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Statutory functions and compositions of Government Portfolio

Subjects

- Combined Cadet Force
- Home Guards
- National Defense Policy
- War Graves and Memorials
- Zambia Defense Force
- Zambia National Service

Legislation

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Combined Cadet Force	***Cap. 118***
Defense	***Cap. 106***
Home Guards	***Cap. 122***
Tanganyika Victoria Memorial Institute	***Cap. 176***
Victoria Memorial Institute (repeal)	***Cap. 177***
War Graves and Memorials	***Cap. 179***
Zambia National Service	***Cap. 121***

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THE COMBINED CADET FORCE ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Establishment of Force
4. Force not part of Defence Force
5. Composition of Force
6. Eligibility to join
7. Command
8. Establishment of contingents
9. Regulations
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CHAPTER 118

COMBINED CADET FORCE

46 *of* 1964
Government Notice
497 *of* 1964

An Act to provide for the establishment and maintenance of a Combined Cadet Force in Zambia and to repeal the Rhodesia and Nyasaland Cadet Corps Act, 1955.

[18*th September*, 1964]

1. This Act may be cited as the Combined Cadet Force Act. — Short title

2. In this Act, unless the context otherwise requires- — Interpretation

"Air Commander" means the person appointed under section *one hundred and sixty-five* of the Defence Act; — Cap. 106

"Army Commander" means the person appointed under section *one hundred and sixty-five* of the Defence Act; — Cap. 106

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CAP. 118

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"cadet" means a member of the Cadet Force other than an officer commissioned in the Cadet Force;

"Cadet Force" means the Zambia Combined Cadet Force established in terms of section *three*;

"member" includes cadets and officers commissioned in the Cadet Force;

"officer" means a person commissioned as such in the Cadet Force but shall not include a cadet officer.

Establishment of Force

3. (1) There is hereby established a Cadet Force which shall be styled the Zambia Combined Cadet Force.

(2) The Cadet Force shall have as its object the provision of moral, mental and physical training of boys through the medium of military, sea and air instruction.

Force not part of Defence Force

4. The Cadet Force shall not form part of the Defence Force of Zambia.

Composition of Force

5. The Cadet Force shall comprise-

(*a*) those persons who, immediately prior to the commencement of this Act, were members of the Cadet Corps established under the Rhodesia and Nyasaland Cadet Corps Act, 1955; and

(*b*) persons who become members of the Cadet Force after such commencement.

Eligibility to join

6. Subject to the provisions of this Act, all boys shall be eligible to serve in the Cadet Force who-

(*a*) are not under the prescribed age; and

(*b*) are, in the opinion of the Army Commander or Air Commander, suitable for service in the Cadet Force.

Command

7. The command, training and inspection of the Cadet Force shall be vested in the Army Commander.

Establishment of contingents

8. (1) The President may establish a contingent of the Cadet Force in any school or in any area in Zambia.

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(2) Any contingent of a Cadet Corps which was established under the provisions of the Rhodesia and Nyasaland Cadet Corps Act, 1955, and which was in being immediately prior to the commencement of this Act shall be deemed to have been established in terms of this Act and to be part of the Cadet Force.

(3) The President may at any time disband any contingent of the Cadet Force established or deemed to have been established under this Act.

Regulations

9. The President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act and generally for the good government and organisation of the Cadet Force and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say:

(*a*) the formation, maintenance, control and administration of contingents of the Cadet Force;

(*b*) the appointment of officers in the Cadet Force, the appointment of cadets as cadet officers, the resignation from and cancellation of such appointments, and for the designation and grading of ranks and appointments within the Cadet Force;

(*c*) the granting of certificates or other awards to cadets who reach such standards of proficiency in cadet training as may be prescribed;

(*d*) the grant of medals and decorations to members of the Cadet Force;

(*e*) the creation of a Reserve of officers and the posting of officers to such Reserve;

(*f*) the preservation of property of the Government issued to contingents or members, the determining of responsibility for loss or damage caused to such property and the recovery of compensation for such loss or damage;

(*g*) the pay, allowances and other conditions of service of officers in the Cadet Force; and

(*h*) all matters to be prescribed in terms of this Act.

Repeal

10. The Rhodesia and Nyasaland Cadet Corps Act, 1955, is hereby repealed.

Transitional

11. (1) All arrangements with respect to the administration and control of any contingent established under the provisions of the Rhodesia and Nyasaland Cadet Corps Act, 1955, shall be deemed to have been made in terms of this Act and shall, until otherwise provided in terms of this Act, continue to be governed by the regulations which related to such matters immediately prior to the commencement of this Act.

(2) All members of the Cadet Force who, immediately prior to the commencement of this Act, held commissions in the Cadet Corps established by the Rhodesia and Nyasaland Cadet Corps Act, 1955, shall continue to hold those commissions and shall have all the powers and be subject to all the obligations of officers of the Cadet Force holding commissions granted in terms of this Act.

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COMBINED CADET FORCE

THE COMBINED CADET FORCE REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Interpretation
3. Designation and grading of ranks within the Cadet Force
4. Formation of contingents
5. Establishment of officers
6. Appointment, etc., of chief petty officers
7. Appointment of officers
8. Promotion and suspension of officers
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24. Issue and preservation of Government property
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SCHEDULE-Ranks in the Cadet Force

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SECTION 9-THE COMBINED CADET FORCE REGULATIONS

Regulations by the President

Statutory Instruments
95 *of* 1965
186 *of* 1966

1. These Regulations may be cited as the Combined Cadet Force Regulations. — Title

2. In these Regulations, unless the context otherwise requires- — Interpretation

"contingent" means a contingent of the Cadet Force established under section *eight* of the Act;

"contingent commander" means any officer appointed under regulation 4 to command a contingent;

"officer", for the purposes of these Regulations, means a person commissioned as such in the Cadet Force and an officer of the Auxiliary Air Force, appointed to an air cadet contingent by the Air Commander under the provisions of paragraph (*e*) of sub-regulation (1) of regulation 5, but shall not include a cadet officer;

"Territorial Force" shall have the meaning assigned to it under section *two* of the Defence Act. — Cap. 106

3. (1) The ranks within the Cadet Force shall be- — Designation and grading of ranks within the Cadet Force

(*a*) in a contingent providing training through the medium of army instruction, the ranks specified in the first column of the Schedule;

(*b*) in a contingent providing training through the medium of sea instruction, the ranks specified in the second column of the Schedule;

(*c*) in a contingent providing training through the medium of air instruction, the ranks specified in the third column of the Schedule.

(2) The rank specified in any item of the Schedule shall be inferior to any rank specified in the preceding item and superior to any rank specified in a succeeding item.

(3) The rank specified in the first column of any item of the Schedule shall be the equivalent of the rank specified opposite thereto in the second column and the third column of that item and any reference in these Regulations to any such latter rank shall be construed as including a reference to any such equivalent rank.

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Formation of contingents

4. (1) A contingent providing training through the medium of army instruction (hereinafter referred to as an "army cadet con-tingent") shall-

(*a*) consist of one or more platoons;

(*b*) be commanded by an officer appointed by the Army Commander.

(2) A platoon shall consist of not more than twenty-eight army cadets, of whom one cadet may be a cadet second lieutenant appointed under regulation 14, three cadets may be cadet sergeants, and three cadets may be cadet corporals.

(3) A contingent comprising two platoons or more may, in addition, be granted authority to raise a band consisting of not more than twenty cadets, of whom one cadet may be a cadet drum major. The musicians shall comprise one bass drummer, one tenor drummer, four side drummers, one cymbalist and twelve buglers, of whom two may be cadet sergeants, and two cadet corporals.

(4) The Army Commander may form any number of army cadet contingents into a unit which shall be commanded by an officer appointed by the Army Commander to command that unit in a rank not higher than major.

(5) A contingent providing training through the medium of sea instruction (hereinafter referred to as "a sea cadet contingent") shall-

(*a*) consist of such number of sea cadets as may be declared from time to time by the Army Commander, and in the event not less than fifty sea cadets, of whom two cadets may be cadet acting sub-lieutenants, appointed under regulation 14, two may be cadet petty officers and six may be cadet leading seamen;

(*b*) be commanded by an officer appointed by the Army Commander.

(6) A contingent providing training through the medium of air instruction (hereinafter referred to as an "air cadet contingent") shall-

(*a*) consist of one or more flights;

(*b*) be commanded by an officer of the Auxiliary Air Force appointed by the Air Commander.

(7) A flight shall consist of not more than twenty-one cadets, of whom one cadet may be a cadet sergeant and three may be cadet corporals.

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(8) The Air Commander may form any two or more flights into a squadron, in which one cadet may be a cadet flight sergeant.

(9) The authorised contingents shall be as published in the *Gazette* from time to time.

Establishment of officers

5. (1) Subject to the provisions of regulation 7, the establishment of officers and, in the case of a sea cadet contingent, chief petty officers shall be-

(*a*) in an army cadet contingent comprising one platoon- a lieutenant;

(*b*) in an army cadet contingent comprising two platoons -a captain and a lieutenant;

(*c*) in an army cadet contingent comprising more than two platoons-a captain and such number of lieutenants as may be approved by the Army Commander;

(*d*) in a sea cadet contingent-a lieutenant, a sub-lieutenant and three chief petty officers;

(*e*) in an air cadet contingent, such number of officers of the Auxiliary Air Force as may be appointed thereto by the Air Commander.

(2) Notwithstanding the provisions of sub-regulation (1), the Army Commander may appoint a quartermaster, who shall be a lieutenant, to such army cadet contingents as he may think fit.

(3) Notwithstanding the provisions of paragraph (*a*) of sub-regulation (1), the Army Commander may appoint an officer of or below the rank of lieutenant commander to be overall commander of two or more sea cadet contigents.

(*As amended by No.* 186 *of* 1966)

Appointment, etc., of chief petty officers

6. (1) The Army Commander may-

(*a*) appoint persons to hold the rank or rating of chief petty officer in a sea cadet contingent;

(*b*) suspend from duty any chief petty officer appointed under this regulation.

(2) A chief petty officer appointed under this regulation may resign his appointment by giving to the Army Commander one month's notice in writing of his intention to resign.

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(3) A chief petty officer appointed under this regulation shall, in respect of any period during which he attends for duty at a sea cadet camp, or at any approved full-time course of military or naval instruction in excess of forty-eight hours, receive as pay and allowances the pay and allowances payable at that time to an army warrant officer class two holding the appointment of company sergeant major in the Defence Force.

(*No.* 186 *of* 1966)

Appointment of officers

7. (1) The President may appoint persons to hold commissioned ranks in the Cadet Force.

(2) An officer shall hold his appointment during the pleasure of the President, but his commission shall not be cancelled unless he is notified in writing of the action proposed to be taken against him and is called upon to show cause in relation thereto.

Promotion and suspension of officers

8. The Army Commander or the Air Commander, as the case may be, may-

(*a*) on the authority of the President, promote or temporarily appoint any officer to higher rank;

(*b*) appoint any officer to act in a higher rank;

(*c*) suspend any officer from duty.

Resignation of officers

9. An officer may, in writing, tender the resignation of his commission, but shall not, unless otherwise ordered by the President, be relieved of the duties of his appointment until he has received notification of the acceptance of his resignation.

Placing of officers on supernumerary list

10. The Army Commander shall cause to be placed on a list, to be known as the Zambia Combined Cadet Force Supernumerary List, the names of all officers, other than officers of the Auxiliary Air Force, who, through no fault of their own, are obliged to leave their contingents and who apply to have their names placed on that list.

Pay of officers

11. An officer shall, in respect of any period during which he attends for duty at a cadet camp, or at an approved full-time course of military instruction in excess of forty-eight hours, receive the pay and allowances appropriate to his rank and service at the Defence Force rates.

Annual allowances of officers

12. (1) Subject to the provisions of this regulation, an officer who-

(*a*) holds the rank of major or equivalent rank, shall be paid an allowance at the rate of three hundred kwacha per annum;

(*b*) holds the rank of captain or equivalent rank, shall be paid an allowance of one hundred and fifty kwacha per annum;

(*c*) holds the rank of lieutenant or equivalent rank, shall be paid an allowance of one hundred and twenty kwacha per annum;

(*d*) holds the appointment of quartermaster, shall be paid an allowance at the rate of one hundred and seventy kwacha per annum:

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Provided that an officer of the Auxiliary Air Force appointed to an air cadet contingent by the Air Commander under the provisions of paragraph (*e*) of sub-regulation (1) of regualtion 5, shall not be entitled to payment of an allowance under this regulation in respect of any period during which he is in receipt of an annual allowance or any equivalent allowance which may be prescribed by regulations relating to the Auxiliary Air Force.

(2) The annual allowance referred to in sub-regulation (1) will be payable in arrears at the rate of one-third of the allowance at the end of each school term.

(3) An allowance shall be payable under this regulation to an officer who is a contingent commander only if the Army Commander or Air Commander, as the case may be, has certified that he has performed his duties efficiently during the period in respect of which the allowance is payable.

(4) An allowance shall be payable under this regulation to an officer who is not a contingent commander only if his contingent commander has certified that he has performed his duties efficiently during the period in respect of which the allowance is payable.

(5) No allowance shall be payable under this regulation to an officer in respect of any period during which that officer is on leave of absence from his duties in the Cadet Force.

Leave of absence for officers

13. (1) A contingent commander may be granted leave of absence from his duties in the Combined Cadet Force by the Army Commander or the Air Commander, as the case may be.

(2) An officer other than a contingent commander may be granted leave of absence from his duties in the Cadet Force-

(*a*) for a period not exceeding thirty days, by his contingent commander;

(*b*) for a period exceeding thirty days, by the Army Commander or the Air Commander, as the case may be.

Appointment of cadets as cadet officers

14. (1) The Army Commander may appoint a cadet second lieutenant or cadet acting sub-lieutenant.

(2) On the report of a board of inquiry, the Army Commander may cancel the appointment of any cadet second lieutenant or cadet acting sub-lieutenant, but shall not cancel his appointment unless such cadet is notified in writing of the action proposed to be taken against him and is called upon to show cause in relation thereto.

(3) The Army Commander may suspend any cadet second lieutenant or cadet acting sub-lieutenant from duty.

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(4) A cadet second lieutenant, or cadet acting sub-lieutenant shall not, unless suspended by the Army Commander, be relieved of the duties of his appointment until he has left his contingent or his appointment has been cancelled under subregulation (2).

(5) A cadet second lieutenant, or cadet acting sub-lieutenant shall, in respect of any period during which he attends for duty at a cadet camp, be paid at the rate of thirty-five ngwee per day.

Appointment of cadets to warrant and non-commissioned rank

15. (1) The Army Commander may appoint any cadet serving in an army cadet contingent or a sea cadet contingent to cadet non-commissioned rank or acting cadet non-commissioned rank.

(2) The Air Commander may appoint any cadet serving in an air cadet contingent to cadet non-commissioned rank or acting cadet non-commissioned rank:

Provided that, for the purposes of this and the foregoing sub-regulation, "non-commissioned rank" shall not include the rank of cadet warrant officer.

(3) Notwithstanding the provisions of sub-regulation (2) of regulation 4, the Army Commander may appoint any cadet serving in an army cadet contingent to cadet warrant officer, or acting cadet warrant officer.

(4) Any cadet appointed to cadet warrant or non-commissioned rank may, on the recommendation of his contingent commander, be reduced in rank by the Army Commander or the Air Commander, as the case may be.

Dismissal of cadets

16. The Army Commander or the Air Commander, as the case may be, may, on the report of a board of inquiry, may dismiss from any of his contingents any cadet who, in the opinion of such Commander, is guilty of insubordination or misconduct.

Training year

17. The training year for cadets shall be the calendar year.

Eligibility to join

18. (1) The age prescribed for the purposes of paragraph (*a*) of section *six* of the Act shall be fourteen years six months.

(2) Boys who join the Cadet Force must be attending a recognised secondary school in Form III or above.

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(3) Notwithstanding the provisions of this regulation, the Army Commander or the Air Commander, as the case may be, may permit any boy to serve in the Cadet Force if, in the opinion of such Commander, it is in the interests of the Cadet Force.

19. The senior officer or, in the absence of an officer, the senior cadet present at any parade of cadets shall be responsible for the due observance of discipline by all cadets present. Discipline at parades

20. Officers and cadets of the Cadet Force shall not by public discussion or by communicating anonymously or otherwise to the press or by publishing or being party to the publication of matters concerning the Cadet Force or any contingent thereof- Publication of criticism

(*a*) criticise adversely the conduct of any officer or cadet of the Cadet Force acting in the exercise of his duties under the Act or these Regulations; or

(*b*) create or express a feeling of discontent among officers or cadets of the Cadet Force against lawful orders or instructions issued under proper authority.

21. (1) If an officer thinks himself wronged by his contingent commander and, on due application made to that officer, does not receive the redress to which he considers himself entitled, he may complain to the Army Commander or the Air Commander, as the case may be. Redress of wrongs

(2) If any cadet has a complaint against any other cadet or officer, other than his contingent commander, he may complain to his contingent commander and, if such complaint is not redressed or if he has any complaint against his contingent commander, he may complain to the Army Commander or the Air Commander, as the case may be, through his contingent commander.

(3) Every contingent commander to whom a complaint is made shall cause that complaint to be inquired into and, if on inquiry he is satisfied of the justice of the complaint, he shall take such steps as he considers necessary to give full redress to the complaintant.

(4) If a complaint is made to the Army Commander or the Air Commander, the Commander to whom such complaint is made shall cause the complaint to be inquired into and, if on inquiry he is satisfied of the justice of the complaint, he shall take such steps as he considers necessary to give full redress to the complainant.

22. Boards of inquiry may be convened by the Army Commander or the Air Commander from time to time for the purpose of investigating and reporting upon any matter concerning the Cadet Force. Boards of inquiry

23. Cadets shall not form guards of honour or take part in any public function in their capacity as cadets without the authority of the Army Commander or the Air Commander, as the case may be. Guards of honour and public functions

24. (1) An issue of arms, equipment, clothing and stores shall be made to a contingent from time to time at the expense of the Government. Issue and preservation of Government property

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(2) Any arms, equipment and clothing issued to a contingent shall be issued to the members thereof by the contingent commander in accordance with the directions of the Army Commander or the Air Commander, as the case may be.

(3) Any arms and equipment issued free of charge to an officer, chief petty officer or cadet of the Cadet Force and any clothing issued free of charge to a chief petty officer or a cadet shall remain the property of the Government, and an officer, chief petty officer or cadet may at any time be ordered by his contingent commander to return all or any of the items thereof.

(4) If, when ordered to do so-

(*a*) an officer, chief petty officer or cadet fails to return any item of arms and equipment issued to him free of charge; or

(*b*) a chief petty officer or cadet fails to return any item of clothing issued to him free of charge;

he shall be liable to pay an amount equal to the cost thereof to the Government, unless he can show that such item was stolen, lost or destroyed and that he took all reasonable precautions to prevent its theft, loss or destruction.

(5) Loss or damage to, or destruction of, any arms, equipment, clothing or stores shall be reported immediately to the contingent commander by the officer, chief petty officer or cadet who first discovers such loss, damage or destruction.

(6) If the commission of an officer is cancelled or if he resigns from the Cadet Force, or if, being an officer of the Auxiliary Air Force, he resigns from that Force, he shall hand in to his contingent commander any arms and equipment which have been issued to him under this regulation.

(7) On ceasing to be a member of the Cadet Force, a chief petty officer or cadet shall hand to his contingent commander any arms, equipment and clothing which have been issued to him free of charge.

(*As amended by No.* 186 *of* 1966)

Issue of clothing to officers and chief petty officers

25. (1) An issue of clothing shall be made to every officer on his appointment to commissioned rank and to every chief petty officer on his appointment:

Provided that an officer of the Auxiliary Air Force who has received an issue of clothing on his appointment to commissioned rank in that Force, and who has been appointed to an air cadet contingent by the Air Commander under the provisions of paragraph (*e*) of sub-regulation (1) of regulation 5 shall not, on such appointment, be entitled to an issue of clothing under this regulation.

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(2) If an officer to whom an issue of clothing has been made is permitted to resign his commission and his resignation takes effect or a chief petty officer to whom an issue of clothing has been made terminates his service-

(*a*) before the expiry of two years from the date of his appointment to commissioned rank or to be a chief petty officer, he shall be liable to pay to the Government an amount equal to two-thirds of the cost of that issue;

(*b*) after the expiry of two years but before the expiry of three years from the date of his appointment to commissioned rank or to be a chief petty officer, he shall be liable to pay to the Government an amount equal to one-third of the cost of that issue.

(3) Notwithstanding the provisions of sub-regulation (2), the President, or an officer authorised by him, may remit the whole or any portion of the amount which an officer or chief petty officer is liable, under the provisions of this regulation to pay to the Government if, in his opinion, there are special circumstances which make the resignation of an officer or chief petty officer necessary, and shall remit the whole of any such amount if the officer or chief petty officer is suffering from ill health certified by a medical officer of the Defense Force as being sufficiently serious to warrant the resignation.

(4) An officer or chief petty officer shall be paid an allowance of twenty kwacha annually for the purpose of maintaining his clothing, this allowance to be paid in arrears at the rate of one-third of the allowance at the end of each school term:

Provided that an officer of the Auxiliary Air Force appointed to an air cadet contingent by the Air Commander under the provisions of paragraph (*e*) of sub-regulation (1) of regulation 5 shall not be entitled to an allowance under this regulation but shall be paid the appropriate allowance for the purpose of maintaining his clothing prescribed by regulations relating to the Auxiliary Air Force.

(*As amended by No.* 186 *of* 1966)

Rations

26. Officers and cadets of the Cadet Force attending for duty at a cadet camp shall be issued with rations at the expense of the Government.

Illness and injury in the course of duty

27. (1) An illness contracted or injury sustained by an officer, chief petty officer or cadet in the course of duties in the Cadet Force shall be reported immediately to a medical officer in the Defence Force.

(2) An officer, chief petty officer or cadet who, in the course of his duties in the Cadet Force-

(*a*) contracts an illness; or

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(*b*) sustains an injury;

which is not due to misconduct or serious negligence on his part shall-

(i) be entitled to receive such free medical attention and treatment as is authorised by a medical officer of the Defence Force;

(ii) in the case of an officer or chief petty officer, receive from Government the pay and allowances referred to in regulation 11 in respect of any period that he is thereby incapacitated from carrying out his civil occupation, or the amount of salary and allowances which would have been paid to him by his employer had he been carrying out his civil occupation during such period, whichever is the greater.

(3) Any expenses incurred in the treatment of an officer or cadet referred to in sub-regulation (2) by a medical practitioner, other than a medical officer of the Defence Force or a Government medical officer, shall only be paid by the Government if the treatment has been authorised and approved by the Senior Medical Officer of the Defence Force or the Permanent Secretary, Department of Health, as the case may be.

(*As amended by No.* 186 *of* 1966)

Death in the course of duty

28. If an officer, chief petty officer or cadet dies as a result of an illness contracted or an injury sustained in the course of his duties in the Cadet Force, the amount of any reasonable expenses incurred in burying him shall be paid by the Government.

(*As amended by No.* 186 *of* 1966)

Benefits on death or disability

29. (1) Every disabled officer or chief petty officer and the widow, child or other dependant of a deceased officer or chief petty officer shall be entitled to such disablement benefits and allowances as may be prescribed by regulation from time to time.

(2) For the purposes of this regulation-

"deceased officer or chief petty officer" means a person who was an officer or chief petty officer and who dies owing to an injury received or from an illness contracted in and by the discharge of his duties in the Cadet Force without any misconduct or serious negligence on his part;

"disabled officer or chief petty officer" means-

(*a*) an officer or chief petty officer;

(*b*) a person who was an officer or chief petty officer;

who is suffering from a disablement which is attributable to or which has been aggravated by the discharge of his duties in the Cadet Force without any misconduct or serious negligence on his part.

(*As amended by No.* 186 *of* 1966)

Training and proficiency

30. The Army Commander, in respect of army and sea cadets, and the Air Commander in respect of air cadets will prescribe the courses of instruction to be followed by cadets.

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31. The Army Commander, or the Air Commander, as the case may be, shall prescribe the standards of proficiency to be attained by cadets, which shall be recognised by the granting of appropriate certificates or other awards, and the conditions in which such awards shall count towards the status of a cadet who later joins the Territorial Force. Standards of proficiency

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(*Regulation* 3)

RANKS IN THE CADET FORCE

Army Contingents	*Sea Cadet Contingents*	*Air Cadet Contingents*
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3. Lieutenant	Sub-Lieutenant	
4. Cadet Second Lieutenant	Chief Petty Officer	
5. Cadet Warrant Officer Class I	Cadet Acting Sub-Lieutenant	
6. Cadet Warrant Officer Class II/ Cadet Drum Major		
7. Cadet Colour Sergeant		Cadet Flight Sergeant
8. Cadet Sergeant	Cadet Petty Officer	Cadet Sergeant
9. Cadet Corporal	Cadet Leading Seaman	Cadet Corporal
10. Cadet Lance Corporal		Senior Cadet
11. Cadet	Cadet Able Seaman/ Cadet Ordinary Seaman	Leading Cadet/Cadet First Class/Cadet Second Class

(*As amended by No.* 186 *of* 1966)

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THE SOCIETIES ACT

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THE DEFENCE ACT

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CHAPTER 131

DEFENCE

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An Act to provide for the creation and maintenance in Zambia of a Defence Force consisting of an Army comprising the Regular Force of the Army, the Territorial Force of the Army, the Army Reserve and the Territorial Army Reserve, and an Air Force comprising the Regular Force of the Air Force, the Auxiliary Air Force, the Air Force Reserve and the Auxiliary Air Force Reserve; to charge the Defence Force with the defence of Zambia and with such other duties as may from time to time be determined by the President; to provide for the creation of a Defence Council to advise the President in matters of policy and matters affecting the command, discipline and administration of the Defence Force; to provide for the commissioning, appointment and transfer of officers in the Defence Force and to set out the terms and conditions of enlistment and service of soldiers in the Regular Force of the Defence Force; to provide the conditions of discharge of soldiers from the Regular Force and for their transfer to the Reserve Force; to provide for the discipline of the Defence Force and for the trial and punishment of members of the Force who commit such military offences as are set out in the Act, or civil offences; to make provision for the arrest of members of the Defence Force who commit an offence against any provision of the Act and for the investigation of and summary dealing with charges preferred against such members; to provide for the creation and constitution of courts-martial to try persons subject to military law under the Act, for the procedure to be followed by such courts-martial, for the awarding of punishments and for the confirmation, revision and review of proceedings of courts-martial and the review of summary findings and awards; to make provision for the carrying out of sentences of imprisonment awarded by courts-martial, for a right of appeal from the decision of a court-martial to the court of appeal and for the procedure in and determination of such appeals; to provide for the enforcement of maintenance and affiliation orders against members of the Defence Force by deduction from pay and for the imposition of forfeitures and deductions from the pay of such members in certain circumstances; to set out the order of precedence of officers and soldiers of the Defence Force and to make provision for the command of the Army and the command of the Air Force and for the exemption of officers and soldiers from serving as assessors in civil courts, to provide for the arrest, of deserters and absentees without leave and for the bringing of such persons before a civil court; to set out the offences relating to military matters which are punishable by civil courts and to make provision with respect to evidence in proceedings under this Act, whether before a court-martial or a civil court; to provide for the composition of and enlistment of persons in the Territorial Force, for the training of persons enlisted in such Force, for the embodiment of such Force when necessary in the public interest, for the discharge of persons from the Force and for all other matters affecting the discipline of the Force; to provide for the composition and embodiment of the Reserve Force, for the discharge of persons from that Force and for all other matters affecting the discipline of such Force; to set out the persons who are subject to military law under the Act and generally to provide for matters incidental to or connected with the foregoing; to repeal the Defence Act, 1955, and to give effect to the transitional provisions and savings set out in the Act.

[18*th September*, 1964]

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PART I

PRELIMINARY

1. This Act may be cited as the Defence Act. Short title

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Interpretation
Cap. 25
Cap. 122
Cap. 87

2. (1) In this Act, unless the context otherwise requires-

"the Acts" mean the Army Act, 1955, and Air Force Act, 1955, of the United Kingdom as amended from time to time and any enactment substituted therefor;

"acting rank" means rank of any description (however called) such that under regulations made under section *two hundred and ten* a commanding officer has power to order the holder to revert from that rank; and "acting warrant officer" and "acting non-commissioned officer" shall be construed accordingly;

"active service" shall be construed in accordance with section *three*;

"aircraft" means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;

"aircraft material" includes-

(*a*) parts of, and components of or accessories for, aircraft, whether for the time being in the aircraft or not;

(*b*) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, aircraft;

(*c*) any other gear, apparatus or instruments in, or for use in, aircraft;

(*d*) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft;

(*e*) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

"air signal" means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;

"appropriate superior authority" has the meaning assigned to it by paragraph (*b*) of subsection (1) of section *eighty-four*;

"arrest" includes open arrest;

"before the enemy", in relation to a person, means that he is in action against the enemy or about to go into action against the enemy, or is under attack or threat of imminent attack by the enemy;

"Board of Inquiry Rules" means rules made by the President under section *one hundred and thirty-three*;

"civil court" means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside Zambia;

"civil offence" has the meaning assigned to it in subsection (2) of section *seventy-three*;

"colour service" means service in the Regular Force under the provisions of this Act;

"Commander" means the person appointed under section *one hundred and sixty-five*, and "Army Commander" and "Air Commander" shall be construed accordingly;

"commanding officer" has the meaning assigned to it in paragraph (*a*) of subsection (1) of section *eighty-four*;

"competent military authority" means the President or any officer as may be prescribed;

"corps" means such body of the Defence Force as may from time to time be declared by the President to be a corps for the purposes of this Act and regulations made thereunder;

"corresponding civil offence" has the meaning assigned to it in subsection (2) of section *seventy-three*;

"corresponding rank", in relation to any rank in the Army or Air Force, means such rank in the other of those bodies as may be declared to correspond therewith by regulations made by the President under section *two hundred and ten*;

"court-martial", except where it is expressed to be under service law, means a court-martial under this Act;

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(2) References in this Act to officers and soldiers of the Defence Force shall, except in Part VII, be construed as including references to officers and soldiers attached or seconded to the Defence Force.

