



Tonga

# **TONGA DEFENCE SERVICES ACT 1992**

**Act 17 of 1992**





## TONGA DEFENCE SERVICES ACT 1992

### Arrangement of Sections

#### Section

<b>PART I - PRELIMINARY</b>		<b>11</b>
1	Short Title and commencement .....	11
2	Interpretation.....	11
3	Application of the Act.....	14
<b>PART II - THE DEFENCE SERVICES</b>		<b>14</b>
4	Establishment of the Services .....	14
5	Functions of the Services .....	14
6	Aid to the Civil authorities.....	15
7	Support of the civil authorities.....	15
8	Employment in the public services .....	15
9	Composition of the Services .....	15
10	The Regular Force .....	16
11	The Territorial Force.....	16
12	The Reserve .....	16
13	Designation of units .....	16
14	Declaration of operational service .....	16
15	Service outside the Kingdom.....	17
16	Commander of the Services .....	17
17	Responsibilities of Commander.....	17
18	Co-operation with other forces .....	18
<b>PART III - DEFENCE BOARD</b>		<b>18</b>
19	Composition of Defence Board .....	18

20	Functions of the Board .....	19
----	------------------------------	----

## **PART IV - OFFICERS** **19**

21	Appointment and commissions .....	19
22	Appointment and transfer .....	19
23	Termination of appointment .....	20
24	Resignation .....	20

## **PART V - ENLISTMENT AND TERMS OF SERVICES IN THE REGULAR FORCE** **20**

ENLISTMENT .....	20
------------------	----

25	Enlistment .....	20
----	------------------	----

TERMS AND CONDITIONS OF SERVICE .....	21
---------------------------------------	----

26	Period of enlistment .....	21
----	----------------------------	----

27	Re-engagement .....	21
----	---------------------	----

28	Prolongation of service .....	21
----	-------------------------------	----

DISCHARGE AND TRANSFER TO RESERVE .....	22
---	----

29	Discharge .....	22
----	-----------------	----

30	Transfer to reserve .....	22
----	---------------------------	----

31	Restriction on reduction of warrant and non-commissioned officers .....	22
----	---	----

32	Right of warrant officers to discharge .....	23
----	--	----

33	Reasons for discharge .....	23
----	-----------------------------	----

34	Right of soldier to claim discharge on payment .....	23
----	--	----

MISCELLANEOUS PROVISIONS .....	24
--------------------------------	----

35	Calculating period of service .....	24
----	-------------------------------------	----

36	Irregular enlistment .....	24
----	----------------------------	----

37	False answers on enlistment .....	24
----	-----------------------------------	----

## **PART VI - DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES** **25**

MISCONDUCT IN ACTION AND OTHER OFFENCES ARISING OUT OF MILITARY SERVICE .....	25
---	----

38	Misconduct in action .....	25
----	----------------------------	----

39	Assisting the enemy .....	25
----	---------------------------	----

40	Obstructing operations .....	26
----	------------------------------	----

41	Offences by and against sentries .....	26
----	--	----

42	Failure to attend for duty, neglect of duty .....	26
----	---	----

MUTINY AND INSUBORDINATION .....	27
----------------------------------	----

43	Mutiny.....	27
44	Failure to suppress mutiny.....	27
45	Assault on superior and insubordinate conduct.....	28
46	Disobedience to lawful command.....	28
47	Disobedience of lawful general orders.....	28
<b>DESERTION, ABSENCE WITHOUT LEAVE, ETC.....</b>		<b>28</b>
48	Desertion.....	28
49	Absence without leave.....	29
50	Failure to attend for duty.....	29
51	Failure to apprehend or report deserters or absentees.....	29
<b>MALINGERING AND DRUNKENNESS.....</b>		<b>29</b>
52	Malingering.....	29
53	Drunkenness.....	30
<b>DISORDERLY CONDUCT.....</b>		<b>30</b>
54	Assault, insulting words.....	30
<b>OFFENCES RELATING TO PROPERTY.....</b>		<b>31</b>
55	Stealing or misapplying public or service property.....	31
56	Stranding, hazarding service ship or aircraft.....	31
57	Damaging or causing loss of public or service property.....	31
58	Misapplication and waste of public or service property.....	32
59	Unauthorised use of service vehicles or ships.....	32
60	Stealing or receiving property of person subject to military law.....	32
61	Pawning or pledging equipment or decoration.....	32
<b>OFFENCES RELATING TO, AND BY, PERSONS IN CUSTODY.....</b>		<b>33</b>
62	Permitting escape and unlawful release of prisoners.....	33
63	Resisting arrest.....	33
64	Escape from custody.....	33
<b>MISCELLANEOUS OFFENCES.....</b>		<b>34</b>
65	False swearing.....	34
66	Unauthorised disclosure of information.....	34
67	Falsification etc, of service document.....	34
68	Endangering morale.....	35
69	Conduct unbecoming an officer.....	35
70	Assault or ill-treatment of person of inferior rank.....	35
71	Disgraceful conduct.....	35
72	False accusation.....	35
73	Attempt to commit military offences.....	36
74	Conduct to the prejudice of military discipline.....	36
<b>CIVIL OFFENCES.....</b>		<b>36</b>

75	Civil offences .....	36
<b>PUNISHMENTS .....</b>		<b>36</b>
76	Punishment by Defence Services Judge .....	36
<b>ARREST .....</b>		<b>38</b>
77	Arrest.....	38
78	Charge reports .....	38
<b>INVESTIGATION OR AND SUMMARY DISPOSAL OR CHARGES .....</b>		<b>39</b>
79	Powers of commanding officer .....	39
<b>TRIAL BY DEFENCE SERVICES JUDGE .....</b>		<b>41</b>
80	Appointment of Defence Services Judge .....	41
81	Procedures at trial by Defence Services Judge.....	42
82	Appointment of prosecutors and defenders.....	42
83	Representation of the accused .....	42
84	Alternate findings.....	43
<b>AFFIRMATIONS.....</b>		<b>43</b>
85	Affirmations .....	43
<b>APPEALS FROM, AND REVIEWS OF SUMMARY FINDING AWARDS .....</b>		<b>44</b>
86	Appeals from convictions and punishment .....	44
87	Review of summary convictions and punishment.....	44
<b>COMMENCEMENT AND DURATION OF SENTENCES.....</b>		<b>45</b>
88	Commencement of sentences .....	45
89	Restriction on where sentence of detention is served.....	45
90	Provision as to imprisonment .....	45
<b>TRIAL OF PERSONS CEASING TO BE SUBJECT TO MILITARY LAW AND TIME LIMIT FOR TRIAL .....</b>		<b>45</b>
91	Offenders who have ceased to be subject to military law .....	45
92	Time limitation on trial of offences.....	46
<b>RELATION BETWEEN MILITARY LAW AND CIVIL COURTS AND FINALITY OF TRIALS .....</b>		<b>46</b>
93	Jurisdiction of civil courts .....	46
94	Previous acquittal or convictions .....	47
<b>SUMMARY JURISDICTION RULES .....</b>		<b>47</b>
95	Summary Jurisdiction Rules.....	47
<b>COURTS OF INQUIRY .....</b>		<b>48</b>
96	Court of Inquiry.....	48

97	Effect of inquiries into absence.....	48
----	---------------------------------------	----

---

## **PART VII - FORFEITURES AND DEDUCTIONS** **49**

98	Forfeitures and deductions.....	49
99	Forfeiture of pay for absence from duty .....	49
100	Deduction for barrack damage.....	50
101	Remission of forfeitures or deductions.....	50

---

## **PART VIII - THE TERRITORIAL FORCE** **50**

102	Enlistment and reengagement.....	50
103	Training.....	51
104	Call out on temporary service .....	51
105	Call out on continuous full time service .....	51
106	Attendance on call out .....	52
107	Effective time of call out.....	52
108	Termination of service .....	53
109	Posting or attachment of members.....	53
110	Penalties for non-attendance .....	53
111	Discharge .....	54
112	Protection of employment.....	54
113	Action against employer .....	55
114	Onus of proof of employer.....	55
115	Re-engagement .....	55
116	Call out of the reserve .....	56
117	Attendance on call out .....	56
118	Effective time of call out.....	56
119	Termination of service .....	57
120	Posting and attachment .....	57
121	Penalties for non-attendance .....	57
122	Discharge .....	58

---

## **PART X - GENERAL PROVISIONS** **58**

### **REDRESS OF COMPLAINTS.....** **58**

123	Complaints by officers.....	58
124	Complaints by soldiers.....	58

### **EXEMPTION FOR MEMBERS OF THE SERVICES .....** **59**

125	Exemption from jury Service.....	59
126	Exemption of military property from civil action.....	59

### **PROVISION RELATING TO DESERTERS AND ABSENTEES WITHOUT LEAVE .....** **59**

127	Arrest of deserters and absence without leave.....	59
-----	--	----

128 Procedure where illegal absence admitted .....60  
 129 Procedure where illegal absence not admitted .....60  
 130 Surrendering to police .....60  
 131 Certificates of arrest and surrender .....61  
 132 Duty of prison superintendent to receive illegal absentees .....61

**OFFENCES RELATING TO MILITARY MATTERS PUNISHABLE BY CIVIL COURTS. ....62**

133 Obstructing members in execution of duty .....62  
 134 Accepting military equipment as security for debt .....62  
 135 Unlawful possession of military stores .....62

**PROVISIONS AS TO EVIDENCE .....63**

136 Evidence as to contents to documents .....63

**MISCELLANEOUS PROVISIONS.....64**

137 Temporary reception into civil custody of person under arrest.....64  
 138 Assignment or charge on pay or pension to be void .....64

**PART XI - APPLICATION OF THE ACT AND SUPPLEMENTARY PROVISIONS 65**

139 Persons subject to military law.....65  
 140 Application of service law to another country .....65  
 141 Power to make regulations .....65  
 142 Execution of orders and instruments .....67  
 143 National service.....67  
 144 Power of Board to make determination.....68  
 145 Effect of determinations .....69  
 146 Repeal and savings .....69

**FIRST SCHEDULE 71**

FORM OF COMMISSION .....71

**SCHEDULE 72**

QUESTIONS TO BE PUT TO A PERSON OFFERING TO ENLIST.....72

**THIRD SCHEDULE 74**

PUNISHMENT PROVIDED IN RESPECT OF OFFENCES UNDER THE ACT .....74



---

**FOURTH SCHEDULE** **75**

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ALTERNATIVE OFFENCES OF WHICH AN ACCUSED MAY  
BE CONVICTED.....75





# TONGA DEFENCE SERVICES ACT 1992

Act 17 of 1992

## AN ACT TO RAISE THE TONGA DEFENCE SERVICES AND TO PROVIDE FOR THEIR MAINTENANCE CONTROL AND REGULATION AND FOR RELATED MATTERS

I assent,  
TAUFA'AHAU TUPOU IV,  
7th May, 1993

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

### PART I - PRELIMINARY

#### 1 Short Title and commencement

This Act may be cited as the Tonga Defence Services Act 1992 and is to come into operation on a day to be fixed by His Majesty.

#### 2 Interpretation

(1) In this Act unless the contrary intention appears —

“**acting rank**” means rank of any description however called such that under regulations a commanding officer has power to order the holder to revert from that rank: and “**acting warrant officer**” and an “**acting non-commissioned officer**” shall be construed accordingly;

“**arrest**” includes open arrest;

“**the Board**” means the Defence Board constituted under Part III;

“**civil court**” has the meaning assigned to it by section 75(2);

“**civil offence**” has the meaning assigned to it by section 75(2);

“**the Commander**” means the officer appointed by His Majesty under section 21 to command the Services;

“**commanding officer**” means the Commander, any officer commanding a unit to whom the powers of a commanding officer have been granted by His Majesty and the officer commanding a detachment of the Services;

“**damage**” includes destruction, and references to damaging shall be construed accordingly;

“**date of attestation**” in relation to a person means the date on which he is attested in accordance with the provisions of this Act on his enlistment in the Services;

“**decoration**” includes medals, medal ribbon, clasp and badge;

“**desertion**” shall be construed in accordance with section 48 (2);

“**detachment**” means a part of the Services or a unit thereof which is so separated from the remainder of the Services, or as the case may be, the unit to which it belongs, that the Commander, or as the case may be, the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it;

“**enemy**” includes all persons engaged in armed operations against the Services or a force co-operating with the Services and includes all armed mutineers, armed rebels, armed rioters and pirates;

“**member**” means an officer or soldier of the Services, and includes a soldier appointed to the Tonga Royal Guards, Royal Tonga Marines or the Navy;

“**officer**” means a person appointed and commissioned as an officer of the Services;

“**non-commissioned officer**” means a soldier who holds a rank not higher than the rank of staff-sergeant or lower than the rank of lance-corporal, and includes a soldier holding such a rank as an acting rank, and a soldier who holds the rank of warrant officer as an acting rank;

“**prescribed**” means, prescribed in regulations made pursuant to section 141;

“**public property**” means any property, other than service property, belonging to, used by, or in the possession or under the control of the government of Tonga;

“**the Services**” means the Tonga Defence Services raised and maintained under this Act;

“**service property**” means property used by, or in the possession or under the control of:

- (a) the Services;
- (b) a force co-operating with the Services; or
- (c) a mess, canteen or other institution of the Services or of a force co-operating with the Services;

“**service**” when used adjectively, means belonging to or connected with the Services;

“**soldier**” means a member of the Services, including a member of the Tonga Royal Guards, Royal Tonga Marines or the Navy, other than an officer, but with the modifications contained in this Act in relation to warrant officers and non-commissioned officers, includes (except in section 79) a warrant officer and a non-commissioned officer;

“**stoppages**” means the recovery by deduction from the pay of the offender, of a specified sum by way of compensation for any expenses, loss or damage occasioned by the offence;

“**superior officer**” in relation to any person means an officer, warrant officer or non-commissioned officer of the Services and an officer, warrant officer or non-commissioned officer seconded to or serving with the Services of superior rank and includes any such officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as the said person’s superior.

