

Unannotated Statutes of Malaysia - Subsidiary Legislations/ARMED FORCES (SUMMARY JURISDICTION) REGULATIONS 1976 (P.U.(A) 161/1976)

**ARMED FORCES (SUMMARY JURISDICTION) REGULATIONS 1976
[P.U.(A) 161/1976]**

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IN exercise of the powers conferred by sections 101, 102, 155 and 212 of the Armed Forces Act 1972, the Armed Forces Council, with the approval of the Yang di-Pertuan Agong, makes the following Regulations:

PART I

GENERAL

1. Citation

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

2. Definitions

(1) In these Regulations--

"Act" means the Armed Forces Act 1972.

"Detachment" means a part of a unit which is so separated from the unit to which it belongs that the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it.

"Field officer" means the officer holding the rank of Major.

"Higher authority" means the Armed Forces Council or any officer not below the rank of Brigadier General or corresponding rank, appointed by the Armed Forces Council in that behalf.

"subordinate commander", except where otherwise expressly provided, means the officer commanding a squadron, battery, company or equivalent sub-unit, or any officer appointed to be a subordinate commander by the Armed Forces Council or by an officer in command not below the rank of brigadier or corresponding rank.

"unit", except where otherwise expressly provided, means--

(a) in relation to the army, either any independent portion of a corps which is not higher in the corps organisation than a battalion or its equivalent or any equivalent body of troops;

(b) in relation to the navy, either a ship or a shore establishment: and

(c) in relation to the air force, a formation or command.

(2) For the purpose of the Act and these Regulations, a person shall be deemed to belong to a detachment or unit, if he is posted therein, attached thereto, employed in its service or on a particular assignment on its behalf.

(3) For the purpose of the Act and these Regulations, the following persons may act as appropriate superior authority in relation to a person charged with an offence, that is to say, any officer not below the rank of colonel, naval captain or group captain who in each case has power to convene court-martial under the Act.

(4) Any expressions used in these Regulations and not defined herein shall have the same meaning as they have in the Act.

PART II

GENERAL PROVISIONS AS TO COMMANDING OFFICER AND APPROPRIATE SUPERIOR AUTHORITY

3. Appointment of commanding officers and subordinate commanders

Any appointment made by the higher authority under these Regulations of an officer to be a commanding officer or a subordinate commander--

(a) may be made subject to restrictions, reservations, exceptions or conditions;

(b) may designate the officer appointed by name, by reference to any appointment or office held by him, or by reference to a class of officers of which the officer appointed is a member, and shall, unless otherwise specified, extend to any officer for the time being performing the duties of the officer so named, or holding, or acting in the place of the holder of, that appointment or office, or acting in the place of a member of that class;

(c) may be made in relation to a particular person or to any class or group of persons, or for a particular case or for a class of cases;

(d) may be varied or revoked, either wholly or in part, by the authority by whom it was made, by his successors or by any authority superior in command.

4. General definition of commanding officer

Except where otherwise expressly provided in these Regulations, the commanding officer of a person subject to service law who is charged with an offence is either--

(a) the officer who has been appointed by higher authority to be commanding officer while able effectively to exercise his powers as such, or

(b) where no appointment has been made under paragraph (a) of this Regulation the officer who is, for the time being, in immediate command of the unit to which the accused belongs or is attached or any detachment with which the accused is for the time being serving and who is directly responsible in disciplinary matters to an officer empowered to convene a Court Martial to try a serviceman belonging to or attached to that unit or who is serving with that detachment, as the case may be.

5. Commanding officer of a patient in a hospital

The commanding officer of a person subject to service law who is charged with an offence is, while that person is in the care of a unit or detachment of the Armed Forces Hospital as a patient, the officer commanding that unit or detachment.

6. Commanding officer of a unit or detachment placed under command of another commanding officer

Where a unit or detachment is placed for disciplinary purposes under command of the commanding officer of another unit or detachment, that officer is the commanding officer of a member of the unit or detachment so placed under his command who is charged with an offence and, the officer commanding the latter unit or detachment is a subordinate commander for the purpose of these Regulations.

7. Limitation of powers of detachment commanders below field rank

(1) When the officer commanding a detachment is below field rank, he may be restricted from exercising all or any of his powers as commanding officer either by the officer commanding the unit to which the detachment belongs, if such unit is in the same command or by higher authority, if it appears necessary to do so, having regard to the rank and experience of the officer commanding the detachment.

(2) Where an officer commanding a detachment has had his powers restricted in accordance with paragraph (1) of this Regulation, he may, notwithstanding such restriction, exercise his full powers as commanding officer if it becomes necessary for him to do so for the maintenance of discipline, but if he does so exercise his full powers he shall immediately report his action to the officer or higher authority who restricted him from exercising those powers.

