



BERMUDA

DEFENCE (COAST GUARD UNIT) AMENDMENT ACT 2018

2018 : 57

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WHEREAS it is expedient to amend the Defence Act 1965, the Interpretation Act 1951, the Police Act 1974, the Police Complaints Authority Act 1998, the Police and Criminal Evidence Act 2006, the Police (Conduct) Orders 2016, and the Police (Performance) Orders 2016, to allow for the establishment of a coast guard unit as an integral entity of the Royal Bermuda Regiment, and to give the same policing powers by which they can effectively perform their maritime policing functions (including maritime search and rescue in accord with Bermuda's international maritime law obligations);

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Defence Act 1965, the Interpretation Act 1951, the Police Act 1974, the Police Complaints Authority Act 1998, the Police and Criminal Evidence Act 2006, the Police (Conduct) Orders 2016, and the Police (Performance) Orders 2016, may be cited as the Defence (Coast Guard Unit) Amendment Act 2018.

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Amends the Defence Act 1965

2 The Defence Act 1965 is amended by inserting after section 5A, the following—

“Establishment of a coast guard unit

5B (1) The coast guard unit, being an integral entity of the Royal Bermuda Regiment, is hereby established.

(2) The coast guard unit shall not be construed as an entity acting independently of the Royal Bermuda Regiment.

(3) For the purposes of determining who shall be appointed as members of the coast guard unit, the Commanding Officer shall have regard to the following criteria—

- (a) the successful completion of the recruitment aptitude test by the candidate;
- (b) the successful completion of the proficiency in deep water swim test by the candidate;
- (c) the successful completion of the physical fitness test by the candidate;
- (d) the successful completion of the full medical evaluation by the candidate;
- (e) the successful completion of the drug test by the candidate, which may be determined by way of—
 - (i) blood specimen testing;
 - (ii) hair specimen testing; or
 - (iii) urine specimen testing; and
- (f) the successful completion of the psychological evaluation test by the candidate.

(4) In this section—

“the candidate” means any person seeking admission to the coast guard unit.

Powers and immunities of members of the coast guard unit

5C (1) Every coast guard unit person may make, while acting in the execution of his duty, such searches of vessels and goods as are reasonably required for the due performance of his duties as a coast guard unit person by or under any provision of law.

(2) Every coast guard unit person shall, while acting in the execution of his duty, be entitled to the like protections and immunities as are conferred by or under any provision of law upon a police officer acting in the execution of his duty in substantially similar circumstances.

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Commanding Officer may appoint any person to be a member of the coast guard unit

5D (1) The Commanding Officer may, subject to section 5B(3), appoint any person to be a member of the coast guard unit.

(2) No coast guard unit person shall be entitled to any other or additional salary or other emoluments by virtue of such appointment as a member of the coast guard unit.

(3) The powers and immunities conferred upon any coast guard unit person by section 5C shall extend to any such members of the coast guard unit who are appointed under this section to be coast guard unit persons while acting in the execution of their duty as a coast guard unit person.

Command and administration of coast guard unit persons by the Commanding Officer

5E While lawfully appointed to serve in the coast guard unit, a coast guard unit person shall remain under the command of the Commanding Officer, who, subject only to such general directions of policy with respect to the maintenance of public safety and public order as the Governor may give him, shall determine the use and control of any coast guard unit person, and shall be responsible, subject to such directions as the Governor may give him, for the administration and command of any coast guard unit person.

Duties of the coast guard unit

5F (1) A coast guard unit person, while serving in the coast guard unit, shall—

- (a) enforce the provisions of every law relating to—
 - (i) the regulation of the territorial waters of Bermuda;
 - (ii) quarantine;
 - (iii) immigration;
 - (iv) fisheries; and
 - (v) safety at sea (which includes Bermuda's international law maritime search and rescue obligations);
- (b) detect and prevent contravention, of laws relating to customs and revenue;
- (c) prevent persons from boarding, holding or clinging on to any vessel without the permission of the master of the vessel, and, if necessary, remove any such person from the vessel.

(2) For the purposes of carrying out his duties, a coast guard unit person shall have the same powers and authorities as are conferred by law on members of the Bermuda Police Service.

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(3) Nothing in this Act shall affect the application of section 35 of the Firearms Act 1973 in relation to the lawful—

- (a) possession;
- (b) handling;
- (c) carrying;
- (d) using; or
- (e) repairing,

of any firearm or ammunition issued to a coast guard unit person.