“**unit**” means any body of the Services declared by His Majesty to be a unit.

“**warrant officer**” means a soldier of the Services holding the rank of warrant officer and includes a soldier holding the rank of warrant officer temporarily or as an honorary rank, but does not include a soldier holding the rank of warrant officer as an acting rank;

- (2) In this Act the expression “**on operational service**” in relation to a unit of the Services, means:
  - (a) that the unit is engaged in operations against an enemy; or

- (b) that the unit has been declared under section 14 to be on operational service,

and in relation to a person means that he is serving in or with a unit which is on operational service.

- (3) In this Act the expression “**military law**” means the provisions of this Act applicable to a member of the Services; and the expression “**a person subject to military law**” shall be construed accordingly.
- (4) An offence created by this Act capable of being dealt with either summarily under section 79 or by a Defence Services Judge is an offence contrary to military law only and not a civil offence.

### 3 Application of the Act

The provisions of this Act apply both in and outside the Kingdom.

## PART II - THE DEFENCE SERVICES

### 4 Establishment of the Services

- (1) His Majesty may raise, establish and maintain a military force for the defence of the Kingdom.
- (2) The force raised in accordance with subsection (1) shall be:
- (a) established and maintained out of the public revenue; and
  - (b) known as the Tonga Defence Services.

### 5 Functions of the Services

- (1) The functions and duties of the Tonga Defence Services are:
- (a) the defence of the Kingdom;
  - (b) the aid of the civil authorities in the maintenance of order in the Kingdom;
  - (c) the support of the civil authorities; and
  - (d) those other functions and duties that His Majesty may from time to time determine.
- (2) In the execution of their duties to carry out the lawful orders or directions of the Government and of superior officers to achieve the purposes of this Act the Services and members of the Services may use such force (including force causing death) as is reasonably necessary.

- (3) For the purposes of subsection (2) an order or direction that is contrary to or inconsistent with international law relating to armed conflict is not a lawful order or direction.

## **6 Aid to the Civil authorities**

- (1) Where a proclamation is made pursuant to subsection 3(1) of the Public Order (Preservation) Act (Cap. 38), His Majesty may call out the Services or any part or unit of the Services in aid of the civil authorities.
- (2) For the purposes of section 18 of the Public Order (Preservation) Act (Cap. 38) every warrant officer of the Services called out in aid of the civil authorities is deemed to have the rank of sergeant major.
- (3) Notwithstanding the provision of any other Act members of the Services called out in aid of the civil authorities remain an armed force individually liable to obey the orders of their superior officers in the Services.

## **7 Support of the civil authorities**

- (1) In the event of a civil emergency, the Board, at the request of the relevant civil authority, may direct the Services or a part or unit of the Services to provide support to the civil authorities.
- (2) In this section “civil emergency” includes but is not limited to earthquake, tidal wave, fire, flood, hurricane, famine or shortage of food, epidemic or outbreak of disease, shipping or aircraft disaster, or any other disaster.

## **8 Employment in the public services**

- (1) Subject to this Act, where it appears that it is in the national interest, His Majesty in Council may authorise any part or unit of the Services to perform inside or outside the Kingdom any public service that is capable of being performed by the Services.
- (2) For the purposes of subsection (1) His Majesty in Council may authorise any vehicles, vessels, aircraft or equipment of the Services to be used in connection with the public service to which it relates.

## **9 Composition of the Services**

The Tonga Defence Services consists of:

- (a) the Regular Force;
- (b) the Territorial Force; and
- (c) the Reserve.

**10 The Regular Force**

The Regular Force consists of persons appointed to or enlisted in the Services for continuous full time defence service, or who are transferred to that Force from the Territorial Force or the Reserve.

**11 The Territorial Force**

The Territorial Force consists of persons appointed to or enlisted in that Force or who are transferred to that Force from the Regular Force or the Reserve.

**12 The Reserve**

The Reserve consists of persons appointed to or enlisted in the Reserve or who are transferred to the Reserve in accordance with the regulations.

**13 Designation of units**

His Majesty may designate bodies of the Services to be units for the purposes of this Act.

**14 Declaration of operational service**

- (1) Where it appears that, by reason of imminent or recent hostilities, or for any other reason, to be necessary in the national interest, His Majesty may declare that for a period not exceeding 3 months beginning on the date the declaration to that effect comes into force, the unit or units of the Services specified in the declaration are on operational service.
- (2) Where it appears to be necessary in the national interest that the period specified in a declaration under subsection (1) should be prolonged, or, if the period has previously been extended under this subsection, should be further prolonged, His Majesty may declare that the period be prolonged for a period or further period, in either case not exceeding 3 months, as may be specified in a declaration under this subsection.
- (3) If at any time while a declaration under this section is in force, it appears that the necessity for a declaration that a unit is on operational service no longer exist, His Majesty may declare that as from the date specified in a declaration to that effect the unit has ceased to be on operational service.
- (4) A declaration under this section shall be made by proclamation.



## 15 Service outside the Kingdom

- (1) Subject to this section His Majesty may:
  - (a) direct that the whole or any part of the Services be employed in or outside the Kingdom; or
  - (b) place an officer or member of the Services at the disposal of the service authorities of another country for the purpose of his being attached to the forces of that country for duty or training.
- (2) A member of the Territorial Force or of the Reserve is not liable to perform duty or undergo training outside the Kingdom unless:
  - (a) the consent of the member has been first obtained; or
  - (b) the member has been called out on continuous full time defence service under the provisions of this Act.
- (3) Where a member of the Services is selected to undergo training whether in or outside the Kingdom, and in relation to his selection:
  - (a) if an officer, is required to undertake to remain in the Services for a period specified by the Board; or
  - (b) if a soldier, is required to re-engage in advance for a period or periods specified by the Board,

the member shall not be liable to undergo that training except with his consent.

## 16 Commander of the Services

- (1) His Majesty shall appoint an officer to be the Commander of the Services.
- (2) Subject to this Act and the terms of appointment, the officer appointed under subsection (1) shall have command of the Services.
- (3) It is a function of the Commander to advise His Majesty on matters relating to the command of the Services.
- (4) His Majesty may at any time suspend or dismiss the Commander. The notice of suspension or dismissal shall be published in the Gazette.
- (5) Except where the contrary intention appears, Part VI does not apply to or in relation to the Commander.

## 17 Responsibilities of Commander

- (1) Subject to this Act, the Commander is responsible for:
  - (a) the operational readiness of the Services;
  - (b) the efficient administration of the Services; and

- (c) the implementation of defence policy.
- (2) Orders and instructions issued by or with the authority of the Commander pursuant to subsection (1) shall be known as Defence Services Orders.

## **18 Co-operation with other forces**

- (1) Whenever the Services or a part of the Services is acting in cooperation with the forces or a part of the forces of another country, whether in or outside the Kingdom, a member of the forces of that country has the same powers of command over a member of the Services as a member of the Services holding the same rank in the Services that he holds in the forces of the country to which he belongs.
- (2) For the purposes of sections 45 and 46, a member of the forces of another country to which subsection (1) applies shall be deemed to be a member of the Services of the same rank.
- (3) Whenever the Services or a part of the Services is acting in co-operation with the forces of another country, whether in or outside the Kingdom, His Majesty may place the Services or a part of the Services under the command of the officer commanding “those forces.
- (4) Where a part of the Services is acting in co-operation with all other force, the officer commanding that part of the Services may, in agreement with the officer commanding that other force, define the powers of command and order of precedence of the officers, warrant officers and non-commissioned officers of the Services in relation to the officers, warrant officers and non-commissioned officers of that other force.
- (5) In this section “forces” means the military, naval or air forces of another country and “force” has a corresponding meaning.

## **PART III - DEFENCE BOARD**

### **19 Composition of Defence Board**

- (1) His Majesty may establish a Defence Board consisting of His Majesty and the members for the time being of the Privy Council.
- (2) His Majesty may from time to time appoint a person or persons to be an additional member or additional members of the Board;
- (3) The Board may delegate any of its powers and functions (except this power of delegation) to a person or persons as it may specify by instrument in writing.

- (4) The Board may exercise a power or perform a function notwithstanding that it has delegated its exercise to some other person.

## **20 Functions of the Board**

The functions of the Board are:

- (a) to formulate defence policy;
- (b) through the Commander to control the Services;
- (c) to supervise the administration of the Services;
- (d) to control the monies allocated for the Services;
- (e) the acquisition of lands and buildings, the construction of buildings and other erections, and the acquisition of equipment and services, as may be thought necessary or expedient for the defence of the Kingdom; and
- (f) those particular functions relating to discipline and administration that are set out in this Act.

## **PART IV - OFFICERS**

### **21 Appointment and commissions**

- (1) His Majesty may appoint persons to be officers of the Services and may issue commissions to persons so appointed.
- (2) The appointment of a person to be a commissioned officer of the Services shall be made on the recommendation of the Board.
- (3) A person may be appointed a commissioned officer of the Services for a specified period or for an unspecified period.
- (4) The commission issued to an officer appointed under this section shall be in the form of the first schedule.

### **22 Appointment and transfer**

- (1) Every officer appointed under section 21 shall be appointed an officer of the Regular Force, the Territorial Force or the Reserve.
- (2) Subject to subsection (3) officers may be transferred from one part of the Services to another on the terms and conditions that are prescribed.
- (3) An officer of the Territorial Force shall not be transferred to the Regular Force without his consent.

**23 Termination of appointment**

- (1) Subject to subsection (2) His Majesty may terminate the appointment of an officer and cancel his commission for inefficiency or any appointment other cause.
- (2) Except where the appointment of an officer is terminated on the ground that the officer has been absent from duty without leave for a period exceeding three months, the appointment of an officer shall not to be terminated unless the officer is first notified of the complaint or charge made and of any action proposed to be taken against him and unless he is called upon to show cause why his appointment should not be terminated.

**24 Resignation**

- (1) An officer of the Services may tender the resignation of his appointment as a commissioned officer in writing to the Board through the Commander.
- (2) The Board shall recommend to His Majesty that the resignation of an officer be:
  - (a) accepted without conditions;
  - (b) accepted with conditions; or
  - (c) rejected.
- (3) His Majesty may accept the resignation of the appointment of an officer without conditions or with conditions, or may reject the resignation.

**PART V - ENLISTMENT AND TERMS OF SERVICES IN THE REGULAR FORCE****ENLISTMENT****25 Enlistment**

- (1) Subject to this section and Schedule 2 persons may be enlisted in the Services in the manner set out in the regulations.
- (2) A person under the age of 18 years shall not be enlisted in the Services unless with the consent in writing of the person's parents or guardian. Where the parents or guardian are dead or unknown, or where the required consent cannot reasonably be obtained, the consent of a Magistrate may be obtained instead.
- (3) A person under the age of 16 years shall not be enlisted in the Services.

- (4) On enlistment a person shall be appointed:
  - (a) to a rank in the Services;
  - (b) as a trainee; or
  - (c) as an apprentice.

## TERMS AND CONDITIONS OF SERVICE

### 26 Period of enlistment

- (1) The period of enlistment in the Regular Force of a person other than a trainee or an apprentice is 3 years.
- (2) A trainee or an apprentice may be enlisted in the Regular Force for a period not exceeding 9 years.

### 27 Re-engagement

- (1) Subject to this section a member of the Regular Force may within the period of three months before his period of enlistment in the Regular Force expires, apply to re-engage for a further period.
- (2) The Commander may approve the re-engagement of a member for a period which is prescribed.
- (3) Subject to subsection (4) the re-engagement of a member shall not be approved under this section where the member would reach the prescribed age for transfer to the Reserve before the expiry of his current period of enlistment.
- (4) Where the Commander certifies in writing that it is desirable, in the interests of the Services, that a member, who has special skills or service experience, be retained in the Regular Force after the date on which, but for this subsection, the member would reach the age prescribed for his transfer to the Reserve, the age for transfer to the Reserve of that member is 55 years.
- (5) The Board may require a member of the Regular Force who is selected to undergo training, whether in or outside the Kingdom, to re-engage in advance for a period or periods as the Board determines.

