

Unannotated Statutes of Malaysia - Subsidiary Legislations/ARMED FORCES (BOARD OF INQUIRY) RULES 1976 (P.U.(A) 160/1976)

**ARMED FORCES (BOARD OF INQUIRY) RULES 1976
[P.U.(A) 160/1976]**

ARRANGEMENT OF RULES

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IN exercise of the powers conferred by section 147 of the Armed Forces Act 1972, the Minister of Defence makes the following Rules:

1. Citation and commencement

These Rules may be cited as the **Armed Forces (Board of Inquiry) Rules 1976**, and shall come into force on the 1st day of June, 1976.

2. Definitions

In these Rules unless the context otherwise requires--

"Act" means the Armed Forces Act 1972;

"the authority", in relation to a board, means the Armed Forces Council or any officer empowered by or under these Rules to convene a board;

"board" means board of inquiry;

"civil authority" includes a Magistrate, a Coroner and the civil police;

"civilian witness" means a person who is not subject to the Armed Forces Act 1972 or the Service Law (which has the same meaning as Visiting Forces Act 1960 [23/60] of a visiting force to which the Visiting Forces (Application of Law) Order 1961 [L.N. 178/1961], applies;

"president" means president of a board;

"record of the proceedings", in relation to a board, includes the report or declaration of the board and any opinion expressed by the board in accordance with any directions given by the authority.

3. Duties of a board

It shall be the duty of a board to investigate and report on the facts relating to any matter referred to the board under these rules and, if directed to do so, to express their opinion on any question arising out of such matter.

4. Matters for reference to board

Subject to the provisions of the Act and of these Rules--

(a) a board may be convened with reference to the absence of any serviceman who has been absent without leave for twenty-one days and the deficiency (if any) in the arms, ammunition, clothing, equipment, instruments or service necessaries of the serviceman;

(b) a board may be convened with reference to any matter which the authority decides to refer to a board.

5. Deferment and stay of proceedings

(1) Subject to paragraph (2), where any matter is the subject of investigation by the Malaysian Military Police or by a civil authority or of proceedings under the Act or of proceedings in a civil court within or without the Federation and--

(a) a board has not been convened with reference thereto, the authority may defer the convening of a board until the completion of such investigation or proceedings as aforesaid and upon completion thereof shall not be required to convene a board, if satisfied that a board is not necessary; or

(b) a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such investigation as aforesaid have been completed and shall then dissolve the board, if satisfied that the board is not necessary.

(2) The provisions of paragraph (1) shall not apply to the convening of a board with reference to such absence and deficiency (if any) as are mentioned in paragraph (a) of Rule 4, but, where the authority is satisfied that the absence has terminated, and--

(a) a board has not yet been convened with reference to the absence and deficiency (if any), the authority shall not be required to convene a board, or

(b) a board has already been convened with reference thereto, the authority may forthwith dissolve the board.

6. Convening

(1) A board of inquiry may be convened by order of--

(a) the Armed Forces Council;

(b) the officer for the time being commanding the Malaysian Army, the Navy or the Air Force as the case may be;

(c) any officer not below the rank of lieutenant-colonel, commander or Wing Commander commanding any body of troops, base, ship or service establishment as the case may be;

(d) any officer who is acting for the time being in place of such officers as are specified in sub-paragraphs (b) and (c) hereof; or

(e) any officer commanding a unit, detachment or ship, of the Army, the Navy or the Air Force.

(2) The following provisions shall apply in relation to the order convening a board--

(a) the order shall specify the composition of the board and the place and time at which the board shall assemble;

- (b) the order may, and where the matter referred to the board is that mentioned in paragraph (a) of Rule 4 shall, specify the terms of reference of the board and be published in army, naval or air force orders;
- (c) the order may direct the board to express their opinion on any question arising out of any matter referred to the board; and
- (d) the authority may at any time revoke, vary or suspend the order.

7. Constitution

(1) Subject to paragraph (2) a board shall consist of a president who shall be an officer not below the rank of captain, Navy Lieutenant or Flight Lieutenant, and of not less than two other members each of whom shall be an officer and be subject to the Act.

(2) Where a board is convened with reference to such absence and deficiency (if any) as are mentioned in paragraph (a) of Rule 4 one of the members of the board may be a warrant officer or equivalent.

(3) The authority shall appoint the president by name and each remaining member of the board either by name or by detailing a commanding officer to appoint from persons under his command an officer, or in the case of a board referred to in paragraph (2) a warrant officer or equivalent.

8. Assembly and procedure

(1) A board shall assemble at the time and place specified in the order convening the board.

(2) The president shall lay the terms of reference before the board and the board shall hear and record evidence in accordance with the provisions of these Rules.

9. Adjournment and reassembly

(1) The president may from time to time adjourn the board which A shall sit on such occasions and in such places as he may direct.

(2) Without prejudice to paragraph (1) the authority may at any time if it appears necessary or desirable, direct that the board shall reassemble for such purpose or purposes as may be specified by the authority.

10. Witnesses

(1) A board shall hear the evidence of the witnesses who have been made available by the authority and may hear the evidence of such other persons as they think fit.

(2) A civilian who is not in the service of the Government of the Federation or of any State who has been requested by a board to appear as a witness shall be entitled to receive such allowances as are payable to witnesses in the Civil Courts of Subordinate Jurisdiction.

11. Evidence

(1) A board may receive any evidence which they consider relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in a civil court.

(2) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a civil court, a court-martial, commanding officer or other authority having power to deal summarily with the case, other than proceedings for an offence for giving or fabricating false evidence.

12. Oaths and affirmations

(1) Subject to paragraph (3) a witness before a board shall be examined on oath:

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

(2) Subject to paragraph (3) an oath shall be administered to any person in attendance as an interpreter.

(3) If--

- (a) a person objects to taking an oath, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, or
- (b) it is not reasonably practicable to administer an oath in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation instead of taking an oath.

(4) An oath shall be administered, or an affirmation made, before a board of inquiry in the form and manner prescribed by the Armed Forces (Courts-Martial) Rules of Procedure 1976.

13. Exhibits

(1) Subject to paragraph (2), any document or thing produced to a board by a witness when giving his evidence shall be made an exhibit.

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

(3) Every exhibit shall--

- (a) be marked with a number or letter and be signed by the president or have a label affixed to it bearing a number or letter and the signature of the president, and
- (b) be attached to or kept with the record of proceedings unless in the opinion of the board it is not expedient to attach it or keep it with the record.

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

14. Record of proceedings

(1) The president shall record the proceedings of the board in writing and in sufficient detail to enable the authority to follow the course of the proceedings:

Provided that, if the board consider it necessary any particular question and answer shall be taken down verbatim.

(2) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (1) shall be read over to him and signed by him.

(3) A record of the proceedings shall be signed by the president and other members of the board and forwarded to the authority.

15. Entries of declarations in service books

Where the board declares that a serviceman has been absent without leave or other sufficient cause for a

period specified in the declaration, not being less than twenty-one days, and that there is a deficiency in any arms, ammunition, equipment, instruments, service necessaries or clothing of the serviceman, a record of the declaration of such deficiency shall, in addition to a record of the declaration of such absence required under section 148 of the Act, be entered in the service books.

16. Revocation and saving

The Federation Armed Forces (Board of Inquiry) Regulations 1969 [*P.U.(A) 276/1969*] are revoked:

Provided that any act done under the revoked Regulations shall continue in force until revoked, suspended or otherwise terminated as if such act has been done under these Rules

Dated this 10th day of May, 1976.

[KP. 2759 Jil. 3/(11); PN. (PU²) 140.]