(3) References in this Act to military or Army rank include refernces to the corresponding Air Force rank.

(*As amended by S.I. No.* 8 *of* 1964 *and No.* 32 *of* 1971)

Provisions as to active service

3. (1) In this Act, "on active service", in relation to any unit, means that it is engaged in operations against an enemy and, in relation to a person, means that he is serving in or with such unit which is on active service.

(2) Where it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary in the public interest that a unit should be deemed to be on active service, he may declare that for such period, not exceeding three months, beginning with the coming into force of the declaration, as may be specified therein, that unit shall be deemed to be on active service.

(3) Where it appears to the President that it is necessary in the public interest that the period specified in a declaration under subsection (2) should be prolonged or, if previously prolonged under this section, should be further prolonged, he may declare that the said period shall be prolonged by such time, not exceeding three months, as may be specified in the declaration under this subsection.

(4) If at any time while any unit is deemed to be on active service by virtue of the foregoing provisions of this section, it appears to the President that there is no longer necessity for the unit to continue to be treated as being on active service, he may declare that as from the coming into operation of the declaration the unit shall cease to be deemed to be on active service.

(5) Any declaration under this section shall be by statutory proclamation.

(*As amended by S.I. No.* 8 *of* 1964)

Maintenance of Defence Force

4. (1) There shall be maintained in Zambia a Defence Force which shall consist of-

(*a*) an Army comprising-

(i) the Regular Force of the Army;

(ii) the Home Guard;

(iii) the Army Reserve;

(iv) the Territorial Army Reserve; and

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(*b*) an Air Force comprising-

(i) the Regular Force of the Air Force;

(ii) the Auxiliary Air Force;

(iii) the Air Force Reserve; and

(iv) the Auxiliary Air Force Reserve.

(2) Such components of the Defence Force referred to in subsection (1) may be formed into units or other military bodies as the President may from time to time determine.

(*As amended by No.* 32 *of* 1971)

Employment of Defence Force

5. The Defence Force shall be charged with the defence of Zambia and with such other duties as may from time to time be determined by the President.

Employment of Defence Force outside Zambia

6. Subject to the provisions of section *seven*, the President may at any time order that the whole or any part of the Defence Force shall be employed out of or beyond Zambia.

Overseas training

7. (1) The President may order that any officer or soldier of the Regular Force or, with his consent, any officer or soldier of the Territorial Force or Reserve Force, shall proceed to any place outside Zambia for the purpose of undergoing instruction or training or for duty or employment.

(2) The President may, if the consent of the officer or soldier concerned is first obtained, place any officer or soldier of the Defence Force at the disposal of the military authorities of any other country or territory for the purpose of his being attached to the armed forces of that country or territory.

PART II

DEFENCE COUNCIL

Establishment of Defence Council

8. (1) There shall be a Defence Council which shall advise the President in such matters of policy and matters affecting the command, discipline and administration of the Defence Force and shall perform such other functions and duties as may be referred to it from time to time by the President.

(2) The members of the Defence Council shall be appointed by the President.

(3) The President shall have power to co-opt any other person as a member of the Defence Council from time to time as he may decide.

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PART III

OFFICERS

Officers selection board

9. No person shall be granted a commission in the Defence Force unless he has been recommended by a selection board which shall be established for this purpose by the President.

Grant of commissions

10. (1) The power to grant commissions in the Defence Force is vested in and shall be exercised only by the President.

(2) A commission may be granted either for an indefinite period or for a specified time.

(3) Every officer on being granted a commission shall be issued with a commission signed by the President in a form to be prescribed.

Appointment and transfer of officers

11. (1) Every officer upon being granted a commission shall be appointed to one of the components of the Defence Force referred to in subsection (1) of section *four*.

(2) The President may upon such terms and conditions as may be prescribed transfer any officer between the Regular Force and the Territorial Force, between the Regular Force and the Reserve Force, or between the Territorial Force and the Reserve Force.

Regulations under this Part

12. (1) Subject to the provisions of this Act, the President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Part and, without prejudice to the generality of the foregoing, such regulations may make provisions with respect to all or any of the following matters, that is to say, the commissioning of officers, their terms of service, appointment, transfer, promotion, retirement, resignation, removal from office and such other matters concerning officers as may seem necessary.

(2) The appointment, transfer, substantive promotion, retirement, resignation or removal from office of any officer shall be notified in the *Gazette*.

PART IV

ENLISTMENT AND TERMS OF SERVICE IN THE REGULAR FORCE

Enlistment

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Recruiting officers

13. Any person authorised in that behalf by regulations, in this Act referred to as a recruiting officer, may enlist recruits in the Regular Force in the prescribed manner.

Enlistment

14. (1) A person offering to enlist in the Regular Force shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him, and a recruiting officer shall not enlist any person in the Regular Force unless satisfied by that person that he has been given such a notice, understands it, and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the apparent age of eighteen years unless consent to the enlistment has been given in writing by his parent or guardian or, where the parents or guardian are dead or unknown, by the District Secretary of the district in which such person resides.

Terms of enlistment

15. (1) The term for which a person enlisting in the Regular Force may be enlisted shall be such term beginning at the date of his attestation as is mentioned in the following provisions of this section.

(2) Where the person enlisting has apparently attained the age of eighteen years, the term shall be seven years' colour service and five years with the Reserve Force, or as may be prescribed from time to time by regulations.

(3) Where the person enlisting has not apparently attained the age of eighteen years, the said term shall be seven years' colour service commencing on the date upon which he attains such age, and a term of five years thereafter with the Reserve Force, or as may be prescribed from time to time by regulations.

Re-engagement and continuation in service

16. Any soldier of the Regular Force who at any time has completed or is within one year before completing the term of his service with the Regular Force may, with the approval of the competent military authority, re-engage for such further period or periods of service with the Regular Force and service in the Reserve Force as may be prescribed.

Prolongation of service

17. Any soldier of the Regular Force whose service expires during a state of war, insurrection, hostilities or public emergency, may be retained in the Regular Force and his service prolonged for such period as the competent military authority may direct.

Discharge and Transfer to Reserve Force

Discharge

18. (1) Save as hereinafter in this Act provided, every soldier of the Regular Force upon becoming entitled to be discharged, shall be discharged with all convenient speed, but until discharge shall remain subject to military law under this Act.

(2) Where a soldier of the Regular Force who is entitled to be discharged is serving out of Zambia then-

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(*a*) if he requires to be discharged in Zambia, he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within six months from his arrival; but

(*b*) if at his request he is discharged at the place where he is serving, he shall have no claim to be sent to Zambia or elsewhere.

(3) Except in pursuance of the sentence of a court-martial, a soldier of the Regular Force shall not be discharged unless his discharge has been authorised by order of the competent military authority.

(4) Every soldier of the Regular Force shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed.

Transfer to Reserve Force

19. (1) Every soldier of the Regular Force upon falling to be transferred to the Reserve Force shall be transferred to the Reserve Force but until so transferred shall remain subject to military law under this Act.

(2) Where a soldier of the Regular Force when falling to be transferred to the Reserve Force, is serving out of Zambia, he shall be sent to Zambia free of cost with all convenient speed and shall be transferred to the Reserve Force on his arrival there or, if he consents to his transfer being delayed, within six months from his arrival.

(3) Notwithstanding the provisions of subsections (1) and (2), the competent military authority may, when a soldier of the Regular Force falls to be transferred to the Reserve Force as aforesaid, discharge him forthwith without giving any reason and in any such case the provisions of section *eighteen* shall apply.

Postponement of discharge or transfer pending proceedings for offences, etc.

20. (1) Notwithstanding anything in this Part, a soldier of the Regular Force shall not be entitled to be discharged or transferred to the Reserve Force at a time when he has become liable to be proceeded against for an offence against any of the provisions of this Act:

Provided that if it is determined that the offence shall not be tried by court-martial this subsection shall cease to apply.

(2) Notwithstanding anything in this Part, a soldier of the Regular Force who is serving a sentence of imprisonment or detention awarded by a court-martial or by his commanding officer, shall not be entitled to be discharged or transferred to the Reserve Force during the currency of the sentence.

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21. A soldier of the Regular Force may be discharged by the competent military authority at any time during the currency of any term of engagement upon grounds and subject to such special instructions as may be prescribed.

Discharge upon prescribed grounds

22. (1) Subject to the provisions of this section, a soldier of the Regular Force shall be entitled to claim his discharge-

Right of soldier to purchase discharge

(*a*) at any time within three months after the date of his first attestation upon payment of a sum to be fixed by the Commander but which shall not exceed six hundred fee units; or

(*b*) at any time thereafter, with the consent of the Army Commander or Air Commander, as the case may be, upon payment of one-half of one month's pay for each whole year of service with the Regular Force then remaining uncompleted;

and shall be discharged with all convenient speed, but until discharge shall remain subject to military law under this Act.

(2) Notwithstanding the provisions of subsection (1), a soldier of the Regular Force shall not be entitled to claim his discharge pursuant to this section while soldiers of the Regular Forces are required to continue their colour service under the provisions of section *seventeen*.

(*As amended by Act No.* 13 *of* 1994)

23. (1) A warrant officer or non-commissioned officer of the Regular Force (other than a lance-corporal) shall not be reduced in rank except by a sentence of a court-martial or by order of an officer not below the rank of lieutenant-colonel authorised by regulations to act for the purposes of this subsection.

Restrictions on reduction in rank of warrant officers and non-commissioned officers

(2) An authorisation under subsection (1) may be given generally or subject to such limitations as may be prescribed.

(3) For the purposes of this section, a reduction in rank does not include reversion from acting rank to substantive rank or above.

24. A warrant officer of the Regular Force who is reduced to the rank of private soldier may thereupon claim to be discharged unless a state of war, insurrection, hostilities or public emergency exists.

Right of warrant officer to discharge on reduction in rank

25. Notwithstanding the provision of this Part, a person to be enlisted in the Corps of Instructors may be enlisted and discharged upon such terms and conditions as may be prescribed by the President.

Persons enlisting in Corps of Instructors

Miscellaneous and Supplementary Provisions

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Rules for reckoning service

26. In reckoning the service of any soldier of the Regular Force towards discharge or re-engagement or transfer to the Reserve Force, there shall be excluded therefrom-

(*a*) all periods during which he has been absent from his duty for any of the following causes:

(i) imprisonment;

(ii) desertion;

(iii) absence without leave exceeding twenty-eight days; and

(*b*) any period ordered by a court-martial to be forfeited.

Validity of attestation and enlistment

27. (1) Where a person has made such declaration upon his attestation as may be prescribed and has thereafter received pay as a soldier of the Regular Force-

(*a*) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;

(*b*) after the expiration of a period of three months from the date on which he made the said declaration he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any regulation made as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper) and he shall be deemed to be a soldier of that Force until his discharge.

(2) Where a person has received pay as a soldier of the Regular Force without having previously made such declaration as aforesaid then-

(*a*) he shall be deemed to be a soldier of that Force until discharged;

(*b*) he may claim his discharge at any time and, if he makes such claim, the claim shall be submitted as soon as may be to the competent military authority who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in the foregoing provisions of this section shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

False answers in attestation papers

28. (1) If a person appearing before a recruiting officer for the purpose of being enlisted in the Regular Force knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer, he shall commit an offence against this section and shall be liable on conviction to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a term not exceeding three months, or to both.

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(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to military law under this Act.

(*As amended by Act No.* 13 *of* 1994)

PART V

DISCIPLINE AND TRIAL AND PUNISHMENT OF MILITARY OFFENCES

Treachery, Cowardice and Offences arising out of Military Service

Aiding the enemy

29. (1) Any person subject to military law under this Act who, with intent to assist the enemy-

(*a*) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend; or

(*b*) does any act calculated to imperil the success of operations of the Defence Force, or of any forces co-operating therewith or any part of any of those forces; or

(*c*) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or

(*d*) furnishes the enemy with arms or ammunition or with supplies of any description or with anything likely to assist him (whether similar to any of the things aforesaid or not); or

(*e*) harbours or protects an enemy not being a prisoner of war; or

(*f*) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal; or

(*g*) when ordered by a superior officer, or otherwise under orders, to carry out any warlike operation in the air fails to use his utmost exertions to carry such orders into effect; or

(*h*) causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force;

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

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(2) Any person subject to military law under this Act who, knowingly and without lawful excuse, does any of the acts specified in paragraphs (*a*) to (*g*) of subsection (1) shall, where it is not proved that he acted with intent to assist the enemy, be liable on conviction by court-martial to imprisonment or any less punishment provided by this Act.

(3) Any person subject to military law under this Act who negligently causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force, or any forces co-operating therewith shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Communica-tion with the enemy

30. (1) Any person subject to military law under this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to suffer death or any punishment provided by this Act.

(2) Any person subject to military law under this Act who, without authority, communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this section, "intelligence" means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:

(*a*) the number, description, armament, equipment, disposition, movement or condition of the Defence Force or of any forces co-operating therewith, or any aircraft of the Defence Force or aircraft of any such co-operating forces;

(*b*) any operations or projected operations of any of such forces, or aircraft as aforesaid;

(*c*) any code, cypher, call-sign, password or countersign;

(*d*) any measures for the defence or fortification of any place;

(*e*) the number, description or location of any prisoners of war;

(*f*) munitions of war.

Cowardly behaviour

31. (1) Any person subject to military law under this Act who, when before the enemy-

(*a*) leaves his post, position or other place where it is his duty to be; or

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(*b*) throws away his arms, ammunition or tools; or

(*c*) does any of the acts specified in paragraphs (*f*) to (*h*) of subsection (1) of section *twenty-nine*;

in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence against this section.

(2) Any person subject to military law under this Act who, when before the enemy, induces other persons subject to service law and before the enemy to commit an offence under subsection (1) shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Offences against morale

32. Any person subject to military law under this Act who-

(*a*) spreads (whether orally, in writing, by signal, or otherwise) reports relating to operations of the Defence Force or of any forces co-operating therewith, or of any part of those forces, being reports calculated to create despondency or unnecessary alarm; or

(*b*) when before the enemy, uses words calculated to spread despondency or unnecessary alarm;

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

Becoming prisoner of war through disobedience or wilful neglect and failing to rejoin Force

33. (1) Any person subject to military law under this Act who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section.

(2) Any person subject to military law under this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law captured by the enemy from taking, reasonable steps to rejoin the Defence Force which are available to him or, as the case may be, to that other person shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(*As amended by S.I. No.* 8 *of* 1964)

Offences by or in relation to sentries, etc.

34. (1) Any person subject to military law under this Act who, while on guard duty-

(*a*) sleeps at his post; or

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(*b*) when not on duty at his post, is asleep at a time when he is not allowed to be asleep; or

(*c*) is drunk; or

(*d*) leaves his post without having been regularly relieved, or otherwise absents himself from any place where it is his duty to be;

shall be guilty of an offence against this section.

(2) For the purposes of this section, a person shall be treated as being drunk if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty.

(3) Any person subject to military law under this Act who strikes or otherwise uses force against any person on guard duty, being a member of the Defence Force or of any forces co-operating with that Force, or who by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence is not committed on active service he shall not be liable to imprisonment for more than two years.

(5) References in this section to a person on guard duty are references to a person who-

(*a*) is posted or ordered to patrol; or

(*b*) is a member of a guard or other party mounted or ordered to patrol;

for the purpose of protecting any persons, property, premises or place.

(6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises, property or place, or regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

(*As amended by S.I. No.* 8 *of* 1964)

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Looting

35. Any person subject to military law under this Act who-

(*a*) steals from or with intent to steal searches the person of anyone killed or wounded in the course of warlike operations; or

(*b*) steals any property which has been left exposed or unprotected in consequence of warlike operations; or

(*c*) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy;

shall be guilty of looting and liable, on conviction by court-martial, to imprisonment or any less punishment provided by this Act.

Mutiny and Insubordination

Mutiny

36. (1) Any person subject to military law under this Act who-

(*a*) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against the enemy, or the impeding of the performance of any such duty or service; or

(*b*) incites any person subject to service law to take part in such a mutiny, whether actual or intended;

shall, on conviction by court-martial, be liable to suffer death or any other punishment provided by this Act.

(2) Any person subject to military law under this Act who, in a case not falling within subsection (1), takes part in a mutiny, or incites any person subject to service law to take part in a mutiny whether actual or intended, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) In this Act, "mutiny" means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law-

(*a*) to overthrow or resist lawful authority in the Defence Force or any forces co-operating therewith or in any part of any of the said forces; or

(*b*) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(*c*) to impede the performance of any duty or service in the Defence Force or in any forces co-operating therewith or in any part of any of the said forces.

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37. Any person subject to military law under this Act who, knowing that a mutiny is taking place or is intended- Failure to suppress mutiny

(*a*) fails to use his utmost endeavours to suppress or prevent it; or

(*b*) fails to report without delay that the mutiny is taking place or is intended;

shall, on conviction by court-martial-

(i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any other punishment provided by this Act;

(ii) in any other case, be liable to imprisonment or any less punishment provided by this Act;

38. (1) Any person subject to military law under this Act who- Insubordinate behaviour

(*a*) strikes or otherwise uses violence to or offers violence to a superior officer; or

(*b*) uses threatening or insubordinate language to a superior officer;

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such.

(2) In this section, "superior officer", in relation to a person, means an officer, warrant officer or non-commissioned officer subject to service law of superior rank, and includes an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as the said person's superior.

39. (1) Any person subject to military law under this Act who, in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act. Disobedience to particular orders

(2) Any person subject to military law under this Act who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service he shall not be liable to be imprisoned for more than two years.

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Obstruction of provost officers

40. Any person subject to military law under this Act who-

(*a*) obstructs; or

(*b*) when called on, refuses to assist;

any person known to him to be a provost officer, or to be a person (whether subject to military law under this Act or not) legally exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Disobedience to standing orders

41. (1) Any person subject to military law under this Act who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or body of troops, or for any command or other area, garrison or place, or for any vessel, train or aircraft.

Desertion, Absence without Leave, etc.

Desertion

42. (1) Any person subject to military law under this Act who-

(*a*) deserts; or

(*b*) persuades or procures any person subject to service law to desert;

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that a person shall not be liable to be imprisoned for more than two years unless-

(i) if the offence was against paragraph (*a*), he was on active service or under orders for active service at the time it was committed;

(ii) if the offence was an offence against paragraph (*b*), the person in relation to whom it was committed was on active service or under orders for active service at that time.

(2) For the purposes of this Act, a person deserts who-

(*a*) leaves the Defence Force or, when it is his duty to do so, fails to join or rejoin the Defence Force, with (in either case) the intention, subsisting at the time of leaving or failure or formed thereafter, of remaining permanently absent from his duty; or

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(*b*) being an officer enlists in or enters any part of the Defence Force or other forces without having resigned his commission, or being a soldier enlists in or enters any part of the Defence Force or other forces without having been discharged from his previous enlistment; or

(*c*) absents himself without leave with intent to avoid serving at any place outside Zambia or to avoid service or any particular service when before the enemy;

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

(3) In addition to or in lieu of any punishment authorised by subsection (1), the court-martial by whom a soldier of the Regular Force is convicted of desertion may direct that the whole or any part of his service previous to the period in respect of which he is convicted of having been a deserter shall be forfeited.

Absence without leave

43. Any person subject to military law under this Act who-

(*a*) absents himself without leave; or

(*b*) persuades or procures any person subject to service law to absent himself without leave;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Assisting and concealing desertion and absence without leave

44. Any person subject to military law under this Act who-

(*a*) knowingly assists any person subject to service law to desert or absent himself without leave; or

(*b*) knowing that any person subject to service law has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Falsely obtaining or prolonging leave

45. Any person subject to military law under this Act who, for the purpose of obtaining leave or prolonging his leave, knowingly makes any false statement shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Failure to perform military duties

46. Any person subject to military law under this Act who, without reasonable excuse, fails to attend for any parade or any military duty of any description or leaves any such parade or duty as aforesaid before he is permitted to do so shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Malingering and Drunkenness

Malingering

47. (1) Any person subject to military law under this Act who-

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(*a*) falsely pretends to be suffering from sickness or disability; or

(*b*) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent; or

(*c*) injures another person subject to service law, at the instance of that person, with intent thereby to render that person unfit for service; or

(*d*) with intent to render or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability;

shall be guilty of malingering and shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) In this section, "unfit" includes temporarily unfit.

Drunkenness

48. (1) Any person subject to military law under this Act who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that when the offence is committed by a soldier neither on active service nor on duty the sentence imposed shall not exceed detention for a period of six months.

(2) For the purposes of subsection (1), a person is guilty of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on the Defence Force.

Offences Relating to Property

Offences in relation to public and service property

49. (1) Any person subject to military law under this Act who-

(*a*) steals or fraudulently misapplies any public or service property, or is concerned in or connives at the stealing or fraudulent misapplication of any public or service property; or

(*b*) receives any public or service property knowing it to have been stolen or to have been fraudulently misapplied; or

(*c*) wilfully damages, or is concerned in the wilful damage of, any public or service property; or

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(*d*) by wilful neglect, causes damage by fire to any public or service property;

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), any person subject to military law under this Act who-

(*a*) wilfully damages, or is concerned in the wilful damage of, any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or

(*b*) by wilful neglect, causes damage to, or the loss of, any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or

(*c*) without lawful authority, disposes of any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith;

shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

(3) Any person subject to military law under this Act who, during a state of war, wilfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any aircraft of the Defence Force or of any forces co-operating therewith shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if he has not acted wilfully or with wilful neglect he shall not be liable to imprisonment for a term exceeding two years.

Offences in relation to property of members of Force

50. Any person subject to military law under this Act who-

(*a*) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or

(*b*) receives any such property knowing it to have been stolen or to have been fraudulently misapplied; or

(*c*) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to service law;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

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Miscellaneous offences relating to property

51. Any person subject to military law under this Act who-

(*a*) loses, or by negligence damages, any public or service property of which he had the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care; or

(*b*) by negligence, loses or damages any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or

(*c*) is guilty of any act or neglect likely to cause damage to or loss of any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or

(*d*) by negligence, causes damage by fire to any public or service property; or

(*e*) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or

(*f*) fails to take proper care of any animal or bird used in the public service which is in his charge; or

(*g*) makes away (whether by pawning, selling, destruction or in any other way) with any service decoration granted to him, or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that it shall be a defence for any person charged under this section with losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

Offences Relating to Billeting and Requisitioning of Vehicles

Billeting offences

52. Any person subject to military law under this Act who-

(*a*) knowing that no billeting requisition is in force under any law authorising him to demand any billets or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them; or

(*b*) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under any law any money or thing as consideration for not requiring, or ceasing to require, the accommodation for himself or the said other person or standing room for the vehicle; or

(*c*) commits any offence against the personal property of the occupier or premises in which he is billeted in pursuance of a billeting requisition under any law or of any other person being in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property as aforesaid;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences in relation to requisitioning of vehicles

53. (1) Any person subject to military law under this Act who-

(*a*) knowing that no requisitioning order is in force under any law authorising him to give directions for the provisions of any vehicle, or that he is otherwise not authorised to give such directions, gives directions for the provision of the vehicle or orders or procures another person to give such directions; or

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(*b*) in purported exercise of powers conferred by a requisitioning order under any law takes, or orders or procures any other person to take, possession of a vehicle, knowing that no requisitioning order is in force under which the taking possession of the vehicle could be authorised, or that the taking possession thereof is otherwise not authorised under such order; or

(*c*) takes or agrees to take, or demands, from any person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or possession of a vehicle not being taken, or not being retained, under a requisition order under any law;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Subsection (1) shall apply in relation to horses, food, forage and stores as it applies in relation to vehicles.

Flying, etc., Offences

Dangerous flying, etc.

54. Any person subject to military law under this Act who is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

Inaccurate certification of aircraft, etc.

55. Any person subject to military law under this Act who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court-material, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Low flying

56. Any person subject to military law under this Act who, being the pilot of an aircraft, flies it at a height less than such height as may be provided by any regulations issued under the authority of the President, except-

(*a*) while taking off or alighting; or

(*b*) in such other circumstances as may be provided;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Annoyance by flying

57. Any person subject to military law under this Act who, being the pilot of an aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences Relating to, and by, Persons in Custody

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58. (1) Any person subject to military law under this Act who, when another person subject thereto is under arrest- Irregular arrest and confinement

(*a*) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his commanding officer or an appropriate superior authority, or, as the case may be, tried by court-martial; or

(*b*) fails to release, or effect the release of, that other person when it is his duty to do so;

shall be guilty of an offence against this section.

(2) Any person subject to military law under this Act who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer or other officer, or any warrant officer, or non-commissioned officer, fails without reasonable cause to deliver-

(*a*) at the time of the committal; or

(*b*) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter;

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, shall be guilty of an offence against this section.

(3) Where any person (hereinafter referred to as "the prisoner") is committed to the charge of a person subject to military law under this Act who is in command of a guard, then if without reasonable cause that person does not as soon as he is relieved from his guard and any further duty, or if he is not sooner relieved, within twenty-four hours after the committal, give to the officer to whom it is his duty to report-

(*a*) a written statement containing, so far as known to him, the prisoner's name and alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; and

(*b*) if he has received it, the report required by sub-section (2);

he shall be guilty of an offence against this section.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

59. (1) Any person subject to military law under this Act who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act. Permitting escape, and unlawful release of prisoners

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(2) Any person subject to military law under this Act who-

(*a*) without proper authority, release any person who is committed to his charge; or

(*b*) without reasonable excuse, allows to escape any person who is committed to his charge, or whom it is his duty to guard;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Resistance to arrest

60. (1) Any person subject to military law under this Act who, being concerned in any quarrel or disorder, refuses to obey any officer subject to service law who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.

(2) Any person subject to military law under this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to military law under this Act or not, whose duty it is to apprehend him or in whose custody he is, shall be guilty of an offence against this section.

(3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Escape from confinement

61. Any person subject to military law under this Act who escapes from arrest, prison or other lawful custody (whether military or not), shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences in Relation to Courts-martial

Offences in relation to courts-martial

62. (1) Any person subject to military law under this Act who-

(*a*) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or

(*b*) refuses to swear an oath when duly required by a court-martial to do so; or

(*c*) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or

(*d*) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or

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(*e*) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

(*f*) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court;

shall, on conviction by court-martial, other than the court in relation to which the offence was committed, be liable to a term of imprisonment not exceeding two years or any less punishment provided by this Act.

(2) Notwithstanding anything in subsection (1), where an offence against paragraph (*e*) or (*f*) of that subsection is committed in relation to any court-martial held in pursuance of this Act, that court, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, may by order under the hand of the president order the offender to be imprisoned for a period not exceeding twenty-one days, or, in the case of a soldier, either to be imprisoned for such a period or to undergo detention for such a period.

(3) References in paragraphs (*a*) to (*f*) of subsection (1) to a court-martial shall include references to a court-martial held in pursuance of service law.

False evidence

63. (1) Any person subject to military law under this Act who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) A person shall not be liable to be convicted of an offence against this section solely on the evidence of one witness as to the falsity of any statement alleged to be false.

Miscellaneous Offences

Injurious disclosures

64. (1) Any person subject to military law under this Act who, without authority, discloses, whether orally, in writing, by signal or by any other means whatsoever, any information which is or purports to be information useful to an enemy shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) In this section, "information useful to an enemy" means information as to any matter such that information as to it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid, that is to say:

(*a*) the number, description, armament, equipment, disposition, movement or condition of the Defence Force or of any forces co-operating therewith, or any aircraft of the Defence Force or aircraft of any such co-operating forces;

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(*b*) any operations or projected operations of any of such forces or aircraft as aforesaid;

(*c*) any code, cypher, call-sign, password or counter-sign;

(*d*) any measures for the defence or fortification of any place;

(*e*) the number, description or location of any prisoners of war;

(*f*) any munitions of war.

Making of false statements on enlistment

65. Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part IV, has knowingly made a false answer to any question contained in the attestation paper and put to him by the direction of the recruiting officer shall, if he has since become and remains subject to military law under this Act, be liable, on conviction by court-martial, to imprisonment for a period not exceeding three months or to any less punishment provided by this Act.