### 28 Prolongation of service

A member of the Regular Force whose period of service expires during any time of war, defence emergency, or insurrection may be retained in that Force for a further period as His Majesty acting on the advice of the Board may direct.

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## DISCHARGE AND TRANSFER TO RESERVE

### 29 Discharge

- (1) Except as provided by this Act, a soldier of the Regular Force whose period of service has expired is entitled to be discharged with all convenient speed, but until discharged remains subject to military law.
- (2) Except where the discharge is in pursuance of a sentence on conviction for an offence under this Act or the civil law, the discharge of a soldier of the Regular Force shall be authorised by the Commander.
- (3) A member of the Regular Force is not entitled to be discharged:
  - (a) while he is serving a sentence of imprisonment or detention: or
  - (b) while there are pending against him proceedings for an offence under this Act or the civil law.
  - (c) where the member has been selected to undergo training and has engaged or re-engaged in advance for a particular period, until he has served the period for which he has engaged or re-engaged.
- (4) On his discharge from the Services, a member of the Regular Force shall be given a certificate of discharge containing the particulars prescribed in the regulations.

### 30 Transfer to reserve

- (1) Subject to this section, a member of the Regular Force may be transferred to the Reserve at any time.
- (2) A member of the Regular Force transferred to the Reserve in accordance with this section shall remain in the Reserve until he attains the age which is prescribed.
- (3) A member of the Regular Force shall not be transferred to the Reserve while there are pending against him any proceedings for an offence under this Act, unless it is determined that the offence is not to be tried by a Defence Services Judge.
- (4) A member of the Regular Force shall not be transferred to the Reserve while he is serving a sentence of imprisonment or detention.

### 31 Restriction on reduction of warrant and non-commissioned officers

- (1) A warrant officer or non-commissioned officer of the Regular Force other than a lance-corporal shall not be reduced in rank except:

- (a) by sentence of a Defence Services Judge or punishment imposed by the Commander for an offence under this Act; or
  - (b) for inefficiency, in accordance with the regulations.
- (2) The reduction of a warrant officer by sentence of the Commander, or for efficiency, shall not take effect until the reduction has been confirmed by the Board.
- (3) For the purpose of this section reduction in rank does not include reversion from acting rank.

### **32 Right of warrant officers to discharge**

Except in time of war, defence emergency or insurrection, a warrant officer of the Regular Force who is reduced in rank is entitled to claim his discharge.

### **33 Reasons for discharge**

- (1) By order of His Majesty, a member of the Regular Force may be discharged at any time during his service on the ground of inefficiency or for any other reason.
- (2) Except where a member of the Regular Force is discharged on the ground that such member has been absent from duty without leave for a period exceeding three months, such member shall not be discharged unless he is first notified of the complaint or charge made and of any action proposed to be taken against him and unless he is called upon to show cause why he should not be charged.

### **34 Right of soldier to claim discharge on payment**

- (1) Subject to this section a person enlisted in the Regular Force is entitled to claim his discharge at any time within three months after the date of his attestation.
- (2) On payment of \$150 to public revenue a person claiming discharge under subsection (1) shall be discharged with all convenient speed but until discharged remains subject to military law.
- (3) The provisions of section 29 do not apply to a soldier discharged under the provisions of this section.
- (4) A member of the Regular Force is not entitled to claim his discharge under subsection (1) while a direction made under section 28 is in force.

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## MISCELLANEOUS PROVISIONS

### 35 Calculating period of service

In reckoning the service of any member of the Regular Force towards discharge or transfer to the Reserve all periods during which he was absent:

- (a) on leave without pay;
  - (b) without leave; or
  - (c) by reason of desertion or imprisonment,
- shall be excluded.

### 36 Irregular enlistment

- (1) Where a person has taken the oath of allegiance and has afterwards received pay as a member of the Regular Force, the validity of his enlistment shall not be questioned after the expiration of three months from the date of attestation.
- (2) Nothing in subsection (1) shall affect:
  - (a) the calculation of the period of enlistment of a person;
  - (b) the power to discharge a person who has not claimed discharge; or
  - (c) the power to discharge a person convicted under section 37.

### 37 False answers on enlistment

- (1) A person attending before an officer for the purpose of being enlisted in the Regular Force who knowingly makes a false answer to a question contained in the attestation paper and put to him by or by the direction of the officer, commits an offence.
- (2) A person who commits an offence under this section is guilty of a civil offence and shall be tried summarily by a magistrate's court, and on conviction shall be liable to a fine not exceeding \$500 or to imprisonment for a period not exceeding 3 months.



## **PART VI - DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES**

### **MISCONDUCT IN ACTION AND OTHER OFFENCES ARISING OUT OF MILITARY SERVICE**

#### **38 Misconduct in action**

- (1) A person subject to military law who, without lawful excuse:
- (a) surrenders to the enemy a place or post, service ship, service aircraft, service vehicle or military equipment which it is his duty to defend; or
  - (b) abandons any place or post, service ship, service aircraft, service vehicle or military equipment which it is his duty to defend or to prevent from falling into the hands of the enemy.
- commits an offence.
- (2) A person subject to military law who, while engaged on service in connection with operations against the enemy:
- (a) does not use his utmost exertions to carry out the lawful orders of his superior officers;
  - (b) behaves in a manner showing cowardice;
  - (c) induces another person (including a member of a force co-operating with the Services), to behave in a manner showing cowardice; or
  - (d) uses words likely to cause despondency or unnecessary alarm, commits an offence.

#### **39 Assisting the enemy**

A person subject to military law who, without lawful excuse, intentionally:

- (a) communicates with or gives information to the enemy;
- (b) fails to inform the proper authorities of any information received from the enemy;
- (c) furnishes the enemy with supplies;
- (d) having been captured by the enemy;
  - (i) serves with the enemy;
  - (ii) aids the enemy in the prosecution of hostilities or of measures likely to influence morale; or
  - (iii) behaves towards the enemy in any other manner not authorised by international usage or custom of war;

- (iv) fails to take, or prevents or discourages another person subject to military law who has been captured by the enemy from taking reasonable steps to rejoin the Services; or
- (e) harbours or protects an enemy who is not a prisoner of war, commits an offence.

#### **40 Obstructing operations**

A person subject to military law who, while on operational service:

- (a) by act or omission behaves in a manner likely to prevent the success or reduce the effectiveness of any action or operation carried out by the Services; or
  - (b) intentionally delays or discourages the carrying out of any action or operation,
- commits an offence.

#### **41 Offences by and against sentries**

A person subject to military law who, while on operational service:

- (a) sleeps while:
    - (i) on guard duty; or
    - (ii) under orders to regulate traffic;
  - (b) strikes or otherwise uses force against:
    - (i) a member of the Services, or of a force co-operating with the Services, who is on guard duty; or
    - (ii) a member of the Services, or of a force co-operating with the Services, who is under orders to regulate traffic; or
  - (c) by the threat of violence compels a person mentioned in paragraph (b) to let him or another person pass,
- commits an offence.

#### **42 Failure to attend for duty, neglect of duty**

A person subject to military law who, while on operational service, without reasonable excuse:

- (a) fails to attend his place of duty;
- (b) leaves his place of duty before he is permitted to do so;
- (c) neglects to perform his duty; or

- (d) negligently performs his duty,  
commits an offence.

## MUTINY AND INSUBORDINATION

### 43 Mutiny

- (1) A person subject to military law who:
  - (a) intentionally takes part in a mutiny using violence or the threat of violence; or
  - (b) incites a person subject to military law to take part in a mutiny, whether actual or intended, using violence or the threat of violence,  
commits an offence.
- (2) A person subject to military law who, in a case not involving the use of violence or the threat of violence:
  - (a) intentionally takes part in a mutiny; or
  - (b) incites a person subject to military law to take part in a mutiny, whether actual or intended,  
commits an offence
- (3) In this Act, the expression “mutiny” means a combination between persons who are, or of whom at least two are, subject to military law:
  - (a) to overthrow lawful authority in the Services or in a force co-operating with the Services;
  - (b) to resist lawful authority in the Services or in a force co-operating with the Services in a manner subversive of discipline so as to prejudice the efficiency of the Services or of a force co-operating with the Services in, or in connection with operations against the enemy;
  - (c) to impede the performance of duty or service in the Services or a force co-operating with the Services.

### 44 Failure to suppress mutiny

A person subject to military law who knows that a mutiny is taking place or is intended and does not take reasonable steps:

- (a) to suppress or prevent the mutiny; or
- (b) to report without delay to an appropriate authority that a mutiny is taking place or is intended,

commits an offence.

**45 Assault on superior and insubordinate conduct**

- (1) A person subject to military law who:
  - (a) assaults a superior officer; or
  - (b) uses threatening or insubordinate language to a superior officer, commits an offence.
- (2) It is a defence if a person charged with an offence under this section did not know, or could not reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

**46 Disobedience to lawful command**

- (1) A person subject to military law who disobeys a lawful command (by whatever means communicated to him), given to him by a superior officer, commits an offence.
- (2) It is a defence if a person charged with an offence under this section did not know, or could not reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was a superior officer.

**47 Disobedience of lawful general orders**

- (1) A person subject to military law who does not comply with a provision of a lawful order to which this section applies, which is known to him, or which could reasonably be expected to be known to him, commits an offence.
- (2) This section applies to standing or routine orders, or other orders of a continuing nature made for the Services generally, a part or a unit of the Services, a body of troops, or any command, area, garrison, ship or place.

**DESERTION, ABSENCE WITHOUT LEAVE, ETC.**

**48 Desertion**

- (1) A person subject to military law who deserts, commits an offence.
- (2) For the purposes of this Act a person deserts who:
  - (a) without lawful authority, and with the intention to remain permanently absent from duty, leaves or fails to attend at his unit, ship or place of duty;

- (b) having, without lawful authority, left or failed to attend at his unit, ship or place of duty, forms the intention, or behaves in a manner that shows the intention to remain permanently absent from duty; or
- (c) having been warned for duty outside the Kingdom, or for operational service against an enemy, with the intention to avoid that service, or any particular service, absents himself without leave.

and references in this Act to desertion shall be construed accordingly.

#### **49 Absence without leave**

A person subject to military law who is absent without leave commits an offence.

#### **50 Failure to attend for duty**

A person subject to military law who does not attend for duty or ceases performance of duty before he is permitted to do so commits an offence.

#### **51 Failure to apprehend or report deserters or absentees**

A person subject to military law who knows that another person subject to military law has committed an offence, or is attempting to commit an offence under section 48 or 49, and:

- (a) does not report the fact without delay to the appropriate authority; or
- (b) does not take reasonable steps to cause that other person to be apprehended,

commits an offence.

### **MALINGERING AND DRUNKENNESS**

#### **52 Malingering**

- (1) A person subject to military law who:
  - (a) falsely pretends to be suffering from sickness or disability;
  - (b) injures himself, or causes or permits himself to be injured by another person, with the intention to render himself unfit for service;
  - (c) injures another person subject to military law at the instance of that other person, with intent to render that person unfit for service; or

(d) with intent to render himself unfit for service, by act or omission, whether or not at the time of the act or omission he is in hospital, causes himself to suffer a sickness or disability or prolongs or aggravates a sickness or disability from which he is suffering,  
commits the offence of malingering.

(2) In this section the expression “unfit for service” includes temporary unfitness to perform duty.

### **53 Drunkenness**

(1) A person subject to military law who:

- (a) is drunk on duty; or
- (b) is drunk when he reports for duty; or
- (c) is drunk when he should report for duty,

commits an offence.

(2) For the purpose of this section a person shall be deemed to be drunk if, and only if, owing to the influence of alcohol or a drug, whether alone or in combination with other substances, his faculties are so impaired that:

- (a) he is unfit to perform his duty;
- (b) it would be unwise to entrust him, or allow him to continue with, the performance of his duty or with any duty which he might reasonably expect to be called upon to perform; or
- (c) he behaves in a disorderly manner or in a manner likely to bring discredit on the Services.

### **DISORDERLY CONDUCT**

### **54 Assault, insulting words**

A person subject to military law who, without reasonable excuse:

- (a) assaults another person subject to military law;
- (b) uses insulting or provocative words to another person subject to military law; or
- (c) causes a disturbance or takes part in causing or continuing a disturbance on service premises,

commits an offence.

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## OFFENCES RELATING TO PROPERTY

### 55 Stealing or misapplying public or service property

- (1) A person subject to military law who:
  - (a) steals; or
  - (b) fraudulently misapplies,public or service property, commits an offence.
- (2) A person subject to military law who receives public or service property, knowing or having reason to believe it to have been stolen or fraudulently misapplied, commits an offence.

