

**BERMUDA REGIMENT**  
**STANDING ORDERS**  
**DISCIPLINE**



**2011**

STANDING ORDER NO 45

**ORDERS FOR SOLDIERS IN MILITARY CUSTODY**

1. Soldiers held in military custody awaiting Orders or trial will be held in the custody of the Regimental Police in the Warwick Camp Guardroom or other authorised location. Details are in Standing Order No. 41 'Orders for the Regimental Police'.
2. Soldiers in military custody will, as far as possible, be kept in separate cells to soldiers under sentence (SUS).
3. The arrested soldier will be searched and all personal articles will be removed (e.g. cigarettes, matches, money, cell phone, pocket-knife, etc). Articles removed will be itemised in the Custody Record and placed into safe-keeping.
4. A soldier placed in military custody when under the influence of alcohol or drugs will have bedding removed from the cell (except in cold weather). This soldier will, if possible, be kept in his / her own cell. The soldier will be roused at regular intervals by the Duty RP for the soldier's own safety. They cannot request to see the Officer dealing with their case until at least 24 hours have passed and they have had opportunity to sober up.
5. A soldier in military custody who is sick, or injured or complains of sickness or injury shall be reported promptly to a medical officer.
6. A soldier placed in military custody will be taken before the Commanding Officer, or else an officer appointed by him, normally the soldier's Company Commander, without unnecessary delay (those under the influence of alcohol or drugs will not be seen until they have had the opportunity to sober up). If the case is not completed at his point the Officer may, if he deems it necessary, order the soldier to be retained in custody.
7. A soldier will only be held in custody for as long as is deemed necessary by the Commanding Officer or other Officer dealing with the case, and for a maximum of 72 hours from the time of arrest.
8. A soldier may be released from custody at any time on the order of the Commanding Officer issued through the Adjt or RSM, or on the order of the Company Commander or other Officer appointed by the Commanding Officer to deal with the case. If the 72 hour limit has elapsed, the duty RP is to release the detainee immediately. The RSM or Adjt is to be informed immediately.
9. A soldier in military custody will be issued an up to date copy of the handout 'Rights of a Soldier Arrested for or Charged with an Offence under the Defence Act 1965' and this will not be taken away.
10. Soldiers in military custody will be visited by the Orderly Officer daily (during camps) or else seen by the Adjutant or RSM. Any complaints or requests will be brought to the attention of the Adjutant or RSM by the Orderly Officer.
11. A soldier in military custody will not be required to attend parades, perform duties or do more than necessary to keep themselves and their accommodation clean. In the absence of any reason otherwise they will remain locked in their cells.
12. Lights will be extinguished at 2100 hrs by the Duty RP. Soldiers in military custody will not be permitted to leave their cells between the period of 2100 hrs and 0530 hrs except to use the restroom, when they will be properly escorted.

13. The Provost staff on duty will ensure that soldiers in military custody are washed and shaved as appropriate at Reveille.

14. If a soldier has been in arrest for 48 hours, the Provost Sgt will arrange for the soldier to be given 2 hours exercise outside of the Guard room. An Escort will be detailed to ensure the safe custody of the detainee.

15. The soldier may have one person of their choice contacted, at public expense, and told of the fact of their arrest and where they are being held.

16. No person other than the Provost staff, Officers and WOs/SNCOs, and the soldier's legal representative (if any) will be allowed contact with a soldier in military custody. On request through the Adjutant or RSM, the soldier may make phone calls using a military telephone to his/her legal representative only, in order to arrange a legal visit. Detainees will not place the calls themselves. Any visits by legal representatives must be scheduled through the Adjutant or RSM. Visits by legal representatives or by any Officer/WO/SNCO appointed to advise the soldier will take place within the supervision (but not hearing) of the Regimental Police.

17. A soldier in military custody will be permitted the following privileges: smoking, reading material and letter writing. On request the soldier will be provided with writing materials and may send and receive letters, at the soldier's own expense. Communications other than with legal advisers and any Officer/WO/SNCO appointed to advise the soldier may be stopped on the order of the Commanding Officer if he considers that hindrance is reasonably likely to be caused to the interests of the investigation or prevention of crime, the apprehension of offenders, or the operations, safety or security of any member of Regiment.

18. Soldiers placed in military custody will have these Orders read to them by the Duty RP and they will sign the Custody Record stating that they understand the Orders.

19. All meals for soldiers in military custody will be taken in the Guard Room. Efforts will be taken to satisfy reasonable dietary requirements for religious or other reasons. Drinking water will be available regularly and on request. Meals will be provided at the following times:

0700 – Breakfast

1200 – Lunch

1800 – Evening Meal

2200 – Light Snack (Guard only)

20. The QM is to provide equipment as follows:

1 x Blanket

1 x Toothbrush

1 x Wash Cloth

1 x Towel

1 x Razor Blade (males) – to be retained by RPs for safe keeping

Non-metal cutlery, paper or plastic plates, paper or polystyrene cups

STANDING ORDER NO 46

**ORDERS FOR PERSONS IN OPEN ARREST**

1. This Standing Order is deleted as of Sep 2011 as the term 'Open Arrest' no longer exists.
2. If it is not justified to hold a soldier in military custody then they are released from all form of arrest. This is without prejudice to any subsequent arrest, the soldier may also be warned off to attend an Orders hearing. The Commanding Officer may also order restrictions such as not speaking to others involved in the investigation.

STANDING ORDER NO 47

**ORDERS FOR NCOs IN-CHARGE OF ESCORTS**

1. NCOs for escort duty will be detailed by the RSM, and will always be senior to the soldier(s) being escorted, hereafter referred to as the detainee. The RSM will brief the Escort Commander and give the Commander a copy of these Orders which the Escort Commander will carry throughout the tour of duty.
2. Throughout the tour of duty, the Escort Commander will ensure that the Escort is at all times alert to any possible attempt by the detainee(s) to escape. The Escort Commander must clearly understand the safe custody of detainees is their own personal responsibility until the detainee(s) has been handed over at the destination.
3. The Escort Commander will ensure that the Escort and detainee(s) are property dressed and of clean and smart appearance at all times.
4. The Escort Commander will have possession of sufficient money to defray any minor expenses that may occur and will obtain a receipt for any expenditure incurred.
5. Should it be necessary for the Escort Commander to hand-over charge to another JNCO, the Escort Commander will do it in such a way as to clearly indicate the change of responsibility. The Escort Commander will take all necessary precautions to ensure the safe custody of the detainee(s) during the absence.
6. If it is necessary for the detainee(s) to be examined by a Medical or Dental Officer, the Escort will remain present during the examination.
7. The Commanding Officer may order a detainee to be placed in handcuffs only for the purpose of safe custody during their removal from one place or establishment to another. Otherwise, handcuffs will only be used at the discretion of the Escort Commander if in the Commander's opinion this is reasonable force in response to violence or attempts to escape by the detainee. A detainee shall not be subjected to any form of mechanical restraint as a punishment.
8. The Escort will always be provided with handcuffs. Only Bermuda Regiment issued handcuffs may be used and they will be drawn from the QM by the NCO IC Escorts. Personnel using handcuffs are to have passed a recognised training course. No other form of mechanical restraint other than handcuffs is to be used.
9. A soldier under escort, whether handcuffed or not, will NOT march through public thoroughfares, nor be conveyed on buses or ferries.
10. Before moving, all detainees will be searched and any dangerous articles such as knives and razors will be removed from their possession.
11. All documents and committal warrants will be retained by the Escort Commander and carried on the Commander's person until the detainee has been handed over to the destination establishment.
12. When delivering a detainee to an establishment, the Escort Commander will always have a written receipt to certify that the detainee has been handed over.
13. Should a detainee become violent and attempt to escape, the Escort Commander will Order the Escort to use reasonable force to prevent the detainee from escaping.

14. The Escort Commander will ensure that the detainee does not talk to anyone except the Escort.
15. The ratio of Escorts will where possible be a Commander and 2 Escorts for each detainee. They shall be of the same gender as the detainee.

STANDING ORDER NO 48

**ARREST PROCEDURE**

1. An Officer, Warrant Officer or NCO is empowered to place into arrest a member of the Regiment of lower rank who they believe has committed a military offence under the Defence Act, by verbally notifying the person that he/she is being arrested and then arranging for them to be placed in military custody, normally in the Guard Room. The Bermuda Police Service should be called in the event of a suspected civilian offence.
2. Placing a person in custody is a serious matter demanding the immediate attention of all concerned. The person choosing to make the arrest must be certain of his/her rights and responsibilities in the case and if in doubt must contact a superior. Details are in Standing Order No. 41 'Orders for the Regimental Police'.
3. If the circumstances do not justify confinement in military custody, then the soldier will NOT be arrested but instead should simply be informed that he/she will be charged for an offence and the soldier's Coy Comd should be informed (normally via the CSM). Disciplinary proceedings can then follow without the need for custody prior to Orders.
4. Examples of when it may be justifiable to place a member of the Regiment under arrest are:
  - a. He/she is undermining discipline by repeated insubordinate acts or language which makes it necessary to retain him/her in custody until brought before the Commanding Officer or other Officer on a charge.
  - b. He/she is offering violence and is likely to injure himself or others, and reasonable force must be used to restrain him/her.
  - c. He/she has been apprehended (not surrendered) whilst AWOL or having failed to attend numerous duties and it is likely he/she will not attend for Orders at a future date.
  - d. Having regard to the nature or prevalence of the alleged offence, it is undesirable in the interests of discipline that he/she should be at large prior to being brought before the Commanding Officer or other Officer on a charge.
5. A soldier must be brought 'forthwith' before the Commanding Officer or other Officer nominated to deal with their case. Standing Order No. 55 'Disciplinary Procedures' describes the procedure by which this occurs and how the Commanding Officer or Officer nominated by him must authorise an arrested soldier to remain in military custody if the case is not completed at that time. If at any point continued custody is not justified then the arrested soldier must be released by the order of the Commanding Officer or his nominated Officer. Extending custody longer than is strictly necessary as an unofficial form of punishment is forbidden. It is therefore vital that the chain of command is informed of the arrest as soon as possible so that the soldier can be brought without delay in front of the Officer and, if that officer decides, for authorization of continued custody to be given.
6. The person arresting a soldier must:
  - a. Inform the person what is the alleged offence for which they are being arrested.
  - b. Arrange for them to be handed over into the custody of the Duty RP.

- c. Inform the Adjt, RSM, arrested soldier's Company Commander (normally via CSM) as soon as possible. This may be done by the Duty RP but the arresting person must ensure it is.
  - d. Make a note of the date, time, location of arrest.
  - e. Report to Coy HQ to write a signed, written statement with full particulars, to be used as evidence on Orders.
7. The duty Regimental Police (if not the person making the arrest) will immediately be summoned and will take the person into custody in the Guard Room and follow the list of procedures given in Standing Order No. 41 'Orders for the Regimental Police'.
8. The Orderly Officer, if in camp, should visit the detainee (except in drunkenness cases) and brief the Adjt/RSM at the earliest opportunity.
9. A soldier placed into custody whilst under the influence of alcohol or drugs is subject to special handling due to the increased risk of harm, details are in Standing Order No. 41 'Orders for the Regimental Police'.
10. A soldier placed in custody will have the relevant orders (Standing Order No. 45) read to him/her by the Duty RP and will sign the book to confirm they understand the orders.