Making of false documents

66. Any person subject to military law under this Act who-

(*a*) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular; or

(*b*) alters any service report, return, pay list, or certificate or other service document, or alters any entry in such document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce; or

(*c*) with intent to defraud, fails to make an entry in any such document; or

(*d*) aids, abets, commands, cancels, procures or connives at the commission by another person subject to service law of an offence against this section or the corresponding section of the applicable service law (whether or not he knows the nature of the document in relation to which that offence will be committed);

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Scandalous conduct of an officer

67. Every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer, shall, on conviction by court-martial, be cashiered.

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68. If-

Ill-treatment of officers or men of inferior rank

(*a*) any officer subject to military law under this Act strikes or otherwise ill-treats any officer subject to service law of inferior rank or less seniority, or any soldier subject to service law; or

(*b*) any warrant officer or non-commissioned officer subject to military law under this Act strikes or otherwise ill-treats any person subject to service law, being a warrant officer or non-commissioned officer of inferior rank or less seniority or a private soldier;

he shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

69. Any person subject to military law under this Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Disgraceful conduct

70. Any person subject to military law under this Act who-

False accusation, etc.

(*a*) makes an accusation against any officer or soldier subject to service law, which he knows to be false or does not believe to be true; or

(*b*) in making a complaint in which he thinks himself wronged, makes a statement affecting the character of an officer or soldier subject to service law, which he knows to be false or does not believe to be true, or wilfully suppresses any material facts;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

71. Any person subject to military law under this Act who attempts to commit an offence against any of the foregoing provisions of this Part shall, on conviction by court-martial, be liable to the like punishment as for that offence:

Attempts to commit military offences

Provided that if the offence is one punishable by death, he shall not be liable to any greater punishment than imprisonment.

72. Any person subject to military law under this Act who is guilty of any act, conduct or neglect to the prejudice of good order and military discipline shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Conduct to the prejudice of military discipline

Civil Offences

73. (1) Any person subject to military law under this Act who commits a civil offence, whether in Zambia or elsewhere, shall be guilty of an offence against this section.

Civil offences

(2) In this Act-

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(*a*) "civil offence" means any act or omission punishable by the law of Zambia or which, if committed in Zambia, would be punishable by that law;

(*b*) "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.

(3) A person convicted by court-martial of an offence against this section shall-

(*a*) if the corresponding civil offence is treason or murder, be liable to suffer death;

(*b*) in any other case, be liable to suffer any punishment or punishments which the civil court could award for the corresponding civil offence, if committed in Zambia, being a punishment or punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer or detention in the case of a soldier, as is so provided.

(4) A person shall not be charged with an offence against this section committed in Zambia if the corresponding civil offence is treason, murder, manslaughter, treason-felony, rape or an offence under section *eight* of the Suicide Act. Cap. 89

(5) Where the corresponding civil offence is murder, manslaughter or an offence under section *eight* of the Suicide Act, an offence against this section shall be deemed, for the purposes of subsection (4), to have been committed at the place of the commission of the act or occurrence or the neglect which caused the death, irrespective of the place of death. Cap. 89

(*As amended by No.* 1 *of* 1967)

Punishments

74. (1) The punishments which may be awarded to an officer by sentence of a court-martial under this Act are those set out in the scale in subsection (2) and, in relation to an officer, references in this Act to punishments provided by this Act are references to those punishments. Punishment of officers

(2) The scale referred to in subsection (1) is-

(*a*) death;

(*b*) imprisonment;

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(*c*) cashiering;

(*d*) dismissal from the Defence Force;

(*e*) forfeiture in the prescribed manner of seniority of rank in the Defence Force or in the corps to which the offender belongs, or in both;

(*f*) fine of a sum not exceeding the equivalent of ninety days' pay;

(*g*) severe reprimand or reprimand;

(*h*) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part, a punishment specified in any paragraph of the scale in subsection (2) shall be treated as less than the punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the said scale.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for one offence.

(5) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(6) A severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or a fine.

(7) Where an officer is sentenced by a court-martial to imprisonment he shall also be sentenced to be cashiered:

Provided that if the court-martial fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

Punishment of soldiers

75. (1) The punishments which may be awarded to a soldier by a sentence of a court-martial under this Act are those set out in the scale in subsection (2) and, in relation to a soldier, references in this Act to punishments provided by this Act are references to those punishments.

(2) The scale referred to in subsection (1) is-

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(*a*) death;

(*b*) imprisonment;

(*c*) discharge with ignominy from the Defence Force;

(*d*) in the case of a warrant officer, dismissal from the Defence Force;

(*e*) detention for a term not exceeding two years;

(*f*) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding ninety days;

(*g*) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;

(*h*) in the case of a warrant officer or non-commissioned officer, forfeiture in the prescribed manner of seniority of rank;

(*i*) where the offence is desertion, forfeiture of service;

(*j*) fine of a sum not exceeding the equivalent of ninety days' pay;

(*k*) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;

(*l*) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part, a punishment specified in any paragraph in the scale in subsection (2) shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the said scale:

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(4) Save as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for any one offence.

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(5) A soldier sentenced by a court-martial to imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from the Defence Force, and a warrant officer sentenced by a court-martial to imprisonment may, in addition thereto, be sentenced to dismissal from the Defence Force.

(6) Where a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment, detention or field punishment, he shall also be sentenced to be reduced to the ranks:

Provided that if the court-martial fails to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.

(7) In the case of a warrant officer or non-commissioned officer, a severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or a fine.

(8) Where an offender is on active service when sentence of a court-martial is announced, a fine may be awarded in addition to field punishment.

(9) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(10) Where an offender has been sentenced by a court-martial to detention, then, if he is subsequently sentenced by a court-martial to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.

(11) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

76. Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under regulations to be made by the President, and may include confinement in such place or manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided. Field punishment

Arrest

77. (1) Any person subject to military law under this Act found committing an offence against any provision of this Act or alleged to have committed or reasonably suspected of having committed any such offence, may be arrested in accordance with the following provisions of this section. Power to arrest offenders

(2) An officer may be arrested by an officer subject to service law of superior rank, or, if engaged in a quarrel or disorder, by such an officer of any rank.

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(3) A soldier may be arrested by any officer, warrant officer or non-commissioned officer subject to service law:

Provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any officer, warrant officer or non-commissioned officer subject to service law lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or soldier:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Provisions for avoiding delay after arrest

78. (1) The allegations against any person subject to military law under this Act who is under arrest shall be duly investigated without unnecessary delay and, as soon as may be, either proceedings shall be taken for punishing his offence or he shall be released from arrest.

(2) Wherever any person subject to military law under this Act, having been taken into military custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report will be made to the like authority and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that, in the case of a person on active service, compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.

(3) For the purposes of subsection (1) of section *fifty-eight*, the question as to whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to the provisions of subsection (2).

Investigation of, and Summary Dealing with, Charges

Investigation of charges by commanding officer

79. Before an allegation against a person subject to military law under this Act (hereinafter referred to as "the accused") that he has committed an offence against any provision of this Part is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

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80. (1) After investigation, a charge against an officer below the rank of lieutenant-colonel or against a warrant officer may, if an authority has power under the following provisions of this Part to deal with it summarily, be so dealt with by that authority (in this Act referred to as "the appropriate superior authority") in accordance with those provisions.

Charges to be dealt with summarily or by court-martial

(2) After investigation, a charge against a non-commissioned officer or private soldier may be dealt with summarily by his commanding officer, subject to, and in accordance with, the following provisions of this Part.

(3) Any charge not dealt with summarily as aforesaid shall, after investigation, be remanded for trial by court-martial.

(4) Notwithstanding anything in the foregoing provisions of this section, where-

(*a*) a commanding officer has investigated a charge against an officer or warrant officer; or

(*b*) the commanding officer has investigated a charge against a non-commissioned officer or private soldier, which is not one which can be dealt with summarily;

the commanding officer may dismiss the charge if he is of opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

81. (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or private soldier.

Further proceedings on charges against non-commissioned officers and soldiers

(2) If-

(*a*) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it; or

(*b*) the charge is one which can be dealt with summarily but the commanding officer is of opinion that it should not be so dealt with;

he shall take the prescribed steps with a view to the charge being tried by court-martial.

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(3) Otherwise, the commanding officer shall proceed to deal with the charge summarily, and if he records a finding of guilty he may award one or more of the following punishments, that is to say:

(*a*) if the accused is a non-commissioned officer-

(i) a fine of a sum not exceeding the equivalent of seven days' pay;

(ii) severe reprimand or reprimand;

(iii) where the offence has occasioned any expense, loss or damage, stoppages;

(iv) admonition;

(*b*) if the accused is a private soldier-

(i) detention for a period not exceeding twenty-eight days, or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days;

(ii) a fine of a sum not exceeding the equivalent of seven days' pay;

(iii) where the offence has occasioned any expense, loss or damage, stoppages;

(iv) confinement to barracks for a period not exceeding fourteen days;

(v) extra guards or pickets;

(vi) admonition.

(4) Where the accused is an acting warrant officer or an acting non-commissioned officer, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to revert to his permanent rank or to assume an acting rank lower than that held by him but higher than his permanent rank.

(5) Notwithstanding the provisions of subsection (4), where the accused is a substantive corporal or lance-corporal, and the commanding officer finds him guilty, the commanding officer may, if he awards no other punishment or no other punishment except stoppages, order the accused to be reduced to the ranks.

(6) No fine or severe reprimand or reprimand, confinement to barracks, extra guards or pickets, or admonition shall be awarded for an offence for which detention is awarded.

(7) A fine shall not be awarded for an offence for which stoppages have been awarded.

(8) Notwithstanding anything in subsection (3), where a commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or admonition, confinement to barracks, extra guards or pickets, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects and does not subsequently, in accordance with regulations, withdraw his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

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(9) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to its being tried by court-martial, any higher authority to whom the charge is referred may refer the charge back to the commanding officer to be dealt with summarily; and on any such reference subsections (3), (4), (5), (6), (7) and (8) shall apply as if the commanding officer had originally been of opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

(10) Notwithstanding anything in the foregoing provisions of this section, the power thereby conferred on a commanding officer in the Home Guard shall not be exercisable by a commanding officer except during any period when the President has ordered the employment of the Home Guard or any part thereof under the provisions of section *nineteen* of the Home Guard Act, or during any period when the person to be dealt with is on any other duty pursuant to the provisions of the said Act. Cap. 122

(*As amended by No.* 32 *of* 1971)

Further proceedings on charges against officers and warrant officers

82. (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to a higher authority; and thereupon it shall be determined by such authority how the charge is to be proceeded with an accordance with subsections (2) and (3).

(2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.

(3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.

(4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether the accused is guilty of the charge and accordingly dismiss the charge or record a finding of guilty:

Provided that if in the course of investigating the charge the authority determines that it is desirable that the charge be tried by the court-martial, the prescribed steps shall be taken with a view to its being so tried.

(5) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments, that is to say:

(*a*) forfeiture in the prescribed manner of seniority of rank, where the accused is an officer the forfeiture being of seniority of rank either in the Defence Force or in the corps to which the accused belongs, or in both;

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(*b*) a fine of a sum not exceeding the equivalent of twenty-eight days' pay;

(*c*) severe reprimand, or reprimand;

(*d*) where the offence has occasioned any expense, loss or damage, stoppages;

except that he may not award both forfeiture of seniority of rank and a fine.

(6) Notwithstanding anything in subsection (4), where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award forfeiture of seniority, a fine, stoppages, or where a finding of guilty will involve a forfeiture of pay the authority shall not record a finding until affording the accused an opportunity of electing to be tried by court-martial; and if the accused so elects the authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

Dismissal of charges referred to higher authority

83. (1) Notwithstanding the provisions of sections *eighty-one* and *eighty-two*, where a charge-

(*a*) has been referred to higher authority with a view to its being tried by court-martial; or

(*b*) has been referred to higher authority for determination of how it is to be proceeded with;

that authority may, subject to the provisions of this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed, and in any such case the commanding officer shall dismiss the charge.

(2) The reference back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the higher authority has so directed or the commanding officer thinks fit.

Officers who are to act as commanding officers and appropriate superior authorities

84. (1) In this Act-

(*a*) "commanding officer", in relation to a person charged with an offence, means the officer for the time being commanding the unit or detachment to which the person belongs or is attached;

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(*b*) "apprropriate superior authority", in relation to a person charged with an offence, means-

(i) in the case of officers of the rank of major and below and of warrant officers, any officer of the Defence Force not below the rank of colonel;

(ii) in the case of officers of the rank of lieutenant and below and of warrant officers, any officer of the Defence Force not below the rank of lieutenant-colonel who is not the commanding officer of such person.

(2) Regulations made by the President under this section may confer on commanding officers power to delegate powers of commanding officers, in such cases and to such extent and to such officer or class of officers as may be specified in the regulations.

Limitation of powers of summary dealing with charges

85. (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may be specified by regulations of the President.

(2) In such cases as may be specified in that behalf by regulations of the President, the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

Court-martial: General Provisions

Trial by, and powers of, court-martial

86. Subject to the provisions of this Act, a court-martial under this Act shall have power to try any person subject to military law under this Act for any offence which under this Act is triable by court-martial and to award for any such offence any punishment authorised by this Act for that offence.

Officers having power to convene court-martial

87. (1) A court-martial may be convened by an officer not below the rank of colonel or by any officer not below field rank in the name of such officer and authorised by him to convene courts-martial.

(2) Any authorisation under subsection (1) to convene courts-martial-

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

(*b*) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and successors;

(*c*) may be varied or may be revoked either wholly or in part by the officer by whom it was given or his successor in office.

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88. (1) A court-martial shall consist of the president and not less than two other officers as members: Constitution of court-martial

Provided that a court-martial shall consist of the president and not less than four other officers as members if-

(i) an officer is to be tried; or

(ii) the only punishment or the maximum punishment which can be awarded in respect of the charge before the court is death.

(2) An officer shall not be appointed to be the president or a member of a court-martial unless-

(*a*) he belongs to the Defence Force, is subject to military law and has been an officer in the Defence Force for a continuous period of not less than two years; or

(*b*) is an officer in the Defence Force, is subject to military law and has served in that Force or in any other military, naval or air force for periods amounting in the aggregate to not less than two years.

(3) Not less than two of the members of a court-martial shall be of a rank not below that of captain.

(4) The president of a court-martial shall be appointed by order of the convening officer and shall not be under field rank unless in the opinion of the convening officer an officer of field rank having suitable qualifications is not, with due regard to the public service, available; and in any event the president of a court-martial shall not be under the rank of captain.

(5) The members of a court-martial shall be appointed by order of the convening officer or in such other manner as may be prescribed.

(6) An officer under the rank of captain shall not be a member of a court-martial for the trail of an officer above that rank.

(*As amended by S.I. No.* 8 *of* 1964)

89. (1) The officer who convenes a court-martial shall not be a member of that court-martial. Supplementary provisions as to constitution of court-martial

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(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under service law has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject-matter of the charge against the accused, shall not be president or sit as a member of the court-martial or act as judge advocate at such a court-martial.

(3) Where the officer convening a court-martial appoints a captain to be president, being of opinion that a field officer having suitable qualifications is not, with due regard to the public service, available, the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

Place for sitting of court-martial and adjournment to other places

90. (1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without Zambia) as may be specified in the order convening the court.

(2) A court-martial sitting at any place shall, if the convening officer directs it to sit at some other place, and may without any such direction if it appears to the court requisite in the interest of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Court-martial: Provisions Relating to Trial

Challenges by accused

91. (1) An accused about to be tried by court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another officer.

(2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1), the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those officers.

(3) Every objection made by the accused to any officer shall be considered by the other officers appointed members of the court.

(4) If objection is made to the president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.

(5) If objection is made to a member of the court other than the president and not less than one-half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced to below the legal minimum shall, be filled in the prescribed manner by another officer.

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Administration of oaths

92. (1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter.

(2) Every witness before a court-martial shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath if, in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that where the evidence is given on behalf of the prosecution, the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.

(3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

Court-martial to sit in open court

93. (1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused.

(2) Nothing in subsection (1) shall affect the power of a court-martial to sit *in camera* on the ground that it is necessary or expedient in the interests of the administration of justice so to do; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on their finding or sentence on any charge.

(4) A court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as may be prescribed.

Dissolution of court-martial

94. Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.

(2) Without prejudice to the generality of subsection (1), if after the commencement of a trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.

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(3) If after the commencement of the trial the president dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then-

(*a*) if the senior member of the court is of the rank of captain or is of higher rank, the convening officer may appoint him president and the trial shall proceed accordingly; but

(*b*) if he is not, the court shall be dissolved.

(4) Without prejudice to the generality of subsection (1), if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

(5) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried by another court-martial.

Decisions of court-martial

95. (1) Subject to the provisions of this section, every question to be determined on a trial by court-martial shall be determined by a majority of votes of the members of the court.

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) A finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court; and where on such a finding being come to by the majority of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.

(4) Where the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

(5) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the president shall have a second or casting vote.

Finding and sentence

96. (1) Without prejudice to the provisions of section *ninety-three*, the finding of a court-martial on each charge shall be announced in open court.

(2) Any finding of guilty shall be, and be announced as being, subject to confirmation.

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(3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

Power to convict of an offence other than that charged

97. (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.

(2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed that offence.

(4) Where an accused is charged before a court-martial under section *seventy-three* in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed that civil offence.

(5) Where an accused is charged before a court-martial with an offence against section *seventy-three*, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Zambia, he might have been found guilty of another civil offence, then, if the court finds that he has committed that other civil offence, he may be convicted of an offence against section *seventy-three* in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence specified in the first column of the First Schedule may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

Rules of evidence

98. (1) Subject to the provisions of this Act, the rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in Zambia, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in Zambia.

(2) Notwithstanding anything in subsection (1), a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent to which oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in any such trial on behalf either of the prosecution or of the defence-

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(i) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trail, been served on the accused;

(ii) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused, or the commanding officer of the accused has given his agreement in writing to its admission;

(iii) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration;

(iv) in any case, if the court-martial is of opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

(3) A court-martial shall take judicial notice of all matters of notoriety including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in Zambia.

Privilege of witnesses and others at court-martial

99. A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court.

(*As amended by S.I. No.* 8 *of* 1964)

Offences by civilians in relation to court-martial

100. Where in Zambia any person not subject to military law under this Act-

(*a*) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons; or

(*b*) refuses to swear an oath when duly required by a court-martial to do so; or

(*c*) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or

(*d*) when a witness refuses to answer any question which a court-martial has lawfully required him to answer; or

(*e*) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

(*f*) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court; or

(*g*) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court;

the president of the court-martial may certify the offence of that person under his hand to the High Court, and the High Court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.

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Affirmations

101. (1) If-

(*a*) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to be sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or

(*b*) it is not reasonably practicable to administer an oath to such a person as aforesaid in the manner appropriate to his religious belief;

he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

(2) A person who may be permitted under this section to make his solemn affirmation may also be required to do so and for the purposes of this section, "reasonably practicable" means reasonably practicable without inconvenience or delay.

Confirmation, Revision and Review of Proceedings of Court-martial

Confirmation of proceedings of court-martial

102. (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming officer for confirmation of the finding and sentence of the court on that charge.

(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of sections *one hundred and three* and *one hundred and four* or the provisions of this Act as to confirmation or approval.

Petitions against finding or sentence

103. At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against finding or sentence or both.

Revision of findings of court-martial

104. (1) A confirming officer may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him-

(*a*) that the finding was against the weight of evidence; or

(*b*) that some question of law determined at the trial and relevant to the finding was wrongly determined.

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(2) Any such direction shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reasons for the direction.

(3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.

(4) On any such revision the court shall not have power to receive further evidence.

(5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances the court may substitute a different sentence for the original sentence.

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

(6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming officer, or the revision of the original finding if adhered to by the court on such a previous direction; but save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

Provided that the decision of the court on the revision shall not be required to be announced in open court.

Powers of confirming officers

105. (1) Subject to the provisions of section *one hundred and four* and to the following provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to a higher confirming officer.

(2) In lieu of withholding confirmation of the finding of a court-martial, a confirming officer may, if-

(*a*) some other finding of guilty could have been validly made by the court-martial on the charge before it; and

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(*b*) he is of opinion that the court-martial must have been satisfied of the facts necessary to justify that other finding;

substitute that other finding, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised.

(3) Where it appears to a confirming officer that a sentence of a court-martial is invalid, he may, in lieu of withholding confirmation of the sentence, substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

(4) In confirming the sentence of a court-martial, a confirming officer may-

(*a*) remit in whole or in part any punishment awarded by the court; or

(*b*) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

(5) In confirming any sentence, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this subsection.

(6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(7) The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(8) Where the confirming officer determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

106. (1) Subject to the provisions of this section, the following shall have power to confirm the finding and sentence of any court-martial, that is to say: Confirming officers

(*a*) the officer who convened the court-martial or any officer superior in rank to that officer;

(*b*) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer;

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(*c*) failing any such officer as aforesaid, the President.

(2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say:

(*a*) any officer who was a member of the court-martial; or

(*b*) any person who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused; or

(*c*) any person who, as appropriate superior authority, investigated the allegations against the accused.

(3) An authorisation empowering the convening of a court-martial may reserve for confirmation by superior authority findings or sentences, or both, in such circumstances as may be specified by or under the authorisation, and the power conferred by subsection (1) shall be exercisable subject to any such reservation.

Approval of death sentence by President
Cap. 1

107. Subject to the provisions of the proviso to section *one hundred and forty-five*, a sentence of death shall not be carried into effect unless it has been approved by the President or by the advisory committee established under the Constitution.

(*S.I. No.* 8 *of* 1964)

Review of finding and sentence of court-martial

108. (1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence, a petition is duly presented under section *one hundred and three* against the finding or sentence, then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

(2) The reviewing authorities for the purposes of this Act are-

(*a*) any officer superior in command to the confirming officer;

(*b*) the President.

(3) If an application for leave to appeal is received by the registrar of the court of appeal under the provisions of Part VI, so much of subsection (1) as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the appeal or the application for leave to appeal relates and to the sentence passed in consequence of that finding.

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(4) On a review under this section the reviewing authority may-

(*a*) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence; or

(*b*) in so far as the review is of a sentence, quash the sentence; or

(*c*) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences, and remitting or commuting a punishment as are conferred on a confirming officer by subsections (2), (3) and (4) of section *one hundred and five*;

and any substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(5) Where a reviewing authority exercises any of the powers conferred by subsection (4), the determination shall be promulgated and shall have effect as from the promulgation thereof.

Reconsideration of sentences of imprisonment and detention

109. (1) Sentences of imprisonment and detention passed by courts-martial may be reconsidered by the Commander and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, it shall be remitted accordingly.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and where after review a sentence remains effective it shall be reconsidered at intervals of six months:

Provided that delay in complying with this subsection shall not invalidate the sentence.

Review of Summary Findings and Awards

Review of summary findings and awards

110. (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding or award.

(2) The said authority is-

(*a*) any officer superior in command to the officer who dealt summarily with the charge; or

(*b*) the President.

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(3) Where on a review under this section it appears to the said authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding.

(4) If a finding in any proceedings is quashed under subsection (3) and the award made in those proceedings relates only to the finding quashed, the authority shall also quash the award; and if the award relates also to any other finding and it appears to the authority that the award was not warranted by this Act in respect of that other finding, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

(5) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

Findings of Insanity

Provisions where accused found insane

111. (1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations made under this Part until the directions of the President are known or until any earlier time at which the accused is fit to stand his trial.

(2) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations made under this Part until the directions of the President are known.

(3) In the case of any such finding as aforesaid, the President may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the President thinks fit.

(4) A finding under subsection (1) shall not have effect unless and until the finding has been confirmed by an officer who would have had power to confirm a finding of guilty come to by the court-martial in question and has been promulgated.

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(5) Where the court or the confirming officer comes to or substitutes a finding of guilty but insane, the confirming officer or, as the case may be, the reviewing authority shall not have power to substitute for that finding a finding of guilty; but, save as aforesaid, the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court-martial in question) apply in relation to such findings as are provided for by subsection (2) as those provisions apply in relation to other findings of guilty.

Commencement, Suspension and Duration of Sentences

Commencement of sentences

112. (1) A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to the provisions of subsection (4) of section *one hundred and thirty-seven* (which empowers the court of appeal in certain cases to direct that a sentence shall begin to run from the day on which the court dismisses an application for leave to appeal), begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

(2) A sentence of imprisonment or detention passed by a court-martial on a soldier which is suspended in pursuance of section *one hundred and fourteen* before he has been committed to prison or a military establishment shall not begin to run until the beginning of the day on which the suspension is determined:

Provided that where the sentence is suspended by the confirming officer and the reviewing authority determines the suspension, the reviewing authority may direct that the sentence shall run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the reviewing authority may specify.

Duration of sentences of imprisonment and detention

113. (1) Where a soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of section *one hundred and fourteen* after he has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with the provisions of that section until the beginning of the day on which the suspension is determined.

(2) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into military custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large.

Provided that if he satisfies such authority as may be specified in that behalf by or under Imprisonment and Detention Regulations made by the President, that during any time during the last mentioned period he was in the custody of a civil authority, otherwise than on account of an offence committed by him while unlawfully at large, the last mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

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(3) In subsection (2), "civil authority" means a civil authority authorised by law to detain persons, and includes a police officer.

(4) Without prejudice to subsection (2), where any person serving a military sentence of imprisonment or detention has in accordance with Imprisonment and Detention Regulations been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(5) A person who for any period is released as mentioned in subsection (4) or who is otherwise allowed, in pursuance of Imprisonment and Detention Regulations, out of any military establishment or otherwise out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (2) as being unlawfully at large.

(6) A person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(7) References in subsection (6) to release or recall under civil law are references to release or recall under the provisions of the Prisons Act. Cap. 97

114. (1) The following provisions of this section shall have effect with regard to the suspension of a sentence of imprisonment or detention passed by a court-martial on a soldier. Suspension of sentences

(2) Without prejudice to subsection (5) of section *one hundred and five*, in confirming such a sentence the confirming officer may order that the sentence shall be suspended.

(3) Any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the authority reviewing or reconsidering the sentence.

(4) The suspension of any such sentence may (without prejudice to its again being suspended) be determined on the review or reconsideration of the sentence by an order of the said authority committing the person sentenced to imprisonment or detention, as the case may be.

(5) Where, while any such sentence is suspended, the person sentenced is sentenced by court-martial to imprisonment or detention for a fresh offence, then (unless the balance of the earlier sentence is remitted by virtue of subsection (10) of section *seventy-five*).

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(*a*) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively:

(*b*) if the court does not exercise the powers conferred by paragraph (*a*), the confirming officer may exercise those powers on the confirmation of the later sentence;

(*c*) if neither the court nor the confirming officer exercises the said powers, a reviewing authority may exercise those powers on the review of the later sentence.

(*d*) where the said powers are exercised (whether by the court, the confirming officer or a reviewing authority), any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

Provided that this subsection has effect subject to the provisions of subsection (11) of section *seventy-five*.

(6) Without prejudice to the further suspension of the earlier sentence, an order under subsection (5) directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.

(7) Where the sentence of a person in custody is suspended he shall thereupon be released.

(8) The maximum intervals for the reconsideration, under subsection (2) of section *one hundred and nine*, of a sentence of imprisonment or detention which is suspended shall be three months, and not as specified under that subsection.

115. A person shall not be required to serve any part of a military sentence of detention in a military or civil prison. Restriction on serving of sentences of detention in prison

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Regulations a person serving such a sentence may be temporarily detained in a military or civil prison for any period not exceeding seven days.

116. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under section *one hundred and thirty-four* or of Imprisonment and Detention Regulations made under section *one hundred and thirty-two* shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court. Special provisions as to civil prisons in Zambia

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117. The President may from time to time make arrangements with the authorities of any country or territory outside Zambia whereby sentences of death passed by courts-martial may in accordance with regulations made under this Part be carried out in establishments under the control of those authorities and military sentences of imprisonment or detention may in accordance with Imprisonment and Detention Regulations be served wholly or partly in such establishments.

Special provisions as to carrying out or serving sentences outside Zambia

118. (1) A person who is serving a military sentence of imprisonment or detention in Zambia may (in so far as may be specified by or under Imprisonment and Detention Regulations) be removed out of Zambia to any place where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place.

Country in which sentence of imprisonment or detention to be served

(2) Subject to the following provisions of this section, a person sentenced under this Act by a court-martial held out of Zambia, to imprisonment or detention for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to Zambia.

(3) Where a person has been sentenced under this Act by a court-martial held out of Zambia to imprisonment or detention for more than twelve months, the confirming officer or reviewing authority may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to Zambia until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection a confirming officer or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.

(4) Any direction of a confirming officer under this section may at any time be revoked by the confirming officer or by a reviewing authority, or superseded by any direction of a confirming officer or a reviewing authority which the officer or authority could have given under subsection (3); and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority or superseded as aforesaid.

(5) Any direction given under this section, and the revocation of any such direction, shall be promulgated.