### 56 Stranding, hazarding service ship or aircraft

- (1) A person subject to military law who intentionally causes or allows:
  - (a) a service ship to be stranded or hazarded; or
  - (b) a service aircraft or other piece of service equipment to be hazarded,commits an offence.
- (2) A person subject to military law who recklessly causes or allows:
  - (a) a service ship to be stranded or hazarded; or
  - (b) a service aircraft or other piece of service equipment to be hazarded,commits an offence.
- (3) A person subject to military law who negligently causes or allows:
  - (a) a service ship to be stranded or hazarded; or
  - (b) a service aircraft or other piece of service equipment to be hazarded,commits an offence.
- (4) For the purposes of this section:
  - (a) a ship is stranded when it touches ground or a submerged object fixed to the ground and remains fast for some time; and
  - (b) a ship or aircraft is hazarded when it is exposed to danger.

### 57 Damaging or causing loss of public or service property

- (1) A person subject to military law who intentionally, by act or omission:

- (a) damages; or
  - (b) causes the loss of,  
public or service property, commits an offence.
- (2) A person subject to military law who recklessly, by act or omission:
- (a) damages; or
  - (b) causes the loss of,  
public or service property, commits an offence.
- (3) A person subject to military law who negligently, by act or omission:
- (a) damages; or
  - (b) causes the loss of,  
public or service property, commits an offence.

### **58 Misapplication and waste of public or service property**

A person subject to military law who misapplies or wastefully expends any public or service property commits an offence.

### **59 Unauthorised use of service vehicles or ships**

A person subject to military law who:

- (a) drives a service vehicle in any place, whether a public place or not, without being authorised to drive that vehicle; or
- (b) uses a service vehicle or service ship for an unauthorised purpose, commits an offence.

### **60 Stealing or receiving property of person subject to military law**

A person subject to military law who:

- (a) steals property belonging to a person subject to military law; or
- (b) receives property belonging to a person subject to military law knowing or having reason to believe it to have been stolen or unlawfully obtained,

commits an offence.

### **61 Pawning or pledging equipment or decoration**

- (1) A person subject to military law who pawns or pledges:



- (a) clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or
  - (b) any decoration granted to him,
- commits an offence.

## OFFENCES RELATING TO, AND BY, PERSONS IN CUSTODY

### 62 Permitting escape and unlawful release of prisoners

- (1) A person subject to military law who intentionally, by act or omission, allows to escape:
  - (a) a person committed to his charge; or
  - (b) a person whom it is his duty to guard,commits an offence.
- (2) A person subject to military law, who, without proper authority, releases a person committed to his charge, commits an offence.
- (3) A person subject to military law, who by act or omission, negligently allows to escape:
  - (a) a person committed to his charge; or
  - (b) a person whom it is his duty to guard,commits an offence.

### 63 Resisting arrest

- (1) A person subject to military law involved in any quarrel or disorder who:
  - (a) refuses to obey an officer, warrant officer or non-commissioned officer of the Services who orders him into arrest; or
  - (b) assaults an officer, warrant officer or non-commissioned officer of the Services, whether or not the officer, warrant officer or non-commissioned officer is his superior officer,commits an offence.
- (2) A person subject to military law who assaults a person, whether or not subject to military law, whose duty it is to apprehend him or in whose custody he is under this Act, commits an offence.

### 64 Escape from custody

A person subject to military law who escapes from arrest, or lawful custody commits an offence.

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## MISCELLANEOUS OFFENCES

### 65 False swearing

- (1) A person subject to military law who, having been sworn as a witness or interpreter in proceedings before a Defence Services Judge, a commanding officer or a court of inquiry, makes a statement material to those proceedings which:
  - (a) he knows to be false; or
  - (b) he does not believe to be true,commits an offence.
- (2) A person is not liable to be convicted of an offence against this section solely upon the evidence of one witness as to the falsity of any statement alleged to be false.
- (3) In this section “sworn” includes having made a solemn affirmation.

### 66 Unauthorised disclosure of information

A person subject to military law who without lawful authority discloses to an unauthorised person by any means, information relating to a matter which is or is likely to be useful to an enemy, commits an offence.

### 67 Falsification etc, of service document

A person subject to military law who, with intent to deceive:

- (a) makes a service document which to his knowledge is false in a material particular;
- (b) signs a service document which to his knowledge is false in a material particular;
- (c) makes in a service document an entry which to his knowledge is false in a material particular;
- (d) alters a service document so that the document is to his knowledge false in a material particular;
- (e) alters an entry in a service document so that entry is to his knowledge false in a material particular;
- (f) suppresses, defaces or makes away with a service document or entry in a service document which it is his duty to preserve or produce; or
- (g) fails to make an entry in a service document which it is his duty to make,

commits an offence.

### **68 Endangering morale**

A person subject to military law who by any means spreads reports relating to operations of the Services or of a force co-operating with the Services, or of a part of those forces, likely to create despondency or unnecessary alarm, commits an offence.

### **69 Conduct unbecoming an officer**

An officer subject to military law who by act or omission behaves in a manner unbecoming the character of an officer and a gentleman, commits an offence.

### **70 Assault or ill-treatment of person of inferior rank**

An officer, warrant officer or non-commissioned officer, subject to military law, who assaults or otherwise ill-treats a person subject to military law who is inferior in rank or of less seniority, commits an offence.

### **71 Disgraceful conduct**

A person subject to military law who by act or omission behaves in a disgraceful, cruel, indecent, or unnatural manner, commits an offence.

### **72 False accusation**

A person subject to military law who:

- (a) makes against an officer or other person subject to military law, an accusation which:
  - (i) he knows to be false; or
  - (ii) he does not believe to be true; or
- (b) in a complaint where he thinks himself wronged, makes a statement affecting the character of an officer or other person subject to military law;
  - (i) which he knows to be false;
  - (ii) which he does not believe to be true; or
  - (iii) in which he intentionally suppresses any material facts, commits an offence.

**73 Attempt to commit military offences**

- (1) A person subject to military law who attempts to commit an offence under a provision of this Part, commits an offence.
- (2) Notwithstanding any other provision of this Act, a person convicted of an offence under this section is not liable to any punishment greater than imprisonment.

**74 Conduct to the prejudice of military discipline**

A person subject to military law who by act or omission behaves in a manner likely to:

- (a) prejudice good order and military discipline; or
  - (b) bring discredit upon the Services,
- commits an offence.

**CIVIL OFFENCES****75 Civil offences**

- (1) For the avoidance of any doubt a person subject to military law who commits a civil offence, shall be tried therefor by the civil courts of the Kingdom and not according to military law.
- (2) In this Act the expression “civil offence” means any criminal act or omission which would be triable in the civil courts; and “civil courts” means the Court of Appeal, the Supreme Court and the Magistrates’ Court.
- (3) The Chief Justice with the approval of the Defence Board, shall make such Rules as appear to him appropriate or necessary with respect to the commission of a civil offence by a person subject to military law, the trial of such an offender, and his punishment if convicted.

**PUNISHMENTS****76 Punishment by Defence Services Judge**

- (1) Subject to this section and the other provisions of this Act the only punishments that may be imposed on a person subject to military law by a Defence Services Judge are, in decreasing order of severity, as follows:
  - (a) death;
  - (b) imprisonment for life;
  - (c) imprisonment for a specified period;

- (d) dismissal from the Services with disgrace;
  - (e) in the case of a warrant officer or non-commissioned officer, reduction in rank;
  - (f) fine not exceeding the amount of a person's pay for 90 days;
  - (g) in the case of an officer, warrant officer or non-commissioned officer, severe reprimand or reprimand;
  - (h) where the offence has occasioned any expense, loss or damage, stoppages.
- (2) Unless otherwise provided in this Act a Defence Services Judge may not impose more than one punishment for an offence.
- (3) The punishment provided for an offence under this Act referred to in the first column of the table in the Third Schedule to this Act is the punishment set out opposite that offence in the second column of the table in the Third Schedule.
- (4) Where a sentence of death is imposed by a Defence Services Judge, the sentence shall not be carried into effect until it has been reviewed in the same manner as a sentence of death passed by the Supreme Court in respect of a civil offence.
- (5) A Defence Services Judge shall not sentence an officer to imprisonment unless he also sentences the officer to dismissal with disgrace. Where a Defence Services Judge sentences an officer to imprisonment but fails to also sentence the officer to dismissal with disgrace, the sentence of imprisonment is valid in all respects and is to be taken to include a sentence of dismissal with disgrace.
- (6) A Defence Services Judge shall not sentence a warrant officer or non-commissioned officer to imprisonment, unless he also sentences the warrant officer or non-commissioned officer to reduction to the ranks. Where a Defence Services Judge sentences a warrant officer or non-commissioned officer to imprisonment but fails to also sentence the warrant officer or non-commissioned officer to reduction to the ranks, the sentence of imprisonment is valid in all respects and is taken to include a sentence of reduction to the ranks.
- (7) A soldier sentenced to imprisonment may in addition be sentenced to dismissal with disgrace.
- (8) A sentence of stoppages may be imposed in addition to another punishment
- (9) A sentence of severe reprimand or reprimand may be imposed in addition to the punishment of a fine.

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## ARREST

### 77 Arrest

- (1) A person subject to military law who:
  - (a) is found committing an offence under this Act; or
  - (b) is reasonably suspected of having committed an offence under this Act,may be arrested in accordance with the provisions of this section.
- (2) An officer may be arrested by an officer subject to military law of superior rank, or, if engaged in a quarrel, by an officer subject to military law of any rank.
- (3) A member other than an officer may be arrested by an officer, warrant officer or non-commissioned officer subject to military law of superior rank.
- (4) The power of arrest given to a person under this section may be exercised:
  - (a) personally;
  - (b) by ordering the person concerned into arrest; or
  - (c) by giving an order for the arrest of the person concerned.
- (5) A person subject to military law who is arrested in accordance with the provisions of this section and who is not charged with an offence under this Act within 24 hours of being arrested, shall be released from arrest.
- (6) A person subject to military law who fails or fails to authorise the release from arrest of a person who, under subsection (5), is entitled to be released, commits an offence.

### 78 Charge reports

- (1) An allegation that a person subject to military law has committed an offence under this Act shall be in the form of a charge report.
- (2) A charge report in respect of a person charged with an offence under this Act shall be placed before the commanding officer of the person charged within 48 hours of the charge report being prepared.
- (3) Whether or not the person is under arrest the commanding officer of a person charged shall investigate the charge in accordance with the provisions of section 79 without delay.

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## INVESTIGATION OR AND SUMMARY DISPOSAL OR CHARGES

### 79 Powers of commanding officer

- (1) A commanding officer shall investigate a charge under this Act in accordance with the Summary Jurisdiction Rules.
- (2) After he has investigated such a charge a commanding officer shall:
  - (a) if for any reason he thinks that the charge should not be proceeded with, dismiss the charge; or
  - (b) if he thinks that the charge should be proceeded with;
    - (i) take steps to refer the charge to a Defence Services Judge for the trial of the accused; or
    - (ii) deal with the offence summarily in the manner prescribed.
- (3) If after hearing the evidence the commanding officer is of opinion that the offence is one with which he cannot deal summarily he shall take the necessary steps to have evidence recorded in the prescribed manner and to refer the case to a Defence Services Judge for trial.
- (4) If after hearing the evidence the commanding officer is of the opinion that the charge is one with which he can deal himself and is satisfied that the charge is proved he shall announce the fact and may then impose punishment in accordance-with subsections (6), (8) or (12).
- (5) Subject to this section the only punishments that may be imposed on a person subject to military law by a commanding officer are, in decreasing order of severity, as follows:
  - (a) imprisonment;
  - (b) dismissal with disgrace;
  - (c) detention;
  - (d) reduction in rank;
  - (e) fine;
  - (f) confinement to barracks;
  - (g) severe reprimand;
  - (h) reprimand;
  - (i) admonition; and
  - (j) stoppages.
- (6) The punishments which may be imposed by the Commander are, in decreasing order of severity, as follows:
  - (a) in the case of an officer:

- (i) severe reprimand or reprimand; and
    - (ii) where the offence has occasioned any expense, loss or damage, stoppages;
  - (b) in the case of a warrant officer;
    - (i) reduction in rank;
    - (ii) severe reprimand or reprimand; and
    - (iii) where the offence has occasioned any expense, loss or damage, stoppages;
  - (c) in the case of a non-commissioned officer,
    - (i) reduction to a lower rank or to the ranks;
    - (ii) a fine not exceeding the equivalent of 90 days pay;
    - (iii) severe reprimand or reprimand; and
    - (iv) where the offence has occasioned any expense, loss or damage, stoppages;
  - (d) in the case of a soldier,
    - (i) imprisonment for 2 years;
    - (ii) dismissal with disgrace;
    - (iii) detention for 60 days;
    - (iv) fine not exceeding the equivalent of 90 days pay;
    - (v) confinement to barracks for 14 days;
    - (vi) admonition; and
    - (vii) where the offence has occasioned any expense, loss or damages, stoppages.
- (7) Subject to subsections (8) and (12) the punishments which may be imposed by a commanding officer other than the Commander are, in decreasing order of severity, as follows:
- (a) in the case of a non-commissioned officer,
    - (i) fine not exceeding the equivalent of 90 days pay;
    - (ii) severe reprimand or reprimand; and
    - (iii) where the offence has occasioned any expense, loss or damage, stoppages;
  - (b) in the case of a soldier,
    - (i) imprisonment for 90 days;
    - (ii) detention for 28 days;
    - (iii) fine not exceeding the equivalent of 90 days pay;
    - (iv) confinement to barracks for 14 days;



- (v) admonition; and
  - (vi) where the offence has occasioned any expense, loss or damage, stoppages.
- (8) In addition to his other powers of punishment as a commanding officer, an officer appointed to command a patrol boat may, in the case of a soldier, impose imprisonment for a period not exceeding 2 years.
- (9) A fine may not be imposed together with a punishment of imprisonment or detention.
- (10) Stoppages may be imposed alone, or with another punishment.
- (11) The Commander may delegate to an officer who commands a unit, who has not been given the powers of a commanding officer, the power to deal summarily with a charge against a soldier.
- (12) The punishments which may be imposed by an officer to whom the powers of punishment have been delegated under subsection (11) are, in decreasing order of severity, as follows;
- (a) fine not exceeding the equivalent of 14 days pay;
  - (b) confinement to barracks for 7 days;
  - (c) admonition; and
  - (d) where the offence has occasioned any expense, loss or damage, stoppages.
- (13) The punishment of detention shall not be imposed on a soldier who is under the age of 17 years.
- (14) In this Part, unless the contrary intention appears, “prescribed” means prescribed by the Summary Jurisdiction Rules made under section 95.

