



BERMUDA

DEFENCE AMENDMENT ACT 2015

2015 : 48

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WHEREAS it is expedient to amend the Defence Act 1965 and repeal the Bermuda Volunteer (Reserve Force) Act 1939, and make consequential provision;

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 may be cited as the Defence Amendment Act 2015.

Amends section 1

2 (1) Section 1 of the Defence Act 1965 ("the principal Act") is amended as follows.

(2) Delete the definition of "the Army Act" and substitute—

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

(3) Delete the definition of "commanding officer" and substitute—

“ “Commanding Officer” means the officer in command of the Royal Bermuda Regiment;”.

(4) Delete the definition of "Her Majesty's regular forces" and substitute—

“ “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;

“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;”.

(5) Delete the definition of "military training register" and substitute—

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

(6) At the appropriate places in alphabetical order insert—

“ “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;

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

“Minister” means the Minister responsible for defence;”.

(7) Delete the definition of "volunteer" and substitute—

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“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.”

Amends section 3

3 In section 3 of the principal Act—

- (a) delete “the Bermuda Regiment” and substitute “the Royal Bermuda Regiment”; and
- (b) delete “Minister of Finance” and substitute “Minister”.

Repeals and replaces section 4

4 Section 4 of the principal Act is repealed and replaced as follows—

“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.”

Inserts section 5A

5 After section 5 of the principal Act insert—

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“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.”

Amends section 12

6 In section 12 of the principal Act—

(a) in subsection (1), in the definition of “exempted person”—

(i) insert after paragraph (b)—

“(ba) is a member of the Bermuda Fire and Rescue Service; or”;

(ii) in paragraph (c), after the word “Service” insert “(including the Reserve Police)”;

(iii) repeal paragraphs (g) (and the “or” immediately preceding it) and (h);

(b) after subsection (2) insert—

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

Inserts section 12A

7 After section 12 of the principal Act insert—

“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

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- (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.”

Amends section 14

8 In section 14 of the principal Act—

- (a) in subsection (1), delete “Volunteers who are Commonwealth citizens” and substitute “Volunteers of any nationality who are ordinarily resident in Bermuda”;
- (b) in the first proviso to subsection (2), delete “section 21” and substitute “section 19”;
- (c) at the end, insert—

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

Amends section 15

9 In section 15(2) of the principal Act, after paragraph (c) insert—

- “(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”.

Inserts section 15A

10 After section 15 of the principal Act insert—

“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;

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“registered” means registered in the military eligibility register.”

Amends section 19

11 In section 19 of the principal Act, after subsection (3) insert—

“(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.”

Amends section 23

12 In section 23 of the principal Act, after subsection (2) insert—

“(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).”

Amends section 27

13 In section 27 of the principal Act—

(a) delete subsection (4)(b) and substitute—

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

(b) after subsection (4), insert—

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

Inserts section 31A

14 After section 31 of the principal Act insert—

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“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.”

Repeals and replaces sections 33 and 34

15 Sections 33 and 34 of the principal Act are repealed and replaced as follows—

“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.

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.”

Inserts new sections 36 to 36E

16 Section 36 of the principal Act is repealed and replaced with the following new sections—

“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.

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.

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

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*.

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.

(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.

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.

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(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.”

Repeals and replaces section 37

17 Section 37 of the principal Act is repealed and replaced as follows—

“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.

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(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. "

Amends section 37A

18 In section 37A(1) of the principal Act, delete "under section 37" and substitute "under section 36D, 36E or 37 (other than one imposed by a court of summary jurisdiction)".

Repeals proviso to section 40(3)

19 Repeal the proviso to section 40(3) of the principal Act.

Amends section 43

20 In section 43 of the principal Act—

- (a) in the heading and in subsection (1), delete "proceedings" and substitute "criminal proceedings";
- (b) delete subsection (3) and substitute—

"(3) In this section "officer" means—

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

Amends section 44

21 In section 44 of the principal Act—

- (a) in subsection (1), delete the words "in accordance with this section" and substitute "after consulting the Minister"; and
- (b) repeal subsection (2).

Amends Second Schedule

22 In the Second Schedule to the principal Act—

- (a) delete "man" (wherever it occurs) and substitute "member";
- (b) in paragraph 1(5), delete "men" and substitute "members";
- (c) delete paragraph 9 and substitute—

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“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.”