(4) For the avoidance of doubt and in accordance with section 5(2) of the Police Act 1974 or any other statutory provision, every coast guard unit person shall be deemed always to be on duty when required to act as such.

Coast guard unit power of arrest

5G (1) A coast guard unit person may, in the pursuance of his duties in the coast guard unit, arrest with and without a warrant any person who commits an offence against any provision of law relating to—

- (a) the regulation of the territorial waters of Bermuda;
- (b) quarantine;
- (c) immigration;
- (d) fisheries;
- (e) safety at sea (which includes Bermuda's international law maritime search and rescue obligations).

(2) Where any coast guard unit person arrests a person with or without warrant, he shall do so in accordance with the provisions of the Police and Criminal Evidence Act 2006.

(3) Nothing in this section shall prohibit a coast guard unit person from performing any duty performed by a police officer, where it is reasonably necessary for the preservation of good law and order.

(4) A coast guard unit person who arrests any person pursuant to any provision of law, shall deliver the person to a police officer to be dealt with in accordance with the provisions of the Police and Criminal Evidence Act 2006..

Coast guard unit uniform, insignia, warrant card, etc.

5H (1) A coast guard unit person shall, when performing his duties in the coast guard unit, wear the prescribed uniform or service uniform which shall include—

- (a) a coast guard unit insignia patch;

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- (b) his warrant number, to be displayed in a conspicuous location on the uniform or service uniform,

and shall have with him his issued warrant card, unless there is a reasonable excuse for not doing so, in such form as may be prescribed in accordance with this section, and it shall be evidence of his appointment as a member of the coast guard unit.

(2) Provision may be made by Governor's Orders for the purposes of prescribing the uniform and warrant card to be issued to a coast guard unit person.

Hazarding or loss of vessel

5I (1) A coast guard unit person who, being subject to the provisions of this Act—

- (a) negligently causes or allows to be lost; or
- (b) negligently strands or hazards,

any vessel belonging to or being used by the regiment is guilty of an offence: Punishment on summary conviction: imprisonment for 12 months.

(2) A court of summary jurisdiction, upon the conviction of a coast guard unit person for an offence under subsection (1) may, if it thinks fit, make an order of restitution to the regiment for the loss, stranding, or hazarding of any vessel belonging to or being used by the regiment.

Abandoning post or sleeping on watch

5J A coast guard unit person who—

- (a) being attached to any vessel of the regiment; and
- (b) being under orders to be prepared to defend the territorial waters and the laws of Bermuda,

without reasonable excuse abandons his post, or sleeps while on watch, is guilty of an offence: Punishment on summary conviction: imprisonment for 12 months.

Powers in respect of vessels

5K (1) A coast guard unit person being in command of any vessel of the regiment, may—

- (a) cause any vessel within the territorial waters of Bermuda that he suspects is being used or employed in any unlawful operation or enterprise, to be boarded, or stopped and boarded and searched;
- (b) search any vessel, and, after demand and refusal of any key, break open any receptacle or break down any door, if he reasonably suspects that there is on board the vessel any property that has been stolen or unlawfully obtained, or any article prohibited to be imported or exported;

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- (c) direct, for the purposes of any lawful examination, investigation or inquiry, that the vessel be taken to such place as he specifies;
- (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 stolen or unlawfully obtained, or any article prohibited to be imported or exported, and the person in whose possession it is found, within a reasonable time, into the custody of a police officer to be processed in accordance with section 19 of the Police and Criminal Evidence Act 2006 or in accordance with any other provision of law.

(2) A coast guard unit person acting in the execution of any of the provisions of this section may—

- (a) pursue and arrest without warrant, whether he has landed or not, any person upon reasonable suspicion of his having committed or being about to commit a criminal offence; and
- (b) take such steps as are reasonably justified in the circumstances of the case to compel compliance with any directions given in pursuance of any such provisions.

(3) No coast guard unit person shall be liable for—

- (a) any loss or damage to any vessel referred to in this section;
- (b) any loss or injury to any person on board any such vessel,

occasioned in the execution of his duty.

(4) A person who in any way hinders, opposes, molests, or obstructs any coast guard unit person acting in the exercise of his duties, or any person acting in his aid or assistance, commits an offence against this Act: Punishment on summary conviction: imprisonment for twelve months.