Note: There exists a Memorandum of Understanding between the Bermuda Police Service and the Bermuda Regiment for the use of BPS cells in the interim period (dated 03 March 2011) and must be referred to until it ceases to exist.

## STANDING ORDER NO 55

### DISCIPLINARY PROCEDURES

#### Introduction

1. This Standing Order lays down the policy of the Commanding Officer (CO) for implementing the disciplinary powers that are laid down in defence legislation. This policy is to be followed by all those involved in order to ensure the legality, fairness and consistency of disciplinary action in the Regiment.
2. If there is a conflict between this Standing Order and the defence legislation itself on matters of law, then defence legislation (current version of Defence Act 1965 and Governors Orders 1993) takes precedence. This Standing Order is to be reviewed whenever there is any change to this legislation. Any questions are to be referred to the Adjutant, if the answer is not known then the Adjt will request legal advice from Attorney General's Chambers.

#### Disciplinary Punishments versus Administrative Action

3. The formal disciplinary process (charging with an offence under the Defence Act, to be heard on 'Orders' by the CO, or by the Officer Commanding (OC) of a sub-unit) is only one of the methods available to commanders for maintaining discipline and operational efficiency; another is administrative action. Administrative action (both minor and major) is covered at Annex E and Annex F in this Standing Order.
4. The policy on Absenteeism as a specific offence is at Annex D to this Standing Order.

#### Charges

5. A member of the Regiment can be reported for disciplinary action (placed on a charge) by any commander (NCO or above) who is senior in rank to the accused. The commander must report the incident to the OC of the company of which the accused is a member; normally this will be done via the CSM. The accused's OC will have the incident investigated and will decide whether to go ahead with a formal charge, to replace it with minor administrative action, or to take the soldier off the charge. For reasons of justice and maintenance of morale, the accused should be informed as soon as possible that they are being charged and for what alleged offence, similarly they should be informed if they are taken off the charge. Since the specific charge may change prior to Orders the accused is not formally 'charged' until they are either handed a copy of the charge sheet or the charge is read out to them at OC's or CO's orders. (Note that commissioned officers are not currently covered by the Orders process for military offences; see Governors Orders for the method of taking administrative action against officers for inefficiency or misconduct).
6. Rules for investigation and hearing of charges by the OC or CO are given in section 36 & 37 of the Defence Act. The range of charges which can be brought and the punishments that can be given by the CO and OCs are limited, so serious incidents that may constitute criminal offences must be reported to the Police first in order to determine who has jurisdiction, and the Regiment will only charge a member of the Regiment under the Defence Act if the BPS have confirmed they do not wish to deal with the case (whether the victim wishes to press charges may also be a factor in this). Allegations of the following types of incident should always be reported to the BPS:

- a. Violence.
- b. Ill-treatment.

- c. Sexual assault, harassment or other sexual offences.
- d. Theft.
- e. Fraud.
- f. Criminal damage.
- g. Illegal substances.
- h. Any other potential criminal activity (as opposed to offences of a purely military nature such as missing a parade, absence without leave etc, which do not exist in criminal law).

7. Regiment personnel should be careful not to prejudice any subsequent police investigation by carrying out questioning of the accused which is not PACE compliant (e.g. by obtaining a confession or statement from the accused by an interview that is not conducted under caution).

### Powers of Commanders

8. Below is a simplified guide based on current Regimental interpretation of Defence Act section 37 which shows the maximum powers available to an OC or CO for each rank of accused. The table refers to substantive rank held, except Acting Cpl which is shown in its own column. In the event of several charges, one of the authorised punishments may be awarded for each charge that the officer is satisfied has been proved, but the CO's policy is that the total fines, detention etc. cannot exceed the commander's limit for each type of punishment. Shaded boxes indicate punishments which cannot be awarded to that rank of accused, or by that level of commander.

	Pte	LCpl	Acting Cpl	Cpl	Sgt	CSgt	WO2 & WO1
<b>Officer Commanding</b>							
Admonition	YES	YES	YES	YES			
Reprimand		YES	YES	YES			
Additional fatigue or other duties	YES						
Confined to barracks (not exceeding 7 days)*	YES						
Fine (not exceeding 7 days' pay)	YES						
Reduction to substantive rank (to LCpl)			YES				
Reduction to the ranks (to Pte)		YES	YES				

<b>Commanding Officer</b>							
Admonition	YES						
Reprimand		YES	YES	YES	YES	YES	
Additional fatigue duties or other duties	YES						
Fine (not exceeding 28 days' pay)	YES						
Confined to barracks (not > 14 days)**	YES						
Detention (not exceeding 28 days)**	YES						
Severe Reprimand		YES	YES	YES	YES	YES	
Reduction to the ranks (to Pte)		YES	YES	YES	YES	YES	
Reduction to lower grade			YES	YES	YES	YES	
Recommendation to Governor for dishonourable discharge (in addition to or in place of any other punishment)	YES						
Alternatively, remand for prosecution by magistrates court	YES						

\* 'Only when the unit is in camp' which is interpreted to mean a typically 2-week camp such as recruit camp or overseas camp, NOT during drills (which are drill nights and training weekends).

\*\* Only when the unit is embodied or in camp. 'Embodiment' is interpreted as a period for which the Governor/ Acting Governor has signed an embodiment order. 'Camp' is the same as above.

9. Alternatively, the CO can remand any rank from Pte to WO1 to a court of summary jurisdiction (magistrates court) where the following maximum sentences may currently be imposed if found guilty:
- a. Failure to complete military training (Defence Act section 26) – imprisonment for 3 months, or a fine of \$360, or both.
  - b. Failure to report on embodiment (Defence Act section 32) – imprisonment for 6 months, or a fine of \$720, or both.
  - c. Any of the military offences in second schedule (Defence Act section 36) - imprisonment for 3 months, or a fine of \$2,250, or both.

### **Investigation of Charges**

10. 'Investigating the charge' in Defence Act section 37 requires the OC (or CO if the person has been remanded to him) to cause such enquiries to be made which he considers necessary, and to consider any witness statements or other material relevant to the charge. It is now Regiment policy that this investigation should begin before the soldier appears in front of the person hearing the case i.e. the OC should direct that an investigation takes place to gather evidence before the soldier is brought in for Orders.

11. Evidence is normally in the form of a signed witness statement and/or documentary evidence (such as a company roll book showing the soldier was not present at roll call). The accused should not be made to write a self-incriminating statement. There is no set format for a witness statement but it should contain:

- a. Service number rank and name of the witness;
- b. The facts (including the date/time/location of the incident);
- c. Signature of the witness; and
- d. Date of witness statement.

12. When written statements are taken, the best practice is for the witness to compose his/her own statement in their own words. However the OC (or more likely the person gathering the investigation on behalf of the OC e.g. the CSM) will be aware of the particular areas of relevance, which he may ask the witness to include. Care should be taken not to provide the witness with information relating to the matter known only to the person conducting the investigation or other witnesses, which may influence their evidence. Detailed witness statements, written when the incident is still fresh in the mind of the witness, are of vital importance, particularly if the case results in a referral to Magistrates Court at some time in the future.

13. Once the evidence is collected this will allow the OC to decide whether the alleged offence merits Orders, and whether the case is ready to be heard. The OC must consider questions such as:

- a. Is Orders the best way to deal with this situation, or could administrative sanctions be used?
- b. Has all the evidence been gathered and witnesses identified, and statements completed correctly, in order to make the case against the accused?
- c. Has the appropriate charge been used and is the Charge Report filled out correctly?
- d. Is the accused of a rank that can be dealt with at this level, or by the CO only?
- e. If I find the charge proved will I be able to give a suitable punishment, or is the alleged offence serious enough to be dealt with by the CO?

14. After this preliminary investigation of the charge, the accused will be brought in front of the OC with minimum delay (or else will be informed there is no case to answer). By this point the OC will generally have decided whether to deal with the case himself or remand to the CO. If an OC cannot deal with a case because of either the rank of the accused exceeds his powers to deal with, or the seriousness of the charge is such that the OC feels a suitable punishment would exceed the powers available to him if the charge were proved, then the accused should be remanded to appear before the CO (Defence Act section 37(3)). If however the OC feels he can deal with it, he will hear the case there and then. Advice should always be sought from the RSM or Adjt if in doubt.

15. If remanding to the CO, then the OC must not hear the full case including making a decision on guilty/not guilty but instead will simply inform the accused that the matter is too serious for him and will be dealt with by the CO. The charge report and all statements / other evidence will be forwarded to the RSM who will check them and forward to the Adjutant. The OC must still have fully investigated the charge i.e. gathered together all the required evidence, produced the charge sheet etc. and decided there is a strong case to answer, prior to remanding to the CO. The Adjutant will carry out a double check by further investigating the case on the CO's behalf before it reaches CO's Orders.

16. Avoiding any unnecessary delay is especially vital if custody is involved. Common sense dictates that a person should not be held in custody merely because their Company Commander is not available to investigate a charge. In this event the CO will ensure another officer is appointed to act as the person's Officer Commanding for disciplinary purposes (see custody section below).

### **Rights of a Soldier**

17. As soon as practical after a member of the Regiment is either placed in military custody or is informed that they will be charged with an offence under the Defence Act, he/she is to be handed the 'Rights of a Soldier' handout at Annex A (and given assistance in understanding it, if requested).

### **Custody**

18. 'Custody' relates to any pre-trial loss of liberty including military or civilian custody prior to the hearing (the OC's Orders, CO's Orders, or magistrates court) at which the case is completed. It equates to the previous terminology 'close arrest'. Use of the terms 'close arrest' and 'open arrest' is discontinued; also any time served as a punishment awarded at CO's Orders is termed 'detention' to distinguish it from pre-trial custody. OCs are not authorised to award detention and the CO can only do so in specific circumstances.

19. Military custody is covered in section 36 of the Defence Act in which sub-section 36(5) states that the person shall "be released on giving an undertaking that he will appear before the person trying his case when called upon unless the Commanding Officer or other officer is satisfied that he will not

so appear in which case he shall be kept in military custody". This presumption of release means that custody is not automatic and in many cases will not be justified. It is the CO's policy that custody should be used only when legally justified and for the minimum length of time possible that is consistent with effective maintenance of military discipline.

