Authorities (Fees) Act 1971 .

[First schedule amended by 1998:31 effective 13 July 1998; paragraph 1A(1) amended by BR 5/2011 para.5 effective 25 February 2011]

SECOND SCHEDULE

(section 36)

MILITARY OFFENCES

1 (1) *Neglect of duty while on guard*, that is to say, if a member of the regiment, 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 properly relieved or otherwise absents himself from any place where it is his duty to be.

(2) *Violence against any person on guard*, that is to say, if a member of the regiment strikes or otherwise uses force against any person on guard duty, being a member of the regiment or of any forces operating therewith, or by threat of force compels any such person to let him or any other person pass.

(3) For the purposes of this paragraph, a member shall be deemed to be drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.

(4) References in this paragraph to a member on guard duty are references to a member who—

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

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

(5) The foregoing provisions of this paragraph shall apply in relation to members posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises or place, as they apply to persons on guard duty.

2 (1) *Insubordinate behaviour*, that is to say, if a member of the regiment—

- (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.

(2) In this paragraph, “superior officer”, in relation to any member, means an officer, warrant officer or non-commissioned officer of the regiment, or of Her Majesty’s regular forces, of superior rank.

3 *Disobedience*, that is to say, if a member of the regiment, whether wilfully or through neglect, disobeys any lawful command.

4 (1) *Disobedience to standing orders*, that is to say, if a member of the regiment contravenes or fails to comply with any provision of orders to which this paragraph applies, being a provision known to him or which he might reasonably be expected to know.

(2) The orders to which this paragraph applies are standing orders or other orders of a continuing nature made by the Commanding Officer of the regiment or by the officer commanding any sub-unit of the regiment.

5 *Absence without leave*, that is to say, if a member of the regiment, while attending camp or while the regiment, or any part thereof of which he is a member, is embodied, absents himself without leave.

6 *Failure to perform military duties*, that is to say, if a member of the regiment without reasonable excuse fails to attend a parade or for other military duty of any description or leaves any such parade or duty as aforesaid before he is permitted to do so.

7 *Drunkenness*, that is to say, if a member of the regiment is drunk on duty, or, if not on duty, in uniform.

(2) For the purposes of this paragraph, 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 regiment.

8 *Loss of or damage to public property*, that is to say, if a member of the regiment-

- (a) loses, or by negligence or otherwise 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
- (b) loses, or by negligence or otherwise damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or
- (c) makes away with any clothing, arms, ammunition, or other equipment issued to him for his use for military purposes.

9 *Ill-treatment of subordinates*, that is to say, if a member of the regiment strikes or otherwise ill-treats another member of inferior rank or less seniority.

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10 *Conduct to the prejudice of good order and military discipline*, that is to say, if a member of the regiment is guilty of any conduct or act or neglect to the prejudice of good order and military discipline.

[Second Schedule paragraph 5 "or which" changed to "or while" under the authority of the Computerization and Revision of Laws Act 1989 s. 11(n); Second Schedule amended by 2015 : 48 s. 22 and s. 24 effective 1 November 2017]

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THIRD SCHEDULE

(section 54)

[Omitted. Printed in full in the Annual Volume for 1965 at page 148.]

[Assent Date: 3 August 1965]

[The Act was brought into operation on 23 August, 1965]

[Amended by:

1966 : 8
1968 : 139
1970 : 109
1971 : 43
1971 : 82
1974 : 41
1977 : 1
1979 : 21
1982 : 2
1988 : 2
1992 : 69
1997 : 37
1998 : 31
1998 : 32
1999 : 8
2002 : 31
BR 5 / 2011
2015 : 48]