### TRIAL BY DEFENCE SERVICES JUDGE

#### **80 Appointment of Defence Services Judge**

- (1) The Board, acting on the advice of the Chief Justice, shall appoint or more persons to be a Defence Services Judge.
- (2) A person is not eligible to be appointed a Defence Services Judge unless he is a Judge of the Supreme Court.
- (3) A Defence Services Judge has the powers and performs the functions that are provided in this Act to be exercised or performed by a Defence Services Judge.

**81 Procedures at trial by Defence Services Judge**

- (1) Subject to this section, where in accordance with section 79 a charge is referred to a Defence Services Judge for trial, the trial shall proceed in the manner of the trial of an accused before the Supreme Court on indictment without a jury.
- (2) A Defence Services Judge may take such measures as appear necessary to adapt the practice and procedures of the Supreme Court to the requirements of a unit on operational service.
- (3) The Board shall appoint two officers of the Services to advise a Defence Services Judge to determine the punishment to be imposed on a person who is convicted at a trial under this section.
- (4) The officers appointed as assessors under subsection (3) are to sit with the Defence Services Judge during the trial, but shall have no part in determining the guilt or innocence of the person being tried.

**82 Appointment of prosecutors and defenders**

- (1) For the purposes of proceedings before a Defence Services Judge, the Board may appoint members of the Services approved by the Defence Services Judge to be prosecutors or defenders.
- (2) A prosecutor is entitled:
  - (a) to present a charge;
  - (b) to withdraw a charge; and
  - (c) to appear and be heard on a charge;and for the purposes of or connected with any proceedings before a Defence Services Judge, shall be deemed to be a person who is a law practitioner under the Law Practitioners Act.
- (3) A defender is entitled to appear and be heard on behalf of a person accused or charged before a Defence Services Judge, and for the purposes of or connected with any proceedings before a Defence Services Judge, shall be deemed to be a person who is a law practitioner under the Law Practitioners Act.

**83 Representation of the accused**

- (1) At a trial before a Defence Services Judge, the person charged or accused may choose to be represented by:
  - (a) a member of the Services approved and appointed under section 82(1);

- (b) a law practitioner;
  - (c) where the trial- is held in a country outside the Kingdom, a person qualified to practice before the courts of that country; or
  - (d) himself.
- (2) Where an accused person makes no choice, a suitable defender shall be assigned by the Board to represent the accused person at his trial.
- (3) An accused person who is represented at his trial by a member of the Services, shall be represented without expense to him.

#### **84 Alternate findings**

- (1) A person charged before a Defence Services Judge with committing an offence in circumstances for which a more severe punishment is provided by this Act may be found guilty of committing the offence under circumstances for which a less severe punishment is provided.
- (2) A person charged before a Defence Services Judge with an offence may be found guilty of an attempt to commit the offence.
- (3) A person charged before a Defence Services Judge with attempting to commit an offence may be found guilty of that charge notwithstanding that it is proved that he actually committed the offence.
- (4) A person charged before a Defence Services Judge with an offence specified in the first column of the Fourth Schedule may be found guilty of an offence specified in the second column of the Schedule opposite the first mentioned offence.

### AFFIRMATIONS

#### **85 Affirmations**

Where under this Act provision is made for a person to take an oath for any purpose, and:

- (a) a person objects to being sworn on the ground that he has no religious belief or that the taking of oath is contrary to his religious belief: or
- (b) it is not reasonably practicable to administer an oath to a person in the manner appropriate to his religious belief,

the person may be required instead to make a solemn affirmation in the prescribed form.

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## APPEALS FROM, AND REVIEWS OF SUMMARY FINDING AWARDS

### 86 Appeals from convictions and punishment

- (1) Where a member of the Services has been dealt with under Part VI of this Act, either summarily under section 79 or by a Defence Services Judge, the member may petition the Board for review of his conviction, punishment, or conviction and punishment provided that there shall be no review against punishment alone where the punishment is by way of stoppages, admonition, reprimand, severe reprimand, confinement to barracks, or a fine of less than \$100, without leave of the person who imposed any such punishment.
- (2) A review of a conviction and punishment under this section shall be made by the Board acting on the advice of a Defence Services Judge.
- (3) On review of a conviction and punishment under this section the Board,
  - (a) if it is of opinion that the conviction is unjust, shall quash the conviction and punishment; or
  - (b) if it is of the opinion that the conviction is just but the punishment is too severe, shall quash the punishment and impose a less severe punishment in its stead.

### 87 Review of summary convictions and punishment

- (1) Subject to this section where a charge has been dealt with summarily, the Board may at any time review the finding or the punishment imposed.
- (2) Where a sentence of imprisonment, dismissal with disgrace or reduction in rank is imposed, the conviction and punishment shall be reviewed by the Board.
- (3) A review of a conviction and punishment under this section shall be made by the Board acting on the advice of a Defence Services Judge.
- (4) Where on a review under this section it appears to the Board that there has been a mistake of law in the summary proceedings or that for any other reason the accused has suffered substantial injustice, the Board shall quash the conviction.
- (5) If a conviction in a summary proceeding is quashed under subsection (4) and the punishment imposed in those proceedings relates only to the conviction quashed, the Board shall also quash the punishment. If the punishment relates also to other convictions and it appears to the Board that the punishment is not warranted under this Act in respect of the other convictions, the Board shall quash the punishment and substitute a

punishment or punishments (not being a punishment or punishments more severe than the original punishment) which to the Board seems proper.

- (6) Where on a review under this section it appears to the Board that a punishment imposed was not within the power of the officer who imposed it, or was too severe, or where, two or more punishments were imposed, that the punishments or some one or more of them were not able to be imposed in combination or were, taken together, too severe, the Board shall quash the punishment or punishments as the case may be and substitute a punishment or punishments (not being more severe than the original punishment or punishments) which to the Board seem proper.

## COMMENCEMENT AND DURATION OF SENTENCES

### **88 Commencement of sentences**

A sentence of imprisonment imposed by a Defence Services Judge, or a sentence of imprisonment or detention imposed by a commanding officer, commences to run from the beginning of the day on which the sentence is imposed.

### **89 Restriction on where sentence of detention is served**

A person is not required to serve any part of a sentence of detention in a civil prison.

### **90 Provision as to imprisonment**

A person sentenced to death or imprisonment shall be committed or transferred to a civil prison in the Kingdom and while in that prison shall be confined and otherwise dealt with in the same manner as a person confined to prison under a sentence of a civil court.

## TRIAL OF PERSONS CEASING TO BE SUBJECT TO MILITARY LAW AND TIME LIMIT FOR TRIAL

### **91 Offenders who have ceased to be subject to military law**

- (1) Subject to the provisions of section 92 where a person has committed or is reasonably suspected of having committed an offence under this Act triable by a Defence Services Judge, and at the time of the alleged offence the person was a person subject to military law, then, for the purposes of being charged and dealt with in relation to the offence under the provisions of this Act, such person may be treated in all respects as subject to military law notwithstanding the person is no longer subject to military law.

- (2) Where, a person who is in military custody by virtue of this section (whether before, during or after his trial by a Defence Services Judge), commits or is reasonably suspected of having committed, an offence which, if he were subject to military law, would be an offence under this Act triable by a Defence Services Judge, then, for the purposes of being charged and dealt with in relation to the offence under the provisions of this Act, the person may be treated in all respect as a person subject to military law.

## **92 Time limitation on trial of offences**

- (1) Subject to this section, a person is not liable to be tried by a Defence Services Judge for any offence under this Act, other than:
- (a) mutiny;
  - (b) failing to suppress or report a mutiny; or
  - (c) desertion.
- unless the trial commences within three years of the commission of the offence.
- (2) In the calculation of the period of three years mentioned in subsection (1) any time spent as a prisoner of war or any period of illegal absence shall be excluded.
- (3) A person is not liable to be tried under the provisions of subsection 91(1) unless the trial commences within three months after the person ceases to be subject to military law.

## **RELATION BETWEEN MILITARY LAW AND CIVIL COURTS AND FINALITY OF TRIALS**

## **93 Jurisdiction of civil courts**

- (1) A civil court does not have jurisdiction to try a person subject to military law for all offence against military law under this Act.
- (2) Where a person subject to military law has been:
- (a) dealt with summarily by his commanding officer; or
  - (b) tried by a Defence Services Judge,
- for an offence under this Act, the person is not liable to be tried by a civil court for a civil offence that is the same or substantially the same offence.
- (3) For the purposes of this section a person has been dealt with summarily by a commanding officer for an offence under this Act notwithstanding that

the conviction of has been quashed, or the punishment imposed has been quashed or varied on appeal or review.

#### **94 Previous acquittal or convictions**

- (1) Where a person subject to military law;
  - (a) has been tried by a civil court for a civil offence;
  - (b) has been charged with an offence under this Act and has had the charge dismissed or been convicted of the offence by his commanding officer; or
  - (c) has been acquitted or convicted of an offence under this Act by a Defence Services Judge,

such person shall not be liable to be dealt with summarily by his commanding officer or tried by a Defence Services Judge for the same offence.

Provided that a person convicted by a civil court of a civil offence may be discharged from the Services or demoted to a lower rank by the Board.

- (2) For the purposes of this section, a person shall be deemed to have been convicted of an offence by a commanding officer notwithstanding that the conviction has been quashed, or the punishment has been quashed or varied on appeal or review.
- (3) Proceedings for an offence under this Act are not barred on the ground of good conduct.

### **SUMMARY JURISDICTION RULES**

#### **95 Summary Jurisdiction Rules**

- (1) His Majesty may make rules, not inconsistent with this Act (including the regulations), with respect to the investigation of offences created by this Act.
- (2) The rules made under this section are to be known as Summary Jurisdiction Rules.
- (3) Without prejudice to the generality of subsection (1) Summary Jurisdiction Rules may make provision for and in relation to:
  - (a) the taking of evidence;
  - (b) the addition of charges, or the substitution of charges, where other offences are disclosed by evidence taken in the investigation;
  - (c) procuring the attendance of witnesses;

- (d) the forms of orders and other documents to be made for the purpose of any provision of this Part or the rules relating to the investigation of offences under this Act.

## COURTS OF INQUIRY

### 96 Court of Inquiry

- (1) His Majesty, the Board, the Commander or a commanding officer may convene a court of inquiry to investigate and report on:
  - (a) the absence of any person subject to military law;
  - (b) the arrest of a person illegally absent from the Services;
  - (c) the death of a person where an inquiry into the death is not required to be held by the civil authorities; or
  - (d) any other matter relating to the Services or a member of the Services.
- (2) A court of inquiry may be directed to express opinions or make recommendations concerning a matter referred to it.
- (3) A court of inquiry shall consist of a president and one or more persons subject to military law.
- (4) A person appointed to be the president of a court of inquiry shall be an officer not below the rank of lieutenant.
- (5) If directed by the convening authority, a court of inquiry is to take evidence on oath, and for this purpose the president of a court of inquiry is authorised to administer oaths.
- (6) Evidence given before a court of inquiry is not admissible against any person subject to proceedings under this Act other than proceedings for an offence under section 75 for the civil offence of perjury.

### 97 Effect of inquiries into absence

- (1) Where a court of inquiry investigating the absence of a member of the Services reports that the member has been absent without leave or other sufficient cause for a period of not less than twenty one days, a record of the report is to be entered in the service books.
- (2) Unless the absentee surrenders or is arrested, or the report of the court of inquiry is annulled by the Board or by a subsequent court of inquiry, a report entered in a record pursuant to subsection (1) is to have the same effect as a conviction for desertion recorded by a Defence Services Judge.