20. The Regiment's policy for authorising military custody is as follows:

- a. **As soon as any member of the Regiment places an individual under arrest, the Adjutant, RSM, and the arrested soldier's Company chain of command is to be informed immediately (see also para 20(g) below).** The arresting person is to make a note of the date, time and location of arrest and is also to inform the QM's Company (to arrange feeding if appropriate).
- b. Without delay the arrested person's OC (or acting OC) is to investigate. The person is to be brought in front of the OC at the earliest opportunity and informed why they are being held and issued with the Rights of a Soldier handout. Most likely the investigation of the charge is still ongoing (i.e. the witness statements, charge report etc are still being gathered). The OC will determine the requirement for continued custody or not, bearing in mind the content of Defence Act section 36(5). Only if the OC is satisfied that custody is justified by this sub-section will they authorise the Regimental Police (RP) to continue with custody. Otherwise the person will be warned for orders at a given time and date and will be released from arrest. The OC will ensure that the arrested person has been given a copy of the 'Rights of a Soldier' guide.
- c. If at any stage the OC decides that the alleged offence does not justify a charge then the soldier is to be released as soon as possible after this decision, since the case is now completed (any use of custody as an unofficial 'punishment' or 'cooling off' period is forbidden).
- d. Whatever the OC's decision, the outcome and time of decision on this review of custody are to be entered in the soldier's individual custody record (to be held in the guardroom).
- e. The OC will then continue to investigate the charge as quickly as practicable bearing in mind that depriving someone of their liberty is a serious matter and the duration should be minimised. Once the charge has been investigated sufficiently for Orders to take place the OC will have the soldier brought in front of him either to hear the case or to remand the soldier for CO's Orders.
- f. Note that the term 'remand for CO's Orders' does not necessarily mean 'remand in custody'. When in front of the OC the accused should be allowed to make a representation about why they feel they should be released. If at this point the OC believes that custody is no longer justified under Defence Act sub-section 36(5) then the person will be released having given an undertaking to appear on CO's Orders (the time and date having been confirmed via the RSM/Adjt). The 72 hrs limit for military custody mentioned in s. 36(5) is a maximum, and all periods of custody should be kept as short as practicable within this maximum limit.
- g. The Defence Act requirement for the accused to be brought before the CO or officer appointed by him is achieved by the Adjt and RSM being notified as soon as possible after the arrest, they will in turn notify the CO as soon as possible. Normally the accused will be brought in front of the OC of the Company of which he/she is a member, but if this is not practical without causing unnecessary delay (for example an arrest outside of training time when a part-time company commander is not available) then the CO will appoint another officer to act as the arrested person's Officer Commanding for disciplinary purposes, who will carry out actions a-f above). This appointment is made informally and could be by direct conversation, phone, email, etc.

- h. The RPs guarding the person should be expecting this review process to take place in a timely manner and are to query with the chain of command or RSM/Adjt if it does not happen.
- i. If at CO's Orders the CO decides to remand for magistrates court then the same justification process applies in that the person may give an undertaking to appear at magistrates court when called upon, and will be released unless the CO is satisfied they will not appear.
- j. Once the case has been completed then the accused must be released (unless the CO has awarded a punishment of detention).
- k. If at any point the maximum time limit of 72 hrs for military custody is reached then the person must be released. This is interpreted as being the time elapsed from the time of first arrest. The officer currently dealing with the case (OC or CO) will ensure it happens however the RPs guarding the person must be prepared to prompt the chain of command or else act on their own initiative, if necessary.
- l. There must be an Acting CO, formally appointed in Part One Orders, for all occasions when the CO will be unable to act (or appoint someone to act) within the laid down timelines.

21. Further details on AWOL, arrest, custody, detention and escorts are covered in the relevant Standing Orders.

### **CO's and OC's Orders Hearings**

22. It is important that Orders hearings are conducted in a way that demonstrably upholds the fairness of the procedures. Specifically any practice that might indicate a presumption of guilt is prohibited. There is no requirement for the accused to dress differently from the others involved in the hearing. Belt and belt and beret will no longer be removed from any rank of accused prior to Orders by OC or CO, and the accused will be marched in at normal pace (not double quick time). An escort is only required if the accused soldier is in military custody when he/she appears on Orders. The Orders hearings are not public and no legal representation is allowed.

23. The accused must not be disadvantaged procedurally either by any lack of knowledge or experience or by the manner in which orders are conducted. The OC will ensure that the accused soldier has been given the 'Rights of a Soldier' guide. If the soldier asks for help in understanding their rights then the OC will detail an officer, WO or SNCO (not a witness or otherwise connected with the case) to advise them on military law and procedure. The officer conducting the hearing must be satisfied that the accused understands what is going on and should be prepared to explain any aspect of the procedure at any time during the hearing.

24. The Police and Criminal Evidence Act (PACE) does not apply to the Regiment however a fair process must be implemented. In particular:

- a. Some form of evidence should be presented to prove the charge, rather than just an expectation that the accused will admit guilt. This will prevent accusations of forced confessions.
- b. It is advisable that the officer trying the case should read aloud the statements or summarise the documentary evidence to the accused, which will demonstrate to the accused that there is actual evidence rather than just hearsay. Or, if the OC prefers, oral questioning of witnesses under oath or solemn affirmation can be done in front of the accused.

c. The accused should be given the opportunity to present evidence in their defence, and should be allowed to cross examine any witnesses who are called to give evidence in person (by posing questions through the officer trying the case rather than speaking directly to the witness).

d. If an Assisting Officer has been nominated they will attend the Orders and the accused can consult with him/her at any stage during the hearing and on request both should be permitted to consult case papers and take notes during the hearing.

25. For consistency across the companies an aide memoire for OCs Orders hearings is at Annex B. This should be followed as far as is practical and it contains (in bold type) a recommended format of wording to be used to ensure that the above points are covered.

26. There is an opportunity for the soldier to enter a guilty/not guilty plea in the orders procedure however the soldier does not have to do either. Any admission of guilt should be taken into account when sentencing.

### **Sentencing**

27. If the officer trying the case is satisfied the charge(s) has/have proved, they will then decide on the punishment. At this stage the conduct sheet will be viewed for previous offences, the accused will be allowed to make a statement in mitigation, and any other factors will be taken into account.

28. The actual sentence awarded, provided it is within legal limitations, is a matter for judgement by the officer dealing with the case having taken into account the merits of the case. Factors to be considered could include, for example: the seriousness of the offence, re-offending, premeditation, circumstances not amounting to a defence but relevant to culpability (e.g. mistake or ignorance), any admission of guilt, remorse shown by the accused, rank and experience of the accused, past history and character, hardship. There is no set punishment for a charge as it will vary depending on mitigating or aggravating factors, provided it is within the powers of the officer to award.

29. Only one of the permitted punishments (see table in paragraph 9 above) may be awarded for each charge that the commander is satisfied has been proved. For multiple charges heard at the same time, it is good practice to determine the total punishment and then break this down into a separate punishment for each charge. This helps in the event of an appeal against one, several, or all of the findings and/or sentences. Where there is no separate penalty for a lesser charge the accused can be admonished for that charge. Fines are stated in dollar amounts, they are cumulative and their total must not exceed the amount the commander is permitted to award (which is stated in terms of days' pay). Sentences of detention awarded at the same time will run concurrently so as not to exceed 28 days total time served.

30. 'Admonition' means a formal acknowledgement of guilt, which is not deemed serious enough on that occasion to warrant a punishment. 'Reprimand' and 'severe reprimand' for an NCO should be seen by promotion boards and may have an impact on promotion prospects.

31. When fines are awarded, the officer should state (and record on the Charge Sheet) the deadline by which the fine is to be paid by. Defence Act section 37(8) gives 7 days for payment of fines although commanders have discretion in this when they make the sentence. Likewise for extra duties the deadline by which they should be completed should be stated and recorded. The failure to satisfactorily complete extras or pay a fine by the deadline is in itself a chargeable offence.

32. The CO, in addition to or in place of any other punishment he may impose, may recommend to the Governor that a warrant officer or below should be dishonourably discharged from the Regiment.

## **Documentation and Charge Reports**

33. All charges will be entered in BRIMS unless circumstances do not allow such as overseas deployment. Upon regaining BRIMS access, the Microsoft Word copy is to be entered into BRIMS and retained.

34. A charge report on which an accused is found 'not guilty' will be destroyed.

35. If 'admonition' is awarded, a note will be attached to the conduct sheet of the offender and will remain for a period of six calendar months, after which it will be destroyed. If any other punishment is awarded, the charge and award will be recorded on the conduct sheets. The charge report will be attached to the conduct sheet until checked and signed to ensure that it has been entered correctly, they will then be filed in the individual's documents file.

## **Review**

36. The 'minor offence report' printout will be printed out by the RSM and submitted for scrutiny by the Regiment 2IC at intervals. This will provide a level of oversight to ensure that OCs are not exceeding their powers.

## **Publication**

37. All members of the Regiment sentenced by the Commanding Officer will have the offence and punishment published on Part One Orders.

## **Appeals**

38. Appeals are to be made in accordance with section 37A of the Defence Act, 1965.

Annexes:

- A. 'Rights of a Soldier' Guide.
- B. Aide Memoire for OC's Orders Hearings.
- C. Aide Memoire for CO's Orders Hearings.
- D. Absentees
- E. Minor Administrative Action
- F. Major Administrative Action

**RIGHTS OF A SOLDIER ARRESTED FOR OR CHARGED WITH AN OFFENCE UNDER THE DEFENCE ACT 1965**  
(The 'Rights of a Soldier' guide)

**Introduction**

1. This guide is produced to help you understand your rights and the military laws and regulations when you are arrested for or charged with an offence under the Defence Act 1965. It cannot deal with every situation or question you may have.
2. If you are in any doubt about the contents, or your rights generally, you should ask for an Officer, Warrant Officer or Senior NCO to assist you with advice on military law and procedure. You may also ask to see a full version of the Defence Act 1965.
3. An up to date copy of this guide will be issued to you if you are arrested and kept in military custody or charged with an offence. It will not be taken away from you.

**Arrest**

4. You will not necessarily be arrested at all during your case. If not, then ignore this section.
5. Once you have been arrested, the arresting person will make a note of the date, time and location of your arrest. You will be taken into custody at Warwick Camp or an alternative location.
6. You will be taken without unnecessary delay to the Commanding Officer (CO) or else an officer appointed by him, normally the Officer Commanding your company (OC).
7. If your case is not completed at this point then you will be released on giving an undertaking to the officer that you will appear before the person trying your case when called upon. It will be a military offence if you do not appear as ordered.
8. If however the officer is satisfied that you will not appear when called upon then you can be kept in military custody for as long as the officer believes is needed or until your case has been finished with, up to a maximum period of 72 hours from the time of your arrest.
9. If you are to be kept in custody then the officer dealing with your case will inform you of the offence you have been arrested for, and the reason why you are being kept in military custody. You may inform the officer why you believe you should be released.
10. You will have the right to have one person of your choice contacted, at public expense, and told the fact of your arrest and where you are being held. You should be given writing materials if you ask.
11. While in military custody you will not have to attend parades or do more than necessary to keep yourself and your accommodation clean. You may be ordered to perform duties if on operations.

**Orders**

12. Once there has been sufficient investigation you will be taken in front of the OC (or other officer appointed) and either your case will be dealt with by the OC (on 'OC's Orders') or you will be told that you are being remanded for CO's Orders. All ranks above corporal, and the most serious charges, are remanded to the CO.
13. If remanded for CO's orders you will either be released on giving an undertaking to appear on CO's orders, or you can be kept in military custody if the officer is satisfied you will not appear when called upon (as above).
14. During OC's or CO's orders the charge or charges will be read out to you. You will be asked if you understand and you should ask to have something explained if you are not sure of the meaning at any point in the process. You will be asked if you wish to plead guilty or not guilty. You do not have to do so.