Interpretation

5L For the purposes of sections 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J and 5K—

“coast guard unit person” means—

- (a) an officer of the regiment;
- (b) a man of the regiment; or
- (c) where the context requires, an officer of the regiment and a man of the regiment.”.

Amends the Interpretation Act 1951

3 Section 3 of the Interpretation Act 1951 is amended, in the definition of “police officer”, by inserting after the words “Police Service” the words “, of the Royal Bermuda Regiment coast guard unit; and”.

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Amends the Police Act 1974

4 The Police Act 1974 is amended—

(a) in section 1(1)—

(i) in the definition of “Minister” by inserting after the word “police matters” the words “or for Royal Bermuda Regiment coast guard unit matters”;

(ii) by repealing and replacing the definition of “Service” with the following—

“Service” means—

(a) the Bermuda Police Service; and

(b) the Royal Bermuda Regiment coast guard unit.”;

(b) in the Part II heading by inserting after the words “POLICE SERVICE” the words “AND THE ROYAL BERMUDA REGIMENT COAST GUARD UNIT”;

(c) by repealing and replacing section 2 with the following—

“2 There shall continue to be established in Bermuda the police service known as the “Bermuda Police Service” and the Royal Bermuda Regiment coast guard unit shall have the same policing powers as the Bermuda Police Service.”.

Amends the Police Complaints Authority Act 1998

5 (1) The Police Complaints Authority Act 1998 is amended—

(a) in section 2—

(i) by inserting after the definition of “the Authority” the following—

“the Commanding Officer” means the commanding officer of the Royal Bermuda Regiment coast guard unit;”

(ii) by repealing and replacing the definition of “officer”, with the following—

“officer” means—

(a) a police officer of the Bermuda Police Service; or

(b) a coast guard unit person.”;

(b) in section 6—

(i) in the heading by inserting before the word “Commissioner” the words “Commanding Officer and”; and

(ii) by inserting before the word “Commissioner” the words “Commanding Officer or the”;

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- (c) in section 7(4) by inserting before the word “Commissioner” the words “Commanding Officer or (as the case may warrant) to the”;
- (d) in section 8—
 - (i) in the heading by inserting before the word “Commissioner” the words “Commanding Officer and”;
 - (ii) by inserting before the word “Commissioner”, where it appears, the words “Commanding Officer and the”;
- (e) in section 9—
 - (i) in the heading by inserting before the word “Commissioner” the words “The Commanding Officer and the”;
 - (ii) in section 9 by inserting before the word “Commissioner”, where it appears, the words “Commanding Officer or the”;
- (f) in section 10—
 - (i) in subsection (1)(a) by inserting before the word “Commissioner” the words “Commanding Officer or the”;
 - (ii) in subsection (1)(d) by inserting before the word “Commissioner” the words “Commanding Officer or the”;
 - (iii) in subsection (2) by inserting before the word “Commissioner” the words “Commanding Officer or the”;
- (g) in section 11(1)(2) and (3) by inserting before the word “Commissioner”, where it appears, the words “Commanding Officer or the”;
- (h) in section 12(2) by inserting before the word “Commissioner’s” the words “Commanding Officer’s or the”;
- (i) in section 13(c),(d) and (e) by inserting before the word “Commissioner” the words “Commanding Officer or the”;
- (j) in section 14 in the heading and in subsections (1), (1A), (1C), (2) and (3) by inserting before the word “Commissioner”, where it appears, the words “Commanding Officer or the”;
- (k) in section 15—
 - (i) in the heading by inserting before the word “Commissioner” the words “Commanding Officer or the”;
 - (ii) in subsection (1) and (2) by inserting before the word “Commissioner” the words “Commanding Officer or the”;
- (l) in section 16 by inserting before the word “Commissioner” the words “Commanding Officer or the”;
- (m) in section 17(1) by inserting before the word “Commissioner” the words “Commanding Officer or the”;

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- (n) in section 20(2),(3) and (3)(a), by inserting before the word Commissioner” the words “Commanding Officer or the”;
- (o) in section 21(1) and (2), by inserting before the word “Commissioner” the words “Commanding Officer or the”;
- (p) in section 22(1)(b) and (2)(a), by inserting before the word Commissioner’s” the words “Commanding Officer’s or the”.

Amends the Police and Criminal Evidence Act 2006

6 The Police and Criminal Evidence Act 2006 is amended in section 74(4) by inserting after paragraph (a) the following—

“(aa) the Commanding Officer of the Royal Bermuda Regiment coast guard unit;”.