## PART VII - FORFEITURES AND DEDUCTIONS

### 98 Forfeitures and deductions

- (1) The pay of a member of the Services shall not be subject to forfeiture or deduction unless authorised by this Act, some other Act or by regulations made under this Act.
- (2) Regulations shall not authorise the making of a penal deduction by reason of the commission of an offence or other wrongful act or in consequence of negligence.
- (3) Notwithstanding that deduction from the pay of a member of the Services is authorised, the member is entitled to receive each pay day not less than 75% of his normal entitlement to pay.
- (4) An amount authorised to be deducted from the pay of a member of the Services may be deducted from any balance (whether or not representing pay) which may be due to him as such a member and references in this Act to the making of deductions from pay shall be construed accordingly.

### 99 Forfeiture of pay for absence from duty

- (1) The pay of a member of the Services that accrued during the period:
  - (a) in respect of which he is found guilty under this Act of the offence of desertion or absence without leave;
  - (b) of imprisonment or detention imposed as a punishment for an offence under this Act;
  - (c) of unfitness for duty certified by a medical officer to have been caused by an offence of which he has been found guilty;
  - (d) of absence from duty without leave in circumstances not amounting to an offence under this Act, where the Board is of the opinion that the period of absence was occasioned by circumstances within the control of the member,shall be forfeited.
- (2) The pay of a member of the Services that accrued during the period that he was a prisoner of war shall be forfeited, where a court of inquiry is satisfied that:
  - (a) the member became prisoner war through disobedience of lawful orders or wilful neglect of duty;
  - (b) having become a prisoner of war the member failed to take steps reasonably available to him to rejoin the Services; or

- (c) having been made a prisoner of war the member served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or behaved towards the enemy in any other manner not authorised by international usage or custom of war.
- (3) For the purpose of this section any part of a day occurring in a period where the pay of a member is forfeited shall be counted as a day.

### **100 Deduction for barrack damage**

- (1) Where a court of inquiry reports that barrack damage, or damage to vehicles, appears to have been caused by the wilful act or negligence of a person or persons who cannot be identified belonging to a unit of the Services during the period which the unit was in occupation, the Board or the Commander may order that there be deducted from the pay due or becoming due of a soldier belonging to the unit the share he is required to contribute towards compensation for the damage.
- (2) For the purposes of this section the expression “barrack damage” means damage to, or loss of, any premises, including huts and tents, in which soldiers are quartered or billeted, or any fixtures, furniture or effects in those premises.
- (3) For the purposes of this section “damage to vehicles” means damage to or loss of a ship, train, motor vehicle, aircraft or other conveyance in which units or parts of units of the Services are transported, or fixtures, furniture or effects in those conveyances.
- (4) The share ordered to be deducted under the provisions of subsection (1) shall be proportionate to the number of persons from whom the compensation is to be recovered.

### **101 Remission of forfeitures or deductions**

Any forfeiture or deduction imposed under the provisions of section 99 or 100, or under the regulations may be remitted by the Board.

## **PART VIII - THE TERRITORIAL FORCE**

### **102 Enlistment and reengagement**

- (1) The period of enlistment of person in the Territorial Force is 4 years.

- (2) Subject to this section a person enlisting in the Territorial Force shall be attested in the same manner as a person enlisting in the Regular Force.
- (3) A person enlisting in the Territorial Force may be attested by any officer and the provisions of section 37 shall apply to a person attending for the purpose of being enlisted in the Territorial Force as if the expression “Regular Force” included Territorial Force.
- (4) The provisions of section 36 apply to the enlistment of a person in the Territorial Force as if the words “and has afterwards received pay as a member of the Regular Force” were omitted, and as if the expression “Regular Force” in paragraph 36(1) read “Territorial Force”.
- (5) A soldier of the Territorial Force may within the period of six months before the period of his enlistment in the Territorial Force expires apply to reengage for a further period of 4 years.
- (6) The Commander may approve the re-engagement of a member of the Territorial period or further period of four years.

### **103 Training**

- (1) Subject to this section a member of the Territorial Force shall attend for training at the place or places and for the period or periods that may be determined by His Majesty and shall fulfil the conditions relating to training that may be determined by His Majesty.
- (2) The Commander may exempt a member of the Territorial Force from the whole or a part of the requirements of subsection (1),
- (3) Notwithstanding the provisions of this section a member of the Territorial Force may voluntarily attend for training in addition to training referred to in subsection (1).

### **104 Call out on temporary service**

- (1) Where it appears that it is in the national interest, His Majesty may callout the Territorial Force, or as many members of that Force as may he thought necessary, on temporary service,
- (2) A member of the Territorial Force called out for service under subsection (1) is not liable to serve, at anyone time, for a continuous period exceeding 28 days

### **105 Call out on continuous full time service**

- (1) In time of war, defence emergency or insurrection, His Majesty may by proclamation call out the Territorial Force, or as many members of that

Force as may be thought necessary, on continuous full time defence service.

- (2) A member of the Territorial Force called out under subsection (1) is liable to render continuous full time defence service until his services are no longer required.

### **106 Attendance on call out**

- (1) Where the whole or any part of the Territorial Force is called out on temporary service or on continuous full time defence service, every member who is called out shall attend in person at the time and place specified in the notice issued under subsection (2).
- (2) Where the whole or any pan of the Territorial Force is called out on temporary service or continuous full time defence service, the Board shall cause a notice to be served on the member of the Territorial Force who has been called out requiring the member to attend at the time and place specified in the notice.
- (3) A member of the Territorial Force is not liable to proceedings for an offence under this Act by reason of his failure to attend at a time or place on callout unless he has been served with a notice issued under subsection (2) requiring him to attend.
- (4) A notice issued under subsection (2) may be served on a member of the Territorial Force by:
  - (a) delivering it to him personally; or
  - (b) leaving for him at his last known address.

### **107 Effective time of call out**

For the purposes of this Act a member of the Territorial Force is deemed to be called out on temporary service or continuous full time defence service, as the case may be, from:

- (a) the time of his attendance at the place specified in the notice issued under subsection 106(2); or
- (b) the time specified in the notice issued under subsection 106(2) and served on him,

which ever is the earlier.

**108 Termination of service**

- (1) Where a member of the Territorial Force has been called out on temporary service or continuous full time defence service, His Majesty may by proclamation terminate the temporary service or continuous full time defence service, as the case may be, of the member.
- (2) A member of the Territorial Force whose temporary service or continuous full time defence service has been terminated under subsection (1) may, under the provisions of section 104 or 105, be called out for further temporary or continuous full time defence service, as the case may be.

**109 Posting or attachment of members**

A member of the Territorial Force:

- (a) when undergoing training under the provisions of section 103; or
- (b) when called out on temporary service or on continuous full time defence service,

may be posted or attached to any unit of the Services.

**110 Penalties for non-attendance**

- (1) Unless exempted under the provisions of subsection 103(2) or granted leave by his commanding officer, a member of the Territorial Force who, without reasonable excuse, fails to appear at the time and place appointed for training, commits the offence of absence without leave.
- (2) A member of the Territorial Force called out on temporary service, who, without reasonable excuse, fails to attend at the time and place specified in a notice issued under subsection 106 (2) and served on him, commits the offence of absence without leave.
- (3) A member of the Territorial Force called out on continuous full time defence service, who, without reasonable excuse, fails to attend at the time and place specified in a notice issued under subsection 106(2) and served on him, commits the offence of desertion.
- (4) A member of the Territorial Force who commits an offence under this section;
  - (a) may be dealt with under the provisions of Part VI in the same manner as a person subject to military law, and on conviction is liable to the punishment or punishments which may be imposed for an offence under section 49 or 50, as the case may be; or

- (b) may be tried summarily by a magistrate's court and on conviction is liable to a fine of \$1000 or imprisonment for a period not exceeding 6 months.
- (5) The provisions of section 77 apply to a member of the Territorial Force who commits an offence under this section, as if he were a member of the Regular Force.
- (6) Where a member of the Territorial Force who:
  - (a) has failed to appear at the time and place for training appointed under subsection 103(1); or
  - (b) when called out on temporary service or on continuous full time defence service, has failed to appear at the time and place specified in a notice issued under subsection 106(2) and served on him,

remains absent for a period of not less than 21 days, his commanding officer or an officer authorised by his commanding officer for that purpose shall make an entry of the member's absence in the service books and the entry shall be prima facie evidence of the absence.

## 111 Discharge

- (1) The Commander may authorise the discharge of a soldier of the Territorial Force any time during the soldier's service in that Force.
- (2) Unless the Territorial Force has been called out on continuous full time defence service and that service has not been terminated, a soldier of the Territorial Force who:
  - (a) gives the Commander 6 weeks notice of his intention to seek discharge; and
  - (b) delivers up in good order, fair wear and tear only excepted, all items of arms, clothing and equipment, and other service property issued to him, or, in a case where, for a reasonable cause, the delivery of an item is not possible, pays the value thereof.

is entitled to be discharged from the Territorial Force.

- (3) A soldier of the Territorial Force who becomes entitled to be discharged under subsection (2) shall be discharged with all convenient speed but until discharged remains a member of the Territorial Force.

## 112 Protection of employment

- (1) A person who terminates or threatens to terminate the employment of an employee for the reason that the employee is a member of the Territorial

Force, or is in the process of becoming, or has expressed an intention to become a member of the Territorial Force, commits an offence.

- (2) Notwithstanding the provision of any other Act, an employer of a member of the Territorial Force who, in respect of a period during which the employee is bona fide on service with the Territorial Force:
  - (a) withholds or deducts an amount of wages or other remuneration: or
  - (b) withholds or denies a privilege or benefitto which an employee would otherwise be entitled, commits an offence.
- (3) For the purposes of subsection (2) an employee who is a member of the Territorial Force is on bona fide service with that force at any time when the member:
  - (a) is attending training appointed under subsection 103(1);
  - (b) is on temporary service under section 104; or
  - (c) is on continuous full time defence service under section 105.
- (4) A person who commits an offence under this section is liable on summary conviction by a magistrate's court to a fine not exceeding \$1000, or to imprisonment for a period not exceeding 6 months.

### **113 Action against employer**

Where the Commander makes a complaint to the police alleging that a person has committed an offence under section 112, the police shall take the necessary action to bring the alleged offender before the court.

### **114 Onus of proof of employer**

At a hearing of proceedings for an offence under section 112, the burden of proving that the matter complained of did not arise out of an employee's connection with service in the Territorial Force, shall be on the employer.

### **115 Re-engagement**

- (1) A soldier of the Reserve may within the period of six months before the period for which he is liable to serve in the Reserve expires, apply to re-engage for a further period of service in the Reserve.
- (2) The Commander may approve the re-engagement of a member of the Reserve for a period or further period prescribed in the regulations.

**116 Call out of the reserve**

- (1) In time of war, defence emergency or insurrection, His Majesty may by proclamation call out the Reserve or as many members of the Reserve as may be thought necessary, on continuous full time defence service.
- (2) A member of the Reserve called out under subsection (1) is liable to render continuous full time defence service until his services are no longer required.

**117 Attendance on call out**

- (1) Where the whole or a part of the Reserve is called out on continuous full time defence service, a member who has been called out shall attend in person at the time and place specified in the notice issued under subsection (2).
- (2) Where the Reserve or a part of the Reserve is called out on continuous full time defence service the Board shall cause a notice to be served on a member who has been called out requiring him to attend at the time and place specified in the notice.
- (3) A member of the Reserve called out for continuous full time service is not liable to proceedings for an offence under this Act by reason of his failure to attend at a time and place on callout unless he has been served with a notice issued under subsection (2) requiring him to attend.
- (4) A notice under subsection (2) may be served on a member of the Reserve by:
  - (a) delivering it to him personally; or
  - (b) leaving it for him at his last known address.

**118 Effective time of call out**

For the purposes of this Act a member of the Reserve is deemed to be called out on continuous full time defence service from:

- (a) the time of his attendance at a place specified in a notice issued under subsection 117(2); or
  - (b) the time specified in a notice issued under subsection 117(2),
- whichever is the earlier.



**119 Termination of service**

- (1) Where a member of the Reserve has been called out on continuous full time defence service, His Majesty may by proclamation terminate the continuous full time defence service of the member.
- (2) A member of the Reserve whose continuous full time defence service has been terminated under subsection (1) may, under the provisions of section 114, be called out for further continuous full time service.

**120 Posting and attachment**

A member of the Reserve called out on continuous full time defence service may be posted or attached to any unit of the Services.