15. If you do not plead guilty the officer will consider the charges based on the evidence against you. You have the right to give evidence in your defence if you wish (the officer may require this to be done under oath/solemn affirmation).
16. If a witness is giving evidence against you in person then you will have the right to ask them questions, in which case you will say the question to the OC or CO and they will put the question to the witness.
17. You will only be sentenced for any charges against you that the OC or the CO is satisfied are proved.
18. If the OC or CO decides a charge is proved then he will consider an appropriate punishment. To help him do this he will look at your conduct sheet and consider your past conduct and other relevant factors. You will have the opportunity to say something that may affect the OC's or CO's decision on punishment (mitigation).
19. If the OC is dealing with you then you may be awarded one of the following punishments for each charge that is proved, depending on your rank:
- Private: Admonition<sup>1</sup>, additional fatigues or other duties, confined to barracks (not exceeding 7 days, only when the unit is in camp), fine (not exceeding total 7 days' pay for all charges).
  - LCpl or Acting Cpl: admonition, reprimand, reduction to substantive rank (A/Cpl only), reduction to the ranks (LCpl or A/Cpl).
  - Cpl (substantive): admonition, reprimand.
20. If the CO is dealing with you then the following punishments are available for each charge depending on rank:
- Privates: admonition, additional fatigues or other duties, confined to barracks (not exceeding 14 days, only if the unit is embodied or in camp), fine (not exceeding a total 28 days' pay for all charges), detention for any period not exceeding 28 days (only if unit is embodied or in camp).
  - NCOs (includes LCpl to CSgt): reprimand, severe reprimand, reduction to the ranks or lower grade.
21. Any fines must be paid by the specified date, and extra duties completed by the specified date, or that will incur another offence.
22. Instead the CO may decide to remand any rank Pte-WO1 to the Magistrates Court to be tried from the beginning. The magistrate may currently award the following punishments for charges that the CO could have dealt with:
- Defence Act section 26, failure to complete military training. 3 months' imprisonment, a fine of \$360, or both.
  - Defence Act sect 32, failure to report on embodiment. 6 months' imprisonment, a fine of \$720, or both.
  - Any of the military offences in second schedule of the Defence Act. 3 months imprisonment, a fine of \$2,250, or both.
23. The CO may in addition or instead recommend to the Governor that any rank Pte-WO1 be dishonourably discharged. Warrant Officers can only be remanded to the Magistrate and/or recommended for discharge.

### **Right of Appeal**

24. If you feel aggrieved by a disciplinary punishment received under the above process conducted under Section 37 of the Defence Act, then you may, within 14 days of receiving the punishment, make an appeal to the Defence Board by following the process described in Section 37A of the Defence Act, 1965.

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<sup>1</sup> 'Admonition' is a formal acknowledgement of guilt which is not deemed serious enough for punishment on this occasion.

**AIDE MEMOIRE FOR OC'S ORDERS HEARINGS**

1. Fully investigate the charge prior to seeing the soldier as follows:
  - a. Check the evidence (the aim is to have enough evidence to prove the charge without reliance on the soldier admitting his/her guilt)
  - b. Check the appropriate charge has been used and the charge report is correct.
  - c. Decide whether to deal with the accused yourself or refer to CO.
  
2. The dress of the accused and the rank of their escort is to be in accordance with the chart below:

<b>RANK OF SOLDIER ON ORDERS</b>	<b>Pte</b>	<b>LCpl</b>	<b>Acting Cpl</b>	<b>Cpl</b>	<b>Sgt</b>	<b>CSgt</b>	<b>WO2 &amp; WO1</b>
Officer Dealing	OC	OC	OC	OC	CO	CO	CO/GH
Head Dress	YES	YES	YES	YES	YES	YES	YES
Belt	YES	YES	YES	YES	YES	YES	YES
Rights of a Soldier Arrested or Charged with an Offence	YES	YES	YES	YES	YES	YES	YES
Escort*	LCpl and above	Cpl and above	SNCO		WO2 or CSgt	WO2	WO1 for WO2

3. Then have the accused brought in front of you and follow the guide below:

<b>Ser</b>	<b>Item</b>	<b>Example dialogue</b>
1.	Appointment of OC ( <i>if you are not normally their company commander</i> )	<b>I am...</b> <rank, name> <b>I am your Officer Commanding for this case</b>
2.	Confirmation of identity	<b>Are you...</b> <no, rank, name>? <i>If no: march out, speak to CSM</i>
3.	Rights of a Soldier document	<b>Have you received the document 'Rights of a Soldier Arrested for or Charged With an Offence under the Defence Act'?</b> <i>If no: CSM march out. CSM gives guide, allows time to read it.</i>
4.	Confirm understanding rights	<b>Do you understand the Rights of a Soldier document?</b> <i>Remember the soldier may not be able to read/understand it</i> <b>Do you wish me to delay the case while someone explains the Rights of a Soldier to you?</b> <i>If yes order the accused to be marched out, adjourn while an Offr, WO or SNCO advises the accused on military law and procedure (cannot be a witness, the arresting person, the Adjit or the OC). Then march back in.</i>
5.	Announcement of decision on dealing with case by OC or remanding to CO	<b>I can either deal with you myself or remand you to the CO.</b> <b>I have decided to...</b> <deal with you myself / remand you to the CO> <i>If remanding go to serial 5a &amp; 5b, otherwise go to serial 6.</i>

Only if remanding to CO:

Ser	Item	Example dialogue
5a.	Details of CO's orders and opportunity for accused to given an undertaking to appear.	<b>You will be given a date and time to appear before the CO.</b>  <b>Will you attend for CO's orders?</b> Listen to accused's reply and form an opinion on the matter
5b.	Decision on requirement to put/keep in custody  Note: maximum 72 hour time limit (from time of first arrest)	<b>I am satisfied that you will <u>not</u> appear so I am remanding you in military custody prior to CO's orders.</b> <b>CSM, march out.</b> <i>Ensure RSM, Adjt are informed immediately that accused has been remanded in custody and pass paperwork to RSM ASAP</i> Or <b>I am releasing you until you are required to report for your case to be dealt with by the CO. Remember it will be a military offence not to appear when called upon.</b> <b>CSM will give you the details of when to report.</b> <b>CSM, march out</b> <i>Ensure RPs release from arrest. Ensure RSM/Adjt is informed that accused has been remanded and pass paperwork to RSM.</i>

Continue here if dealing with the case yourself:

Ser	Item	Example dialogue
6.	Reading the charge	<b>You are charged with...</b> <read out charge(s) verbatim>
7.	Confirmation understands the charge	<b>Do you understand the charge(s)?</b> <i>If no: explain the charge or charges</i>
8.	Entering of a plea	<b>Do you wish to enter a plea of guilty or not guilty?</b> <i>Does not have to plead either way. If pleads guilty on all charges then go to ser 15 (finding). If no plea, or if pleads not guilty on any charge, then consider the evidence, serial 9 on.</i>
9.	Review of written evidence	<b>I will now look at the evidence against you...</b> <i>While doing this, read aloud any witness statements and/or describe any documentary evidence (roll book, guard duty rosters etc) by which it is proposed to prove the charge(s).</i> <i>If OC wishes to call witnesses go to serial 10 otherwise ser.14</i>
10.	And/or hear the witnesses in person <i>(Optional, only if OC wishes to hear oral evidence, e.g. unsure of details in statement. If so, witness will have been told to wait in outer office)</i>	<b>I will now call a witness to give evidence in person.</b> <b>March in...</b> <rank & name of first witness>  <i>Ask witness to make oath or solemn affirmation (CSM to have a bible and card available).</i>  <i>Ask witness to describe in their own words what happened.</i>
11.	Questioning of Witness by OC	<i>OC questions the witness as sees fit</i>
12.	Opportunity for accused to question witness	<b>You may if you wish ask questions of the witness. If so you will say the questions to me and I will put them to the witness. Do you have any questions for the witness?</b> <i>Important that the OC controls this process so it does not become an argument between witness and accused.</i>
13.	Second and subsequent witness(es) - if applicable	<i>Repeat above procedure for any additional witness(es) you may wish to give their evidence in person</i>

14.	Opportunity for evidence from accused in his/her defence	<b>Do you wish to give any evidence in your defence under oath or solemn affirmation? You do not have to.</b>  <b>Do you wish to call any witnesses in your defence?</b> <i>If yes, swear in the accused or witness following above procedure for oath/solemn affirmation as above. Listen to what the accused has to say, you may then question him/her.</i>
15.	Finding	<b>I find the charge proved</b> Or <b>I find &lt;charges&gt; proved and &lt;charges&gt; not proved</b> Or <b>I find all the charges proved</b> Or <b>I find &lt;the charge/all charges&gt; not proved, you are free to go, CSM march out.</b>
16.	Consideration of accused's character, performance and any other factors	<b>I will now consider your character and any other factors relevant to sentencing</b> <i>Look at conduct sheets (it is at OC's discretion how far back to look)</i> <b>I see you have ..... recent entries that are relevant</b>
17.	Statement of character or mitigation by accused	<b>Do you wish to say anything that could affect my decision on the punishment?</b>
18.	Announcement of punishment for each sentence	<b>On the charge of ... I award you ...</b> <i>Give the punishment for each charge that has been proved</i>
19.	Deadline	<b>The &lt;fine/extras&gt; to be &lt;paid / completed&gt; by &lt;date&gt;</b>
20.	OC's comments	<i>OC can speak to the soldier as desired giving reason for sentence, warning as to future performance, pep talk etc</i>
21.	End of proceedings	<b>CSM, march out</b>

### Forms of Oath

The person taking the oath shall hold the New Testament, or if a person of Jewish faith the Old Testament, in their uplifted hand and shall say, or repeat after the person administering it, the oath:

"I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth."

Alternatively the person may say, or repeat, the solemn affirmation:

"I (state name) do solemnly, sincerely, and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth."

If neither is appropriate to the religious beliefs of the person taking the oath, an oath may be administered in such form and manner as the person taking the oath declares to be binding on their conscience in accordance with their religious beliefs.