(6) In ascertaining at any time for the purposes of this section the nature or length of a sentence regard shall be had to any commutation or remission of the sentence previously directed.

119. (1) It shall be the duty, in so far as regulations made under this Part or Imprisonment and Detention Regulations so provide, of the superintendent or other person in charge of a prison (not being a military prison) to receive any person duly sent to that prison in pursuance of such regulations and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

Duties of officers in charge of prisons and others to receive prisoners

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(2) Where a person is in the military custody in pursuance of a military sentence of imprisonment or detention, then, on receipt of a written order in that behalf purporting to be signed by that person's commanding officer, it shall be the duty of any such superintendent or other person as aforesaid or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

Trial of Persons Ceasing to be Subject to Military Law under this Act and Time Limits for Trials

Trial and punishment of offences under this Act notwithstanding offender

120. (1) Subject to the provisions of section *one hundred and twenty-one*, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed by any person while subject to military law under this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by court-martial (including confirmation, review and reconsideration and suspension) and execution of sentences as continuing subject to military law under this Act notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in military custody by virtue of this section (whether before, during or after trial), he commits, or is reasonably suspected of having committed, an offence which if he were subject to military law under this Act would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in subsection (1) and the provisions thereof as to the summary dealing with charges, as having been subject to military law under this Act when the offence was committed or is suspected of having been committed and as continuing subject thereto thereafter.

(3) Where by virtue of either subsection (1) or subsection (2) a person is treated as being at any time subject to military law under this Act for the purpose of any provision of this Act, that provision shall apply to him-

(*a*) if he holds any military rank, as to a person having that rank;

(*b*) otherwise as to a person having the rank which he had when last actually subject to military law under this Act:

Provided that as respects any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to a private soldier.

(4) Where apart from this subsection any provision of this Act would under subsection (3) apply to aperson, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

Limitation of time for trial of offences under this Act

121. (1) No person shall be tried by court-martial for any offence, other than one against section *thirty-six or thirty-seven* or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent:

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Provided that-

(i) in the event of an offence against section *seventy-three* where proceedings for the corresponding civil offence must, by virtue of any law, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section *seventy-three* in substitution for the foregoing provisions of this subsection;

(ii) subject to any such limit of time as is mentioned in proviso (i), a person may be tried by court-martial for a civil offence committed outside Zambia notwithstanding that it was committed more than three years before the begining of the trial, if the Attorney-General by notice in writing consents to the trial.

(2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the Regular Force continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

(3) A person shall not be triable by virtue of subsection (1) of section *one hundred and twenty* unless his trial is begun within three months after he ceases to be subject to military law under this Act, or the trial is for a civil offence committed outside Zambia and the Attorney-General by notice in writing consents to the trial:

Provided that this subsection shall not apply to an offence against section *thirty-six* or *thirty-seven* or to desertion.

(4) A person shall not be arrested or kept in custody by virtue of subsection (1) of section *one hundred and twenty* for an offence at any time after he has ceased to be triable for the offence.

Relations between Military and Civil Courts and Finality of Trials

Powers of civil court

122. Save as provided in section *one hundred and forty-six*, nothing in this Act shall restrict the offences for which persons may be tried by any civil court, or the jurisdiction of any civil court to try a person subject to military law under this Act for any offence.

Persons not to be tried under this Act for offences already disposed of

123. (1) Where a person subject to military law under this Act-

(*a*) has been tried for an offence by a competent civil court or a court-martial under service law;

(*b*) has been charged with an offence under service law, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or an appropriate superior authority;

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(*c*) has had the offence condoned by his commanding officer;

he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or an appropriate superior authority.

(2) For the purposes of this section-

(*a*) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence;

(*b*) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed;

(*c*) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;

(*d*) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;

(*e*) a person ordered under subsection (2) of section *sixty-two* or the corresponding provision of any service law, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

(3) Subject to the provisions of subsection (2) of section *one hundred and thirty-eight*, where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

(4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the grounds of condonation.

Inquiries

Boards of inquiry

124. (1) Subject to and in accordance with the provisions of rules made under section *one hundred and thirty-three* (in this Act referred to as "Board of Inquiry Rules") the Commander or any officer empowered by or under such Rules so to do, may convene a board of inquiry to investigate and report on the facts relating to-

(*a*) the absence of any person subject to military law under this Act;

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(*b*) the capture of any such person by the enemy;

(*c*) the death of any person where any inquiry into the death is not required to be held by any civil authority;

(*d*) any other matter of a class specified in such Rules or referred to such a board by the President or any such officer as aforesaid;

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matters referred to the board.

(2) A board of inquiry shall consist of such number of persons as may be provided for by Board of Inquiry Rules who shall be persons subject to service law and the president of a board of inquiry shall be an officer not below the rank of lieutenant.

(3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section *sixty-three* or for an offence against section *seventy-three* where the corresponding civil offence is perjury.

Inquiries into absence

125. (1) Where a board of inquiry inquiring into the absence of an officer or soldier of the Defence Force reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall in accordance with Board of Inquiry Rules be entered in the service books.

(2) A record entered in pursuance of subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Commander or a subsequent board of inquiry, have the like effect as a conviction by a court-martial for desertion.

Miscellaneous Provisions

Restitution or compensation for theft, etc.

126. (1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, receiving it knowing it to have been stolen, fraudulently misapplying it or otherwise.

(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

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(4) Where money is found in the possession of the offender, then, whether or not it appears to have been obtained as aforesaid, an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn), such sum as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court-martial by whom the offender is convicted, by the confirming officer, or by any reviewing authority; and, in this section, "appearing" means appearing to the court, officer or authority making the order.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming officer; and the provisions of this Part as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.

(9) The operation of any order under this section shall be suspended-

(*a*) in any case, until the expiration of any period prescribed under Part VI as the period within which an application for leave to appeal to the court of appeal against the conviction must be lodged; and

(*b*) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;

and where the operation of such an order as aforesaid is suspended under this section-

(*c*) it shall not take effect if the conviction is quashed on appeal;

(*d*) the court of appeal may by order annul or vary the order although the conviction is not quashed;

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(*e*) such steps shall be taken for the safe custody, during the period which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court.

(10) Notwithstanding anything in subsection (9), an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, officer or authority making the order directs to the contrary in any case in which, in the opinion of the court, officer or authority, the title to the property is not in dispute.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

Appointment of judge advocates

127. The appointment of a judge advocate to act at any court-martial may be made by the Chief Justice upon application being made to him by the Commander.

(*As amended by Act No.* 21 *of* 1985)

Promulgation

128. Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be prescribed or as the confirming officer or reviewing authority, as the case may be, may direct.

Custody of proceedings of court-martial and right of accused to copy thereof

129. (1) The record of the proceedings of a court-martial shall be kept in the custody of the Commander for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) shall be capable of being exercised.

(2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Commander on demand at any time within the relevant period and on payment therefor of such payment as may be prescribed a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the President ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the Commander on demand at any time within the period of twelve months from the death and on payment therefor of such payment as may be prescribed a copy of the record of the proceedings of the court.

(4) If, on an application in pursuance of either subsection (2) or (3) for a copy of the record of any proceedings, the President certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

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(5) In this section, "the relevant period", in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, when he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

(6) Any reference in this section to the record of the proceedings of a court-martial includes a reference to a record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

Indemnity for prison officers, etc.

130. No action shall lie in respect of anything done by any person in pursuance of a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in a warrant or other instrument made for the purposes of that sentence.

Rules of Procedure, etc.

Rules of procedure

131. (1) Subject to the provisions of this section, the President may, by statutory instrument, make rules (in this Act referred to as "Rules of Procedure") with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities and with respect to the confirmation and revision of findings and sentences of courts-martial.

(2) Without prejudice to the generality of subsection (1), Rules of Procedure may make provision with respect to all or any of the following matters, that is to say:

(*a*) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;

(*b*) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purpose of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so, however, that the Rules shall make provision for the application of section *ninety-two* in any case where the accused requires that evidence shall be taken on oath;

(*c*) in addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;

(*d*) the convening and constitution of courts-martial;

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(*e*) the sittings, adjournment and dissolution of courts-martial;

(*f*) the procedure to be observed in trials by courts-martial;

(*g*) the representation of the accused at such trials;

(*h*) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of Rules of Procedure;

(*i*) applying in relation to proceedings before commanding officers and appropriate superior authorities and otherwise in relation to proceedings prior to trial by courts-martial all or any of the provisions of sections *ninety-eight, ninety-nine, one hundred* and *one hundred and one*;

(*j*) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;

(*k*) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;

(*l*) the forms of orders and other documents to be made for the purposes of any provision of this Act or the Rules of Procedure.

(3) Rules of Procedure shall secure that the power to amend charges referred to in paragraph (*j*) of subsection (2) shall not be exercisable in circumstances substantially different from those in which charges or informations are amendable by a civil court in Zambia, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which charges or informations are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

(4) Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial, and without prejudice to the generality of this provision may make provision-

(*a*) as to the effect of advice or rulings given to the court by a judge advocate on questions of law;

(*b*) for requiring or authorising the president of a court-martial, in such cases as may be specified in the Rules, to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination such of the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.

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(5) In subsection (4) references to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately.

(6) Rules of Procedure may make provision for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences against this Act committed by him.

(7) Where Rules of Procedure make such provision as provided by subsection (6), they may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

Imprisonment and Detention Regulations

132. The President may, by statutory instrument, make regulations (in this Act referred to as "Imprisonment and Detention Regulations") with respect to all or any of the following matters, that is to say:

(*a*) the places in which and the establishments or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them under this Act;

(*b*) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;

(*c*) the provision, classification, regulation and management of military establishments;

(*d*) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody;

(*e*) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which, and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence for good conduct and industry;

(*f*) the appointment, powers and duties of inspectors, visitors and superintendents, and of officers and other members of the staff of military establishments.

Board of Inquiry Rules

133. (1) The President may, by statutory instrument, make rules with respect to the convening, constitution and procedure of boards of inquiry (in this Act referred to as "Board of Inquiry Rules").

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(2) Without prejudice to the generality of subsection (1), Board of Inquiry Rules may make provision with respect to all or any of the following matters, that is to say:

(*a*) the rules of evidence to be observed by boards of inquiry and the taking of evidence before such boards, so however that the Rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with;

(*b*) without prejudice to the provisions of section *one hundred and twenty-five*, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the Rules.

(3) Board of Inquiry Rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of inquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the Rules.

Miscellaneous regulations

134. The President may, by statutory instrument, make regulations with respect to all or any of the following matters, that is to say:

(*a*) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;

(*b*) field punishment;

(*c*) any matter which by this Part is required or authorised to be prescribed or for which regulations may be made;

(*d*) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections *one hundred and thirty-one, one hundred and thirty-two* and *one hundred and thirty-three*, and in this section.

Interpretation of Part V

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Interpretation of Part V

135. (1) In this Part-

"civil prison" means a prison in Zambia in which a person sentenced by a civil court to imprisonment can for the time being be confined;

"convening officer", in relation to a court-martial, means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor's functions;

"military establishment" means a military prison or any other establishment under the control of the Commander where persons may be required to serve military sentences of imprisonment or detention;

"military prison" means separate premises designated for persons serving military sentences of imprisonment;

"prison" means a civil prison or a military prison;

"private soldier" means a soldier who is not a warrant officer or a non-commissioned officer.

(2) References in this Part to a military sentence of imprisonment are references to a sentence of imprisonment passed by a court-martial.

(3) References in this Part to a military sentence of detention are references to a sentence of detention passed by a court-martial or awarded by the offender's commanding officer.

(4) References in this Part to warrant officers do not include references to acting warrant officers.

(5) References in this Part to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

PART VI

APPEALS FROM COURTS-MARTIAL

Right of appeal

136. Subject to the following provisions of this Part, a person convicted by a court-martial may, with the leave of the supreme court appeal to that court against his conviction:

Provided that an appeal as aforesaid shall lie as of right without leave from any conviction by a court-martial involving a sentence of death.

Application for leave of appeal

137. (1) Leave to appeal to the supreme court shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, with the registrar of the court of appeal, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

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(2) An appeal against a conviction involving a sentence of death shall not be entertained by the court of appeal unless the appeal is lodged by or on behalf of the appellant within fourteen days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, with the registrar of the supreme court in the prescribed manner.

(3) The supreme court may extend the period within which an application for leave to appeal is required by subsection (1) to be lodged, whether that period has expired or not and may similarly extend the period for lodging the appeal provided by subsection (2), if, owing to the fact the appellant is outside Zambia or otherwise, he has not had a reasonable opportunity of lodging his appeal within fourteen days.

(4) Where the supreme court dismisses an application for leave to appeal it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the court dismisses the application.

Determination of appeals in ordinary cases

138. (1) Subject to the provisions of section *one hundred and thirty-nine*, on an appeal under this Part against a conviction, the supreme court shall allow the appeal if it thinks that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the supreme court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) If the supreme court allows an appeal under this Part, it shall either quash the conviction or direct that the finding of the court-martial shall be treated as if confirmation thereof had been withheld and, in the latter event, notwithstanding the provisions of subsection (3) of section *one hundred and twenty-three*, a new trial by court-martial may be held within such time as the court may order.

Powers of court of appeal in special cases

139. (1) If it appears to the Supreme Court that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant was not one that could lawfully be passed by the court-martial for the offence for which he was convicted on the other charge, the court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.

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(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the supreme court that the court-martial must have been satisfied with the facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which could lawfully have been passed for that other offence, but not being a sentence of greater severity,

(3) Where-

(*a*) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the supreme court that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment; or

(*b*) an appellant has been convicted of an offence and it appears to the supreme court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations;

the supreme court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the supreme court that although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission was made so as not to be responsible according to law for his actions, the supreme court may quash the sentence passed at the trial and order the appellant to be kept in custody under the provisions of section *one hundred and eleven* in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

Commencement of sentence

140. The term of any sentence passed by the supreme court under any of the provisions of section *one hundred and thirty-nine* shall, unless the court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the supreme court shall be deemed, for the purposes of this Act, to be a sentence passed by the court-martial, being a sentence that has been confirmed.

Appeal to be final

141. Any determination by the Supreme Court of any appeal or other matter which it has power to determine under the provisions of this Part shall be final.

(*As amended by S.I. No.* 8 *of* 1964)

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142. An appellant shall not be entitled to be present at the hearing of an appeal to the supreme court under this Part or to any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the supreme court gives him leave to be present, and accordingly any power of the court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

Proceedings may be heard in absence of appellants

143. It shall be the duty of the Attorney-General on an appeal against conviction by court-martial to undertake the defence of the appeal.

Defence of appeals

144. An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

Right of appellant to present his case in writing

145. Where a conviction by court-martial involves sentence of death-

Suspension of death sentence

(*a*) the sentence shall not in any case be executed until the expiration of the period within which the appeal to the supreme court against the conviction shall be lodged;

(*b*) if such an appeal is duly lodged or if application is made for the extension of the period for lodging the appeal, the sentence shall not be executed until the appeal or application is determined or abandoned;

Provided that, where a sentence of death passed on a person on active service by a court-martial is confirmed and the officer who confirms the sentence certifies that it is essential in the interests of discipline for the purposes of securing the safety of the force with which that person is present that the sentence should be carried out forthwith, the foregoing provisions of this section shall not apply to the sentence.

(*As amended by S.I. No.* 8 *of* 1964)

146. Where the conviction of a person by a court-martial for an offence has been quashed under this Part, he shall not be liable to be tried again for this offence by a court-martial or by any other court.

Person not to be tried again where conviction quashed

147. Imprisonment and Detention Regulations may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at, and brought back from any place at which he is entitled to be present for the purposes of this Part or any place to which the supreme court or a Judge thereof may order him to be taken for the purpose of any proceedings of the court of appeal.

Removal of prisoners for purposes of this Part

148. In the case of every appeal or application for leave to appeal, under this Part to the supreme court against a conviction by court-martial, it shall be the duty of the Commander to furnish to the registrar of the supreme court, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the findings or sentence of the court-martial in pursuance of subsection (1) of section *one hundred and four*), the proceedings with respect to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted.

Furnishing, on appeal, of documents relating to trial

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149. (1) The registrar of the supreme court shall take all necessary steps for obtaining the determination of an appeal or application under this Part and shall obtain and lay before the supreme court in proper form all documents, exhibits and other things relating to the proceedings in the court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

Duties of registrar of court of appeal with respect to appeals, etc.

(2) The registrar of the supreme court shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal under this Part to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to lodge an appeal or make application for leave to appeal under this Part.

150. Nothing in this Part shall affect the exercise by the reviewing authorities of the powers conferred by section *one hundred and eight* in respect of a conviction by a court-martial so far as regards the exercise thereof at a time before the lodging with the registrar of the supreme court of an appeal or an application for leave to appeal to that court against the conviction, and nothing in this Part shall affect the exercise by the President of the prerogative of mercy.

Saving of powers of reviewing authorities

151. Upon the hearing of any appeal from any court-martial, supreme court shall consist of an uneven number of Judges not being less than three.

Composition of court of appeal

152. Any Judge of the the supreme court may-

(*a*) give leave to appeal; or

(*b*) extend the period within which an application for leave to appeal or an appeal is required by subsection (1) or (2) of section *one hundred and thirty-seven* to be lodged; or

(*c*) allow the applicant or appellant to be present at any proceedings under this Part;

but if the Judge refuses an application on the part of an applicant or appellant to exercise in his favour any of the powers hereinbefore mentioned, the applicant or appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed manner, shall be entitled to have the application determined by the supreme court which shall consist of an uneven number of Judges not being less than three.

Exercise of certain powers of court of appeal by a Judge

153. (1) Subject to the provisions of this Part, any rules of court in force relating to the hearing of criminal appeals by the supreme court shall apply to the hearing and determination of an appeal by that court under this Part.

General provisions as to procedure

(2) Where under this Part anything is required or authorised to be prescribed, it shall be prescribed by rules of court to be made by the Chief Justice.

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PART VII

FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF MAINTENANCE LIABILITIES

Forfeitures and deductions; general provisions

154. (1) No forfeiture of the pay of an officer or soldier of the Defence Force shall be imposed unless authorised by this Act, other service law or any other law and no deduction from such pay shall be made unless so authorised or authorised by regulations.

(2) Regulations shall not authorise the making of any penal deduction, that is to say, a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.

(3) The provisions of subsections (1) and (2) shall not prevent the making of regulations providing for the imposition of any forfeiture authorised by this Act or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

(4) Notwithstanding any deduction from the pay of an officer or soldier of the Defence Force, he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed.

(5) Notwithstanding that forfeiture of pay of an officer or soldier of the Defence Force for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such minimum rate as aforesaid, but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorised to be deducted from the pay of an officer or soldier of the Defence Force may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or soldier and references in this Act to the making of deductions from pay shall be construed accordingly and the whole or any part of any sum forfeited from an offender's pay may be recovered by deductions from any such balance.

Forfeiture of pay for absence from duty

155. (1) The pay of an officer or soldier of the Defence Force may be forfeited-

(*a*) for any day of absence in such circumstances as to constitute an offence under section *forty-two* or *forty-three* or, if the Commander so directs, of other absence without leave;

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(*b*) for any day of imprisonment, detention or field punishment awarded under service law by a court-martial or commanding officer, or of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court;

(*c*) where he is found guilty (whether by court-martial under service law, an appropriate superior authority or his commanding officer) of an offence under service law, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer or soldier of the Defence Force may be forfeited for any day of absence by reason of his having been made a prisoner of war if the President or an officer authorised by him is satisfied-

(*a*) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty; or

(*b*) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Defence Force; or

(*c*) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage;

but, save as aforesaid, nothing in paragraph (*a*) of subsection (1) shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations or orders of the President may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

(*As amended by S.I. No.* 8 *of* 1964)

Deductions for payment of civil penalties

156. Where a person sentenced or ordered by a civil court (whether within or without Zambia) to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes an officer or soldier of the Defence Force, then, if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay.

Compensation for loss occasioned by wrongful act or negligence

157. (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after perusal of the record of the proceedings of a board of inquiry, the Commander is satisfied that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or soldier of the Defence Force (hereinafter referred to as "the person responsible").

(2) The Commander may order the person responsible to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from his pay.

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(3) No order shall be made under the provisions of subsection (2) if, in proceedings before a court-martial under service law, an appropriate superior authority or the commanding officer of the person responsible, that person-

(*a*) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or

(*b*) has been awarded stoppages in respect of the same loss or damage;

but save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2).

Deductions for barrack damage

158. (1) When damage occurs to any premises in which one or more units or parts of such units of the Defence Force are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with the provisions of regulations made by the President, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof but that the said persons cannot be identified, any person belonging to any of such units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with such regulations be determined to be just, and the amount may be deducted from his pay.

(2) The provisions of subsection (1) shall extend to vessels, trains, motor vehicles and aircraft in which units or parts of units are being transported, and reference to premises, quartering and occupation shall be construed accordingly.

Remission of forfeitures and deductions

159. Any forfeiture or deduction imposed under this Part or under regulations may be remitted by the president or in such manner or by such authority as may be provided by such regulations.

Enforcement of maintenance and affiliation orders by deduction from pay

160. (1) Where any court in Zambia has made an order against any person (in this section referred to as "the defendant") for the payment of any periodical or other sum specified in the order for or in respect of-

(*a*) the maintenance of his wife or child; or

(*b*) any costs incurred in obtaining the order; or

(*c*) any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order;

and the defendant is an officer or soldier of the Defence Force then (whether or not he was a member of that Force when the said order was made) the Commander or an officer authorised by him may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the Commander or authorised officer may think fit.

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(2) Where to the knowledge of the court making any such order as aforesaid, or an order varying, revoking or reviving any such order, the defendant is an officer or soldier of the Defence Force, the court shall send a copy of the order to the Commander.

(3) Where such an order as is mentioned in subsection (1) has been made by a court of a country outside Zambia, and the Commander or an officer authorised by him is satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the Commander or authorised officer shall have the like power under subsection (1) as if the order had been made by such a court as is mentioned in that subsection:

Provided that this subsection shall not apply to an order for payment of a sum for or in respect of the maintenance of an illegitimate child or for the payment of costs incurred in obtaining such an order or in proceedings on appeal against, or for the variation, revocation or revival of, such an order.

(4) The Commander or an officer authorised by him may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (*a*) of subsection (1) of section *one hundred and fifty-five*.

(5) In this section-

(*a*) references to an order made by a court in Zambia include references to an order registered in or confirmed by such a court under the provisions of the Affliation and Maintance of Children Act; Cap. 55

(*b*) references to a wife or child include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been the wife or child of the defendant if the marriage had subsisted;

(*c*) references to a child of a person include references to a child of his wife, and to an illegitimate or adopted child of that person or of his wife, and in this paragraph "adopted child" means a child adopted (whether alone or jointly) in pursuance of an adoption order made under the Adoption Act. Cap. 54

161. (1) Where the Commander or an officer authorised by him is satisfied that an officer or soldier of the Defence Force is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of sixteen, the Commander or authorised officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the Commander or authorised officer thinks fit. Deductions from pay for maintenance of wife or child

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(2) On an application made to the Commander or an officer authorised by him for an order under subsection (1), the Commander or authorised officer, if satisfied that a *prima facie* case has been made out for the making of such an order, may make an interim order for such deduction and appropriation as is mentioned in subsection (1) to take effect pending the further examination of the case.

(3) Where an order is in force under subsection (1) or (3) of section *one hundred and sixty* for the making of deductions in favour of any person from the pay of an officer or soldier of the Defence Force, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer or soldier is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under section *one hundred and sixty* was made.

(4) The Commander or authorised officer may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (*a*) of subsection (1) of section *one hundred and fifty-five*.

Limit of deductions under sections 160 and 161 and effect on forfeiture

162. (1) The sums deducted under sections *one hundred and sixty* and *one hundred and sixty-one* shall not together exceed-

(*a*) in the case of an officer, three-sevenths of his pay;

(*b*) in the case of a warrant officer or a non-commissioned officer not below the rank of sergeant, two-thirds of his pay;

(*c*) in the case of a soldier below the rank of sergeant, three-fourths of his pay.

(2) Where any deductions have been ordered under either section *one hundred and sixty* or *one hundred and sixty-one* from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of an appropriate superior authority or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

(3) For the purposes of paragraphs (*b*) and (*c*) of subsection (1), a person having acting rank shall be treated as of that rank.

Service of process in maintenance proceedings

163. (1) Any process to be served on an officer or soldier of the Defence Force (in this section referred to as "the defendant") in connection with proceedings for any such order of a court in Zambia as is mentioned in subsection (1) of section *one hundred and sixty*, or for the variation, revocation or revival of such an order, shall be deemed to be duly served on him if served either on him or his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

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(2) Where any such process is served in Zambia and the defendant will be required to appear in person at the hearing, then if his commanding officer certifies to the court by which process was issued that the defendant is under orders for service out of Zambia and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

PART VIII

GOVERNMENT AND GENERAL PROVISIONS

Command

Command and precedence

164. (1) Officers and soldiers of the Defence Force shall stand with each other in such order of precedence as may be prescribed by the President.

(2) Officers and soldiers of any other military, naval or air force may, with the approval of the President, be attached or seconded to the Defence Force.

(*As amended by S.I. No.* 8 *of* 1964)

Command of Forces

165. (1) The President shall appoint an officer to be Commander of the Army, and another officer to be Commander of the Air Force and the command of the Army and of the Air Force respectively shall vest in the persons so appointed.

(2) Each Commander shall have such rank and title and fulfil such duties and functions as may be determined by the President.

(3) Each Commander may delegate to any officer under his command such duties, functions and powers, other than such power of delegation, as he may from time to time deem expedient.

Regulations as to command

166. Without prejudice to the provisions of section *one hundred and sixty-five*, the President may, by statutory instrument, make regulations as to the persons in whom command over any part of the Defence Force or member thereof is vested and as to the circumstances in which such command as aforesaid is to be exercised.

Powers of command of members of co-operating forces

167. (1) In so far as powers of command depend on rank, a member of any other military, naval or air force who-

(*a*) is acting with; or

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(*b*) is a member of a body of those forces which is acting with;

any body of the Defence Force shall have the like such powers as a member of the Defence Force of corresponding rank; and, for the purposes of sections *thirty-eight* and *seventy-seven*, any such member of the said forces shall be treated as if he were a member of the Defence Force of corresponding rank.

(2) If the whole or any part of the Defence Force is required to act with any other military, naval or air force, the President may place the Defence Force or such part thereof under the command of the officer commanding such other force.

(3) Where any part of the Defence Force is acting in co-operation with any other force, the Army Commander or Air Commander or the officer commanding that part of the Defence Force, may, in agreement with the officer commanding that other force, define the powers of command and the order of precedence of the officers, warrant officers and non-commissioned officers of the Defence Force in relation to the officers, warrant officers and non-commissioned officers of such other force.

(*As amended by S.I. No.* 8 *of* 1964)

Redress of Complaints

Complaints by officers

168. (1) If an officer of the Defence Force thinks himself wronged in any matter by a superior officer and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Commander.

(2) On receiving any such complaint it shall be the duty of the Commander to investigate the complaint and to grant any redress which appears to him to be necessary or, if the complainant so requires, the Commander shall make his report on the complaint to the President in order to receive the directions of the President thereon.

Complaints by soldiers

169. (1) If a soldier of the Defence Force thinks himself wronged in any matter by any officer other than his commanding officer or by any soldier, he may make a complaint with respect to that matter to his commanding officer.

(2) If a soldier of the Defence Force thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint with respect thereto to any officer under whom the complainant is for the time being serving, being an officer not below the rank of lieutenant-colonel.

(3) It shall be the duty of a commanding or other officer to have any complaint received by him under this subsection investigated and to take any steps for redress in the matter complained of which appear to him to be necessary.

Exemptions for Officers and Soldiers

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170. An officer or soldier of the Regular Force shall be exempt from serving as an assessor in any civil court. Exemption from service as assessor

171. (1) Duties or tolls for passing over any road, ferry or bridge in Zambia shall not be payable in respect of- Exemption from tolls, etc.

(*a*) members of the Defence Force on duty;

(*b*) vehicles in military service, being vehicles belonging to the Government or other vehicles driven by persons (whether members of the Defence Force or not), in the service of the Government;

(*c*) goods carried in such vehicles;

(*d*) animals in military service.

(2) In subsection (1), "in military service" means employed under proper military authority for the purposes of any body of the Defence Force or accompanying any body of the Defence Force.

172. No judgment, decree or order given or made against an officer or soldier of the Defence Force by any court in Zambia shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon. Exemption from taking in execution of property used for military purposes

Provisions Relating to Deserters and Absentees without Leave

173. (1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or soldier of the Defence Force who has deserted or is absent without leave. Arrest of deserters and absentees without leave

(2) Where no police officer is available any person may arrest any person whom he has reasonable cause to suspect as aforesaid.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or soldier of the Defence Force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a subordinate court.

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(5) Notwithstanding the provisions of any other law to the contrary, a person arrested and brought before a subordinate court under the provisions of this section or section *one hundred and seventy-four or one hundred and seventy-five* shall not be admitted to bail.