**121 Penalties for non-attendance**

- (1) A member of the Reserve called out for continuous full time defence service who, without reasonable excuse fails to appear at the time and place specified in a notice issued under subsection 117(2) and served on him, commits the offence of desertion.
- (2) A member of the Reserve who commits an offence under this section:
  - (a) may be dealt with under provisions of Part VI in the same manner as a person subject to military law and on conviction shall be liable to the punishment or punishments which may be imposed for an offence under section 49; or,
  - (b) may be tried summarily by a magistrate's court and on conviction shall be liable to a fine not exceeding \$1000 or imprisonment for a period not exceeding 6 months.
- (3) The provisions of section 77 apply to a member of the Reserve who commits an offence under this section as if he were a member of the Regular Force, or a person subject to military law.
- (4) Where a member of the Reserve who, when called out on continuous full time defence service, has failed to appear at the time and place specified in a notice issued under subsection 117(2) and served on him, remains absent for a period of not less than twenty one days, his commanding officer or an officer authorised by his commanding officer shall make an entry of the member's absence in the service books and such the entry shall be prima facie evidence of the absence.

## 122 Discharge

The Commander may authorise the discharge of a soldier of the Reserve at any time during the soldier's service in the Reserve.

# PART X - GENERAL PROVISIONS

## REDRESS OF COMPLAINTS

### 123 Complaints by officers

- (1) Where an officer of the Services thinks he has been wronged by a superior Officer in any matter relating to his service, the officer may make a complaint with respect to the matter to the Commander.
- (2) Where he receives a complaint pursuant to subsection (1) the Commander shall investigate the complaint and take steps to redress the matter complained of as he considers necessary.
- (3) Where, after he has made a complaint to the Commander under subsection (1) an officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to the matter to His Majesty through the Board.
- (4) The Board shall investigate a complaint received pursuant to subsection (3), and shall make a report on the complaint to His Majesty.
- (5) After receiving a report from the Board pursuant to subsection (4), His Majesty may give directions in relation to the complaint as he considers necessary.

### 124 Complaints by soldiers

- (1) Where a soldier of the Services thinks himself wronged by an officer, other than the Commander, or by a soldier, in any matter relating to his service, he may make a complaint with respect to the matter to the Commander.
- (2) Where the Commander receives a complaint pursuant to subsection (1), he shall investigate the complaint and take steps to redress the matter complained of as he considers necessary.
- (3) Where a soldier thinks he has been wronged by the Commander;
  - (a) in any matter relating to his service; or

- (b) for the reason that he has not, after making a complaint to the Commander under subsection (1), obtained the redress to which he thinks he is entitled,

the soldier may make a complaint with respect to the matter to His Majesty through the Board.

- (4) The Board shall investigate a complaint received pursuant to subsection (3), and shall make a report on the complaint to His Majesty,
- (5) After receiving a report from the Board pursuant to subsection (3), His Majesty may give directions in relation to the complaint as he considers necessary.

## EXEMPTION FOR MEMBERS OF THE SERVICES

### 125 Exemption from jury Service

A member of the Regular Force is exempt from serving on any jury.

### 126 Exemption of military property from civil action

A judgment or order given or made against a member of the Services by a court shall not be enforced.

- (a) by levying execution on; or  
(b) by making distress on,

property of the member which consists of arms, ammunition, equipment, instruments uniforms, or clothing used by him for military purposes.

## PROVISION RELATING TO DESERTERS AND ABSENTEES WITHOUT LEAVE

### 127 Arrest of deserters and absence without leave

- (1) Within the Kingdom, a police officer may, without a warrant, arrest a person whom with reasonable cause he believes to be a member of the Services who is a deserter or is absent without leave.
- (2) A member of the Services may, without a warrant, arrest a person whom with reasonable cause he believes to be a member of the Services who is a deserter or is absent without leave.
- (3) Within the Kingdom, a judge or magistrate who is satisfied by evidence on oath that there is, or is reasonably suspected of being within his jurisdiction, a member of the Services who is a deserter or is absent without leave may issue a warrant for the arrest of that person.

- (4) A person who is arrested under the provisions of this section, shall be brought before a magistrate's court as soon as practicable.

### **128 Procedure where illegal absence admitted**

- (1) Where a person who is brought before a magistrate's court under the provisions of section 127 or 130 admits that he is illegally absent from the Services, and the court is satisfied of the truth of the admission:
- (a) unless he is in custody for other cause, the court shall; or
  - (b) notwithstanding that he is in custody for some other cause, the court may:
    - (i) order that the person be delivered into military custody; or
    - (ii) order that the person be confined in a prison, police station or other place provided for the confinement of persons in custody.
- (2) Where a person is ordered to be confined under sub-paragraph (ii) the court shall specify a period within which the person is to be delivered from that confinement into military custody.
- (3) A period of time specified by a court under subsection (2) may be extended by the court as the court considers necessary.

### **129 Procedure where illegal absence not admitted**

- (1) Where a person is brought before a magistrate's court under the provisions of section 127 or 130, and:
- (a) the person does not admit that he is illegally absent from the Services; or
  - (b) the court is not satisfied of the truth of an admission made by the person,
- the court shall consider the evidence including any statement made by the person in custody.
- (2) Where the court is satisfied that the person is illegally absent from the Services, the court shall proceed in the manner set out in section 128.
- (3) Where the court is not satisfied that the person is illegally absent from the Services, the court shall discharge the person from custody.

### **130 Surrendering to police**

- (1) Where, in the Kingdom, a person who is illegally absent from the Services surrenders himself to a police officer the police officer shall (unless the

person surrenders himself at a police station) bring the person to a police station without delay.

- (2) The officer in charge of a police station to which a person who has surrendered himself is brought, shall immediately inquire into the matter.
- (3) Where it appears to an officer in charge of a police station that a person brought to the police station is illegally absent from the Services, the officer in charge shall:
  - (a) cause the person to be delivered into military custody; or
  - (b) bring him before a magistrate's court without delay.

### **131 Certificates of arrest and surrender**

- (1) Where under the provisions of section 128 or 129 a magistrate's court orders that a person is to be delivered into military custody, a certificate in the prescribed form shall be signed by the magistrate, and shall be handed over to the appropriate military authority at the time of delivery of the person into custody.
- (2) Where under a provision of this Act other than section 128 or 129 a person is delivered into military custody by a police officer, a certificate in the prescribed form signed by the police officer responsible for delivering the person into military custody shall be handed over to the appropriate military authority at the time of delivery.
- (3) In any proceedings for an offence under section 48 or 49 a document purporting to be a certificate signed under subsection (1) or (2), shall be evidence of the matters stated in the document.

### **132 Duty of prison superintendent to receive illegal absentees**

Where by order made under the provisions of section 128 or 129 a person is to be confined in a prison, police station or other place provided for the confinement of persons in custody, the superintendent or officer in charge of the prison, police station or other place of confinement, as the case may be, shall receive the person the subject of the order and shall detain him until the time he is delivered into military custody in accordance with the order.

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## OFFENCES RELATING TO MILITARY MATTERS PUNISHABLE BY CIVIL COURTS.

### 133 Obstructing members in execution of duty

- (1) A person not subject to military law who wilfully obstructs or otherwise interferes with a member of the Services acting in the execution of his duty commits an offence.
- (2) A person who commits an offence under this section is guilty of a civil offence and shall be liable on summary conviction before a magistrates' court to a fine not exceeding \$1000 or to imprisonment for a period not exceeding 6 months or to both such fine and imprisonment.

### 134 Accepting military equipment as security for debt

- (1) Any person not subject to military law who, as a pledge or security for a debt, receives, detains or has in his possession:
  - (a) clothing, arms, ammunition, or other equipment issued to a member of the Services for military purposes; or
  - (b) a decoration granted to a member of the Services, commits an offence.
- (2) A person who commits an offence under this section is guilty of a civil offence and shall be liable on summary conviction before a magistrates' court to a fine not exceeding \$1000 or to imprisonment for a period not exceeding 6 months or to both such fine and imprisonment.

### 135 Unlawful possession of military stores

- (1) A person not subject to military law who, without lawful excuse, has in his possession military stores, commits an offence.
- (2) It is a defence to a charge under this section if the person proves that he did not know, or could not reasonably be expected to have known, that the goods in question were military stores.
- (3) A person who commits an offence under this section is guilty of a civil offence and is liable:
  - (a) on summary conviction before a magistrates' court to a fine not exceeding \$1000 or imprisonment for a period not exceeding 6 months or to both fine and imprisonment; or
  - (b) on conviction on indictment to a fine not exceeding \$5000 or imprisonment for a period not exceeding 5 years or to both fine and imprisonment.

- (4) In this section “military stores” means any goods of any description belonging to the Government or the Services which have been issued for use for military purposes or is held in store for the purpose of being issued when required.

## PROVISIONS AS TO EVIDENCE

### 136 Evidence as to contents to documents

In any proceedings taken under this Act before a Defence Services Judge, a commanding officer, a magistrate’s court or another court having jurisdiction in the matter:

- (a) a document purporting to be a copy of the attestation paper and certified by the person having the custody of the attestation paper to be a true copy, shall be evidence of the enlistment of the person named in the attestation paper;
- (b) the attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given answers to questions which he is recorded as having given;
- (c) a letter, return or other document purporting to be signed by or on behalf of the Commander, stating that a person:
  - (i) was or was not serving at a particular time or during a particular period in the Services or was discharged from the Services at or before a particular time; or
  - (ii) held or did not hold at a particular time a particular rank or appointment in the Services, or had at or before a particular time been attached, posted or transferred to the Services, or at a particular time or during a particular period was or was not serving or held or did not hold a rank or appointment in a particular country or place,shall be evidence of the matters stated in the document;
- (d) a record in a Services book or other document being a record made in pursuance of this Act, or otherwise in the course of military duty, and purporting to be signed by the Commander or by a person whose duty it was to make the record shall be evidence of the facts stated therein; and a copy of a record (including the signature) in a Services book or other document, certified by the person having the custody of the Services book or other document, shall be evidence of the contents of the record;
- (e) a document purporting to be issued by order of His Majesty or the Commander and to contain instructions or orders given or made by His Majesty, or the Commander, as the case may be, shall be

evidence of the giving of the instructions or making of the orders and of their contents;

- (f) a certificate purporting to be signed by the Commander or any officer authorised by him to give the certificate, and stating the contents of, or any part of, standing orders or other orders of a general nature made for any formation or unit or body of troops or any command or other area, garrison or place, shall in proceedings against a person subject to military law be evidence of the matters stated in the certificate.

## MISCELLANEOUS PROVISIONS

### 137 Temporary reception into civil custody of person under arrest

Where a person is in military custody:

- (a) charged with an offence under this Act; or  
(b) for the purpose of being charged with an offence under this Act,

it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order in the prescribed form purporting to be signed by the commanding officer of the person in custody, to receive that person into his custody for a period not exceeding seven days.

### 138 Assignment or charge on pay or pension to be void

- (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Services shall be void.
- (2) Except as provided by this Act, a court shall not make an order which would have the effect of:
- (a) restraining a person from receiving a payment which by virtue of this section he is precluded from assigning; or  
(b) directing that the payment be made to another person.
- (3) Nothing in this section affects a law providing for the payment of an amount to a bankrupt's trustee in bankruptcy for distribution among creditors.



## PART XI - APPLICATION OF THE ACT AND SUPPLEMENTARY PROVISIONS

### 139 Persons subject to military law

Subject to the provisions of section 140 members of the Services are subject to military law in the following circumstances:

- (a) a member of the Regular Force, at all times;
- (b) an officer of the Territorial Force, at all times;
- (c) a soldier of the Territorial Force, when:
  - (i) called out on temporary service;
  - (ii) called out on continuous full time defence service;
  - (iii) undergoing training (whether or not in pursuance of an obligation);
  - (iv) performing duty on the permanent staff of the Territorial Force; or
  - (v) in uniform;
- (d) members of the Reserve, when called out on continuous full time defence service.

### 140 Application of service law to another country

- (1) Members of the forces of a country, who are subject to the service law of that country, and who are seconded to serve with the Services or a part of the Services are not subject to military law under this Act.
- (2) Where a person referred to in sub-section (1) commits an offence under the service law of the country to which he belongs, he may be tried and punished, in the Kingdom, by the service authorities of that country.

### 141 Power to make regulations

- (1) His Majesty may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the good government of the Services, or for the better carrying out or giving effect to this Act, and in particular prescribing matters providing for and in relation to:
  - (a) the qualifications for entry into and conditions of service in the Services;

- (b) the numerical establishments of units of the Services and ranks within those establishments;
- (c) the government, organisation, administration, training and instruction of the Services, the formation of training camps and the holding of training exercises and courses of instruction by the Services and attendance of members of the Services at camps, exercises and courses;
- (d) the appointment and commissioning of officers of the Services;
- (e) the seniority of officers of the Services, and the transfer, retirement and resignation of officers of the Services;
- (f) the appointment, promotion, and tenure of service of warrant officers in the Services;
- (g) the pay, allowances, pensions and gratuities of members of the Services and of their dependants, and deductions from and forfeiture of pay, allowances, pensions and gratuities;
- (h) the description, supply, use and disposal of arms, equipment, clothing and other stores;
- (i) the granting of leave with or without pay to members of the Services;
- (j) the calling out of the Territorial Force for training, on temporary service or continuous full time defence service including the manner in which the notification of the places and time as appointed for training and call out is given;
- (k) the calling out of the Reserve on continuous full time Defence service including the manner in which notification of the places and for reporting on such call out;
- (l) the standard of physical fitness and efficiency from time to time required of members of the Services;
- (m) the requisition of transport, goods, accommodation, land or other things in time of war or emergency and the payment of compensation;
- (n) the quartering or billeting of members of the Services in time of war;
- (o) the declaration as a prohibited area of a place used or intended to be used for a purpose of defence, the prohibition of persons entering, being in or remaining in the prohibited area without permission and the removal of any such person from the area;
- (p) the regulation of arms practices;
- (q) prisoners of war; and

- (r) penalties of fines not exceeding \$1000 or imprisonment for periods not exceeding 6 months, or both for breach of the regulations.