**AIDE MEMORE FOR COMMANDING OFFICER'S ORDERS HEARINGS**

1. A guideline format of CO's orders is shown below

Ser	Item	Example dialogue
1.	Confirmation of identity	<b>Are you...</b> <no, rank, name>? <i>If no: march out, speak to Adjt</i>
2.	Rights of a Soldier document	<b>Have you received the document 'Rights of a Soldier Arrested for or Charged With an Offence under the Defence Act?'</b> <i>If no: RSM march out. RSM gives guide, allows time to read it.</i>
3.	Confirmation understands rights	<b>Do you understand the Rights of a Soldier document?</b> <i>Remember the soldier may not be able to read/understand it</i> <b>Do you wish me to delay the case while someone explains the Rights of a Soldier to you?</b> <i>If yes order the accused to be marched out, adjourn while an Offr, WO or SNCO advises the accused on military law and procedure (cannot be a witness, the arresting person, the Adjt or the OC). Then march back in.</i>
4.	Announcement of decision on dealing with case	<b>I can either deal with you myself or remand you to the Magistrates Court. I have decided to...</b> <deal with you myself / remand you to the Magistrates <i>If remanding go to serial 5a &amp; 5b, otherwise go to serial 6.</i>

Only if remanding to Magistrates Court:

Ser	Item	Example dialogue
5a.	Details of Court date and opportunity for accused to given an undertaking to appear.	<b>You will be given a date and time to appear before the Magistrate.</b>  <b>Will you attend the Court?</b> <i>Listen to accused's reply and form an opinion on the matter</i>
5b.	Decision on requirement to put/keep in custody  Note: maximum 72 hour time limit (from time of first arrest)	<b>I am satisfied that you will <u>not</u> appear so I am remanding you in military custody prior to Magistrates Court.</b> <b>RSM, march out.</b> <i>Or</i> <b>I am releasing you until you are required to report for your case to be dealt with by the Magistrate. Remember it will be a military offence not to appear when called upon.</b> <b>The RSM will give you the details of when to report.</b> <b>RSM, march out</b> <i>RSM will ensure RPs release from arrest.</i>

Continue here if dealing with the case yourself:

Ser	Item	Example dialogue
6.	Reading the charge	<b>The Adjutant will now read out the charge(s)...</b> <Adj reads out charge(s) 'You are charged with.....'>
7.	Confirmation understands the charge	<b>Do you understand the charge(s)?</b> <i>If no: explain the charge or charges</i>
8.	Entering of a plea	<b>Do you wish to enter a plea of guilty or not guilty?</b> <i>Does not have to plead either way. If pleads guilty on all charges then go to ser 15 (finding). If no plea, or if pleads not guilty on any charge, then consider the evidence, serial 9 on.</i>
9.	Review of written evidence	<b>I will now look at the evidence against you...</b> <i>While doing this, read aloud any witness statements and/or describe any documentary evidence (roll book, guard duty rosters etc) by which it is proposed to prove the charge(s).</i>

		If CO wishes to call witnesses go to serial 10 otherwise ser.14
10.	And/or hear the witnesses in person <i>(Optional, only if CO wishes to hear oral evidence, e.g. unsure of details in statement. If so, witness will have been told to wait in outer office)</i>	<b>I will now call a witness to give evidence in person.</b> <b>March in...</b> <rank & name of first witness>  <i>Ask witness to make oath or solemn affirmation (Adj't to have a bible and card available).</i>  <i>Ask witness to describe in their own words what happened.</i>
11.	Questioning of Witness by CO	<i>CO questions the witness as sees fit</i>
12.	Opportunity for accused to question witness	<b>You may if you wish ask questions of the witness. If so you will say the questions to me and I will put them to the witness. Do you have any questions for the witness?</b> <i>Important that the CO controls this process so it does not become an argument between witness and accused.</i>
13.	Second and subsequent witness(es) - if applicable	<i>Repeat above procedure for any additional witness(es) you may wish to give their evidence in person</i>
14.	Opportunity for evidence from accused in his/her defence	<b>Do you wish to give any evidence in your defence under oath or solemn affirmation? You do not have to.</b>  <b>Do you wish to call any witnesses in your defence?</b> <i>If yes, swear in the accused or witness following above procedure for oath/solemn affirmation as above. Listen to what the accused has to say, you may then question him/her.</i>
15.	Finding	<b>I find the charge proved</b> <i>Or</i> <b>I find &lt;charges&gt; proved and &lt;charges&gt; not proved</b> <i>Or</i> <b>I find all the charges proved</b> <i>Or</i> <b>I find &lt;the charge/all charges&gt; not proved, you are free to go, RSM march out.</b>
16.	Consideration of accused's character, performance and any other factors	<b>I will now consider your character and any other factors relevant to sentencing</b> <i>Look at conduct sheets (it is at CO's discretion how far back to look)</i> <b>I see you have ..... recent entries that are relevant</b>
17.	Statement of character or mitigation by accused	<b>Do you wish to say anything that could affect my decision on the punishment?</b>
18.	Announcement of punishment for each sentence	<b>On the charge of ... I award you ...</b> <i>Give the punishment for each charge that has been proved</i>
19.	Deadline	<b>The &lt;fine/extras&gt; to be &lt;paid / completed&gt; by &lt;date&gt;</b>
20.	CO's comments	<i>CO can speak to the soldier as desired</i>
21.	End of proceedings	<b>RSM, march out</b>

## **ABSENTEES**

### **General**

1. The purpose of this Annex is to detail the action to be carried out in the event of a soldier of the Regiment failing to attend for duty.
2. Every effort should be made in the short term to ensure that Absentees are returned to duty quickly, and not permitted to be absent for an extended period.

### **Action on Absence**

3. The actions to be carried out in the event of an Absentee are as follows:
  - a. The CSM of the Coy concerned is to detail a senior NCO to visit or contact the Absentee, and inform him that he must appear the next drill night.
  - b. If the soldier continues to be absent, then on the third occasion of absence the CSM is to inform the RSM.
  - c. The RSM will obtain an arrest warrant from the CO and will order the RPs to visit the soldier's house or likely whereabouts to effect an arrest.
  - d. On return to Camp the soldier will be placed in front of the Company Commander who will deal with him according to current regulations.
  - e. It will be considered too serious for the Coy Comd to deal with if the soldier has been absent for more than 3 drills and the Coy Comd is to remand the soldier for Commanding Officer's Orders. Coy Comds are to see that the case is handed over in good order when it is remanded for CO's Orders. They are to brief the Adjutant. They should not normally brief the CO directly but may be required to attend his Orders in person. Written evidence from the Coy Comd may be necessary and on handling over a case it must be made clear what efforts had been made by the Coy to bring in the soldier for training or arrest, and if there are any known extenuating circumstances.

### **Authority for Arrest**

4. The Commanding Officer is the sole authority for arrest and arrest authorization cards. Appendix 1 will be issued to each Officer, WO/SNCO and RP each taking part before leaving Camp. These cards will be obtained from the RSM. These cards will be signed by the Commanding Officer and the individual will keep them on their person.

### **Arrest Procedure**

5. As per Standing Order No. 48 'Arrest Procedure', in addition the NCO IC of the arrest party will ensure the following:
  - a. The soldier is to be positively identified before arrest.
  - b. That minimum force is used to pick up any Absentees; no physical contact should be used where possible. Common sense is applied to the circumstances affecting the arrest.

- c. The Absentee must be warned of the reason for arrest, and shown a copy of the warrant.
- d. Note the time of arrest.
- e. Caution the soldier of his rights.
- f. Transport the soldier to his Company Office for Orders.
- g. Provide escorts for Officer Commanding and where necessary Commanding Officer's Orders.
- h. Arrange RPs for overnight guard of detainee (if needed).
- i. Hand arrest report (Appendix 2) to RSM.

### **Person Detained in Military Custody**

6. The Commanding Officer's or nominated Officers' authorisation will be required for continued military custody if the soldier's case cannot be completed at OCs or COs Orders immediately after time of arrest, or if the CO remands the soldier for Magistrates' Court. This authorisation will depend on whether the Officer believes that the soldier will appear for the hearing or not.

7. If continued custody is authorised the RP NCO is to carry out the actions for taking persons into custody as listed in Standing Order No. 41 'Orders for Regimental Police'. The Orders for Soldiers in Military Custody (Standing Order No. 45) will apply and that Standing Order is to be read to the detainee.

8. A person in military custody awaiting Orders or trial will not be detained more than 72 hours from time of initial arrest.

### **Magistrates' Court**

9. The Adjutant is responsible for ensuring that the documentation and procedure for Magistrates' Court is adhered to and that the following takes place:

- a. Information for Summary Offences Form is completed.
- b. The Attorney General's Chambers is notified and that a Prosecutor is arranged.
- c. Soldiers are escorted to Court in time for the hearing, see Standing Order No. 47 'Orders for NCOs IC Escorts'.

### **Administration**

10. Companies are to ensure that in each Absentee's documents is a copy of Appendix 3 showing when the Coys/RPs visited the Absentee's house in order to arrest them.

11. Coy FTI is to produce to the RSM at 0900 hrs a list of persons who have been absent more than 3 times.

12. The QM is to provide equipment for the detainee as per Standing Order No. 45.

13. The QM is to provide meals in the Guardroom at timings as given in Standing Order No. 45.

## Appendix

1. RP Arrest Authorisation Card.
2. Report.
3. Record of Visits to Absentees.
4. Tariff Guideline procedures for LTA Soldiers.

Copy No \_\_\_ of

**ARREST AUTHORISATION CARD**

NAME OF BEARER:

---

,who is a member of The Bermuda Regiment, is  
authorised by virtue of Section 36(3) of  
The Defence Act 1965, to arrest without  
warrant, any member of The Bermuda Regiment  
whom he believes on reasonable grounds to  
have committed a military offence set out  
in the Second Schedule of The Defence Act  
1965 or an offence against Section 18 or 26 of  
The Defence Act. This authorization is valid

From:

\_\_\_\_ day of \_\_\_\_\_      \_\_\_\_\_  
(dd)                      (mm)                      (yyyy)

To:

\_\_\_\_ day of \_\_\_\_\_      \_\_\_\_\_  
(dd)                      (mm)                      (yyyy)

Lieutenant Colonel  
Commanding Officer

**ARREST REPORT FOR AN ARREST UNDER THE COMMANDING OFFICER'S AUTHORISATION**

1. I am No: \_\_\_\_\_ Rank: \_\_\_\_\_ Name: \_\_\_\_\_  
a member of The Bermuda Regiment.

2. I am authorised, in writing, by the Commanding Officer of The Bermuda Regiment to arrest  
No: \_\_\_\_\_ Rank: \_\_\_\_\_ Name: \_\_\_\_\_  
who is a member of the Regiment. Attached is the Commanding Officer's authorising letter.

3. I saw the person known to me as \_\_\_\_\_  
at \_\_\_\_\_  
(Brief description of location)

4. I, No: \_\_\_\_\_ Rank: \_\_\_\_\_ Name: \_\_\_\_\_  
informed him/her that he/she was to be arrested for an Offence under  
Section 36 (6) of The Defence Act, 1965.

5. No: \_\_\_\_\_ Rank: \_\_\_\_\_ Name: \_\_\_\_\_  
was taken into custody at \_\_\_\_\_ hrs by No: \_\_\_\_\_ Rank: \_\_\_\_\_  
Name: \_\_\_\_\_

- 6. a. He / She resisted arrest.
- b. He / She did not resist arrest.

7. (Explain para 6a below).  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. He / She was conveyed in a Military Vehicle / Private vehicle to the Regimental Guard Room at Warwick Camp.

9. In the Guard Room at Warwick Camp,

a. He/She was searched by No: \_\_\_\_\_ Rank: \_\_\_\_\_

Name: \_\_\_\_\_

b. He/She was cautioned by No: \_\_\_\_\_ Rank: \_\_\_\_\_

Name: \_\_\_\_\_

c. He / She was read Regimental Standing Orders No 45 by:

No: \_\_\_\_\_ Rank: \_\_\_\_\_ Name: \_\_\_\_\_

d. He/She was placed in a cell by No: \_\_\_\_\_ Rank: \_\_\_\_\_

Name: \_\_\_\_\_

No: \_\_\_\_\_ Rank: \_\_\_\_\_ Name: \_\_\_\_\_

(Person completing Report).