Proceedings before a civil court where persons suspected of illegal absence

174. (1) Where a person who is brought before a subordinate court is alleged to be an officer or soldier of the Defence Force who has deserted or is absent without leave, the following provisions shall have effect.

(2) If he admits that he is illegally absent from the Defence Force and the court is satisfied of the truth of the admission, then-

(*a*) unless he is in custody for some other cause, the court shall; and

(*b*) notwithstanding that he is in custody for some other cause, the court may;

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered into military custody) or until sooner delivered into such custody.

(3) Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

(4) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to service law and if of opinion that there is sufficient evidence to justify his being tried under service law for an offence of desertion or absence without leave, then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

Deserters and absentees without leave surrendering to police

175. (1) Where a person surrenders himself to a police officer as being illegally absent from the Defence Force the police officer shall (unless he surrenders himself at a police station) bring him to a police station.

(2) The police officer in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith inquire into the case and, if it appears to that officer that the said person is illegally absent as aforesaid, he may cause him to be delivered into military custody without bringing him before a subordinate court or may bring him before such a court.

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176. (1) Where a subordinate court in pursuance of section *one hundred and seventy-four* deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by a magistrate, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court.

Certificates of arrest or surrender of deserters and absentees

(2) Where a person is delivered into military custody without being brought before a court, whether under the provisions of section *one hundred and seventy-five* or under any other lawful power, there shall be handed over a certificate in the prescribed form signed by a police officer who causes him to be delivered into military custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence against section *forty-two or forty-three*-

(*a*) a document purporting to be a certificate under either of subsections (1) or (2), or under the corresponding provisions of any service law (other than this Act) and to be signed as thereby required, shall be evidence of the matters stated in the document;

(*b*) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or by any officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender, shall be evidence of the matter stated in the certificate.

177. (1) It shall be the duty of the superintendent or other person in charge of a civil prison to receive any person duly committed to that prison by a subordinate court as illegally absent under service law and to detain him until, in accordance with the directions of the court, he is delivered into military custody.

Duties of superintendents of prisons and others to receive deserters and absentees

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, as it applies to the superintendent of a prison.

Offences Relating to Military Matters Punishable by Civil Courts

178. (1) Any person who falsely represents himself to any military or civil authority to be a deserter from the Defence Force shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a term not exceeding three months, or to both.

Punishment for pretending to be a deserter

(2) Any person who-

Punishment for procuring and assisting desertion

(*a*) procures or persuades any officer or soldier of the Defence Force to desert or to absent himself without leave; or

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(*b*) knowing that any such officer or soldier is about to desert or absent himself without leave, assists him in so doing; or

(*c*) knowing any person to be a deserter or absentee without leave from the Defence Force, conceals him or assists him in concealing himself or assists in his rescue from custody;

shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(*As amended by Act No.* 13 *of* 1994)

Punishment for obstructing officers or soldiers in execution of duty

179. Any person who wilfully obstructs or otherwise interferes with any officer or soldier of the Defence Force acting in the execution of his duty shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a term not exceeding three months, or to both.

(*As amended by Act No.* 13 *of* 1994)

Punishment for aiding malingering

180. Any person who-

(*a*) produces in an officer or soldier of the Defence Force any sickness or disability; or

(*b*) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service;

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(*As amended by Act No.* 13 *of* 1994)

Unlawful purchase, etc., of military stores

181. (1) Any person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall be guilty of an offence, unless he proves either-

(*a*) that he did not know, and could not reasonably be expected to know, that the chattels in question were military stores; or

(*b*) that those chattels had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe had, power to give the order or consent; or

(*c*) that those chattels had become the property of an officer of the Defence Force who had retired or ceased to be an officer, or of a soldier of the Defence Force who had been discharged or of the personal representatives of a person who had died;

and shall be liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

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(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a subordinate court.

(4) In this section-

(*a*) "acquire" means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

(*b*) "dispose" means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);

(*c*) "military stores" means any chattel of any description belonging to the Government which has been issued for use for military purposes or is held in store for the purpose of being so issued when required, and includes any chattel which had belonged, and had been issued or held, as aforesaid at some past time.

(5) For the purposes of subsection (3), property shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

182. (1) Any person who-

Illegal dealings in documents relating to pay, pensions, mobilisation, etc.

(*a*) as a pledge or a security for a debt; or

(*b*) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person;

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's military service shall be guilty of an offence against this section.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid or any official document issued in connection with the mobilisation or demobilisation of the Defence Force or any member thereof, shall be guilty of an offence against this section.

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(3) Any person guilty of an offence under this section shall be liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(4) For the purposes of this section, a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

(*As amended by Act No.* 13 *of* 1994)

Unauthorised use of and dealing in Decorations etc.

183. (1) Any person who purchases or takes in pawn any naval, military or air force decoration awarded to any member of the Defence Force, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence against this section unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of that Force.

(2) Any person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.

(*As amended by S.I. No.* 8 *of* 1964 *and No.* 1 *of* 1987, *and Act No.* 13 *of* 1994)

Provisions as to Evidence

General provisions as to evidence

184. (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court, or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person-

(*a*) was or was not serving at any specified time or during any specified period in any part of the Defence Force or was discharged from any part of that Force at or before any specified time; or

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(*b*) held or did not hold at any specified time any specified rank or appointment in the Defence Force, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or

(*c*) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem;

shall, if purporting to be issued by or on behalf of the Commander, or a person authorised by him, be evidence of the matters stated in the document.

(5) A record made in any prescribed service book or any other prescribed document, being a record made in pursuance of service law or regulations, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein, and a copy of a record (including the signature thereto) in any such book or other document as aforesaid purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

(6) A document purporting to be issued by order or on the instructions of the Commander and to contain instructions or orders given or made by the Commander shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be issued by or on behalf of the Commander, or by a person authorised by him, and stating-

(*a*) that a decoration of a description specified in or annexed to the certificate is a military or air force decoration; or

(*b*) that a badge, wound stripe or emblem of a decoration specified in or annexed to the certificate is one authorised by the President;

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for-

(*a*) any formation or unit or body of troops; or

(*b*) any command or other area, garrison or place; or

(*c*) any vessel, train or aircraft;

shall in proceedings against the said person be evidence of the matters stated in the certificate.

(*As amended by S.I. No.* 8 *of* 1964)

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185. (1) Where a person subject to military law under this Act has been tried before a civil court (whether at the time of the trial he was so subject or not) a certificate signed by the clerk of the court or by a Judge or a magistrate and stating all or any of the following matters: Proof of outcome of civil trial

(*a*) that the said person has been tried before the court for an offence specified in the certificate;

(*b*) the result of the trial;

(*c*) what judgment or order was given or made by the court;

(*d*) that other offences specified in the certificate were taken into consideration at the trial;

shall, for the purposes of this Act, be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by the clerk of the court, a Judge or a magistrate shall, unless the contrary is shown, be deemed to be such a certificate.

(3) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer authorised by him, furnish a certificate under this section.

(4) References in this section to the clerk of the court include references to his deputy, to the Registrar of the High Court, and to any other person having the custody of the records of a court.

186. (1) The original record of the proceedings of a court-martial under service law purporting to be signed by the president of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody. Evidence of proceedings of court-martial

(2) A document purporting to be a copy of the original record of the proceedings of a court-martial under service law or any part thereof and to be certified by the person having the lawful custody of the proceedings to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Miscellaneous Provisions

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Temporary reception in civil custody of persons under escort

187. (1) Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part V in the corresponding provisions of any other service law, it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody, to receive him into his custody for a period not exceeding seven days.

(2) In subsection (1), "civil prison" has the meaning ascribed to it in section *one hundred and thirty-five*.

Avoidance of assignment of, or charge on, military pay, pensions, etc.

188. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Defence Force shall be void.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

(*As amended by S.I. No.* 8 *of* 1964)

Power of certain officers to take statutory declarations

189. (1) An officer of the Defence Force or of any other military, naval or air force not below field rank (hereinafter referred to as an "authorised officer") may, outside Zambia, take statutory declarations from persons subject to military law under this Act.

(2) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer, shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

(*As amended by S.I. No.* 8 *of* 1964)

PART IX

190-198. (*Repealed by No.* 32 *of* 1971)

PART X

RESERVE FORCE

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199. The Reserve Force shall consist of such officers and soldiers who shall be appointed therein under the provision of sections *eleven* and *nineteen*. Composition

200. A soldier of the Reserve Force may be discharged by the competent military authority at any time during the currency of any term of service in the Reserve Force upon such grounds as may be prescribed. Discharge from Reserve

201. Officers and soldiers of the Reserve Force shall be required to report to such authority and to attend such examination before a medical board as may be prescribed by the President. Reporting of Reserve

202. (1) Whenever it appears to the President necessary or desirable in the public interest, he may, by statutory notice, or otherwise- Embodiment

(*a*) order the employment of the whole or any part of the Reserve Force; and

(*b*) order the employment of any officer or soldier of the Reserve Force for service within or, with his consent, without Zambia.

(2) Any officer or soldier of the Reserve Force employed in terms of subsection (1) by reason of an order issued by the President shall remain so employed until released by the President.

(3) Every officer and soldier of the Reserve Force may, when called out for service under this section, be posted or attached to any unit of the Regular Force or the Territorial Force or the Reserve Force.

203. Where the time at which a soldier of the Reserve Force would otherwise be entitled to be discharged occurs at a time when the Reserve Force, or any part thereof, is employed in terms of section *two hundred and two*, he may be required to prolong his service for such further term as the President may order. Postponement of discharge

204. (1) Any officer or soldier of the Reserve Force who, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed on embodiment in accordance with directions given under section *two hundred and two*, shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction by court-marital shall be punishable as for an offence under section *forty-two* or, as the case may be, section *forty-three*. Failure to attend on embodiment

(2) Sections *one hundred and seventy-three* and *one hundred and seventy-four* shall apply to a deserter or an absentee without leave contrary to subsection (1).

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(3) Any person who, knowing any officer or soldier of the Reserve Force to be a deserter within the meaning of this Act, employs or continues to employ the officer or soldier, shall be deemed to aid him in concealing himself within the meaning of paragraph (*c*) of subsection (2) of section *one hundred and seventy-eight* (which provides, among other things, for the punishment of persons concealing deserters from the Defence Force).

(4) Where an officer or soldier of the Reserve Force deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of retirement or discharge.

Regulations under this Part

205. Subject to the foregoing provisions of this Part, the President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Part and generally for the good government and organisation of the Reserve Force and for providing for matters required by this Part to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say:

(*a*) the transfer of persons into, and the discharge of persons from, the Reserve Force;

(*b*) the pay, allowances, pensions and gratuities of officers and soldiers of the Reserve Force and of their dependants surviving them and the deductions therefrom and the forfeiture thereof;

(*c*) the calling out of officers and soldiers of the Reserve Force on service in accordance with section *two hundred and two*, including prescribing the manner in which notification of the places and times appointed is to be given;

(*d*) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

PART XI

APPLICATION OF ACT AND SUPPLEMENTARY PROVISIONS

Persons subject to military law

206. (1) Subject to the provisions of sections *two hundred and eight* and *two hundred and nine*, the following persons are subject to military law under this Act:

(*a*) officers and soldiers of the Regular Force;

(*b*) officers and soldiers when attached to the Defence Force or any part thereof;

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(*c*) members of the Home Guard under the provisions of the Home Guard Act, when employed in terms of section *nineteen* of the said Act or when performing any other duty pursuant to the provisions of the said Act; Cap. 122

(*d*) officers and soldiers of the Auxiliary Air Force;

(*e*) officers and soldiers of the Reserve Force when employed in terms of section *two hundred and two*.

(2) This Act shall apply to the persons subject thereto-

(*a*) as well outside as within Zambia; and

(*b*) notwithstanding their attachment under the provisions of section *seven*.

(*As amended by No.* 32 *of* 1971)

Application of Act to civilians

207. (1) Subject to the modifications hereinafter specified, where any part of the Defence Force is on active service, Part V shall apply to any person who is employed in the service of that part of the Defence Force or a member thereof, or accompanies the said part of the Defence Force, and is not subject to service law, as Part V applies to soldiers subject to military law under this Act.

(2) The said modifications are the following:

(*a*) the punishments which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment;

(*b*) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding one hundred kwacha, but no other punishment;

(*c*) the following provision shall have effect in substitution for subsections (2), (3) and (4) of section *seventy-seven*, that is to say, that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer subject to service law;

(*d*) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure;

(*e*) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided, apply as they apply to soldiers;

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(*f*) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer of a civilian to whom this section applies shall be the officer for the time being commanding the unit or detachment in which that person is employed or which he accompanies;

(*g*) for references in sections *one hundred and twenty* and *one hundred and twenty-one* to being, continuing, or ceasing to be subject to this Act, there shall be substituted references to being, continuing to be or ceasing to be in such circumstances that Part V applies and subsection (3) of section *one hundred and twenty* shall not apply.

(3) Any fine awarded by military law under this Act, whether by a court-martial or the commanding officer, shall be recoverable summarily on complaint by any officer of the Defence Force before a subordinate court as a debt due to the Government.

Application of Act to persons subject to the Acts

208. (1) Officers, warrant officers and non-commissioned officers who, being members of the United Kingdom Military or Air Forces, are subject to military or air force law under the Acts and are seconded to serve with the Defence Force or any part thereof, shall remain subject to military law or air force law under the Acts and shall not be subject to military law under this Act.

(2) The powers of arrest conferred by section 74 of the Acts and the provisions of sections 186 to 190 inclusive of the Acts (which relate to deserters and absentees without leave) shall continue to apply in Zambia to the persons referred to in subsection (1) on or after the 24th October, 1964, as they applied before that date.

(3) In the event of a person referred to in subsection (1) committing an offence against the provisions of the Acts, he may be held, tried and punished in Zambia under the Acts for the offence thereunder.

Application of Act to Home Guard and Reserve Force.

209. (1) The provisions of Parts I, II, III, V, VI, VII, VIII and XI shall not apply to members of the Home Guard except-

Cap. 122

(*a*) when the President has ordered the employment of the whole or any part of the Home Guard under section *nineteen* of the Home Guard Act; or

(*b*) when on duty pursuant to any other provisions of the Home Guard Act.

(2) The provisions of Part V relating to the award of fines and stoppages and the provisions of Part VII shall not apply to officers and soldiers of the Reserve Force except when employed in terms of section *two hundred and two*.

(*No.* 32 *of* 1971)

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Regulations

210. Subject to the foregoing provisions, the President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act and generally for the good government and organisation of the Defence Force and for providing for matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say:

(*a*) the enlistment of persons into, and the discharge of persons from, the Regular Force and generally for the carrying into effect of Part IV, including the prescribing of the necessary forms and the administration of oaths and affirmations;

(*b*) determining to what extent and under what conditions colour service in any other military, naval or air force may be counted as colour service in the Regular Force;

(*c*) the pay, allowances, pensions and gratuities of soldiers and their dependants surviving them, and the deductions therefrom and the forefeiture thereof (including the reckoning for pay, pensions and gratuities of service in any other military, naval or air force prior to the commencement of service in the Defence Force);

(*d*) the description, supply, use and disposal of arms, accountrements, clothing and other stores;

(*e*) prohibiting, restricting and regulating the holding of meetings, within the limits of any camp or other military establishment and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;

(*f*) in respect of matters for which regulations may be made under the foregoing provisions of this Act, other than under the provisions of Parts III and VI.

(*As amended by S.I. No.* 8 *of* 1964)

Powers exercisable in subsidiary legislation

211. (1) Any power conferred by this Act to make regulations, rules orders or other instruments shall include power to make provisions for specified cases or classes of cases, and to make different provisions for different classes or cases, and for the purpose of any such instrument classes or cases may be defined by reference to any circumstances specified in the instrument.

(2) Any such regulations, rules, orders or other instruments as aforesaid may impose conditions, require acts or things to be performed or done to the satisfaction of any person named therein, whether or not such persons are members of the Defence Force or of any other military, naval or air force, empower such persons to issue orders orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribed periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled and provide for appeal against any such order, requirement or direction.

(3) Any regulations made under section *twelve* or made with respect to any matter refered to in paragraph (c) of section *two hundred and ten* may, if the President considers it expedient to do so in order to confer a benefit on or remove a disability attaching to any officer or soldier be made with retrospective effect.

(*As amended by Act No.* 18 *of* 1988)

Execution of orders, instruments, etc.

212. Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorised to be made under this Act by any military officer or authority may be under the hand of any officer authorised in that behalf, and any instrument signifying such an order, determination, direction or appointment and purporting to be signed by an officer stated therein to be so authorised shall, unless the contrary is proved, be deemed to be signed by an officer so authorised.

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Transitional provisions

213. (1) The units raised under the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland, existing in the former Protectorate of Northern Rhodesia at the commencement of this Act shall be deemed to have been raised under this Act.

(2) Any person who, immediately before the commencement of this Act, held a commission as an officer in the Defence Forces of the former Protectorate of Northern Rhodesia constituted under the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland or is a member, other than an officer, of such Defence Forces shall be deemed, as from the commencement of this Act-

(*a*) in the case of a person holding such commission as aforesaid, to have been granted a commission pursuant to this Act and to have been appointed to the Regular Force, Territorial Force or Reserve Force, as the case may be; and

(*b*) in the case of a member (not being an officer) as aforesaid, to have been enlisted as a soldier under Part IV or IX, or transferred to the Reserve Force under the provisions of section *nineteen*, as the case may be, so however, that any such member who held, immediately before the commencement of this Act, the rank of a warrant officer or a non-commissioned officer in the said Defence Forces shall be deemed to have been promoted to that rank in the Regular Force, Territorial Force or Reserve Force, as the case may be, by virtue of the provisions of this Act.

(3) No person shall, if he held a commission as an officer in or was a soldier in the Defence Forces of the former Federation of Rhodesia and Nyasaland and transferred from such Defence Forces to the Defence Force without a break in his service, be required, without his consent, to serve for a longer period or on terms and conditions (including rights and privileges) less favourable than he would have been required to serve pursuant to the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland.

(4) Where any question exists in relation to any matter arising under subsection (3), such question may be determined by the President.

(5) The transitional provisions and savings set out in the Second Schedule shall have effect in connection with the repeal of the Defence Act, 1955.

Exemption from Trades Licensing Act and Clubs' Registration Act.
Cap. 393
Cap. 162

214. None of the provisions of the Trades Licensing Act or the Clubs' Registration Act shall apply to any canteen, mess or other similar institution belonging to the Defence Force.

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The Laws of Zambia

FIRST SCHEDULE

(*Part V, Section* 97)

ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE CONVICTED BY COURT-MARTIAL

	Offence Chargedd		*Alternative Offence*
1.	Any offence against subsection (1) of section 29.	1.	Any offence against subsection (2) of section 29.
2	Any offence against subsection (1) of section 30.	2.	Any offence against subsection (2) of section 30.
3	Any offence against subsection (1) of section 36.	3	Any offence against subsection (2) of section 36.
4.	Communicating with or giving intelligence to the enemy, either with intent to assist the enemy or without authority.	4.	Disclosing information without authority.
5.	Striking a superior officer.	5.	(*a*) Using violence to a superior officer otherwise than by striking him; (*b*) offering violence to a superior officer.
6.	Using violence to a superior officer otherwise than by striking him.	6.	Offering violence to a superior officer.
7	Using threatening language to a superior officer.	7.	Using insubordinate language to a superior officer.
8.	Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally.	8.	Disobeying a lawful command.
9.	Desertion.	9.	Absence without leave.
10.	Attempting to desert.	10.	Absence without leave.
11.	Stealing any property.	11.	Fraudulently misapplying the property.
12.	Any offence against subsection (1) of section 59.	12.	Any offence against subsection (2) of section 59.
13.	Any offence against subsection (1) of section 60 involving striking.	13.	(*a*) The corresponding offence involving the use of violence other than striking; (*b*) the corresponding offence involving the offering of violence.
14.	Any offence against section 60 involving the use of violence other than striking.	14.	The corresponding offence involving the offering of violence.

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SECOND SCHEDULE

(*Section* 213)

TRANSITIONAL PROVISIONS AND SAVINGS

1. In this Schedule-

"the appointed day" means the *(1)day upon which this Act comes into operation;
*18th September, 1964.

"the Defence Act" means the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland.

2. (1) In relation to an offence against any section in Part V of the Defence Act, sections *seventy-four* to *one hundred and twenty-three*, and sections *one hundred and twenty-six* to *one hundred and thirty-one* of this Act, and the regulations made under these sections, shall apply as if the said section had been contained in this Act and this Act had been in force when the offence was committed, and as if any finding or punishment having effect before the appointed day, and anything done before that date by virtue of or in relation to such a finding or sentence, had been come to, awarded or done under this Act:

Provided that nothing in this sub-paragraph shall render an offence capable of being tried by court-martial or dealt with summarily, if by reason of the time or place of the commission of the offence it could not have been so tried or dealt with under the Defence Act.

(2) Notwithstanding anything in sub-paragraph (1), where any proceedings for such an offence as aforesaid have been begun before the appointed day, any step in the proceedings taken after that day shall be deemed to be validly taken if taken in accordance with the Defence Act and the regulations made thereunder.

(3) In section *one hundred and twenty-three* of this Act (which provides against trials for offences already disposed of) references to this Act or to any provision thereof shall be construed as including respectively references to the Defence Act and to the corresponding provision thereof.

3. Where after the appointed day a person is alleged-

(*a*) to have committed an offence continuing over a period beginning before that day and ending thereon or thereafter; or

(*b*) to have committed an offence between two dates falling within such a period;

and the offence would be one against a provision in Part V of this Act if this Act had been in force at all material times, he may be proceeded against as if this Act had so been in force.

4. Any instrument issued before the appointed day which authorises the convening of a court-martial shall, if in force on that day, continue in force thereafter as if issued under this Act, and may be varied or revoked accordingly.

5. (1) A person enlisted in pursuance of the Defence Act whose term of enlistment is current at the appointed day shall be deemed to have been enlisted under the corresponding provisions of this Act.

(2) Anything done under the provisions of the Defence Act and relating to the varying of a person's terms of enlistment shall, if the doing thereof would have been authorised by any provisions of this Act if they had been in force when it was done, be deemed to have been done under the last-mentioned provisions.

6. Any order authorising the discharge of a person given before the appointed day by an officer prescribed in that behalf under the Defence Act shall be treated for the purposes of subsection (3) of section *eighteen* of this Act as an order of the competent military authority.

7. The powers conferred by this Act of remitting forfeitures and deductions shall be exercisable in relation to forfeitures and deductions imposed under the Defence Act.

8. (1 Any forfeiture of, or deduction from, pay having effect under the Defence Act immediately before the appointed day shall, subject to paragraph 7, continue to have effect notwithstanding that the Defence Act has ceased to be in force.

(2) Any order having effect immediately before the appointed day under the provisions of the Defence Act corresponding with sections *one hundred and sixty* and *one hundred and sixty-one* of this Act shall continue to have effect as if made under this Act, and section *one hundred and sixty-two* of this Act shall apply accordingly.

9. Any document made before the appointed day which would have been admissible under the provisions of the Defence Act shall be admissible to the like extent and in the like proceedings notwithstanding that the Defence Act has ceased to be in force.

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DEFENCE

THE DEFENCE (REGULAR FORCE) (PENSIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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2. Interpretation
3. Pension contributions to be transfered to the Board

3A.-3H. *Revoked by S.I. No.* 176 *of* 1993

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6. Pension benefits not assignable, etc.
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9. Forfeiture of pension
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SECTIONS 12 AND 210-THE DEFENCE (REGULAR FORCE) (PENSIONS) REGULATIONS

Regulations by the President

Statutory Instrument
184 *of* 1966
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166 *of* 1992
176 *of* 1993
62 *of* 1995

PART I

GENERAL

1. These Regulations may be cited as the Defence (Regular Force) (Pensions) Regulations. Title

2. In these Regulations, unless the context otherwise requires- Interpretation

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"average pensionable emoluments" means-

(*a*) in the case of a person who was appointed to the Regular Force before the *(2)commencement of these Regulations, the annual rate of the pensionable emoluments payable to him on his last day of pensionable service or total service, as the case may be;

* 29th April, 1966.

(*b*) in the case of a person who was appointed to the Regular Force on or after the *(3)commencement of these Regulations and who-

* 29th April, 1966.

(i) has held the same rank; or

(ii) has held different ranks carrying the same maximum annual rate of pensionable emoluments;

for a period of three years immediately preceding the date on which he retires, the annual rate of pensionable emoluments payable to him on his last day of pensionable service or total service, as the case may be:

Provided that such person shall be deemed to have enjoyed the benefit of any increase due to a revision of salaries in the pensionable emoluments of any rank held by him as if such increase had been payable throughout such period;

(*c*) in the case of a person who was appointed to the Regular Force on or after the *(4)commencement of these Regulations and whose pensionable service or total service, as the case may be, amounts to less than three years, the average of the annual rates of the pensionable emoluments to which that person was entitled during his period of pensionable service or total service, as the case may be:

* 29th April, 1966.

Provided that such person shall be deemed to have enjoyed the benefit of any increase due to a revision of salaries in the pensionable emoluments of any rank held by him as if such increase had been payable throughout such period;

(*d*) in the case of any other person, one-third of the aggregate of his pensionable emoluments during the period of three years immediately preceding the date on which he retires:

Provided that-

(i) the average pensionable emoluments of a person calculated in accordance with this paragraph shall in no case be less than they would have been had he retired immediately prior to his appointment to any rank held by him during his last three years of service;

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(ii) such person shall be deemed to have enjoyed the benefit of any increase due to a revision of salaries in the pensionable emoluments of any rank held by him as if such increase had been payable throughout such period;

"Board" means the Civil Service (Local Conditions) Pensions Board;

"child" means an unmarried legitimate or legitimated son or daughter (including a posthumous child, stepchild or child legally adopted) under the age of eighteen years, of an officer, retired officer, member of the Corps of Instructors or former Federal Instructor or person to whom regulation 29 or 30 applies;

"Corps of Instructors" means the body of the Regular Force which has been declared to be the Corps of Instructors for the purposes of the Act;

"dependant" means the wife, child or such other relative dependent upon a member of the Regular Force for maintenance as the Permanent Secretary may recognise for the purposes of these Regulations;

"emoluments factor" means-

$$\frac{KA}{KA+KB};$$

Where K*A* = the total of the pensionable emoluments received by the person concerned during his service in the Regular Force;

K*B* = the total of the emoluments accepted as pensionable by the Scheduled Government or Scheduled Governments concerned during the period of service of the person concerned under that Scheduled Government or Scheduled Governments:

Provided that where part only of any service is taken into account as total service, a proportionate part only of the total emoluments paid during that service shall be taken into account for the purpose of determining K*A* or K*B*;

"former Federal Instructor" means a member of the Corps of Instructors who was appointed to the Regular Force on transfer from the service of the Defence Forces of the ormer Federation of Rhodesia and Nyasaland on or after the 1st October, 1963;

"former Federal officer" means an officer who was appointed to the Regular Force either as an officer or as a member of the Corps of Instructors on transfer from the service of the Defence Forces of the former Federation of Rhodesia and Nyasaland on or after the 1st October, 1963;

"the Government" means, in respect of any period before the 24th October, 1964, the Government of the former Protectorate of Northern Rhodesia, and in respect of any period on or after that date, the Government of the Republic of Zambia;

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"Government medical officer" means a medical practitioner serving in the Defence Force or a medical practitioner serving in the public service of Zambia;

"gratuity" means a lump sum payment;

"medical board" means a board of not less than three medical practitioners, one of whom shall be a Government medical officer, appointed and constituted from time to time by the Senior Medical Officer in the Regular Force for the purpose of carrying out functions imposed under these Regulations on a medical board;

"medical certificate" means a certificate given by a medical authority specified in these Regulations regarding-

(*a*) the fitness or otherwise of a person to perform his work;

(*b*) the nature of the incapacity, if any, of a person;

(*c*) the period of leave, if any, which, in the opinion of the medical authority, is necessary and indispensable for the recovery of the health of a person;

"medical practitioner" means a person registered as a medical practitioner under the Medical and Allied Professions Act; Cap. 297

"officer" means a person holding commissioned rank.

"pension" means an annual pension payable during the lifetime of the recipient unless under these Regulations it is payable for a shorter period;

"Pension Authority" means the Commander.

"pensionable age" means-

(i) in the case of a soldier other than a warrant officer the forty-fifth anniversary of his date of birth;

(ii) in the case of an officer and a warrant officer the fifty-fifth anniversary of his date of birth:

Provided that if the President considers that it is desirable in the public interest and under conditions to be agreed upon, he may allow that officer or warrant officer to continue serving in the Regular Force until he is sixty years of age.

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"pensionable emoluments" means-

(*a*) in respect of service in the Regular Force-

(i) in the case of an officer or a member of the Corps of Instructors who was appointed to the Regular Force before the *(5)commencement of these Regulations-

*29th April, 1966.