## 142 Execution of orders and instruments

Except as provided by the regulations, an order, determination, direction or appointment required or authorised to be made under this Act by a Services officer or authority may be signed by an officer authorised for that purpose, and an order, determination, direction or appointment purporting to be signed by an officer authorised for that purpose shall unless the contrary be proved be deemed to be signed by an officer so authorised.

## 143 National service

- (1) In time of war, defence emergency or insurrection His Majesty may call up male residents of the Kingdom who have attained the age of 18 years but who have not attained the age of 60 years for national service.
- (2) His Majesty may make regulations to provide for —
  - (i) the age and number of persons to be called out;
  - (ii) the form of notice paper to be used;
  - (iii) the place at which the persons called out to are to report to; and
  - (iv) any other matters which may be considered necessary and desirable.
- (3) Where a person has been called out for national service he shall be deemed to have been called out with effect from:
  - (a) the time of his attendance at the place specified in the notice paper served on him; or
  - (b) the time specified in the notice paper served on him, which ever is the earlier,
- (4) A notice paper requiring a person to report may be served on the person by:
  - (a) delivering it to him personally; or
  - (b) leaving it for him at his last known address.
- (5) A person who has been called out for national serve shall deemed to be subject to military law under the provisions of section 139 in the same manner as a member of the Regular Force as from the time specified in subsection (3).

- (6) If the period of service of a person called out under the provisions of the regulations made under this section expires during the time that members of the Territorial Force have been called out on continuous full time defence service under the provisions of section 105 he shall be deemed to remain in service until his services are no longer required.
- (7) The provisions of section 119 shall apply to a person who fails to report in accordance with the provisions of this section, as if he were a member of the Reserve called out for continuous full time service.

#### **144 Power of Board to make determination**

- (1) The Board may, by instrument in writing, make determinations not inconsistent with this Act, providing for and in relation to:
  - (a) the pay of members of the Services;
  - (b) the payment of allowances, gratuities or other pecuniary benefits not being allowances or benefits by way of pay, to or in respect of members of the Services;
  - (c) the payment of allowances or other pecuniary allowances to or in respect of the families of members of the Services;
  - (d) the making of allotments of pay by members of the Services and the suspension, variation and cancellation of allotments of pay made by members of the Services;
  - (e) leave of absence and furlough of members of the Services;
  - (f) the payment of allowances and expenses to or in respect of, and the provision of travelling facilities for, applicants for appointment or engagement as members in respect of attendance at an enlistment centre of the Services or attendance for interview or examination; and
  - (g) deductions from the pay of a member of the Services or from allowances or other pecuniary benefits referred to in paragraphs (b) and (c).
- (2) A determination shall not be made providing for or in relation to the forfeiture or assignment of the whole or part of:
  - (a) the pay of a member of the Services; or
  - (b) allowances or other pecuniary benefits referred to in paragraph (1) (b) or (c).
- (3) A determination takes effect:
  - (a) on the day on which it is made; or

- (b) where another day (which may be a day earlier than the day on which it is made) is specified for the purpose in the determination, on the day so specified.
- (4) A determination shall not be expressed to take effect on a day earlier than the day on which it is made in any case where, if the determination so took effect:
- (a) the rights of a person (other than the Government) existing immediately before the last-mentioned day would be affected in a manner prejudicial to that person; or
  - (b) liabilities would be imposed on a person (other than the Government) in respect of anything done or omitted to be done before the last mentioned day,
- and where, in a determination, any provision is made in contravention of this subsection, that provision shall be void and of no effect
- (5) The determination made in each secular year (including determinations amending or revoking other determinations) shall be numbered in arithmetic series, beginning with the number 1, as nearly as possible in the order in which they are made.
- (6) The Board shall cause to be published in the Gazette, in respect of each determination, notice of:
- (a) the fact that the determination has been made; and
  - (b) the place or places where copies of the determination can be obtained.
- (7) Determinations made under this section may be published in routine or other general orders applicable to the Services.

#### **145 Effect of determinations**

- (1) Subject to this section, a determination made under section 144 shall, for the purposes of the Interpretation Act (Cap. 1), have like effect as an Ordinance passed by King and Privy Council.
- (2) A determination made under section 144 shall remain in force unless:
  - (a) revoked by a later determination made under section 144; or
  - (b) rescinded by the Legislative Assembly.

#### **146 Repeal and savings**

- (1) The Tonga Defence Services Act (Cap. 55) is repealed.

- (2) The Defence Services raised and established under section 3 of the Tonga Defence Services Act (Cap. 55) and in existence immediately before the commencement of this Act shall remain in existence as if those Services had been raised and established under this Act.
- (3) Officers who were commissioned and soldiers who were enlisted into the Tonga Defence Services under the provisions of the Tonga Defence Services Act (Cap. 55), or regulations made under that Act, who immediately before the commencement of this Act were serving in those Services, continue to serve in the Services as if they had been commissioned or enlisted under the provisions of this Act or the regulations made under this Act.
- (4) The terms and conditions of service, including entitlement to pay, allowances, pension and gratuities, leave or any other benefit applying to a member of the Tonga Defence Services immediately before the commencement of this Act shall apply to a member of the Services as if they arose under the provisions of this Act and the regulations made under this Act.
- (5) An order or instruction made under the provisions of the Tonga Defence Services Act (Cap. 55) and in force immediately before the commencement of this Act shall remain in force as if it had been made under this Act or the regulations made under this Act.
- (6) A charge or other proceedings before a commanding officer that has not been completed before the commencement of this Act shall continue as if the charge or proceedings had been made or taken under this Act or the Regulations made under this Act.

Passed in the Legislative Assembly this 6th day of October, 1992.

**FIRST SCHEDULE**

**FORM OF COMMISSION**

Section 21

I, KING TAUFU'AHAU TUPOU IV do give to

Greetings and reposing trust in your loyalty, courage and good conduct, do by these presents constitute and appoint you to be an officer in the .....+ of the Tonga Defence Services (for .....years and for such further period as your services may be required)\* from the .....day of.....19 .....

You are therefore carefully and diligently to discharge your duty as such an officer of the rank of .....or in such other rank as you may from time to time hereafter be promoted or appointed and you are on such occasions to exercise and well discipline in their duties, such officers and soldiers as may be placed under your orders from time to time and use your best endeavours to keep them in good order and discipline.

I do hereby command all such officers and soldiers to obey you as their superior officer, and to observe and follow such orders and directions as from time to time you shall receive from me or any of your superior officers in pursuance of the trust hereby reposed in you.

This commission is granted to you under the provisions of the Tonga Defence Services Act 1992.

Given at Nuku'alofa this .....day of.....19 .....

(+) Insert "regular force" or "territorial force" as the case may be

(\*) Delete if the commission is to be given for an unspecified period

**SCHEDULE**

Section 25

**QUESTIONS TO BE PUT TO A PERSON OFFERING TO ENLIST**

The following questions should be asked of a person offering to enlist in the regular force.

1. What are your names and forenames?
2. What is your date of birth?
3. What is your place of birth?
4. What is your nationality?
5. Are you single, married, widowed or divorced?
6. Do you have any children dependant on you?
7. What is your religious denomination?
8. Have you ever served in any military force other than Tonga?  
*(If the answer is yes state the unit to which you belong)*
9. Have you ever been rejected for service in any military force other than Tonga?  
*(If the answer is yes give details)*
10. Have you ever appeared or are you due to appear before any criminal or civil court?  
*(If the answer yes give dates of each appearance including future appearance, the name of the court and the particulars of the charge and the decision of the court and any sentence imposed by the court).*
11. Have you received a notice paper setting out the questions to be answered on attestation and the general conditions of enlistment?
12. Have you answered all the questions the best of your ability?
13. Do you understand the content of the notice paper and do you wish to be enlisted?
14. Are you willing to serve on continuous full time defence service in the Tonga Defence Services?
15. Do you understand that:



- (1) you can within three months from completing your period of enlistment in the Regular Force apply to re-engage for a further period or periods of three years service in the Regular Force;
- (2) you can at any time during your service in the Regular Force be transferred to the Reserve;
- (3) if there is a state of war, defence emergency or insurrection you may be retained in the Regular Force and your service in that Force may be prolonged past your date of discharge; and
- (4) you will not be accepted for enlistment in the Regular Force unless you are found by a qualified medical doctor to be physically and mentally fit?

16. Do you understand that under the provisions of the Tonga Defence Services Act 1992 if you intentionally give a false answer to any of the questions contained in the attestation paper you render yourself liable to prosecution?

17. Do you understand that you may be required to serve outside the Kingdom of Tonga?

When the person offering to enlist has answered the questions in the attestation paper he shall make a solemn declaration in the following terms in the presence of an officer, both of whom shall sign:

I, ..... do solemnly declare that the above answers made by me to the above questions are true and that I am willing to serve in the Tonga Defence Services according to the engagement made.

The person offering to enlist having signed the declaration set above shall take the oath of allegiance, or as the case may be, make a solemn affirmation of allegiance in the following term:

I, ..... (do swear) (do solemnly declare and affirm) that I will well and truly serve our Sovereign King Taufa'ahau Tupou IV and his successors in the Tonga Defence Services until lawfully discharged and that I will resist His Majesty's enemies and cause His Majesty's peace to be kept and maintained and that I will in all matters appertaining to my service faithfully discharge my duty according to law. (So help me God).

.....  
Date Signature

.....  
Signature of Recruiting Officer

## THIRD SCHEDULE

Section 76(3)

## PUNISHMENT PROVIDED IN RESPECT OF OFFENCES UNDER THE ACT

<b>Section of Act</b>	<b>Maximum punishment</b>
Section 37	imprisonment for three months
Sections 38(1), (2)(a); 39(a) or (d); and 40;	death if with intent to assist the enemy otherwise imprisonment for life
Sections 38(2)(b), (c) or (d); and 39(b), (c) or (e)	imprisonment for life
Section 41	death if with intent to assist the enemy otherwise imprisonment for two years
Section 42	imprisonment for three years
Section 43(1)	imprisonment for life
Section 43(2)	imprisonment for ten years
Section 44	imprisonment for ten years
Section 45(1)(a)	imprisonment for four years
Section 45(1)(b)	imprisonment for one year
Sections 46 and 47	imprisonment for two years
Section 48	imprisonment for ten years
Sections 49; 50; 51; 52; 53; and 54	imprisonment for two years
Section 55	imprisonment for five years
Sections 56(1); 57(1)	imprisonment for five years
Sections 56(2); 57(2)	imprisonment for three years
Sections 56(3); 57(3)	imprisonment for six months
Section 58	imprisonment for three months
Section 59	imprisonment two years
Section 60	imprisonment for five years
Section 61	imprisonment for two years
Section 62(1)	imprisonment for five years
Sections 62(2); 63; 64; 65; and 66	imprisonment for two years
Section 62(3)	imprisonment for six months
Sections 67 and 68	imprisonment for two years
Section 69	dismissal with disgrace (the only punishment)
Sections 70 and 71	imprisonment for two years
Section 72	imprisonment for six months
Section 73	imprisonment for life if the full offence carries the death penalty otherwise the same maximum as for the full offence
Section 74	imprisonment for six months
Section 77(6)	imprisonment for six months

**FOURTH SCHEDULE**

Section 84(4)

**ALTERNATIVE OFFENCES OF WHICH AN ACCUSED MAY  
BE CONVICTED**

1.	Communicating with or giving information to the enemy.	Unauthorised disclosure of information.
2.	While on operations against the enemy using words likely to cause despondency or alarm.	Endangering morale.
3.	Desertion	Absence without leave.
4.	Stealing public or service property.	Misapplying public or service property. Receiving public or service property.
5.	Intentionally damaging public or service property.	Recklessly damaging public or service property. Negligently damaging public or service property.
6.	Recklessly damaging public service property.	Negligently damaging public or service property.
7.	Stealing properly belonging to person subject to military law.	Receiving property belonging to a person subject to military law
8.	Intentionally allowing prisoner to escape.	Unauthorised release of prisoner. Negligently allowing prisoner to escape.
9.	Conduct unbecoming an officer.	Conduct to the prejudice.
10.	Disgraceful conduct.	Conduct to the prejudice.