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Person completing Report)

Name of Report Witness: \_\_\_\_\_  
(BLOCK LETTER)

Signature of Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_ Date: \_\_\_\_\_

(Note: The Witness is to certify the completion of this report. He/She need not witness the arrest).

Name of Person receiving Report: Rank: \_\_\_\_\_ Name: \_\_\_\_\_

Appointment: \_\_\_\_\_

Signature of person receiving Report: \_\_\_\_\_

Date: \_\_\_\_\_

**RECORD OF VISITS TO ABSENTEES**

This is to certify that I attempted to locate the following person:

No:  Rank:  Name:  Ini:  Coy:

in order to affect an arrest under Section 36(3) of the Defence Act, 1965.

Last Known Address: <input style="width: 100%; height: 40px;" type="text"/>  Tel No: <input style="width: 40%; border: none;" type="text"/> or <input style="width: 40%; border: none;" type="text"/> Email: <input style="width: 100%; border: none;" type="text"/>	NOK Address: <input style="width: 100%; height: 40px;" type="text"/>  Tel No: <input style="width: 100%; border: none;" type="text"/> Email: <input style="width: 100%; border: none;" type="text"/>
Employer Address: <input style="width: 100%; height: 20px;" type="text"/> Tel No: <input style="width: 100%; height: 20px;" type="text"/>	Date of Birth: <input style="width: 100%; height: 20px;" type="text"/>  Date of Enlistment: <input style="width: 100%; height: 20px;" type="text"/>

<b>REMARKS</b>					
LONG TERM ABSENT	PENDING DISCHARGE	PENDING HLD COY	KIT OUTSTANDING	FINES OUTSTANDING	OTHER REASON

<b>RECORD OF ATTEMPTS TO CONTACT ABSENT SOLDIER</b>						
Date	Time (hrs)	Date of Last Absence	Action*	Result**	Remarks	Signature

\*TC = Telephone call / EM = Email / VR = Visit to Residence / O = Other (specify)  
 \*\*NA = No answer / NR = No Result / (V)ML = (Voice) message left

<b>FOLLOW UP REPORT</b>

## TARIFF GUIDELINE FOR LONG TERM ABSENT SOLDIERS

Reference:

A. Bermuda Defence Act 1965 : 165 (PART II and III)

### Introduction.

1. This document is to be used as a guide to help provide consistency and fairness when commanders are deciding on awards for absentee soldiers and especially longer term absent soldiers.
2. When deciding on an award for Long Term Absentees (LTAs) commanders are to use a common sense approach that will:
  - a. Deter soldiers from further absenteeism.
  - b. Encourage them to regularly attend.
3. **Computing Additional Fatigue or Other Duties.** As a rough guide, for each drill that is missed, the soldier should be awarded a drill to make up for the drill missed, plus an *Additional Fatigue Drill* i.e. for every drill missed he will be awarded 2 drills. For the drill that has been performed as repayment for a missed duty, **this will be deducted from his service time**. However, this does not apply to the *Additional Fatigue Drill*. Calculation to be applied after mitigating factors.
4. There are many mitigating and aggravating factors that should be considered when awarding disciplinary consequences to the soldier, such as, but not limited to:
  - a. **Mitigating factors.**
    - (1) Voluntary return to the Regt. This is the most important of the Mitigating Factors and should be weighted accordingly (up to 50% reduction in sanction).
    - (2) Honest ignorance of situation.
    - (3) Has been absent for a reason that the CO or Deferment / Exemption Board would likely have awarded deferment / exemption. (School, medical, alternative service etc)
    - (4) Enduring personal hardship.
    - (5) Genuine remorse.
    - (6) Low rank.
  - b. **Aggravating factors.**
    - (1) Arrested / non-voluntary return.

(2) Knowledge of procedures (as evident by letter to Deferment Board on file, interview notes etc).

(3) Repeat offender. (any offence)

(4) Outstanding kit or payment of fines to the Regt.

(5) Petulance / Lack of contrition.

(6) Holds rank.

(7) Absence greater than 12 months (i.e. effectively deserted)

c. **Other factors to consider.**

(1) Age. Are they +/- 33 years of age.

(2) Length of time left to complete obligatory 3 years 2 months service.

(3) Residing in Bermuda or overseas.

d. **For every mitigating factor, the OC should consider subtracting 25% from the total number of additional drills or fine; for every aggravating factor, the OC should add 25% to the total number of additional drills of fine. Common sense needs to be applied though to ensure adjusted awards remain reasonable. (ie no less than the confirmed drills missed and no more than 3 times confirmed drills absent)**

5. Guide for LTA Tariffs should be with accordance to powers stipulated at Reference A:

	1 <sup>st</sup> Occurrence	2 <sup>nd</sup> Occurrence	3 <sup>rd</sup> Occurrence
	any <b>one</b> of the following punishments <sup>1</sup> :	any <b>one</b> of the following punishments <sup>1</sup> :	
3 – 15 Drill periods	<ul style="list-style-type: none"> <li>• A fine not exceeding seven days' pay;<sup>2</sup></li> <li>• If the unit is in camp, confinement to barracks for any period not exceeding seven days;</li> <li>• The carrying out of additional fatigue or other duties up to 2 Drills for each duty missed.</li> <li>• Admonition.</li> </ul>	<ul style="list-style-type: none"> <li>• A fine not exceeding seven days' pay;</li> <li>• If the unit is in camp, confinement to barracks for any period not exceeding seven days;</li> <li>• The carrying out of additional fatigue or other duties up to 2 days for each duty missed.</li> </ul>	Remand to the CO* (See Para 6).
15 – 30 Drill Periods	<ul style="list-style-type: none"> <li>• A fine not exceeding seven days' pay;</li> <li>• If the unit is in camp, confinement to barracks for any period not exceeding seven days;</li> <li>• The carrying out of additional fatigue or other duties up to 2 Drills for each duty missed.</li> </ul>	Remanded to the CO* (See Para 6).	Remanded to the CO*(See Para 6).
30 + Drill Periods	<ul style="list-style-type: none"> <li>• The carrying out of additional fatigue or other duties up to 2 Drills for each duty missed.</li> <li>• (Serious consideration should be given to remanding the soldier to the CO).</li> </ul>	Remanded to the CO* (See Para 6).	Remanded to the CO*(See Para 6).

6. **\*Remand to the CO.** In any case where an officer commanding the subunit in which a soldier is serving has investigated the charge against and considers the circumstances are such that the charge may not suitably be dealt with by him, or in the case of a charge against a warrant officer or a non-commissioned officer above the rank of corporal, he shall remand such man to appear before the Commanding Officer who shall investigate the charge, who may dismiss the charge or, if he is satisfied that the charge has been proved, he may impose any one of the following punishments (for each offence):

- a. A fine not exceeding twenty-eight days' pay;
- b. If the unit is embodied or in camp, detention for any period not exceeding twenty-eight days;

<sup>1</sup> Coy Cdrs can only award up to a maximum of: seven days pay; if unit is in camp confinement to barracks for any period not exceeding 7 days;

<sup>2</sup> **Payment or recovery of debt.** A fine imposed on a man of the Regiment under this section shall be paid to the within seven days, and shall be recoverable from any sums due to such man under this Act or before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 [title 8 item 15], for the recovery of a debt or liquidated demand.

- c. If the unit is embodied or in camp, confinement to barracks for any period not exceeding fourteen days;
- d. The carrying out of additional fatigue duties or other duties;
- e. Admonition;

(In the case of a non-commissioned officer only):

- f. Reduction to the ranks or lower grade;
- g. Severe reprimand;
- h. Reprimand.

7. The CO will consider the same criteria laid out in Para 2 when deciding on the award to be given to an LTA soldier.

8. **Discharge and Dishonourable Discharge.** There may be occasions when the Regiment may be best served by discharging an LTA. However, a discharge may be conditional on the completion of completion of awards for the charges. Under subsection (3) of the Defence Act the Commanding Officer may - in addition to or in place of any other punishment - recommend to the Governor that a man should be dishonourably discharged from the regiment. The Governor on receiving a recommendation from the Commanding Officer that a man should be dishonourably discharged may so discharge the man or may remit the case back to the Commanding Officer requiring him to reconsider his recommendation and any other punishment that he has imposed.

9. When the Commanding Officer is required to reconsider a recommendation for discharge under subsection (5) he shall not impose or alter any other punishment without giving the man in respect of whom the order for dishonourable discharge was made an opportunity to be heard.

10. **Maximum Penalties.** When heard on CO's Orders, the maximum penalty a soldier may receive is \$1000 per offence, and a total of \$4000 for all offences at that hearing. A reasonable length of time to pay fine / complete drill will be given after considering the soldier's personal financial situation.

11. **Remanding to a Magistrate.** The Commanding Officer may, after investigating any charge brought in accordance with this Standing Order, remand any person so charged for prosecution before a court of summary jurisdiction and such court of summary jurisdiction shall thereafter deal with the matter *de novo*.

12. **Imprisonment.** Any soldier of the Regiment who is found guilty of *any* of the military offences set out in the Second Schedule of the Defence Act (including absenteeism) or may be liable on conviction by a court of summary jurisdiction (Magistrates' Court) up to a fine of \$2,250 or to imprisonment for 3 months or to both such fine and imprisonment.

13. **Option to Receive Fine.** At the discretion of the CO, a soldier may be given the option to receive a fine in lieu of a drill – at a rate of \$35 per drill.

14. **Awards to Reduce Remaining Service Time.** All soldiers will have their remaining service reduced by half of the total amount of drills that they are found guilty for.

## **MINOR ADMINISTRATIVE ACTION (MAA)**

### **Introduction**

1. This Annex lays down the policy of the Commanding Officer (CO) by which all commanders in the Regiment are authorised to issue minor administrative sanctions to their subordinates in order to maintain military discipline. MAA is an administrative form of maintaining discipline, distinct from the CO or Officer Commanding (OC) using their statutory disciplinary powers by charging the individual with an alleged military offence under the Defence Act (as covered in Standing Order #55).
2. The policy in this Annex is to be adhered to by commanders at all levels. If there is a conflict between this Annex and Defence Legislation, then the Legislation (current versions of Defence Act 1965 and Governors Orders 1993) takes precedence. This Annex is to be reviewed whenever there is any change to the Legislation. Any questions are to be referred to the Adjutant, if necessary the Adjutant will request legal advice from Attorney General's Chambers.
3. This Annex does not cover Major Administrative Action (Standing Order #55 Annex F) which is administrative action taken by the CO in respect of more serious cases of indiscipline (as an alternative to charging with an offence under the Defence Act).