A. pay; and

B. an amount calculated at the rate of one-sixth of such person's pay or K516 per annum, whichever is the less; and

C. personal allowance;

(ii) in the case of any other person-

A. pay; and

B. personal allowance; and

C. any amount in respect of ration allowance which the Government may have directed should be deemed to be a pensionable allowance;

(*b*) in respect of service with a Scheduled Government, emoluments which count for pension in accordance with the provisions of any law of that Scheduled Government dealing with such service:

Provided that a person shall be deemed to have received his full pensionable emoluments during any period when he is on leave with reduced pensionable emoluments or without pensionable emoluments;

"pensionable service" means pensionable service in accordance with the provisions of regulation 4;

*29th April, 1966.

"Permanent Secretary" means the permanent secretary for the Personnel Division at Cabinet Office;

"personal allowance" means a special addition to pay granted personally to a member of the Regular Force, but does not include such addition if it is granted subject to the condition that it shall not be pensionable;

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"retired member of the Corps of Instructors" means a member of the Corps of Instructors who has retired and is in receipt of a pension awarded under these Regulations other than a pension awarded under Part V;

"retired officer" means an officer who has retired and is in receipt of a pension awarded under these Regulations other than a pension awarded under Part V;

"Scheduled Government" means-

(*a*) any Government or Administration included in the Schedule to the European Officers' Pensions Regulations; and Cap. 266

(*b*) any other Government or Administration the President may determine to be a Scheduled Government for the purposes of these Regulations:

Provided that-

(i) service in the public service of Zambia, and the Teaching Service shall be deemed to be service under a Scheduled Government for the purposes of these Regulations;

(ii) the President may determine that service in any public service, public corporation or public organisation or the like shall be deemed to be service under a Scheduled Government for the purposes of these Regulations;

"Secretary" means Secretary of the Board

"Soldier" means a non-commissioned officer and includes a warrant officer;

"Teaching Service" means the Teaching Service described in the Teaching Service Regulations; Cap. 102

"total service" means the continous period of a transferred person's pensionable service in the Regular Force and any service under any Scheduled Government which may be taken into account by such Scheduled Government for the purpose of calculating pension or gratuity:

Provided that service under the age of eighteen years shall not reckon as total service;

"transferred person" means a person transferred to or from the Regular Force from or to a Scheduled Government:

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Provided that a person shall be deemed to have been transferred only if the President and the Scheduled Government concerned mutually agree to treat such person as having been transferred;

"Unified African Teaching Service" means the Unified African Teaching Service which was established in accordance with section *three* of the African Education Act; Cap. 135

"year" means a calendar year.

(*As amended by S.I. Nos*. 102 *of* 1988, 166 *of* 1992 *and* 62 *of* 1995)

3. All pension contributions and other transferred payments made by members of the Defence Force to the general revenues of the Republic prior to the commencement of these Regulations shall be transferred to the Board and be administered in accordance with these Regulations. Pension contributions to be transferred to the Board

(*As amended by S.I. No*. 176 *of* 1993)

3A.-3H. *Revoked by S.I. No*. 176 *of* 1993.

4. (1) Pensionable service means continuous service in the Regular Force on or after a person' eighteenth birthday and shall include- Pensionable service

(*a*) time spent on duty;

(*b*) time spent on leave; and

(*c*) time spent on attachment or secondment to any other military, naval or air force or to the service of a Scheduled Government.

(2) Notwithstanding the provisions of sub-regulation (1), where any person who has had previous service in the Regular Force is later appointed to employment in the Regular Force within two years of the termination of his previous service, such previous service shall be reckoned as pensionable service if-

(*a*) he is not a person required to resume duty under the provisions of regulation 12; and

(*b*) he was not previously serving on a short service commission; and

(*c*) he did not receive a gratuity or pension under these Regulations, other than a pension under regulation 29; and

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(*d*) being a person who has been paid any sum or sums in respect of his previous service or any portion thereof under the provisions of regulation 13 or sub-regulation (4) of regulation 14, he enters into a written undertaking within a period of three months of the date of his later appointment to employment in the Regular Force whereby he agrees to make payment to the Government of an amount equal to such sum or sums plus interest at the rate of 5 per centum per annum thereon, from the day following the date on which such sum or sums accrued to him until payment is made.

(3) Pensionable service shall not include any period of service during which a person-

(*a*) is undergoing a sentence of imprisonment imposed under the Act by a court-martial or civil court; or

(*b*) is being treated as an in-patient at a hospital for an illness or injury which a Government medical officer certifies was occasioned by an offence in respect of which such person has been convicted under the Act; or

(*c*) is absent in circumstances constituting the offence of desertion or absence without leave; or

(*d*) serves on a short service engagement, unless such person-

(i) is appointed on a permanent regular engagement; and

(ii) elects not to receive any gratuity or other benefit which may be payable to him in respect of such short service engagement under any written law.

(4) Where a person has entered into an undertaking to make payment of an amount in terms of paragraph (*d*) of sub-regulation (2) and such amount is not paid in full within one month after the date on which he entered into such undertaking, such amount shall be paid by such instalments and in such manner as the Chief Paymaster may determine.

5. (1) An officer, soldier or a member of the Corps of Instructors shall pay the Board seven and half per centum of his personal emoluments during pensionable service.

Officers and members of Corps of instructors to contribute to cost of tribute

(2) The payment of contributions payable by a person under sub-regulation (1) shall ordinarily be effected by deducting such amounts from his pensionable emoluments.

(3) All amounts paid to the Board under this regulation shall be paid into the general revenues of the Republic.

(4) All benefits payable under Part IV of the Regulations shall be paid from the general revenues of the Republic.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

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6. A pension benefit granted under these Regulations shall not be assignable or transferable except for the purpose of satisfying- Pension benefits not assignable, etc.

(*a*) a debt due to the Government;

(*b*) an order of any court for the periodical payment of sums of money towards the maintenance of the wife or former wife or child of the person to whom the pension benefit has been granted;

and shall not be liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatever except a debt to the Government.

7. If any person to whom a pension benefit involving periodical payments has been granted under these Regulations is adjudicated a bankrupt or is declared insolvent by a judgment of the Court, then such benefit shall forthwith cease: Pension to cease on bankruptcy

Provided always that in a case where a pension benefit ceases by reason of bankruptcy or insolvency of the pensioner, the Pension Authority may from time to time during the remainder of such pensioner's life or during a shorter period or periods, either continued or discontinued, as it shall think fit, cause all or any part of the moneys to which such pensioner would have been entitled had he not become a bankrupt or insolvent to be paid to, or applied for the maintenance and personal support or benefit of all or any, to the exclusion of all other or others, of the following persons, namely, such pensioner and any wife, child or children of his in such proportions and manner as the Pension Authority thinks proper and such moneys shall be paid or applied accordingly.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

8. If any person to whom a pension benefit involving periodical payments has been granted under these Regulations is convicted of any offence and is required to undergo a period of imprisonment exceeding three months, the payment of his pension shall, if the Pension Authority so directs, be discontinued during the whole or part of the period of imprisonment: Pension to cease on imprisonment

Provided that the Pension Authority may authorise the payment of the whole or any portion of the pension in respect of the period during which it has been so discontinued to or for the benefit of such dependant or dependants of the pensioner as the Pension Authority may determine.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

9. The Pension Authority may declare forfeit, suspend or reduce the pension of any person who has been awarded a pension benefit involving periodical payments under the provisions of these Regulations and who is found guilty by a court of- Forfeiture of pension

(*a*) misappropriating public moneys or property of the Government; or

(*b*) making any false statement for the purpose of obtaining a pension knowing the statement to be false or not believing it to be true

(*As amended by S.I. No.* 102 *of* 1988, 1667 *of* 1993 *and* 176 *of* 1993)

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10. (1) Where a person who was married under a system permitting of polygamy dies and a pension or other benefit is payable under the provisions of regulation 30, 35, 36, 37 or 38, then that pension or other benefit shall be calculated as if there had been only one widow of that person and shall be divided equally into the same number of parts as the number of widows surviving at the date of the person's death.

Payment of benefits to widows and children of a deceased person who was married under a system permitting of polygamy

(2) Each surviving widow of the deceased person shall be paid one part of the pension or other benefit calculated in accordance with sub-regulation (1).

(3) A pension payable to a widow under this regulation shall cease on the date on which she marries or dies, and the pension for the remaining widow, or widows, if any, shall not be increased.

(4) Subject to the provisions of sub-regulation (5), when a person who was married under a system permitting of polygamy dies and a pension is payable under the provisions of regulation 30 or 38 in respect of the children, then that pension shall be calculated on the pension payable as if there had been one widow.

(5) Paragraph (*b*) of sub-regulation (3) of regulation 30 and the proviso to sub-regulation (1) of regulation 38 shall only apply from the date on which the last widow's pension ceases in terms of sub-regulation (3).

11. (1) Any person who is in receipt of a pension or allowance under regulation 18 or 29 may be required by the Commander to submit to a medical examination or to undergo medical or surgical treatment-

Medical examination or treatment

(*a*) if he is receiving a pension under regulation 18, at any time within a period of two years from the date of his retirement;

(*b*) if he is a person to whom regulation 29 applies and is in receipt of a person or allowance under that regulation, at any time.

(2) If any person referred to in sub-regulation (1) fails to submit himself to the examination or to undergo the treatment required by the Commander his right to a pension or allowance under regulation 18 or 29, as the case may be, shall, if the Pension Authority concurs, cease as from the date on which he fails to do so:

Provided that-

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(i) if at any time thereafter he submits himself to the examination or to undergo the treatment required by the Commander, the pension or allowance shall be revived-

(*a*) in the case of a pension payable under regulation 18, where a person is not certified as being fit to resume duty or is not required to resume duty, with effect from the date on which it ceased to be payable;

(*b*) in the case of a pension or allowance payable under regulation 29, with effect from the date on which the person submits himself to that examination or undergoes that treatment;

(ii) in any event, the pension shall be restored with effect from the person's pensionable age.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

Resumption of duty by persons retired on the grounds of ill health

12. (1) If any person who is receiving a pension under regulation 18 is, within two years of the date of his retirement and before his pensionable age, certified by a medical board to be fit to resume duty in the Regular Force, he may, subject to the provisions of sub-regulation (2), be required by the Pension Authority to resume duty in that Force. If the person refuses to resume duty without reasonable cause, his right to a pension under regulation 18 shall cease with effect from the date on which he is required to resume duty:

Provided that in any event the pension shall be restored with effect from the person's pensionable age.

(2) The following provisions shall apply in relation to any person required to resume duty under sub-regulation (1):

(*a*) the pensionable emoluments attaching to the rank to which he is appointed shall not, without his consent, be less than the pensionable emoluments received by him immediately before the date of his retirement;

(*b*) he shall not, without his consent, be appointed to a rank lower than the rank held by him before the date of his retirement;

(*c*) the pension which he was receiving under regulation 18 shall cease with effect from the date of his resumption of duty;

(*d*) his pensionable service shall not be deemed to have been interrupted by the period during which he was receiving pension under regulation 18, but that period shall not form part of his pensionable service.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

PART II

BENEFITS ON RESIGNATION, DISCHARGE OR DISMISSAL

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13. A person, other than a former Federal Instructor, who is required to contribute under the provisions of regulation 5 and who resigns or is discharged in circumstances under which no pension or gratuity is payable to him under these Regulations, other than a pension under the provisions of regulation 29, shall be entitled to receive- Benefits on resignation or discharge

(*a*) if his pensionable service or total service, as the case may be, amounts to less than two years, to a refund of the amounts paid by him under regulation 5.

(*b*) if his pensionable service or total service, as the case may be, amounts to twenty years or more but less than twenty-five years, a gratuity calculated as follows:

K*X* x 2;

(*c*) if his pensionable service or total service, as the case may be, amounts to twenty-five years or more, a gratuity calculated as follows:

$$2 \times KX + \frac{(2 \times KX \times Y)}{50} \ ;$$

Where K*X* = the total amount paid by the person under regulation 5;

Y = the number of completed years during which the person has been required to contribute under the provisions of regulation 5.

(*As amended by S.I. No.* 166 *of* 1992 *and* 176 *of* 1993)

13A. Any person serving in the Defence Force who is required to contribute under regulation 5 and who dies from any natural cause not entitling him to any pension or gratuity under these Regulations, other than under the provisions of regulation 29, shall be entitled, if his pensionable service or total service, as the case may be, amounts to two years or more but less than twenty years, to a gratuity calculated as follows: Pension entitlement for personnel who die of natural causes

$$\frac{KX + KX \times 19 \times B}{400}$$

Where KX = the total amount paid to the person under regulation 5; and

B = the number of completed years during which the person has been required to contribute under regulation 5.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

14. (1) Subject to the provisions of sub-regulations (2) and (3), a person who is dismissed from the Regular Force shall forfeit all right to the award of a pension or gratuity. Benefits on dismissal

(2) Notwithstanding the provisions of sub-regulation (1), a former Federal officer or former Federal Instructor who is discharged or dismissed from the Regular Force in circumstances in which no pension is otherwise payable to him under these Regulations, other than a pension awarded under regulation 29, shall be entitled, as from the day following the date of his discharge or dismissal, to receive a pension equal to the pension, but exclusive of any additional abolition of office pension for which he would have been entitled under the provisions of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, had he retired from the Defence Forces of the former Federation of Rhodesia and Nyasaland on the date of his transfer to the Regular Force.

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(3) The President may award to a person who is dismissed and who is not entitled to a pension under sub-regulation (2)-

(*a*) if that person's pensionable service or total service, as the case may be, amounts to less than ten years, such gratuity as the President may determine;

(*b*) if that person's pensionable service or total service, as the case may be, amounts to ten years or more, such pension or gratuity as the President may determine.

(4) A person who is dismissed and who is not awarded a pension or gratuity under sub-regulation (2) or (3) shall be refunded any payments he may have made under the provisions of regulation 5.

PART III

RETIREMENT BENEFITS

15. For the purposes of this Part- Interpretation of Part III

K*A* = average pensionable emoluments;

K*B* = the annual rate of the pensionable emoluments taken by the Scheduled Government concerned for the purpose of calculating a person's pension or gratuity;

C = emoluments factor.

d = completed months of pensionable service;

e = completed months of total service;

(*As amended by S.I. No.* 176 *of* 1993)

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Benefits for a Commander who retires under provisions of Defence

16. Subject to the provisions of Parts I and V, a Commander who is required to retire under the provisions of regulation 9 of the Defence (Regular Force) (Officers) Regulations, 1960, shall be entitled as from the date of his retirement-

(*a*) if he was appointed to the Regular Force on transfer from the service of a Scheduled Government, to receive a pension calculated as follows:

$$\frac{K\!A \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C\ ;$$

(*b*) if he was not appointed to the Regular Force on transfer from the service of a Scheduled Government, to receive a pension calculated as follows:

$$\frac{K\!A \times d}{\text{the age at which the officer or soldier retires expressed in complete months}}$$

(*As amended by S.I. No.* 102 *of* 1988)

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Benefits for other persons required to retire on grounds of age or length of service

17. Subject to the provisions of Parts I and IV, a person who is required to retire from the Regular Force shall-

(*a*) in the case of a Commander to whom neither regulation 16 nor 18 applies; or

(*b*) in the case of an officer other than a Commander to whom regulation 9 of the Defence (Regular Force) (Officers) Regulations, 1960, applies; or

(*c*) in the case of a soldier to whom regulation 8 or item (xviii) of the Third Schedule to the Defence Force (Regular Force) (Enlistment and Service) Regulations applies;

be entitled, as from the date of his retirement-

(i) if he was appointed to the Regular Force on transfer from the service of a Scheduled Government and his total service amounts to less than ten years, to receive a gratuity calculated as follows:

$$\frac{K\!A \times e \times 5}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C\,;$$

(ii) if he was appointed to the Regular Force on transfer from the service of a Scheduled Government and his total service amounts to ten years or more, to receive a pension calculated as follows:

$$\frac{K\!A \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C\,;$$

(iii) if he was not appointed to the Regular Force on transfer from the service of a Scheduled Government and his pensionable service amounts to less than ten years, to receive a gratuity calculated as follows:

$$\frac{K\!A \times d \times 5}{\text{the age at which the officer or soldier retires expressed in complete months}}$$

(iv) if he was not appointed to the Regular Force on transfer from the service of a Scheduled Government and his pensionable service amounts to ten years or more, to receive a pension calculated as follows:

$$\frac{K\!A \times d}{\text{the age at which the officer or soldier retires expressed in complete months}}$$

(*As amended by S.I. No.* 102 *of* 1988)

Benefits for persons required to retire on grounds of ill health

18. Subject to the provisions of Parts I and IV, a person who is required to retire from the Regular Force because he is medically unfit shall be entitled, as from the date of his retirement-

(*a*) if his medical grading is, in the opinion of the Pension Authority, due to an infirmity contracted or occasioned by his default but not contracted or occasioned deliberately with the intention of escaping a duty or of qualifying for a benefit under these Regulations, and-

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(i) he was appointed to the Regular Force on transfer from the service of a Scheduled Government-

A if his total service amounts to less than ten years, to receive a gratuity calculated as follows:

$$\frac{KA \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times 5 \times C; \text{ or}$$

B. if his total service amounts to ten years or more, to receive a pension calculated as follows:

$$\frac{KA \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C; \text{ or}$$

(ii) he was not appointed to the Regular Force on transfer from the service of a Scheduled Government-

A. if his pensionable service amounts to less than ten years, to receive a gratuity calculated as follows:

$$\frac{KA \times d}{\text{the age at which the officer or soldier retires expressed in complete months}} \times 5; \text{ or}$$

B. if his pensionable service amounts to ten years or more, to receive a pension calculated as follows:

$$\frac{KA \times d}{\text{the age at which the officer or soldier retires expressed in complete months}};$$

(*b*) if his medical grading is, in the opinion of the Pension Authority, due to an infirmity contracted or occasioned without his default, and-

(i) he was appointed to the Regular Force on transfer from the service of a Scheduled Government-

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A. if his total service amounts to less than ten years, to receive a gratuity calculated as follows:

$$\frac{KA \times d}{\text{the age at which the officer or soldier retires expressed in complete months}} \times 5 \times C; \text{ or}$$

B. if his total service amounts to ten years or more, to receive a pension calculated as follows:

$$\left\{ \frac{KA \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C \right\}$$

$$+ \frac{(KA \times f \times 7)}{\text{the age at which the officer or soldier retires expressed in complete months}};$$

(ii) he was not appointed to the Regular Force on transfer from the service of a Scheduled Government-

A. if his pensionable service amounts to less than ten years, to receive a gratuity calculated as follows:

$$\frac{KA \times d}{\text{the age at which the officer or soldier retires expressed in complete months}} \times 5; \text{ or}$$

B. if his pensionable service amounts to ten years or more, to receive a pension calculated as follows:

$$\frac{KA \times d}{\text{the age at which the officer or soldier retires expressed in complete months}}$$

$$+ \frac{KA \times f \times 7}{6000}:$$

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Provided that an officer who is required to retire from the Regular Force because he is medically unfit and who is entitled to receive only a gratuity under the provisions of this regulation shall, in addition, be refunded any payments made by him under regulation 5.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

Benefits for persons who retire voluntarily

19. Subject to the provisions of Parts I and IV, a person to whom this Part applies and who elects to retire from the Regular Force at any time after completing ten or more years' pensionable service or total service, as the case may be, shall be entitled, as from the date of his retirement-

(*a*) if he was appointed to the Regular Force on transfer from the service of a Scheduled Government and-

(i) if his total service amounts to less than twenty years, to receive a gratuity calculated as follows:

$$\frac{KA \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times 5 \times C; \text{ or}$$

(ii) if his total service amounts to twenty years or more, to receive a pension calculated as follows:

$$\frac{KA \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C;$$

(*b*) if he was not appointed to the Regular Force on transfer from the service of a Scheduled Government, and-

(i) if his pensionable service amounts to less than twenty years, to receive a gratuity calculated as follows:

$$\frac{KA \times d}{\text{the age at which the officer or soldier retires expressed in complete months}} \times 5; \text{ or}$$

(ii) if his pensionable service amounts to twenty years or more, to receive a pension calculated as follows:

$$\frac{KA \times d}{\text{the age at which the officer or soldier retires expressed in complete months}}$$

(*As amended by S.I. No.* 102 *of* 1988)

Benefits for persons transferred from Regular Force who retire from the service of a Scheduled Government

20. (1) A person who is transferred from the Regular Force to the service of a Scheduled Government and who is required either by that Scheduled Government or by any other Scheduled Government to which he may have been subsequently transferred to retire-

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(*a*) on the abolition of his post; or

(*b*) to facilitate improvement in the organisation of the service to which he belongs by which greater economy or efficiency can be effected;

in circumstances in which he qualifies for the award of a pension under any pensions legislation of the Scheduled Government, shall be entitled as from the date of his retirement to receive a pension calculated as follows:

$$\frac{KB \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C.$$

(2) A person who is transferred from the Regular Force to the service of a Scheduled Government and who is required or permitted, either by that Scheduled Government or any other Scheduled Government to which he may have been subsequently transferred, to retire in circumstances in which he qualifies for the award of a pension or gratuity under any pensions legislation of the Scheduled Government, but to whom sub-regulation (1) does not apply, shall be entitled as from the date of his retirement-

(*a*) if his total service amounts to less than ten years, to receive a gratuity calculated as follows:

$$\frac{KB \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times 5 \times C;$$

(*b*) if his total service amounts to ten years or more, to receive a pension calculated as follows:

$$\frac{KB \times e}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C.$$

(*As amended by S.I. No.* 102 *of* 1988)

PART IV

SPECIAL PROVISIONS APPLICABLE ONLY TO NON-ZAMBIANS SERVING IN THE REGULAR FORCE ON PENSIONABLE TERMS

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Application of Part IV

21. This Part shall apply only to persons serving on pensionable terms in the Regular Force who are citizens of a country other than Zambia notwithstanding that they may also be citizens of the Republic.

Retirement to facilitate Zambianisation

22. (1) The Commander may, with the approval of the President, by notice in writing require a person to whom this Part applies to retire to facilitate the appointment of a person who is a Zambian citizen and who is not a citizen of any other country to the Regular Force or to facilitate the promotion of a person who is a Zambian citizen and who is not a citizen of any other country to the rank held by the person to whom this Part applies.

(2) Any notice given under sub-regulation (1) requiring a person to retire shall-

(*a*) in the case of a person who is on leave when he is given notice, specify the date on which he shall so retire, which shall, if the period of leave for which he is eligible on the date upon which he is given notice-

(i) is not less than six months, be the date upon which such leave expires; or

(ii) is less than six months, be a date six months after the date upon which he is given notice and his leave shall be extended accordingly on full pensionable emoluments;

(*b*) in the case of any other person, specify the period which shall not be less than six months from the date upon which he is given notice, at the expiration of which period he shall proceed upon leave pending retirement:

Provided that, with the consent of the person concerned, the notice may specify a shorter period than six months.

(3) In the case of a person to whom paragraph (*b*) of sub-regulation (2) applies, he shall, if the period of leave on full pensionable emoluments for which he is eligible at the expiry of the period of notice is less than six months, be granted such additional leave on full pensionable emoluments as will bring the aggregate period of such leave up to six months.

(4) A person to whom this regulation applies shall be granted the travel benefits and baggage facilities to which a person of his rank would be eligible when proceeding on leave pending retirement.

(5) A person to whom this regulation applies and who is on leave when he is given notice, shall, if he returns to his station to settle his affairs, be granted the travel facilities to and from his station for himself only for which he would have been eligible had he been proceeding on privilege leave, and be eligible for subsistence allowance at the rates then current for the period (not exceeding ten days) of his stay at his station.

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(6) Any person to whom this Part applies shall not be compulsorily retired from the Regular Force for the purpose of facilitating the appointment or promotion of a Zambian citizen except in accordance with the provisions of this regulation.

Retirement following supersession for promotion

23. (1) In the event of a person who is a citizen of Zambia and who is not a citizen of any other country being promoted in preference to a person to whom this Part applies and who would otherwise have been promoted on the grounds of seniority and merit, the person so superseded shall be informed by notice in writing by the Commander that he has been superseded for promotion in the interests of Zambianisation, and that he may retire in accordance with the provisions of this regulation.

(2) Subject to the provisions of sub-regulations (3), (4) and (5), any person given notice under the provisions of sub-regulation (1) that he has been superseded for promotion in the interests of Zambianisation may, if he so wishes and has not subsequently been promoted, elect to retire at any time.

(3) Any person not on leave when given notice under the provisions of sub-regulation (1) and who, not having been absent on leave since being given such notice, within six months of being given such notice elects to retire in accordance with sub-regulation (2) shall-

(*a*) be permitted to proceed on leave pending retirement on any date within six months of the date upon which he was given such notice; and

(*b*) if his leave (including any deferred leave) for which he is eligible on the date on which he proceeds on leave pending retirement is less than six months, be granted additional leave to bring his period of leave up to a total of six months; and

(*c*) be granted the travel benefits and baggage facilities to which a person of his rank would be eligible when proceeding on leave pending retirement.

(4) Any person who is on leave when given notice under the provisions of sub-regulation (1) and who elects forthwith to retire, shall-

(*a*) if the period of leave (including any deferred leave) for which he is eligible on the date on which he is given such notice is less than six months, be granted additional leave to bring his period of leave up to six months; and

(*b*) if he returns to his station to settle his affairs, be granted the travel facilities to and from his station for himself only for which he would have been eligible had he been proceeding on privilege leave, and subsistence allowance at the rates then current for the period (not exceeding ten days) of his stay at his station.

(5) Any person who is given notice under sub-regulation (1) and who, not being on leave when given such notice, does not proceed on leave pending retirement under the provisions of sub-regulation (3) or, if he is on leave when given such notice, does not elect to retire forthwith under the provisions of sub-regulation (4) may, until and unless he is subsequently promoted, elect to retire by giving notice in accordance with the provisions of regulation 25.

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Additional benefits for persons required to retire

24. Any person to whom this Part applies and who is required to retire shall, in lieu of any other benefit provided by these Regulations other than a benefit provided under Part V, be granted, as from the date of his retirement, a pension calculated as follows:

(*a*) in the case of a person who was appointed to the Regular Force on transfer from the service of a Schedule Government-

$$\left\{ \frac{KA \times B}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C \right\} + KY;$$

(*b*) in any other case-

$$\frac{KA \times B}{\text{the age at which the officer or soldier retires expressed in complete months}} + KY;$$

Where K*A* = the annual rate of the person's pensionable emoluments on his last day of pensionable service or total service, as the case may be;

B = number of completed months of total service or pensionable service, as the case may be;

C = the age at which the officer or soldier retires expressed in complete months;

$KY = \frac{KA \times B}{1800}$:

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Provided that-

(i) the pension so calculated shall not exceed seven-tenths of the annual rate of the highest pensionable emoluments received by the person at any time in the course of his pensionable service or total service, as the case may be;

(ii) the pension shall not exceed the pension for which the person would have been entitled if he had continued until the age of fifty-five years to hold the rank held by him at the date of his retirement, having received all scale increments for which he would have been eligible by that date and, in the case of a transferred person, if all his total service had been pensionable service;

(iii) a person who is required to retire because he is medically unfit shall be given the opportunity to elect to receive a pension calculated in accordance with regulation 18 in lieu of a pension calculated under this regulation;

(iv) a former Federal Officer or a former Federal Instructor may elect that his pension under this regulation shall be calculated without the addition of K*Y* and that instead he shall receive a gratuity equal to half the compensation for which he would be entitled if he were an "entitled officer" for the purposes of the Zambia (Compensation and Retiring Benefits) Order, 1964.

(*As amended by S.I. No.* 102 *of* 1988)

Right to retire voluntarily

25. Any person to whom this Part applies may retire voluntarily at any time if-

(*a*) having been on duty for not less than three months since last returning from leave, he gives six months' notice in writing of his intention to retire to the Commander; or

(*b*) having been granted leave for a period of not less than four months, he gives notice of his intention to retire to the Commander in writing not less than two months before such leave commences:

Provided that the Commander may at his discretion accept shorter notice if he thinks fit.

Benefits on voluntary retirement

26. (1) Any person who retires voluntarily under the provisions of regulation 25 and who has completed less than twenty-four months' service (excluding leave) in the Regular Force after the 9th January, 1964, shall be entitled, as from the date of his retirement, to receive a pension calculated as follows:

(*a*) in the case of a person who was appointed to the Regular Force on transfer from the service of a Scheduled Government -

$$\frac{KA \times B}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C;$$

(*b*) in any other case-

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$$\frac{KA \times D}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C;$$

Where K*A* = the annual rate of the person's pensionable emoluments on his last day of pensionable service or total service, as the case may be;

B = completed months of total service;

C = the age at which an officer or soldier retires expressed in completed months.

D = completed months of pensionable service.

(2) A former Federal Officer or a former Federal Instructor shall, in addition to the pension payable under sub-regulation (1), be entitled to receive a further pension calculated as follows:

(*a*) if he has completed twelve months or more, but less than eighteen months' service in the Regular Force after the 9th January, 1964-

$$\frac{KX}{3};$$

(*b*) if he has completed eighteen months but less than twenty-four months' service in the Regular Force after the 9th January, 1964-

$$\frac{KX \times 2}{3};$$

(*c*) if he has completed twenty-four months' service in the Regular Force after the 9th January, 1964, but is not eligible for a pension under the provisions of sub-regulation (3)-

K*X*:

Where K*X* = the additional abolition of office pension, if any, to which the person would have been entitled under the provisions of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, had he retired from the service of the Government of the former Federation of Rhodesia and Nyasaland on the date of his transfer to the Regular Force.