8. Delegation of powers by commanding officer

(1) Subject to Regulation 10, an officer who is a commanding officer within the meaning of Regulation 4, 5 or 6 may delegate to a subordinate commander, whatever his rank may be, who is under his command and directly responsible to him in disciplinary matters, the power to investigate and deal summarily with charges with which he himself may so deal under Regulation 12:

Provided that such delegation shall not include (a) the power to remand the accused for trial by court-martial and (b) the power to order the taking of a summary of evidence or the making of an abstract of evidence.

(2) When a commanding officer delegates the power to investigate and deal summarily with charges in accordance with paragraph (1) of this Regulation he may, in addition to the restrictions imposed by Regulation 10, impose such further restrictions as seem to be proper upon the exercise of that power by the officer to whom it is delegated.

(3) When a subordinate commander is dealing with a charge against a non-commissioned officer or a serviceman and the accused elects to be tried by court-martial in accordance with subsection (9) of section 97 of the Act, the subordinate commander shall not deal further with the charge himself, but shall order that the accused shall be brought before the commanding officer who delegated to him the power to investigate the charge.

9. Status of officer to whom the commanding officer has delegated powers

An officer who has had delegated to him by his commanding officer in accordance with Regulation 8 (1) power to investigate and deal summarily with charges is, while exercising such power in respect of any person, the commanding officer of that person for the purposes of these Regulations.

10. Powers of subordinate commanders

(1) A subordinate commander to whom power to investigate and deal summarily with charges has been delegated under Regulation 8 (1) shall not award a punishment against a non-commissioned officer above the rank of corporal or corresponding rank.

(2) Subject to paragraphs (1) and (3) of this Regulation and to any restriction which may be imposed by the commanding officer under Regulation 8 (2), a subordinate commander may award one or more of the following punishments:

(a) a fine not exceeding the aggregate of seven days' pay;

(b) in the case of a non-commissioned officer reprimand;

(c) where the offence has occasioned any expense, loss or damage, stoppages not exceeding one hundred dollars;

(d) any minor punishment as prescribed in the First Schedule to these Regulations.

(3) A subordinate commander who is below the rank of captain or its equivalent shall not award either the punishment of a fine or the punishment of stoppages.

11. Commanding officer of a civilian

The commanding officer of a civilian who is charged with an offence and to whom Part V of the Act applies by virtue of section 212 thereof is such officer not below the rank of lieutenant-colonel or corresponding rank as may be appointed for the purpose by the officer not below the rank of colonel or corresponding rank commanding the body of troops with which, or the command or other area, garrison, shore establishment, station or place in which, the civilian is for the time being.

12. Charges with which a commanding officer or appropriate superior authority may deal summarily

A commanding officer or an appropriate superior authority may deal summarily with a charge under any of the following sections of the Act: 44, 46 (e), 49, 50 (2), 51, 52, 55, 56, 57, 58, 59 (1) (ff), 60, 61 (c) and (d), 62 (c), 63, 64, 65 (2), 66, 67, 72, 77 (a) and (6), 81 (6), 86 (where the principal offence can be dealt with summarily by virtue of this Regulation); 87 and 88 (where the civil offence is one which is specified in the Second Schedule to these Regulations).

13. Punishment by commanding officer/ appropriate superior authority

A commanding officer or an appropriate superior authority may upon conviction award to the person appropriate to his rank, any of the punishments which are prescribed under sections 97 and 98 of the Act.

14. Restrictions on power to dismiss a charge

(1) A commanding officer shall not dismiss a charge unless he is satisfied--

- (a) that the charge is groundless; or
- (b) that there are special circumstances which justify its dismissal.

(2) A commanding officer shall retain the charge sheet.

15. Charges against civilians with which appropriate superior authority may deal summarily

(1) In the case of a civilian who is subject to part V of the Act under section 212 thereof, an appropriate superior authority may deal summarily with a charge under any of the following sections of the Act: 44, 46 (e), 49, 50 (2), 51, 52, 55, 56, 57, 58, 59 (1) (a), 60, 61 (c) and (d) 62 (c), 63, 64, 65 (2), 66, 67, 72, 77 (a) and (b), 86 (where the offence can be dealt with summarily by virtue of the Regulation); 87 and 88 (where the civil offence in one which is specified in the Second Schedule to these Regulations).

(2) The appropriate superior authority or the commanding officer may, upon conviction of the civilian, impose the sentence on him as prescribed under subsection (2) (d) of section 212 of the Act.

16. Record of proceedings of summary trials

The record of proceedings of a summary trial shall consist of the charge report and the form "Proceedings Before A Subordinate Commander/Commanding Officer" or "Proceedings Before An Appropriate Authority" as the case may be, as set out in the Third Schedule to these Regulations.