### **Administrative Action versus Disciplinary Punishments**

4. Administrative Action is action taken to safeguard or restore the operational effectiveness and efficiency of the Regiment by commanders using their command authority. It is intended to be remedial and rehabilitative. The question is not whether the subordinate has committed a military offence, but whether they have failed to uphold the Values and Standards of the Bermuda Regiment by conduct that is in breach of the Regiment Service Test (see Standing Order #62). MAA is part of the normal process by which commanders instil military values and standards in their subordinates. It may be taken by all commanders down to LCpl rank (depending on rank of the individual being subjected to MAA).
5. This Annex is not intended to replace informal rebukes and corrections in the course of normal Regimental life. For example it is preferable to correct a failing immediately using the principles of proportionality and common sense, such as by ordering a soldier to pick up a piece of litter dropped, or to re-clean a weapon that is still dirty. The existence of this Annex does not affect this type of correction.
6. The CO's policy is that MAA is always to be considered for correcting minor failings in military standards unless there is a specific reason why the situation merits Disciplinary Action under the Defence Act. Typical failings which may merit MAA include poor turnout, bad soldiering, performing duties below the expected standard and failure to attend (for short absences only: not to exceed one drill night).
7. However more serious or repeat offences against military discipline must still be charged under the Defence Act. For example, any conduct that falls within the following military offences is normally to be deemed too serious for MAA except with the authority of the CO:
  - a. Failure to complete military training (Defence Act section 26).
  - b. Failure to report on embodiment (section 32).
  - c. Neglect of duty while on guard (section 36, second schedule paragraph 1(1)).

- d. Violence against any person on guard (second schedule paragraph 1(2)).
- e. Insubordinate behaviour if involving violence or threats (second schedule paragraph 2).
- f. Absence without leave (second schedule paragraph 5).
- g. Ill-treatment of subordinates (second schedule paragraph 9).

8. The OC of each company is directly responsible to the CO for overseeing all administrative discipline which takes place in his company, just as he is for implementing his statutory disciplinary powers under the Defence Act. On a day-to-day basis this supervision will normally be delegated to the Company Sergeant Major but the OC retains overall responsibility.

9. The system of awarding MAA sanctions must be fair, predictable and subject to review and oversight by the chain of command to prevent it becoming an unregulated system that could be open to abuse of power or victimization of individuals. Sanctions which involve unreasonableness, public humiliation, sustained or oppressive treatment, sleep deprivation, infliction of pain, or work other than for the benefit of the Regiment are expressly forbidden. The sanction must be proportionate and appropriate to the failing and must be taken for remedial purposes. Only the following minor sanctions are authorised:

- a. Show parades.
- b. Extra duties or tasks.
- c. Extra work.
- d. Informal interviews.
- e. Formal recorded interviews.

10. The table below shows the minimum level of Originator and Reviewer (all ranks are as worn, including local/acting rank). The Originator can be any NCO or above of appropriate rank who observes a failing. The Reviewer is normally the Subject's CSM (even for Subjects of Pte-Cpl rank where it could in theory be a lesser rank) and this will only change if the CSM is unavailable, or in the event of a Subject of CSgt rank or higher.

Ser	Rank of Subject	Minimum rank of Originator	Minimum Rank of Reviewer	Remarks/Sanctions Available
1.	Pte	LCpl	Sgt	All sanctions are available
2.	LCpl	Cpl	Sgt	All sanctions avail except show parades.
3.	Cpl	Sgt	CSgt	
4.	Sgt	CSgt	WO2	
5.	CSgt	WO2	Capt (eg Coy 2IC)*	Extra work must take into account of and be suited to the rank of the subject.
6.	WO2	WO1	Major (normally OC/Regt 2IC)*	Only sanctions available are informal/formal interview or extra tasks.
7.	WO1	Major (or Capt if OC or Adjt)	CO	
8.	Offr Cadets and Offrs up to & including	Major (or Adjt)	CO	

	Capt			
9.	Major	CO	HE the Governor	Only sanctions available are informal or formal interview.

\* Except that, where the matter arose solely as the result of a matter internal to the WOs' and Sgts' Mess the matter may be reviewed by the RSM.

11. The right of a member of the Regiment to complain about any matter relating to his/her service remains unaffected. Any individual who considers himself/herself to have been wronged by the application of a minor administrative sanction may submit a Service Complaint as per Standing Order #63. This will not delay the carrying out of any sanction. If a Service Complaint is upheld then the authority dealing with the application will determine the appropriate redress.

### Procedure

12. The procedure for awarding MAA is as follows:

- a. An Officer, WO or NCO (the Originator) observes a failing by a subordinate (the Subject) and judges that on the balance of probabilities it breaches the Regiment Service Test (*"Have the actions or behaviour adversely impacted, or are they likely to impact, on the efficiency or operational effectiveness of the Bermuda Regiment?"*).
- b. The Originator challenges the Subject, who must be given the chance to explain, defend or deny his/her action before a sanction is applied.
- c. If the Originator wishes to proceed with MAA then he/she selects an appropriate sanction and verbally informs the Subject.
- d. The Originator reports the incident to the Reviewer, normally the Subject's Company Sergeant Major, at the earliest opportunity (where possible the Originator will take the Subject directly to his/her CSM's office). The Originator states the details of the incident and the selected sanction. At this point the CSM may reduce the admin sanction if appropriate or may decide that the matter should instead be dealt with by a charge or by major admin action, not by MAA (conversely if an NCO reports a soldier for a charge then the CSM may convert this to MAA).
- e. The CSM (or other person nominated by the OC as the Reviewer) records the details of date, the nature of the failing, the identity of the Subject and Originator, the sanction awarded and other details on the form at Annex A in the Company Minor Admin Action File. A summary sheet is to be placed in the front of the file for easy reference.
- f. The CSM (Reviewer) must verbally inform the Subject that he/she has a right for the sanction to be formally reviewed before it is carried out. If the Subject requests a review the Subject must tell the CSM why he/she believes the finding to be unfair or why he/she should not receive the sanction given.
- g. The Subject then receives the minor sanction (provided the review, if requested, upholds the award).
- h. The CSM informs the person supervising the sanction (show parade, extra duty etc.) that the individual has been awarded a sanction.
- i. The person supervising the carrying out of the sanction informs the CSM of its successful completion and the CSM records the date on the Annex A and retains it in the Company File.

j. The Company Minor Admin Action File is to be inspected on a weekly basis by the OC in order to ensure the system is being operated correctly and fairly, and any significant matters should be brought to the attention of the CO and appropriate action taken. The CO/Regt 2IC should review each Company Minor Admin Action File monthly. The records should be retained for 5 years.

Appendix:

1. Record of Minor Sanction Form.
2. Description of Minor Sanctions Available.
3. Formal Interview Form.
4. Minor Administration Action Register

**RECORD OF MINOR SANCTION AWARDED**

Subject: \_\_\_\_\_

Number	Rank	Name	Appointment	Company
--------	------	------	-------------	---------

Originator: \_\_\_\_\_

Number	Rank	Name	Appointment	Company
--------	------	------	-------------	---------

Date of Award: \_\_\_\_\_

**SERVICE TEST: “Have your actions or behaviour adversely impacted, or are they likely to impact, on the efficiency of operational effectiveness of the Royal Bermuda Regiment?”**

Reason for Award: \_\_\_\_\_

Sanction Awarded: \_\_\_\_\_

*Show Parades, Extra Tasks / Duties, Extra Work or Informal Interview, Formal Interview.  
Only Interviews may be combined with other sanctions.*

Was the soldier offered a Formal Review?    **Yes**    **No**    (Circle one)

**REVIEW** – Reviewing Officer to complete if Subject requests Formal Review

Minor Administrative Action **is / is not** appropriate (delete one)

MAA **Endorsed / Cancelled** (delete one)

Sanction **Upheld / Reduced** (delete one)

Details of new sanction if reduced: \_\_\_\_\_

\_\_\_\_\_

Date of new sanction to be completed by: \_\_\_\_\_

Reviewing Officer: \_\_\_\_\_

Number	Rank	Name	Appointment	Company
--------	------	------	-------------	---------

\_\_\_\_\_

Signature Date

I certify that the sanction awarded has been carried out (Administrator):

Administrator / Originator: \_\_\_\_\_

Number	Rank	Name	Appointment	Company
--------	------	------	-------------	---------

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

## DESCRIPTION OF MINOR SANCTIONS AVAILABLE

1. The sanctions available following the deciding of a Minor Administrative case are described below.
2. **Show Parades - no more than 5 times.** An individual may be required to report back at a specific place and time in order to emphasise good time keeping and to ensure equipment and clothing is at a suitable state of upkeep and maintenance.
  - a. Each parade must be as long as necessary to correct the failing and never more than 45 minutes duration.
  - b. Dress and equipment should be as directed by the person originating the award.
  - c. Poor standard of turnout may result in an award of 'show again' where the required standard is not met. There may be a maximum of 2 'show agains' for each muster/parade awarded, after which Disciplinary Action should be considered. Failure to attend should attract Disciplinary Action under the Defence Act. Where the matter is sent for Disciplinary Action no further performance of the sanction awarded should be required of the individual.
  - d. Skills training that is relevant to the failing, including appropriate physical training may be included if the service person's failing warrants it. All training is to be conducted by an appropriately qualified instructor.
3. **Extra Tasks or Duties - no more than 5.** An individual may be required to carry out tasks in addition to his/her normal duties in order to emphasise the efficient performance of those duties. The additional task or duty nominated must be of the same nature as the duty in which the individual failed. So for example a failure on orderly sergeant duties could result in extra orderly sergeant duties, but a failure by a chef in his normal chef duties could not result in extra orderly duties, but he/she may be required to perform extra chef's tasks. Any duty should be of the same or less duration of the normal period for the duty imposed and should not extend beyond 24 hours. In imposing and supervising this sanction care must be taken to ensure that, together with the individual's normal duties, he/she is not being required to undertake an unreasonable or unlawful number of hours. All appropriate breaks as would be available in the normal performance of that duty must be available to the individual.
4. **Extra Work - no more than 3, of maximum 4 hours each.** Extra work is different from extra tasks in that it will not consist of a duty that is regularly performed by the individual within the unit. However it must still be relevant to the failing and designed to correct that failing. It may consist of ad hoc jobs to be done in the unit (e.g. grounds maintenance) and it may be carried out together with others who have been awarded this sanction. It is designed to emphasise good order and discipline and to correct the failing identified in the individual. It can be used subject to the following conditions:
  - a. The work must be of a constructive nature for the benefit of the unit as whole.
  - b. All work must be properly led, planned and risk assessed. It is to comply with health and safety regulations.
  - c. Correct tools are to be provided.
  - d. Each period of work may last no longer than 4 hours.

e. A period of up to 4 hours may be split into 2 sessions within the day but may not be spread to cover more than one day.

f. In imposing and supervising this sanction care must be taken to ensure that, together with the individual's normal duties, he/she is not being required to work an unreasonable or unlawful number of hours.

5. **Informal Interview.** This should be imposed as a sanction, where it is considered that the most appropriate method to remedy the individual's professional or personal failings is through a process that will enable him/her to discuss his shortcomings and receive advice on how they may be rectified.

6. **Formal Interview.** A formal interview is intended to make a serviceperson aware of his/her shortcomings and give advice as to how he/she must rectify the behaviour. The formal interview is to contain constructive and specific advice on conduct and performance and this should be noted in writing. It should have the following elements:

a. The subject's detailed failings or weaknesses with examples and dates wherever possible.

b. Dates and types of any previous verbal warnings or rebukes.

c. The standard of behaviour or performance required and direction on how they are to be achieved.

d. The possible consequences of failing to improve performance within the timescales set, namely that Major Administrative Action or Disciplinary Action could be considered.

7. **Combinations of Sanctions.** Show Parades, Extra Tasks and Extra Work cannot be awarded in combination with each other but can be awarded in combination with Formal or Informal interviews.