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(3) Any person who retires voluntarily under the provisions of regulation 25 and who has completed two years' service (excluding leave) in the Regular Force after the 9th January, 1964, shall be entitled to receive as from the date of his retirement a pension calculated as follows:

(*a*) in the case of a person who has appointed to the Regular Force on transfer from the service of a Scheduled Government-

$$\left\{ \frac{KA \times B}{\text{the age at which the officer or soldier retires expressed in complete months}} \times C \right\} + KD;$$

(*b*) in any other case-

$$\frac{KA \times B}{\text{the age at which the officer or soldier retires expressed in complete months}} \times KD;$$

Where K*A* = the annual rate of the person's pensionable emoluments on his last day of total service or pensionable service, as the case may be;

B = the number of the person's completed months of total service or pensionable service, as the case may be;

C = the age at which an officer or a soldier retires expressed in complete months;

$$D = \frac{KA \times B.}{1800}$$

(4) No pension payable under this regulation shall exceed seven-tenths of the annual rate of the highest pensionable emoluments received by that person during his pensionable service or total service, as the case may be, and further, shall not exceed the pension which the person would have been entitled to receive if he had continued until the age of fifty-five years to hold the rank held by him at the date of his retirement, having received all scale increments for which he would have been eligible by that date and, in the case of a transferred person, if all his total service had been pensionable service.

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(5) A person who retires voluntarily under the provisions of regulation 25 shall be granted the travel and baggage facilities for which he would be eligible if proceeding on leave pending retirement.

(*As amended by S.I. No.* 102 *of* 1988)

PART V

BENEFITS IN RESPECT OF INJURY OR DEATH IN THE COURSE OF DUTY

27. This Part applies to all persons serving in the Regular Force. Application of Part V

28. In this Part, unless the context otherwise requires- Interpretation of Part V

"emoluments" means-

(*a*) in the case of a person to whom regulation 29 applies, either-

(i) the annual rate of his pensionable emoluments or the annual rate of his emoluments which would be accepted as pensionable emoluments if he were serving on pensionable terms before the date on which a temporary allowance or pension first became payable to him, but for the provisions of sub-regulation (10) of regulation 29; or

(ii) in the case where an injury does not manifest itself until after that person has ceased to serve in the Regular Force, the annual rate of his pensionable emoluments, or the annual rate of his emoluments which would be accepted as pensionable emoluments if he had been serving on pensionable terms at the date he received the injury or, if the date of the injury is not established to the satisfaction of the Pension Authority, the annual rate of his said emoluments at a date determined by the Pension Authority;

(*b*) in the case of a person to whom regulation 30 applies-

(i) if that person has been awarded a pension, or a gratuity in lieu of a pension, under regulation 29 in respect of the injury which was the cause of the death, his emoluments as defined in paragraph (*a*);

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(ii) if that person has not been awarded a pension, or a gratuity in lieu of a pension, under regulation 29 in respect of the injury which was the cause of his death, the annual rate of his pensionable emoluments which would be accepted as pensionable if he had been serving on pensionable terms at the date he received the injury or, if the date of the injury is not established to the satisfaction of the Pension Authority, the annual rate of his said emoluments at a date fixed by the Pension Authority;

"injury" means-

(*a*) ill health, physical or mental unfitness, physical or mental incapacity or personal injury which, in the opinion of the Pension Authority, is caused by or due to the discharge of the person's duties; or

(*b*) the aggravation to a material extent of ill health, physical or mental unfitness, physical or mental incapacity, or personal injury, which aggravation, in the opinion of the Pension Authority, is caused by or due to the person's duties without any misconduct or serious negligence on the person's part:

Provided that for the purposes of this definition a person who is participating in any regimental sport, recreational training, display or competition authorised by his commanding officer shall be deemed to be discharging his duties while so participating;

"material extent", in relation to an injury which has been aggravated by the discharge of the person' duties, means-

(*a*) where the degree of disablement which would have been applicable had the whole of the condition of the person been caused by the discharge of his duties (hereinafter in this paragraph called his full degree of disablement) is less than 20 per centum, a degree of disablement of 5 per centum or more, which is not less than one-half of his full degree of disablement;

(*b*) in cases not falling under paragraph (*a*), a degree of disablement of at least 10 per centum.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

Injury benefits

29. (1) This regulation applies to any person who sustains an injury.

(2) The Commander may grant to any person to whom this regulation applies, sick leave, with full pay-

(*a*) for a period of, or for periods not exceeding in the aggregate ninety days on production of a medical certificate given by the medical practitioner or dentist, as the case may be, of the person to whom this regulation applies or, if the Commander desires the production of a medical certificate given by a medical practitioner or dentist, as the case may be, nominated by him, the production of that certificate;

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(*b*) in addition to sick leave granted under paragraph (*a*), for a further period of, or for further periods not exceeding in the aggregate ninety days on production of a medical certificate given by a Government medical officer or, if the Commander desires the production of a certificate given by a medical board, on production of that certificate;

(*c*) in addition to any sick leave granted under paragraphs (*a*) and (*b*), for such further periods, being not more than one hundred and eighty days each, as may be recommended by a medical board:

Provided that-

(i) no one continuous period of sick leave granted under this sub-regulation shall exceed five hundred and forty days;

(ii) the Commander shall not grant any further period of sick leave under this sub-regulation if the Pension Authority is satisfied, after considering the report of a medical board, that the person to whom this regulation applies will be permanently unfit for further service in the Regular Force and deems his degree of disablement to have reached a final and stationary condition.

(3) The degree of disablement of a person to whom this regulation applies shall be-

(*a*) in respect of disabilities mentioned in the First Schedule, the percentage indicated in that Schedule;

(*b*) in respect of any disability not mentioned in the First Schedule, such percentage as may be assessed by a medical board on the percentage of disability.

(4) In making a report under paragraph (*b*) of sub-regulation (3), a medical board shall make a comparison of the condition of the person to whom this regulation applies with the condition of a normal healthy person of the same age and sex without taking into account the earning capacity, in his disabled condition, of the person to whom this regulation applies in his own or any other trade or occupation.

(5) In the case where a person to whom this regulation applies has two or more disabilities which are the result of one or more injuries, the degree of disablement shall be determined in relation to the combined disabilities, but shall in no case exceed 100 per centum.

(6) Notwithstanding the provisions of this regulation, if the Pension Authority deems the degree of disablement of a person to whom this regulation applies to be inadequate by reason of the particular consequences of the disablement in relation to the special nature of that person's occupation, it may assess the degree of disablement at such percentage, being not more than 100 per centum, as it may deem equitable in the circumstances:

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Provided that, if there is any material improvement in the earning capacity of a person to whom this regulation applies, the Pension Authority may reduce or vary any assessment made under this sub-regulation to a percentage not lower than that fixed by or under the provisions of sub-regulation (3), (5) or (12).

(7) Subject to the provisions of sub-regulation (11), a person to whom this regulation applies shall, in addition to any other benefit payable under these Regulations, be entitled-

(*a*) until such time as his degree of disablement is deemed by the Pension Authority to have reached a final and stationary condition, to a temporary allowance calculated under sub-regulation (8) according to his degree of disablement as assessed from time to time;

(*b*) when his degree of disablement has been deemed by the Pension Authority to have reached a final and stationary condition, to a pension calculated under sub-regulation (8), or to a sum calculated under sub-regulation (10), as the case may be.

(8) The annual rate of a temporary allowance or pension payable to a person to whom this regulation applies, shall be calculated-

(*a*) in the case of a person whose degree of disablement is 100 per centum, as the amount equal to the aggregate of two-thirds of his emoluments up to and including K1,300, and one-third of his emoluments from K1,301 to K3,040, both inclusive;

(*b*) in the case of a person whose degree of disablement is less than 100 per centum, as an amount equal to one-hundredth of the allowance or pension calculated as in paragraph (*a*), multiplied by the degree of disablement:

Provided that in the case of a person appointed to the Regular Force before the *(6)commencement of these Regulations who-

* 29th April, 1966.

(i) is required to retire because he is medically unfit; and

(ii) is entitled on his retirement to receive a pension under the provisions of regulation 18;

the pension shall, if it is to the person's advantage, be calculated in accordance with the following provisions:

A. where the degree of disablement is 100 per centum, he shall be awarded a pension equal to 50 per centum of the annual rate of his pensionable emoluments on his last day of pensionable service or total service, as the case may be;

*29th April, 1966.

B. where the degree of such disablement is less than 100 per centum, he shall be awarded a pension bearing the same proportion to the pension calculated in accordance with paragraph A as the degree of disablement bears to 100 per centum.

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C. if the aggregate of the pension calculated in accordance with paragraph A or B, as the case may be, and the pension to which the person is entitled under the provisions of regulation 18 and any pension or pensions payable to him in respect of service under a Scheduled Government or Scheduled Governments exceeds the annual rate of his pensionable emoluments on his last day of pensionable service or total service, as the case may be, the pension calculated under this proviso shall be reduced by an amount equal to such excess. For the purposes of this paragraph, "pension" means the value of a pension without regard to any commutation for which the person concerned may have elected;

D. notwithstanding the provisions of sub-regulation (9), no allowance in respect of children shall be paid to a person who received a pension calculated in accordance with paragraph C.

(9) In addition to any temporary allowance or pension payable under sub-regulation (7) to a person to whom this regulation applies, there shall be paid in respect of that person's children, an allowance-

(*a*) if the degree of disablement is 100 per centum, at the rate of one forty-eighth of his emoluments or K60 per annum, whichever is the less, for the first child, and one-sixtieth of his emoluments or K48 per annum, whichever is the less, for each additional child;

(*b*) if the degree of disablement is less than 100 per centum, at rates in the same proportion to the rates referred to in paragraph (*a*) as the degree of disablement bears to 100 per centum:

Provided that any allowance payable under this sub-regulation shall cease from the date on which a pension becomes payable in respect of any of the children under the provisions of regulation 29.

(10) Notwithstanding the provisions of this regulation, the Permanent Secretary, Ministry of Finance, shall, unless the Pension Authority concurs otherwise, at the request of the person to whom this regulation applies, pay to that person, in lieu of any pension calculated under sub-regulation (8), a gratuity equal to the capitalised value thereof, calculated in terms of the Second Schedule.

(11) Temporary allowances and pensions under this regulation shall accrue-

(*a*) in the case of a temporary allowance, from such date as may be determined by the Commander;

(*b*) in the case of a pension, from such date as may be determined by the Pension Authority as the date on which it may be deemed that the degree of disablement has reached a final and stationary condition.

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(12) In any case where the degree of disablement of a person to whom this regulation applies has been deemed by the Pension Authority to have reached a final and stationary condition, the Pension Authority may at any time vary the degree of disablement if it is satisfied, after considering the report of a medical board, that there has been a variation of 5 per centum or more of the total disablement in respect of such person, and any pension payable to the injured person, or any allowance payable in respect of his child under this regulation, shall thereupon be calculated accordingly.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

Death benefits

30. (1) This regulation shall apply to persons to whom this Part applies who sustain an injury which results in their death.

(2) Subject to the provisions of this Part and of Part I, the spouse and children, if any, of a person to whom this regulation applies, hereinafter in this regulation referred to as the deceased person, shall, in addition to any other benefit payable under these Regulations, be entitled-

(*a*) in the case of a spouse, to a pension equal to 66 2/3 per centum of the pension which would have been payable to the deceased person under paragraph (*a*) of sub-regulation (8) of regulation 29 had he sustained a 100 per centum degree of disability;

(*b*) in the case of the children, to a pension at the rate of one twenty-fourth of the emoluments of the deceased person or K120 per annum, whichever is the less, for the first child, and one-fortieth of the said emoluments or K72 per annum whichever is the less, for each additional child:

Provided that if the deceased person leaves children of a marriage or marriages previous to his marriage to his widow and the children live in households other than that in which the widow resides with her children by the deceased person, the children in those other households shall, if the Commander so determines, be entitled to pensions at the rate which would have been appropriate if they were the only children of the deceased person.

(3) Notwithstanding the provisions of sub-regulation (2), the children of the deceased person shall, subject to the provisions of regulation 10, be entitled to pensions at the rate of one-fifteenth of the deceased person's emoluments or K192 per annum, whichever is the less, each-

(*a*) if the deceased person leaves no spouse; or

(*b*) with effect from the date the pension to the widow of the deceased person ceases as a result of her marriage or death.

(4) If the deceased person leaves no spouse or child but there are other dependants, there shall be paid to those dependants in such proportions as the Commander may determine, a gratuity equal to-

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(*a*) three times the deceased person's emoluments; or

(*b*) three times the rate of pension which would be payable under paragraph (*a*) of sub-regulation (8) of regulation 29 to a person to whom that regulation applies whose earnings are K2,880 per annum;

whichever is the less:

Provided that any amount payable in terms of this sub-regulation shall be reduced by the aggregate of any payments made to or on behalf of the deceased person under sub-regulation (7), (9), (10) or (12) of regulation 29.

(5) The estate of-

(*a*) an officer, soldier, or member of the Corp of Instructors who dies while in service shall be entitled to K250,000.00; and

(*b*) an officer or soldier who dies during the course of his official duty will be entitled to a death on duty compensation of K500,000.00 or three times his annual salary whichever is greater.

(6) The entitlements under sub-regulation (5) shall be paid in accordance with the Interstate Succession Act; Cap. 59

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

Special death gratuity

30A. (1) Subject to regulation 30, a gratuity shall be payable in respect of an officer or a soldier who dies and whose death, in the opinion of the Commander, was not caused by any wrongful act or ommission on the part of such officer or soldier in discharging his official duties.

(2) A gratuity payable under this regulation shall be equal to the officer's or soldier's annual pernsionable emoluments at the date of his death or K45,000 whichever is the greater and shall be paid as follows:

(*a*) where there remains a spouse but no children, to the spouse;

(*b*) where there remains any children of the deceased, whether or not there is also remaining a spouse, to such persons and in such proportions as the Commander shall determine;

(*c*) where there is no spouse or child remaining, to the estate of the deceased.

(*As amended by S.I. No.* 102 *of* 1988)

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31. The following conditions shall apply to a pension payable to the spouse, and to allowances or pensions payable in respect of the children under regulation 29 or 30, as the case may be:

Conditions applicable to pensions and allowances payable in terms of regulation 29 or 30

(*a*) the pension shall be payable from the day following the death of the person to whom regulation 30 applies;

(*b*) the pension to the spouse shall cease from the date on which the spouse remarries;

(*c*) any allowance payable in respect of a child under sub-regulation (9) of regulation 29, or a pension payable under regulation 30, as the case may be, shall be paid to such person or persons as shall from time to time be determined by the Commander;

(*d*) if a child dies or ceases to be a child within the definition of a child in regulation 2, the allowance payable under sub-regulation (9) of regulation 29 or the pension payable under regulation 30, as the case may be, shall cease or, if there are other children, shall be adjusted accordingly;

(*e*) if a person to whom regulation 30 applies leaves a spouse who does not maintain or deserts or abandons a child of herself and that person, the Commander may direct that such portion of the widow's pension as he thinks fit shall be paid to such person as he may direct and be applied by such person for the benefit of such child.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

32. (1) In any case where a person to whom regulation 29 applies incurs unavoidable expense of a nature other than that referred to in sub-regulation (2) or (3), which the Commander is satisfied is directly attributable to his undergoing medical examination or treatment in respect of his injury, the Commander shall, unless the Pension Authority directs otherwise-

Reimbursement of medical and other expenses

(*a*) in a case where the injured person is in receipt of a temporary allowance or pension under regulation 29, authorise the increase of the allowance or pension, together with the allowances in respect of children, if any, payable under sub-regulation (9) of that regulation, to an amount not exceeding that which would have been payable had the degree of disablement of the injured person been 100 per centum, for the period that the injured person undergoes medical examination or treatment and while travelling in connection therewith;

(*b*) in a case where the injured person is not in receipt of a temporary allowance or pension under regulation 29, award a temporary allowance together with the allowances in respect of the children, if any, payable under sub-regulation (9) of that regulation, not exceeding that which would have been payable had the degree of disablement been 100 per centum during the period of the medical examination or treatment and while travelling in connection therewith.

(2) When it is necessary for any person to whom regulation 29 applies to make a journey for the purpose of undergoing a medical examination or treatment in connection with his injury, the Commander shall, unless the Pension Authority directs otherwise, authorise the payment of subsistence allowance and transport costs at such rates and subject to such conditions as he may determine:

Provided that no subsistence allowance shall be payable for any period during which an injured person is an in-patient at an institution or hospital, the cost of which is paid, in whole or in part, under sub-regulation (3).

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(3) A person to whom regulation 29 applies shall be entitled to the payment of such expenses, not exceeding in the aggregate K500, as the Commander is satisfied have been reasonably and necessarily incurred by that person as a result of an injury in respect of dental, medical, surgical, hospital or other treatment, including the supply of artificial limbs and appliances-

(*a*) where the treatment of the injury incurs expenditure in excess of K500, the Commander of the Regular Force shall report thereon and make recommendations to the Pension Authority and the Pension Authority may direct the payment of such additional payments in excess of K500 as it may approve;

(*b*) where the expenses are related to an injury which is due to aggravation to a material extent by the discharge of his duties-

(i) the sum payable under this sub-regulation in respect of each claim shall not exceed an amount equal to the same proportion of that claim as the actual degree of disablement of the injured person due to the aggravation bears to the degree of disablement which would have been applicable to him had the whole of his disablement been due to an injury;

(ii) the aggregate of the amounts payable under this sub-regulation shall not exceed an amount equal to the same proportion of K500, or such increased amounts as the Pension Authority may fix under paragraph (*a*), as the actual degree of disablement of the injured person due to the aggravation bears to the degree of disablement which would have been applicable to him had the whole of his disablement been due to an injury.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

PART VI

DEATH BENEFITS

33. For the purposes of this Part- Interpretation of Part VI

KA = average pensionable emoluments;

KB = the annual rate of the pensionable emoluments taken by the Scheduled Government concerned for the purpose of calculating the person's gratuity or pension;

C = the age at which an officer or a soldier retires expressed in complete months;

d = completed months of pensionable service;

e = completed months of total service;

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f = number of completed months between the date of death and the date on which the person would have attained his pensionable age.

(*As amended by S.I. No.* 102 *of* 1988)

Death benefits: officers and members of Corps of Instructors with less than two years' service

34. If an officer or a member of the Corps of Instructors, whose pensionable service or total service, as the case may be, amounts to less than two years dies, there shall be paid to his legal personal representative an amount equal to the payments made by him under the provisions of regulation 5.

Death benefits: officers with between two and ten years' service

35. (1) Subject to the provisions of Part I, if an officer who is not a former Federal officer and who was not a former Federal Instructor before being appointed to commissioned rank, and who was appointed to the Regular Force on transfer from the service of a Scheduled Government, and whose total service amounts to two years or more but less than ten years dies, there shall be paid to his legal personal representative a gratuity calculated as follows:

(*a*) $\frac{KA \times e}{120} \times C$; or

(*b*) twice the amount of the payments made by the officer under the provisions of regulation 5;

whichever is the greater.

(2) Subject to the provisions of Part I, if an officer who was not appointed to the Regular Force on transfer from the service of a Scheduled Government and whose pensionable service amounts to two years or more but less than ten years dies, there shall be paid to his legal personal representative a gratuity calculated as follows:

(*a*) $\frac{KA \times e}{120}$; or

(*b*) twice the amount of the payments made by the officer under the provisions of regulation 5;

whichever is the greater.

Death of officer or warrant officer before notice or date of retirement

35A. (1) An officer who after completing twenty years or more of service and who-

(*a*) dies before giving due notice to retire; or

(*b*) after giving notice to retire dies before his date of retirement;

shall be deemed to have voluntarily retired on the date of his death in accordance with these Regulations.

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(2) A soldier who after completing twenty years or more of service and who-

(*a*) dies before giving due notice to retire; or

(*b*) after giving notice to retire dies before his date of retirement;

shall be deemed to have voluntarily retired immediately before the date of his death in accordance with these Regulations.

(*As amended by S.I. No.* 176 *of* 1993)

Death of warrant officer before notice to retire or before date of retirement

35B. A Warrant Officer or soldier who after completing twenty years or more of service and who-

(*a*) dies before giving due notice to retire; or

(*b*) after giving notice to retire dies before his date of retirement;

shall be deemed to have voluntarily retired immediately before the date of his death in accordance with these Regulations.

(*As amended by S.I. No.* 166 *of* 1992)

Death benefits: other ranks

36. (1) Subject to the provisions of Part I, if a person-

(*a*) who is not an officer or a member of the Corps of Instructors or was not an officer or a member of the Corps of Instructors immediately before his transfer from the Regular Force to the service of a Scheduled Government; and

(*b*) was appointed to the Regular Force on transfer from the service of a Scheduled Government or was transferred from the Regular Force to the service of a Scheduled Government; and

(*c*) whose total service amounts to two years or more;

dies, there shall be paid and distributed amongst his widow (if any), child or children (if any) and any other dependants (if any) in accordance with the directions of the Commander, a gratuity calculated as follows:

$$\frac{KA \times e}{120} C.$$

(2) Subject to the provisions of Part I, if a person who is not an officer and who was not appointed to the Regular Force on transfer from the service of a Scheduled Government dies, there shall be paid and distributed amongst his widow (if any), child or children (if any) and other dependants (if any) in accordance with the directions of the Commander, a gratuity calculated as follows:

$$\frac{KA \times d}{120}.$$

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(3) Subject to the provisions of Part I, if any person who has retired from the Regular Force and who was not an officer or a member of the Corps of Instructors dies, and the amount paid to him in respect of commuted pension under the provisions of Part VII and by way of periodical payments of the pension awarded to him under the provisions of Part III, is less than the amount which would have been payable under subregulation (1) or (2) had he died on his last day of total service or pensionable service, as the case may be, then the balance shall be paid and distributed amongst his widow (if any), child or children (if any) and other dependants (if any) in accordance with the directions of the Commander.

Pensions for widows of officers and members of Corps of Instructors

37. (1) Subject to the provisions of Part I and of this regulation, if-

(*a*) a former Federal officer; or

(*b*) a former Federal Instructor; or

(*c*) any officer who was appointed to the Regular Force on transfer from the service of a Scheduled Government and whose total service amounts to ten years or more; or

(*d*) any soldier, whose total service amounts to ten years or more;

dies and leaves a spouse, there shall be paid to the spouse a pension equal to 40 per centum of the pension for which the officer would have been eligible under the provisions of paragraph (*b*) of regulation 18 had he been required to retire on the date of his death because his medical grading, as determined by a medical board, made him unsuitable for further service in the Regular Force.

(2) Subject to the provisions of Part I and of this regulation, if an officer who was not appointed to the Regular Force on transfer from the service of a Scheduled Government and whose pensionable service amounts to ten years or more, dies and leaves a spouse, there shall be paid to the spouse a pension equal to 40 per centum of the pension for which the officer would have been eligible under the provisions of paragraph (*b*) of regulation 18 had he been required to retire on the date of his death because his medical grading, as determined by a medical board, made him unsuitable for further service in the Regular Force.

(3) Subject to the provisions of Part I and of this regulation, if-

(*a*) a former Federal officer or a former Federal Instructor; or

(*b*) any officer whose total service amounts to ten years or more;

who transferred from the Regular Force to the service of a Scheduled Government dies while in the service of a Scheduled Government without a break in his total service and leaves a spouse, there shall be paid to the spouse a pension calculated as follows:

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$$\left\{ \frac{KB \times e}{600} + \frac{KB \times f \times 7}{6000} \right\} \times C.$$

Provided that this sub-regulation shall apply only to former Federal Instructors or to persons who were officers immediately before transfer to a Scheduled Government.

(4) Subject to the provisions of Part I and of this regulation, if a retired officer or a retired member of the Corps of Instructors dies and leaves a spouse, there shall be paid to his spouse a pension equal to the pension which would have been payable to the spouse under the provisions of this regulation had the deceased person died on his last day of pensionable service or total service, as the case may be.

(5) Subject to the provisions of Part I, a pension payable under this regulation shall be paid from the day following the date of death of the officer, retired officer, member of the Corps of Instructors or retired member of the Corps of Instructors, as the case may be.

(*As amended by S.I. No.* 102 *of* 1988 *and* 176 *of* 1993)

Pensions for children of officers and members of Corps of Instructors

38. (1) Subject to the provisions of Part I and of this regulation, if-

(*a*) a former Federal officer, soldier or a former Federal Instructor; or

(*b*) any officer, soldier whose pensionable service or total service, as the case may be, amounts to ten years or more; or

(*c*) any soldier, whose pensionable service or total service as the case may be, amounts, to ten years or more;

dies and leaves a spouse and children, there shall be paid in respect of his children, with effect from the day following the date of his death, a pension equal to the following percentages of the spouse's pension calculated under the provisions of regulation 37:

(i) for one child-25 per centum;

(ii) for two children-40 per centum;

(iii) for three children-50 per centum;

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(iv) for four children-60 per centum;

(v) for five or more children-66 2/3 per centum;

Provided that on the death or remarriage of the spouse pensions in respect of the children shall be at the rates specified in sub-regulation (2).

(2) Subject to the provisions of Part I and of this regulation, if-

(*a*) a retired officer or soldier; or

(*b*) a retired member of the Corps of Instructors; or

(*c*) a former Federal officer or soldier; or

(*d*) a former Federal Instructor; or

(*e*) any officer or soldier whose pensionable service or total service, as the case may be, amounts to ten years or more;

dies and leaves no spouse, but leaves children, there shall be paid in respect of the children, with effect from the day following the date of his death, a pension equal to the following percentages of the pension that would have been payable to the spouse under regulation 37, had he left one:

(i) for one child-50 per centum;

(ii) for two children-80 per centum;

(iii) for three children-100 per centum;

(iv) for four children-120 per centum;

(v) for five or more children-133 1/3 per centum.

(3) If a child dies or ceases to be a child within the meaning of these Regulations, the pension payable under this regulation shall cease or, if there are other children, shall be adjusted accordingly.

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(4) Any pension payable under this regulation shall be paid to such person or persons as shall from time to time be determined by the Pension Authority and shall, in accordance with its determination, be paid in respect of one child or apportioned between any two or more of the children.

(5) If the deceased person leaves a spouse who does not maintain or deserts or abandons a child and such person, the Pension Authority may direct that such portion of the spouse's pension as it thinks fit shall be paid to such person as it may direct and be applied by such person for the benefit of the child.

(6) Notwithstanding any other provisions contained in these Regulations, if a pension is being paid under this regulation in respect of a child-

(*a*) because of the death of the parent of the child, no further pension shall be payable under this regulation in respect of that child on the death of the step-parent of that child;

(*b*) because of the death of the step-father of that child, no further pension shall be payable under this regulation in respect of that child on the death of the father of that child.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

Gratuity payment upon death

38A. Subject to the provisions of Part VI an officer or a soldier whose pensionable service amounts to ten years or more dies and whose death in the opinion of the Commander, was not caused by any wrongful act or omission on the part of such officer or soldier in discharging his official duties, there shall of paid in addition to any other benefit under this part a gratuity equal to the officer's or soldier's annual pensionable emoluments at the date of his death and shall be paid as follows:

(*a*) where there remains a spouse but no children, to the spouse;

(*b*) where there remains any children of the deceased whether or not there also remains a spouse to such person and in such proportions as the Commander shall determine;

(*c*) where there is no spouse or child remaining, to the estate of the deceased.

(*As amended by S.I. No.* 102 *of* 1988)

PART VII

MISCELLANEOUS

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Commutation of pensions

39. An officer or a soldier who is entitled to a pension may elect before the payment of pension commences, to receive in lieu of either one-third or two-thirds of that pension, a gratuity calculated by multiplying the amount of pension to be commuted by the factor obtained from the Third Schedule appropriate to the officer's age on his last day of pensionable service or total service as the case may be:

Provided that if the portion of the pension not so commuted is less than K50 the Pension Authority may commute the whole pension.

(*As amended by S.I. No.* 102 *of* 1988

Revocation

40. The following regulations are hereby revoked:

(*a*) regulations 9, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of the Defence (Regular Force) (African Members) Regulations, 1962;

(*b*) regulations 10, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 84A, 85, 86, 87, and 88 of the Defence (Regular Force) (Officers) Regulations, 1960;

(*c*) regulations 10, 11, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 91A, 92, 93 and 94 of the Defence (Regular Force) (European Members) Regulations, 1961.