FIRST SCHEDULE

(Regulation 10)

LIST OF MINOR PUNISHMENTS

- (a) Removal from appointment.
- (b) Restriction of privileges.
- (c) Extra guards or picquets not exceeding three in number.
- (d) Admonition.
- (e) Stoppage of leave (not exceeding 28 days).
- (f) Stoppage of dining-out leave.
- (g) Extra drills for not more than two hours a day for a period not exceeding seven days.
- (h) (*Deleted by P.U.(A) 402/1999*)

SECOND SCHEDULE

(Regulations 12 and 15)

TABLE OF CIVIL OFFENCES WHICH MAY BE DEALT WITH BY COMMANDING OFFICER AND APPROPRIATE SUPERIOR AUTHORITY

1. Assault under section 352 of the Penal Code.

2. Using a motor vehicle without a valid motor vehicle licence contrary to section 15 of the Road Transport Act 1987.
3. Driving a motor vehicle without a valid driving licence of that class contrary to section 26 of the Road Transport Act 1987.
4. Driving a motor vehicle at a speed exceeding the speed limit imposed contrary to section 40(1) of the Road Transport Act 1987.
5. Careless and inconsiderate driving contrary to section 43(1) of the Road Transport Act 1987.
6. Traffic offences contrary to sections 46, 47, 48 and 49 of the Road Transport Act 1987.
7. Taking motor vehicle without consent of the registered owner contrary to section 51 of the Road Transport Act 1987.
8. Riding offences by pedal cyclists under section 54 of the Road Transport Act 1987.

THIRD SCHEDULE

(Regulation 16)

(A) CHARGE REPORT

| | |
|---|--------------------|
| | Unit Address |
| 1. CHARGE AGAINST: | |
| (Number, rank, name, unit or other description) | |
| | |
| 2. STATEMENT AND RELEVANT | |
| | |
| 3. PARTICULARS OF OFFENCE: in that he at | |
| | |
| | |
| | |
| | |
| | |
| on (or | |
| about)..... | |
| | |
| | |
| 4. OFFENCE REPORTED BY: | |
| (Number, rank, name, unit or other description) | |
| 5. OTHER WITNESSES: | |
| (Number, rank, name, unit or other description) | |

(B) PROCEEDINGS BEFORE A SUBORDINATE COMMANDER/ COMMANDING OFFICER

1. A short summary of the evidence

.....

.....

2. Election:

(a) Accused accepts summary punishment.

(b) Accused elects to be tried by a court-martial

3. The finding:

(a) Accused is not guilty and charge is dismissed.

(b) Accused is guilty and convicted as charged.

(c) Accused is remanded for/ refer to further investigation/ Commanding Officer/ Higher Authority/ Court-Martial.

4. Plea in mitigation.....

.....
.....
.....

5. The punishment: I impose on the convicted person the following punishment:

.....
.....
.....
.....
.....

Date.....

.....
(Signature, Rank and Name of Subordinate Commander / Commanding Officer)

NOTES :

1. If the charge is not dismissed or dealt with summarily, enter in the appropriate place the decision made, for example:

(a) Remanded for investigation, referred to Commanding Officer/ Higher Authority/Legal Department.

(b) Remanded in close /open arrest for investigation/further investigation/pending investigation and reference to Legal Department/ Provost Officer on election of accused to be tried by a court-martial.

2. Subject to Note 3, charge reports in respect of which an accused has been found guilty will be retained in the Orderly Room for one year after the date of the offence.

3. When the punishment is admonition only, the charge report will be retained with the Serviceman's documents for three months and thereafter destroyed.

4. A fresh Part B should be used by Commanding Officer if the accused has already appeared before a

Subordinate Commander.

Occurrence Slip Action:

Entered in Regt/Coy Conduct Sheet:

Entered in Delay Report Diary:

(C) PROCEEDINGS BEFORE AN APPROPRIATE SUPERIOR AUTHORITY

ACCUSED'S NUMBER, RANK AND NAME.....

.....

UNIT.....

1. Questions to be put to the accused by the officer dealing with the case before the charge is read.

Q. Have you received a copy of the charge-sheet and (summary) (abstract) of evidence not less than 24 hours ago.

A.
.....

Q. Have you had sufficient time to prepare your defence?

A.
.....

2. The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question:

Q. Have you agreed in writing that the witness against you need not give their evidence in person?

A.
.....

3. If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

4. After the summary or abstract of evidence has been read or the witness against the accused have given their evidence , as the case may be, the officer dealing with the case shall say to the accused:

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.

A.
.....

Q. Do you wish to adduce any other evidence in your defence?

A.

5. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then:

- (i) consider all the evidence and determine whether the accused is guilty of the offence or not; and
- (ii) if he determines that the accused is guilty examine and consider the accused's record of service. If he intends to award the punishment of forfeiture of seniority of rank or of a fine or of stoppages or the finding will involve a forfeiture of pay or, in the case of a civilian, if he intends to award any punishment, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his ward.

Q. Will you accept my award or do you elect to be tried court-martial?

A.

6. FINDING

AWARD

Date.....,19.....

.....
(Signature, rank and appointment of an appropriate superior authority)

Made this 26th day of May, 1976.

[KP. 2759 Jil. 3/(7); P.N. (PU²) 140.]

LIST OF AMENDMENTS

| Amending law | Citation | In force from |
|------------------|--|---------------|
| P.U.(A) 402/1999 | Armed Forces (Summary Jurisdiction) (Amendment) Regulations 1999 | 24-09-1999 |