Amends the Police (Conduct) Orders 2016

7 The Police (Conduct) Orders 2016 are amended—

- (a) in order 2(1) by inserting after the definition of “business day” the following—

“ “Commanding Officer” means the commanding officer of the Royal Bermuda Regiment coast guard;”;

- (b) in order 2(1) by revoking and replacing the definition of “appropriate authority” with the following—

“ “appropriate authority” means—

- (a) where the police officer concerned is the Commissioner or Deputy Commissioners, the Governor;
- (b) where the police officer concerned is the Commanding Officer of the Royal Bermuda Regiment coast guard unit, the Governor;
- (c) in any case involving the Bermuda Police Service, the Commissioner; or
- (d) in any case involving the Royal Bermuda Regiment coast guard unit, the Commanding Officer;”

- (c) by inserting after order 2(5) the following—

“(5A) Where the appropriate authority is the Commanding Officer of the Royal Bermuda Regiment coast guard unit, he may, subject to paragraph (6A), delegate any of his functions under these Orders to—

- (a) a member of the Service of at least the rank of major; or

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(b) a human resources professional who, in the opinion of the Commanding Officer of the Royal Bermuda Regiment coast guard unit, is of at least a similar level of seniority to a major.”

(d) by inserting after order 2(6) the following—

“(6A) Where the Commanding Officer of the Royal Bermuda Regiment coast guard unit delegates his functions under order 10 or 40, the decisions must be authorised by a senior officer.”;

(e) in order 3(6)(c) by revoking the word “or” and inserting after paragraph (i) the following—

“(ia) brought to the attention of the Commanding Officer of the Royal Bermuda Regiment coast guard unit, the complainant or the police officer under investigation; or”

(f) by inserting after order 6(3) the following—

“(4) Where a police friend is a police officer, in the case of the Royal Bermuda Regiment coast guard unit, the Commanding Officer, where it appears necessary, shall permit him to use a reasonable amount of duty time for the purposes referred to in paragraph (2).”

Amends the Police (Performance) Orders 2016

8 The Police (Performance) Orders 2016 are amended—

(a) in order 2(1)(a) by—

(i) revoking the word “or” at the end of suborder (a) and by inserting after suborder (a) the following—

“(aa) in the case of the Royal Bermuda Regiment coast guard unit, a member of the Service of the rank of Commanding Officer; or”;

(ii) revoking and substituting order 2(2) with the following—

“(2) These Orders apply to—

(a) in the case of the Bermuda Police Service, all police officers of the rank of Assistant Commissioner of Police and below, subject to the modifications set out in the Schedule to these Orders.

(b) in the case of the Royal Bermuda Regiment coast guard unit, all police officers of the rank of Major and below, subject to the modifications set out in the Schedule to these Orders.”

(b) in order 3(1) by—

(i) revoking and substituting the definition of “appropriate authority” with the following—

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“appropriate authority” means—

- (a) in any case involving the Bermuda Police Service, the Commissioner; or
 - (b) in any case involving the Royal Bermuda Regiment coast guard unit, the Commanding Officer;”
- (ii) inserting after the definition of “business day” the following—

“Commanding Officer” means the Commanding Officer of the Royal Bermuda Regiment coast guard unit;”;

- (iii) revoking and substituting the definition of “senior officer” with the following—

“senior officer” means—

- (a) a member of the Service who, in the case of the Royal Bermuda Regiment coast guard unit, is of the rank, substantive or otherwise, of major or above;
 - (b) a member of the Service who, in the case of the Bermuda Police Service, is of the rank, substantive or otherwise, of assistant commissioner or above;”;
- (c) in paragraph 4(6)(c)(i) by inserting before the word “Commissioner” the words “Commanding Officer or the”;
- (d) in paragraph 6(3) by inserting before the word “Commissioner” the words “Commanding Officer or the”;
- (e) in the Schedule—
- (A) in the Schedule heading by inserting before the word “SUPERINTENDENTS” the words “MAJORS”;
 - (B) by revoking and substituting the heading to paragraph 1 with the words “Application of these Orders to Majors Superintendents and Assistant Commissioners”.

Commencement

9 (1) The provisions of this Act shall come into operation on such day or on such days as the Minister may appoint by notice in the Gazette.

(2) The Minister may appoint different days for the provisions of this Act to come into operation.

[Assent Date: 17 September 2018]

[Operative Date: 01 February 2021]