7. Your performance over the next 1  2  3  6  Months  **N/A**  
will be monitored and should you fail to improve and achieve the standards required then you may be subject to a formal warning or (further) Administrative Action Report.

8. Review date:  **N/A**

Interviewing Officer	<input type="text"/>	Witness(if present)	<input type="text"/>
Name:	<input type="text"/>	Name:	<input type="text"/>
Rank/Appt:	<input type="text"/>	Rank/Appt:	<input type="text"/>
Signed:	<input type="text"/>	Signed:	<input type="text"/>
Date:	<input type="text"/>	Date:	<input type="text"/>

9. I acknowledge receipt of this record of interview.

Signed:  (by person being interviewed)

Name:

Rank:

Appt:

Date:

Copy to: Personal File

- To remain on file permanently
- To be removed from file on posting to new unit/discharge

## **MAJOR ADMINISTRATIVE ACTION**

### **Introduction**

1. This Annex details the policy of the Commanding Officer (CO) by which he will carry out Major Administrative Action in the Regiment in order to maintain military discipline. If there is a conflict between this Annex and the Defence Legislation, then Defence Legislation (current version of Defence Act 1965 and Governors Orders 1993) takes precedence. This Annex is to be reviewed whenever there is any change to this legislation.
2. Major Administrative Action refers to administrative action to maintain discipline that is taken by the CO but is not part of the Orders process i.e. does not involve the individual being charged with a military offence under the Defence Act (the procedure for this is in Standing Order #55). It is also distinct from Minor Administrative Action (MAA) which is when commanders at all levels issue minor sanctions for on-the-spot correction of minor breaches of military standards (which is covered in Standing Order #55 Annex E).
3. Major Administrative Action is action taken by the CO to safeguard or restore the operational effectiveness and efficiency of the Regiment where an individual may be significantly in breach of the Values and Standards of the Bermuda Regiment, if this conduct breaches the Regiment Service Test (see Standing Order #62). It is intended to be remedial and rehabilitative. It may result in career sanctions or, in the most serious cases, termination of Service.
4. Some examples when it may be appropriate to carry out Major Administrative Action are:
  - a. Repeated inefficiency (after verbal warnings).
  - b. Personal misconduct. This would be misconduct which does not amount to a specific military offence under the Defence Act. Examples could be discrimination, bullying or deceit (however all allegations of criminal offences, in particular serious offences such as but not limited to fraud, physical assault or sexual assault or obscene behaviours should be reported to the Bermuda Police Service for them to investigate first if desired).
  - c. Social misconduct. An example is an inappropriate relationship such as adultery (including consensual behaviour whilst off-duty) which can undermine trust and cohesion, and thus damage the morale or discipline of the Regiment and hence its operational effectiveness. It is not practicable to list every type of conduct that may constitute social misbehaviour. The seriousness will depend on the individual circumstances and the potential for adversely affecting operational effectiveness and team cohesion. Misconduct involving abuse of position, trust or rank, or taking advantage of an individual's separation, will be viewed as being particularly serious.
  - d. Conviction by a civilian court for an offence carried out on- or off-duty (an example being drink driving) which demonstrates a lack of judgement, integrity or reliability relative to the rank held, or which may bring the Regiment into disrepute. However, isolated minor traffic offences should not normally be made the subject of Administrative Action. Note that this does not constitute double jeopardy as the individual is not being tried for the offence a second time, instead the fact of conviction has brought into doubt the suitability for continued employment.
5. Possible sanctions resulting from Major Administrative Action are:

a. Discharge from the Regiment. The Defence Act (section 29) currently allows the CO to administratively discharge from the Regiment anyone up to WO1 rank inclusive (including officer cadet). Under Governors Orders section 39 a warrant officer or SNCO has the right of appeal against this to the Governor through the Promotions Board.

b. Dishonourable discharge from the Regiment. The CO may recommend to the Governor that anyone up to WO1 rank inclusive (including officer cadet) is dishonourably discharged in addition to, or instead of, any other punishment given at CO's Orders. Dishonourable discharge is in effect an administrative action following on after the CO has found the individual guilty of a military offence on CO's Orders, so the procedure for disciplinary action in Standing Order #55 would be followed rather than the procedure for major admin action given in this Annex.

c. Relinquishment of commission. A commissioned officer (2Lt and above) can only be ordered to relinquish his/her commission by the Governor as stated in the Defence Act (section 31). The CO will investigate the circumstances (following the procedure in this Annex) before submitting a report for consideration by the Promotions Board and/or Governor, who is the Deciding Officer in respect of alleged misconduct/inefficiency by officers, under the procedures laid down in Governors Orders (sections 37 and 38 for inefficiency and misconduct respectively).

d. In each case a range of lesser administrative sanctions can be given by the CO such as:

(1) Formal Warning (to be interviewed and placed in writing on the Subject's personal file. The effect of this is that any further proven case of Major Admin Action in the following 6 months may result in immediate termination of service).

(2) Moving individuals within the Regiment in order to separate them.

(3) Change of appointment.

(4) An unfavourable comment in the next Confidential Report (CR).

(5) A non-recommendation for promotion in the next CR.

e. Major Administrative Action can also be reduced to MAA if appropriate, or can be discontinued if the CO decides there is no further action required.

6. There is currently no legislative basis for other specific major sanctions (that are available in the British Army for example) such as reduction in rank, loss of seniority, expressions of displeasure or extreme displeasure with a mark time in seniority. If a fine or reduction in rank is desired then the CO would have to deal with the matter on Orders instead of taking major administrative action (assuming that the matter is chargeable as a military offence under the Defence Act, and assuming that the Defence Act gives the CO these punishment options for that rank of accused). In such cases the disciplinary procedure in Standing Order #55 is followed instead of the procedure in this Annex.

7. The Full Time Staff (FTS) are regarded as employees of the Commanding Officer having signed a contract of employment, so in addition to being subject to the Defence Act they are also subject to the minimum safeguards of the Employment Act (2000). The Employment Act allows that misconduct can result in a written warning and serious/gross misconduct (or repeated misconduct within six months) can result in termination of employment without notice. The CO may use the Civil Service Code of Employment as a guide to what constitutes misconduct and gross misconduct for the purposes of the Employment Act, although the FTS are not classed as members of the civil service nor BPSU and the CO does not need the approval of the Head of the Civil Service in order to terminate an FTS member. However if considering discharging a member of the FTS under the

provisions of the Defence Act, the CO must also ensure that there are sufficient grounds for this to be permitted under the Employment Act. It is conceivable that the CO may terminate the employment contract of a member of FTS (for example due to inefficiency at the FTS job) but would allow them to keep their rank as a part time member of the Regiment. However the reverse is not true, a member of the FTS who is discharged under the Defence Act must automatically leave their FTS post if it is one that must be filled by a serving member of the Regiment.

8. In all cases of Major Administrative Action the CO must be satisfied that it is more likely than not that the alleged failure in performance or standards of personal behaviour occurred (on the balance of probabilities), and that the Regiment Service Test was breached.

9. It is a fundamental principle of fairness that, whenever an allegation is made against an individual, he/she has the right to be informed of the allegation, and be given an opportunity to respond to it.

10. Due to the seriousness of the allegation and the possible outcomes, a member of the Regiment subject to an investigation for major administrative action (whether suspended from duty or not) is to be offered the services of an Assisting Officer. The Assisting Officer may be an officer/WO/SNCO of the individual's own reasonably exercised choosing but if he/she declines to choose an Assisting Officer or if the person chosen is not available or is unwilling, then the CO will appoint one, unless the subject individual confirms that he/she does not require one. To avoid conflict of interest, an Assisting Officer is not to be an officer who would normally act in the individual's chain of command and must not be an actual or potential witness in the case. There is nothing to prevent an individual employing a civilian lawyer at his/her own expense to advise him/her.

## **Process**

11. At the outset, the CO will be informed that there is the possibility of a serious disciplinary matter. The CO will determine whether major administrative action or a disciplinary charge is appropriate. If a charge, then follow Standing Order #55. If administrative action then proceed as below:

- a. A suspected serious failing in Values & Standards is identified and reported to the CO.
- b. CO makes an initial assessment as to type of failing and whether Major Admin Action or Disciplinary Action under the Defence Act.
- c. If Major Admin Action, the CO appoints an investigating officer (normally the subject's OC or a major on the FTS) and orders an investigation.
- d. Investigating Officer conducts an initial interview with the Subject (normally in the presence of a third party) to warn the Subject that he/she is under investigation and to offer the assistance of an Assisting Officer. The subject is given an opportunity to comment on the allegation but should not be ordered to answer any question that would be an admission of inefficiency or misconduct, this is not an interview under caution and should not be treated as such.
- e. Suspension is only carried out if judged absolutely necessary by the CO.
- f. Assisting Officer is appointed (if requested) and liaises with the Subject.
- g. Investigation takes place including interviews of the complainant (if any) and any potential witnesses, with a record of the interviews made or else a written statement by each witness.

h. Subject is interviewed again in the presence of a third party (and accompanied by Assisting Officer if desired) and is provided with a copy of the evidence against him/her (witness statements or interview records). The Subject is then allowed to respond and is given a reasonable amount of time to make a written statement if desired.

i. The Investigating officer completes a written report which may include a summary of the investigation (but not a determination of the outcome) and attaches all interview records/statements and gives to the CO who acts as the Deciding Officer. (Note that in matters relating to commissioned officers, the Governor is the Deciding Officer).

j. Individual comes in front of Deciding Officer (normally CO) on disciplinary interview, normally with at least 24 hours notice. The CO may instead hold an oral hearing where it is necessary to resolve a conflict of evidence which is central to the issue for determination and which cannot be resolved on the available written evidence. During the interview/hearing, the Subject is told the outcome of the investigation and the sanction awarded.

12. If, during or after the investigation, it is decided by the CO that the matter should instead be dealt with by a charge under the Defence Act, then the CO may proceed in that manner instead of by means of interviews and major administrative action.

Appendix:

1. Duties of the Assisting Officer.

## **DUTIES OF THE ASSISTING OFFICER**

1. A member of the Regiment subject to an investigation for major administrative action (whether suspended or not) is to be offered the services of an Assisting Officer.
2. The CO has a duty of care to the serviceman throughout the process. The role of an Assisting Officer is an important one. Careful selection of an Assisting Officer (when required) and making sure that he/she has enough time to carry out the duties is vital.
3. At the request of the subject member of the Regiment, the Assisting Officer is to:
  - a. Help in the preparation of any written responses made by the subject member.
  - b. Liaise with other interested parties (e.g. Regimental Headquarters).
  - c. Where the member is suspended from duty, conduct research on his/her behalf.
  - d. Keep the CO informed of any concerns that the subject member may have.
  - e. Safeguard the interests and welfare of the subject member while the administrative procedures are followed until determination of the case.
4. Any conversation or correspondence between the member of the Regiment subject to the investigation and the Assisting Officer is to be treated as privileged information and should not be disclosed to the chain of command. However, the member is to be made aware that an Assisting Officer is obliged to report any information which indicates there has been or may be:
  - a. A breach of security or safety.
  - b. A serious criminal act.

STANDING ORDER NO 56

= SPARE =