Amendments to increase penalties

23 In the provisions of the principal Act listed in the first column of the table, delete the words specified in the second column, and substitute the words specified in the third column—

Section	Delete	Substitute
9(2)	“of \$360”	“equal to 7 days’ pay”
13A(8)	“of \$150”	“equal to 5 days’ pay”
18	“of \$900”	“equal to 14 days’ pay”
26	“of \$360”	“equal to 28 days’ pay”
32(2)	“of \$720”	“equal to 28 days’ pay”
38	“of \$3,600” and “of \$7,500”	“equal to 28 days’ pay” and “equal to two months’ pay”
46(2)	“of \$1,440”	“equal to 28 days’ pay”
48(2)	“of \$360”	“equal to 7 days’ pay”

Consequential amendments in principal Act

24 (1) In consequence of the amendment in section 2(2), delete the words “Army Act”, wherever they appear in sections 31 and 41 of the principal Act, and substitute “Armed Forces Act”.

(2) In consequence of the amendment in section 2(4), delete the words “Her Majesty’s regular forces” and “Her Majesty’s regular military forces”, wherever they appear in sections 11, 12, 19, 28, 31 and 32 of the principal Act, and substitute “Her Majesty’s armed forces”.

(3) In consequence of the amendment in section 2(5), delete the words “military training register”, wherever they appear in sections 13, 15 and 16 of the principal Act, and substitute “military eligibility register”.

(4) In the definition of “the regiment” in section 1 of the principal Act, delete “Bermuda Regiment” and substitute “Royal Bermuda Regiment”.

(5) In consequence of the amendment in sections 16 and 17, in section 39 of the principal Act, delete “Sections 36, 37 and 38” and substitute “Sections 36 to 38”.

(6) In sections 21, 22, 26(ii), 28(5) and 29(1) of, and paragraph 4(2) of the Second Schedule to, the principal Act delete references to “commanding officer” and substitute “Commanding Officer”.

Other consequential amendments

25 (1) In each of the following enactments delete “Bermuda Regiment” and substitute “Royal Bermuda Regiment”—

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- (a) section 3 of the Criminal Code Act 1907, in the definition of “person employed in the public service”;
 - (b) section 2(1) (definition of “telecommunication officer”) and sections 4(2) and 51(2) of the Electronic Communications Act 2011;
 - (c) section 13(1)(b) of the Employment Act 2000;
 - (d) section 24(1)(b) of the Explosive Substances Act 1974;
 - (e) section 35(1)(b) of the Firearms Act 1973 (in both places);
 - (f) in Part B of the First Schedule to the Government Authorities (Fees) Act 1971, in the entry relating to the Promotions Board for the Bermuda Regiment;
 - (g) section 1(3)(a) of the Health Insurance Act 1970;
 - (h) the proviso to section 6(1) of the Human Rights Act 1981;
 - (i) section 13(2)(k) of the Miscellaneous Taxes Act 1976;
 - (j) section 9(2)(d) of the Payroll Tax Act 1995;
 - (k) paragraph 5 of the Schedule to the Public Access to Information Act 2010;
 - (l) section 2 of the Public Service Superannuation Act 1981, in the definition of “Bermuda Regiment staff” (in both places);
 - (m) section 2 of the Telecommunications Act 1986, in the definitions of “Bermuda Regiment” and “telecommunication officer”, and sections 3(1) and (2).
 - (n) regulation 4(2)(c)(i) of the Reserve Police (General) Regulations 1951.
- (2) In section 20(5)(c)(iii) of the Motor Car Act 1951, delete “Regular” and substitute “Armed”.

Repeals the Bermuda Volunteer (Reserve Force) Act 1939

26 (1) The Bermuda Volunteer (Reserve Force) Act 1939 is repealed.

(2) In consequence of that repeal—

- (a) in section 250(3) and 251(2) of the Criminal Code Act 1907, delete “or the Bermuda Volunteer (Reserve Force) Act 1939”;
- (b) in section 24(1)(b) of the Explosive Substances Act 1974, delete “or Bermuda Volunteer Reserve”;
- (c) in section 35(1)(b) of the Firearms Act 1973, delete “Bermuda Volunteer Reserve”;
- (d) in section 13(2)(k) of the Miscellaneous Taxes Act 1976, delete “or Bermuda Volunteer Reserve” and “or the Reserve”;
- (e) repeal section 9(2)(c) of the Payroll Tax Act 1995;

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- (f) in the First Schedule to the Statutory Instruments Act 1977, delete the reference to the Bermuda Volunteer (Reserve Force) Act 1939.

Commencement and transitional provision

27 (1) This Act shall come into operation on such day as the Minister responsible for defence may appoint by notice in the Gazette, and different days may be appointed for different provisions.

(2) Any military offence which, on the commencement of sections 15 and 16, is being investigated or dealt with under Part III of the principal Act, shall continue to be investigated and dealt with under Part III of the principal Act as if the amendments made by those sections of this Act had not come into operation.

(3) The Minister responsible for defence may make regulations including such further transitional provision as may be necessary on the commencement of this Act or any provision of this Act.

(4) The Statutory Instruments Act 1977 shall not apply to regulations made under this section.

[Assent Date: 23 December 2015]

[Operative Date: 01 November 2017]