Review of pensions

41. There shall be a review of pensions at such intervals as the Pension Authority may decide.

(*As amended by S.I. No.* 102 *of* 1988, 166 *of* 1992 *and* 176 *of* 1993)

FIRST SCHEDULE

(*Regulation* 29 (3))

DEGREE OF DISABLEMENT OF AN INJURED PERSON

Item	*Nature of disablement*	*Degree of disablement per centum*
	GENERAL	
1.	Loss of hand and foot above site of Syme's amputation.	100
2.	Injury resulting in the injured person being permanently bedridden . .	100

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INJURY TO UPPER LIMB

3.	Loss of both hands or loss of both arms at higher sites	100
4.	Loss of remaining arm by an injured person who has previously lost one arm	100
5.	Loss of arm at shoulder or below shoulder with stump of less than 8 inches from tip of acromion	70
6.	Loss of arm from 8 inches below tip of acromion to less than 41/2 inches below tip of olecranon	68
7.	Loss of arm 41/2 inches below the tip of olecranon	65
8.	Loss of hand at wrist	60
9.	Loss of four fingers and thumb of one hand	60
10.	Loss of four fingers on one hand	35
11.	Loss of thumb:	
	(*a*) both phalanges	25
	(*b*) one phalanx	10
12.	Loss of index finger:	
	(*a*) three phalanges	10
	(*b*) two phalanges	8
	(*c*) one phalanx	4
	(*d*) tip and nail, no bone	2
13.	Loss of middle finger:	
	(*a*) three phalanges	6
	(*b*) two phalanges	4
	(*c*) one phalanx	2
	(*d*) tip and nail, no bone	1
14.	Loss of ring finger:	
	(*a*) three phalanges	5
	(*b*) two phalanges	4
	(*c*) one phalanx	2
	(*d*) tip and nail, no bone	1
15.	Loss of little finger:	
	(*a*) three phalanges	4
	(*b*) two phalanges	3
	(*c*) one phalanx	2
	(*d*) tip and nail, no bone	1
16.	Loss of metacarpals:	
	(*a*) first or second (additional)	3
	(*b*) third, fourth or fifth (additional)	2
17.	Ankylosis in optimum position:	
	(*a*) shoulder	35
	(*b*) elbow	35
	(*c*) wrist	25

18. Notwithstanding the foregoing provisions of this Schedule-

(*a*) in the case of a right-handed injured person, an injury to the left arm or hand, and in the case of a left-handed injured person an injury to the right arm or hand, shall be rated at 90 per centum of the above percentages;

(*b*) the loss of the thumb and four fingers of one hand shall be equivalent to the loss of a hand;

(*c*) when there are two or more injuries to the hand, the following basis of computing the degree of disablement shall be adopted and for this purpose a thumb shall be regarded as a finger:

(i) where two fingers have been injured, the sum total of the percentages for each finger shall be increased by 20 per centum of such sum total;

(ii) where three fingers have been injured, the sum total of the percentages for each finger shall be increased by 30 per centum of such sum total;

(iii) where four fingers have been injured, the sum total of the percentages for each finger shall be increased by 40 per centum of such sum total.

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INJURY TO LOWER LIMB

19.	Loss of both feet above site of Syme's amputation or loss of both legs at higher sites	100
20.	Loss of remaining leg by an injured person who has previously lost one leg	100
21.	Loss of leg at hip or below hip with stump not exceeding 5 inches in length measured from tip of great trochanter	70
22.	Loss of leg below hip with stump exceeding 5 inches in length measured from tip of great trochanter but not beyond middle thigh	60
23.	Loss of leg below middle thigh but not more than 4 inches below knee	50
24.	Loss of leg below knee with stump exceeding 4 inches	30
25.	Modified Syme's operation:	
	(*a*) one foot	25
	(*b*) two feet	70
26.	Loss of foot at tarso-metatarsal joint	25
27.	Loss of all toes of both feet proximal to the proximal interphalangeal joint	25
28.	Loss of all toes of both feet distal to the proximal inter- phalangeal joint	15
29.	Loss of all toes of one foot proximal to the proximal inter- phalangeal joint	15
30.	Loss of all toes of one foot distal to the distal inter-phalangeal joint	10
31.	Loss of great toe:	
	(*a*) both phalanges	5
	(*b*) one phalanx	2
32.	Loss of toe other than great toe if more than one toe lost, each	1
33.	Ankylosis in optimum position:	
	(*a*) hip	50
	(*b*) knee	25
	(*c*) ankle	15

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INJURY TO SIGHT

34.	Total loss of sight		100
35.	Loss of remaining eye by an injured person who previously had the sight of only one eye		100
36.	Loss of one eye, the other eye being normal		30
37.	Total loss of vision of one eye, the other eye being normal		50
38.	Other degrees of defective vision based on the visual defect as measured after correction with glases:		
	When best visual acuity is-		
	in one eye-	other eye-	
	6/6 or 6/9	6/24	15
	6/6 or 6/9	6/36	20
	6/6 or 6/9	6/60	20
	6/6 or 6/9	3/60	20
	6/12	Nil	30
	6/18	6/18	15
	6/18	6/24	30
	6/18	6/36	40
	6/18	6/60	40
	6/18	3/60	40
	6/18	Nil	50
	6/24	6/24	30
	6/24	6/36	40
	6/24	6/60	50
	6/24	3/60	50
	6/24	Nil	70
	6/36	6/36	50
	6/36	6/60	60
	6/36	3/60	60
	6/36	Nil	70
	6/60	6/60	80
	6/60	3/60	80
	6/60	Nil	90
	3/60	3/60	80
	3/60	Nil	90
	Nil	Nil	100

INJURY TO HEARING

39.	Total deafness in both ears	50
40.	Shout not audible at a distance of more than 3 feet	40
41.	Conversational voice not audible at a distance of more than 1 foot	30
42.	Conversational voice not audible at a distance of more than 3 feet	20
43.	Conversational voice not audible at a distance of more than 6 feet	10
44.	Conversational voice not audible at a distance of more than 9 feet:	
	(*a*) one ear totally deaf	7
	(*b*) otherwise, less than	7

45. The degree of disablement indicated opposite items 40 to 44, both inclusive, shall be in respect of both ears used together.

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SECOND SCHEDULE

(*Regulation* 29 (10))

CALCULATION OF THE CAPITALISED VALUE OF A PENSION

The capitalised value of a pension shall be determined by multiplying the amount of the pension by the relevant factor shown in the following table according to the age of an injured person on his birthday following the date concerned:

Age next birthday	*Factor*
Under 20 years	16.00
20 years or more but less than 25 years	15.50
25 years or more but less than 30 years	15.00
30 years or more but less than 35 years	14.50
35 years or more but less than 40 years	14.00
40 years or more but less than 45 years	13.00
45 years or more but less than 50 years	12.00
50 years or more but less than 55 years	11.00
55 years or more but less than 60 years	10.00
60 years or more but less than 65 years	8.50
65 years or more but less than 70 years	7.00

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THIRD SCHEDULE

(*Regulation* 39)

COMMUTATION OF PENSION FACTORS

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SINGLE CASH PAYMENT IN COMMUTATION OF PENSION OF K1 (ONE KWACHA) PER ANNUM

Nearest Half-Age	Cash Payment Male	Cash Payment Female	Nearest Half-Age	Cash Payment Male	Cash Payment Female
Up to 2020	34.98	35.66	48	26.64	28.76
20.5	34.88	35.58	48.5	26.40	28.56
21	34.78	34.48	49	26.16	28.38
21.5	34.68	35.40	49.5	25.92	28.18
22	34.58	35.30	50	25.68	28.00
22.5	34.48	35.22	50.5	25.44	27.80
23	34.38	35.12	51	25.18	27.60
23.5	34.28	35.04	51.5	24.68	27.38
24	34.16	34.94	52	24.42	26.18
24.5	34.06	34.86	52.5	24.42	26.96
25	33.94	34.76	53	24.18	26.74
25.5	33.84	36.66	53.5	23.92	26.52
26	33.72	34.56	54	23.66	26.30
26.5	33.60	34.46	54.5	23.40	26.06
27	33.40	34.36	55	23.14	25.84
27.5	33.36	34.26	55.5	25.86	25.58
28	33.24	34.16	56	22.60	25.34
28.5	33.12	34.26	56.5	22.32	25.10
29	33.00	33.96	57	22.06	24.84
30	32.76	33.74	58	21.52	24.34
30.5	32.62	33.64	58.5	21.24	24.00
31	32.50	33.54	59	20.96	23.80
31.5	32.36	33.42	59.5	20.68	23.52
32	32.24	33.30	60	20.40	23.26
32.5	32.10	33.20	60.5	20.12	22.98
33	31.96	33.00	61	19.84	22.70
33.5	31.82	32.96	61.5	19.56	22.40
34	31.68	32.84	62	19.28	22.12
34.5	31.54	32.72	62.5	18.98	21.82
35	31.40	32.60	63	18.70	21.52
35.5	31.24	32.48	63.5	18.42	21.22
36	31.10	32.36	64	18.12	20.92
36.5	30.94	32.24	64.5	17.84	20.60
37	30.80	32.10	65	17.56	20.30
37.5	30.64	31.98	65.5	17.26	19.98
38	30.48	31.84	66	16.96	19.66
38.5	30.32	31.72	66.5	16.68	19.34
39	30.14	31.58	67	16.38	19.02
39.5	29.98	31.44	67.5	16.10	18.70
40	29.82	31.30	68	15.50	18.06
40.5	29.64	31.16	63.5	15.50	18.06
41	29.46	31.02	69	15.20	17.72
41.5	29.28	30.88	69.5	14.92	17.40
42	20.19	30.72	70	14.62	17.00
42.5	29.10	30.58	70.5	14.32	16.72
43	28.92	30.42	71	14.02	16.38
43.5	28.52	30.28	71.5	13.72	16.06
44	28.34	30.12	72	13.42	15.72
44.5	28.14	29.96	72.5	13.12	15.38
45	27.94	29.80	773	12.82	15.04
45.5	27.72	29.62	73.5	12.54	14.72
46	27.52	29.46	74.	12.24	14.38
46.5	27.30	29.28	74.5	11.96	14.04
47	27.08	29.12	75	11.68	13.70
47.5	26.86	28.94			

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SECTION 131-THE DEFENCE FORCE (PROCEDURE) RULES

Statutory Instrument
68 *of* 1964

Rules by the President

PART I

PRELIMINARY

1. These Rules may be cited as the Defence Force (Procedure) Rules. Title

2. In these Rules, unless the context otherwise requires- Interpretation

"convening a fresh court" includes dissolving the existing court;

"member", when used in relation to a court-martial, does not include the president;

"special finding" means, when used in relation to-

(*a*) section *ninety-seven* of the Act, any finding which a court-martial may make in accordance with that section;

(*b*) section *one hundred and eleven* of the Act, a finding in accordance with that section;

(*c*) rule 65 (3), a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

PART II

ARREST AND AVOIDANCE OF DELAY

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3. (1) When a person is detained by military authority in arrest, his commanding officer shall, unless it is impracticable, within forty-eight hours of becoming aware that he is so detained, have such person brought before him, inform him of the charge against him and begin to investigate it.

Avoidance of delay by commanding officers in investigating charges

(2) Every case of such a person being detained in arrest beyond such period of forty-eight hours without such investigation having begun shall be reported by his commanding officer to higher authority.

4. The report required by subsection (2) of section *seventy-eight* of the Act with regard to the necessity for further delay in bringing an accused to trial shall be in the form set out in the First Schedule and shall be signed by his commanding officer. The report shall be sent to the officer who would be responsible for convening a court-martial for the trial of the accused.

Eight-day delay reports

5. An accused shall not be held in arrest for more than seventy-two consecutive days without a court-martial being convened for his trial, unless the officer who would be responsible for convening the court-martial directs in writing that he shall not be released from arrest. When giving such a direction such officer shall state his reasons for giving it.

Arrest not to exceed 72 days without permission from higher authority

PART III

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

6. (1) Subject to sub-rules (3) and (4), when a commanding officer investigates a charge he shall first read and, if necessary, explain the charge to the accused and shall then-

Methods of investigating charges

(*a*) hear the evidence himself in accordance with rule 7; or

(*b*) cause the evidence to be reduced to writing in accordance with sub-rule (2):

Provided that-

(i) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;

(ii) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7; and

(iii) before he submits to higher authority a charge against an officer or warrant officer or remands a non-commissioned officer, private soldier or civilian for trial by court-martial, he shall cause the evidence to be reduced to writing.

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(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9:

Provided that a summary of evidence must be taken if-.

(i) the maximum punishment for the offence with which the accused is charged is death; or

(ii) the accused, at any time before the charge against him is referred to higher authority in accordance with rule 12, requires in writing that a summary of evidence be taken; or

(iii) the commanding officer is of opinion that the interests of justice require that a summary of evidence be taken.

(3) Where the evidence taken in accordance with sub-rule (1) discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated for the purposes of these Rules as the investigation of the added or substituted charge.

Hearing of evidence by commanding officer

7. When a commanding officer investigates a charge by hearing the evidence himself-

(*a*) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness:

Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

(*b*) the accused shall be allowed to cross-examine any prosecution witness;

(*c*) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;

(*d*) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;

(*e*) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;

(*f*) if the evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 33.

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8. A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in the First Schedule: Summary of evidence

(*a*) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;

(*b*) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if a person cannot be compelled as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

(*c*) after all the evidence against the accused has been given, the accused shall be asked: "Do you wish to say anything? You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence". Any evidence given or statement made by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence or statement shall be read over to him and corrected where necessary, and he shall sign it unless he declines to do so;

(*d*) the accused may call witnesses in his defence, who shall give their evidence orally;

(*e*) neither the accused nor the witnesses for the defence shall be subject to cross-examination;

(*f*) the evidence of each witness (other than the accused) who gives evidence orally shall be recorded in writing and, immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him;

(*g*) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;

(*h*) the oath shall be administered to each witness before he gives his evidence in accordance with rule 33 by the officer taking the summary of evidence, and to any interpreter:

Provided that-

(i) where any child of tender years, called as a witness, does not, in the opinion of the officer taking the summary, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the officer taking the summary, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

(ii) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with the provisions of this rule.

9. (1) An abstract of evidence shall be made in the following way and shall be in accordance with the forms set out in the First Schedule: Abstract of evidence

(*a*) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;

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(*b*) the accused should not be present whilst the abstract is being made;

(*c*) it shall consist of signed statements by such witnesses as are necessary to prove the charge:

Provided that if, in the case of any witness, a signed statement is not readily procurable, a precis of the evidence to be given by that witness may be included instead of a signed statement; and

(*d*) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with sub-rule (1), a copy of it shall be handed to the accused and he shall then be cautioned in the following terms:

"This is a copy of the abstract of evidence in your case; you are not obliged to say anything with regard to it unless you wish to do so, but you should read it, and, when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence."

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it. This statement, and a certificate signed by the person who recorded the statement stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall be in the form set out in the First Schedule.

Investigation before summary dealing by commanding officer

10. Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing-

(*a*) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and

(*b*) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

Dismissal of charge by commanding officer

11. (1) A commanding officer may dismiss a charge at any time during his investigation if he is of the opinion that it ought not to be proceeded with.

(2) After a commanding officer has referred a charge to higher authority in accordance with rule 12, he shall not dismiss it unless it has been referred back to him.

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Reference of charges to higher authority

12. When a commanding officer submits to higher authority a charge against an officer or warrant officer or has remanded a non-commissioned officer, a private soldier or a civilian for trial by court-martial, he shall send to higher authority-

(*a*) a copy of the charge on which the accused is held;

(*b*) a draft charge sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial;

(*c*) the summary or abstract of evidence;

(*d*) a statement of the character and service record of the accused; and

(*e*) a recommendation as to how the charge should be proceeded with.

PART IV

PREPARATION OF CHARGE SHEETS AND FRAMING OF CHARGES

Charge sheets

13. (1) A charge sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form, or are part of, a series of offences of the same or similar character:

Provided that charges under paragraph (*a*) of subsection (1) of section *forty-two*, paragraph (*a*) of section *forty-three*, paragraphs (*a*) and (*c*) of section *fifty-one* (where the charge is connected with a charge under either of the before-mentioned paragraphs) or section *sixty-one* of the Act may be included in any charge sheet, notwithstanding that other charges in that charge sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

(2) Every charge sheet shall in its layout follow the appropriate illustration given in the Second Schedule.

(3) The commencement of each charge sheet shall be in the appropriate form set out in the Second Schedule and shall state the number rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to military law under the Act or otherwise liable to trial by court-martial.

Charges

14. (1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges but in no case shall they be charged in the alternative in the same charge. When charges are laid in the alternative they should be set out in order of gravity, commencing with the most serious.

(3) Each charge shall consist of two parts, namely:

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(*a*) the statement of the offence; and

(*b*) the particulars of the act, neglect or omission constituting the offence.

(4) The statement of an offence, if it is not a civil offence, shall be in the appropriate form set out in the Second Schedule; if it is a civil offence, in such words as sufficiently describe that offence.

(5) The particulars shall state-

(*a*) such circumstances respecting the alleged offences as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;

(*b*) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a less degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

Joint charges

15. (1) Any number of accused may be charged jointly in one charge for an offence committed by them jointly.

(2) When so charged any one or more of such accused may at the same time be charged on the same charge sheet with any other offence alleged to have been committed by him or them individually or jointly:

Provided that such charges could, if the accused to whom they relate had been tried separately, have been included under rule 13 (1) in the same charge sheet as the other charges against him.

Construction of charge sheets and charges

16. In the construction of a charge sheet or charge there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together.

Action by higher authority on a receipt of a charge

17. When a higher authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or himself convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that that authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send to the appropriate superior authority or other officer concerned the documents mentioned in rule 12 together with his own recommendation as to how the case should be proceeded with.

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PART V

INVESTIGATION OF, AND SUMMARY DEALINGS WITH, CHARGES BY AN APPROPRIATE SUPERIOR AUTHORITY

Documents to be given to officers and warrant officers dealt with summarily

18. An appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than twenty-four hours before the charge is so investigated and dealt with, a copy of the charge sheet containing the charge on which he will be so dealt with and a copy of the summary or abstract of evidence.

Investigation of, and summary dealing with, charges against officers and warrant officers

19. When an appropriate superior authority investigates and deals summarily with a charge-

(*a*) he shall first read the charge to the accused;

(*b*) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them. If the witnesses against the accused do not give their evidence orally, the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;

(*c*) the accused in his defence may produce evidence as to the facts of the case and, in mitigation of punishment, as to his character;

(*d*) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;

(*e*) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 33;

(*f*) when an appropriate superior authority awards the punishment of forfeiture of seniority of rank the award shall be in the appropriate form set out in the Fifth Schedule;

(*g*) a record shall be made of the proceedings in accordance with the form set out in the Third Schedule.

Alternative courses open to appropriate superior authority

20. An appropriate superior authority shall, if an accused elects to be tried by court-martial or the appropriate superior authority in the course of investigating a charge determines that it is desirable that the charge should be tried by court-martial, either himself convene the court-martial or refer the charge to higher authority in accordance with rule 17.

PART VI

CONVENING OF COURTS-MARTIAL

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Duties of convening officer when convening courts-martial

21. When an officer convenes a court-martial he shall-

(*a*) issue a convening order in the appropriate form set out in the Fourth Schedule;

(*b*) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them;

(*c*) if he is of opinion that charges should be put in separate charge sheets, so direct and direct the order in which they are to be tried;

(*d*) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;

(*e*) appoint the president and members of the court and any waiting members in accordance with rule 22;

(*f*) if convening a court-martial for the trial of an officer or any court-martial at which he considers there should be a judge advocate, take the necessary steps to procure the appointment of a judge advocate by request to the Vice-President;

(*g*) appoint an officer subject to service law or counsel assisted by such an officer to prosecute or detail a commanding officer to appoint an officer subject to service law to prosecute:

Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;

(*h*) appoint the date, time and place for the trial;

(*i*) send to the president the charge sheet, the convening order and a copy of the summary or abstract of evidence from which any evidence which, in his opinion, would be inadmissible under the Act at the court-martial has been expurgated;

(*j*) send to each member of the court and to each waiting member a copy of the charge sheet;

(*k*) send to the prosecutor copies of the charge sheet and convening order and the original summary or abstract of evidence together with any unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copies sent to the president;

(*l*) send to the judge advocate (if any) copies of the charge sheet, and convening order and an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the president;

(*m*) ensure that the accused is given a proper opportunity to prepare his defence in accordance with rule 24; and

(*n*) take steps in accordance with rule 90 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24:

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be, such costs, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

Appointment of president and members

22. The convening officer shall-

(*a*) appoint the president of a court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint an officer of a specified rank; and

(*b*) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of a specified rank.

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Officers under instruction

23. (1) Subject to rule 80, any officer subject to service law may, by direction of the convening officer or at the discretion of the president, remain with a court-martial throughout the proceedings as an officer under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

Preparation of defence

24. The following provisions shall apply to the defence of the accused:

(*a*) an accused who has been remanded for trial by court-martial shall be afforded a proper opportunity for preparing his defence and shall be allowed proper communication with his defending officer or counsel and with his witnesses;

(*b*) a defending officer or counsel shall be appointed to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an appointment to be made;

(*c*) if the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him;

(*d*) as soon as practicable after an accused has been remanded for trial by court-martial, and in any case not less than twenty-four hours before his trial, he shall be given-

(i) a copy of the charge sheet;

(ii) an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copies sent to the president;

(iii) notice of any additional evidence which the prosecution intends to adduce;

(iv) if the accused so requires, a list of the ranks, names and units of the president and members who are to form the court and of any waiting members;

(*e*) when an accused is given a copy of the charge sheet and of the summary or abstract of evidence in accordance with this rule, he shall-

(i) if necessary, have the charge explained to him; and

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(ii) be informed that, upon his making a written request to his commanding officer not less than twenty-four hours before his trial requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these Rules to procure the attendance of any such witness at his trial;

(*f*) when an accused is served with a copy of a statutory declaration which the prosecutor proposes to hand to the court in accordance with subsection (2) of section *ninety-eight* of the Act and rule 56, he shall be informed of his right under the said subsection to require that oral evidence shall be given in lieu of such statutory declaration;

(*g*) when it is intended to try two or more accused jointly notice of this fact shall be given to each such accused when he is given a copy of the charge sheet. Any such accused may, before trial, by written notice to the convening officer, claim to be tried separately on the grounds that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall, if he is of opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately;

(*h*) when a charge sheet contains more than one charge, the accused may, before trial, by written notice to the convening officer, claim to be tried separately on any charge in that charge sheet on the grounds that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

PART VII

ASSEMBLY AND SWEARING OF COURT

Preliminary matters to be considered by court and beginning of trial

25. (1) Upon a court-martial assembling, the court shall, before beginning the trial, satisfy themselves in closed court-

(*a*) that the court has been convened in accordance with the Act and these Rules;

(*b*) that the court consists of not less than the legal minimum of officers;

(*c*) that the president and members are of the required rank;

(*d*) that the president and members have been duly appointed and are not disqualified under the Act;

(*e*) if there is a judge advocate, that he has been duly appointed;

(*f*) that the accused appears from the charge sheet to be subject to military law under the Act or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and

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(*g*) that each charge is on its face correct in law and framed in accordance with these Rules.

(2) (*a*) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may appoint a duly qualified waiting member to fill that vacancy.

(*b*) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(3) If the court is not satisfied on any of the matters mentioned in sub-rule (1) and is not competent to rectify such matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereupon.

(4) When the court has complied with this rule and is ready to proceed with the trial the president shall open the court and the trial shall begin.

Objections to the court

26. (1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section *ninety-one* of the Act.

(2) When a court is convened to try more than one accused, whether separately or jointly, each accused shall be given an opportunity to object to any officer of the court in accordance with sub-rule (1) and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to, the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers of the court including any officer who has been appointed by the president in accordance with sub-rule (9) in place of any officer who has retired.

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(8) When an objection to an officer is allowed, that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to (other than the president) retires and there is a duly qualified waiting member in attendance the president should immediately appoint him to take the place of the officer who has retired.

(10) The court shall satisfy themselves that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this rule.

(11) If an objection to the president is allowed the court shall report to the convening officer without proceeding further with the trial.

(12) If, as the result of the allowance of an objection to a member, there are insufficient officers available to form a court in compliance with the Act, the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

Swearing of court

27. (1) Immediately after rule 26 has been complied with, an oath shall be administered to the president and each member of the court in accordance with rule 33 and in the presence of the accused.

(2) If there is a judge advocate, the oath shall be administered by him to the president first and afterwards to each member of the court. If there is no judge advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn.

(3) A court may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if they think fit, proceed to determine that objection in accordance with rule 26, or postpone the trial of that accused and swear the court for the trial of the other accused only.

Swearing of judge advocate

28. After the court has been sworn, an oath shall be administered to the judge advocate (if any) in accordance with rule 33 and in the presence of the accused.

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29. After the court and judge advocate (if any) have been sworn, an oath shall be administered to any officer under instruction in accordance with rule 33 and in the presence of the accused.

Swearing of officers under instruction

30. (1) A competent and impartial person may be appointed at any time to act as an interpreter or shorthand writer at a trial by court-martial and before he so acts an oath shall be administered to him in accordance with rule 33 and in the presence of the accused.

Appointment and swearing of, and objection to, interpreters and shorthand writers

(2) Before a person is sworn as an interpreter or as a short-hand writer, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court thinks that the objection is reasonable, that person shall not act as interpreter or shorthand writer.

31. The accused shall have no right to object to a judge advocate, prosecutor or any officer under instruction.

No right of objection to judge advocate, prosecutor and officer under instruction

32. (1) When a court has been convened to try two or more accused separately and have been sworn in accordance with rule 27 (3), the court shall try them in the order indicated by the convening officer or, where he has given no such indication, then in such order as they think fit.

Order of trials

(2) When a court has been convened to try and accused on charges which are included in more than one charge sheet, the court shall take the charge sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as they think fit.

33. (1) An oath which is required to be administered under these Rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule:

Oaths and solemn affirmations

Provided that-

(i) if any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so:

(ii) the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 27 (2), every oath shall be administered at a court-martial by the president, a member of the court or the judge advocate.

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(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in the Sixth Schedule.

(4) The provisions of section *one hundred and one* of the Act shall apply to proceedings before a commanding officer, the taking of such summaries of evidence and proceedings before an appropriate superior authority as they apply to proceedings before a court-martial.

PART VIII

ARRAIGNMENT OF ACCUSED

Arraignment of accused

34. (1) When the court and judge advocate (if any) have been sworn the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court, he shall be required to plead separately to each charge.

(3) If there is more than one charge sheet against the accused before the court, the court shall arraign and try the accused upon the charge in the first of such charge sheets and shall announce their finding thereon and, if the accused has pleaded guilty, comply with sub-rules (1) and (2) of rule 44 before they arraign him upon the charge in any subsequent charge sheet.

Plea to the jurisdiction of the court

35. (1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court. If he does so-

(*a*) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(*b*) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea they shall adjourn and report to the convening officer.

(3) When a court report to the convening officer under this rule, the convening officer shall-

(*a*) if he approves the decision of the court to allow the plea, dissolve the court;

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(*b*) if he disapproves the decision of the court-

(i) refer the matter back to the court and direct them to proceed with the trial; or

(ii) convene a fresh court to try the accused.

Objection to charge

36. (1) An accused before pleading to a charge may object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules, and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the court uphold the objection they shall either amend the charge, if permissible under rule 82, or adjourn and report to the convening officer:

Provided that if there is another charge or another charge sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall-

(*a*) if he approves the decision of the court to allow the objection-

(i) dissolve the court; or

(ii) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(iii) amend the charge to which the objection relates, if permissible under rule 83, and direct the court to try it as amended;

(*b*) if he disapproves the decision of the court to allow the objection-

(i) direct the court to try the charge; or

(ii) where there is another charge or charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(iii) convene a fresh court to try the accused.

Plea in bar of trial

37. (1) An accused before pleading to a charge may offer a plea in bar of trial in reliance upon section *one hundred and twenty-one* or *one hundred and twenty-three* of the Act. If he does so-

(*a*) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(*b*) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea they shall adjourn and report to the convening officer:

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Provided that if there is another charge or another charge sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall-

(*a*) if he approves the decision of the court to allow the plea-

(i) dissolve the court; or

(ii) where there is another charge or charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charges or charge sheet only;

(*b*) if he disapproves the decision of the court to allow the plea-

(i) direct the court to try the charge; or

(ii) where there is another charge or another charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(iii) convene a fresh court to try the accused.

Application by an accused at a joint trial to be tried separately

38. Where two or more accused are charged jointly, any one of the accused may, before pleading to the charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court are of opinion that the interests of justice so require, they shall allow the application and try separately the accused who made it.

Application by an accused at a trial to have a charge tried separately

39. Where a charge sheet contains more than one charge the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court are of opinion that the interests of justice so require, they shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge sheet.

Pleas to the charge

40. (1) After any pleas under rules 35 and 37, any objection under rule 36, and any applications under rules 38 and 39, have been dealt with, the accused shall be required (subject to sub-rule (2)) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section *ninety-seven* of the Act to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where they could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 65, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

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Acceptance of pleas of guilty

41. (1) If an accused pleads guilty to a charge under either sub-rule (1) or (2) of rule 40, the president or judge advocate shall, before the court decide to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either sub-rule (1) or (2) of rule 40 if-

(*a*) the court are not satisfied that the accused understands the nature of the charge or the effect of his plea;

(*b*) the president, having regard to all the circumstances, considers that the accused should plead not guilty; or

(*c*) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under rule 40 (2), a court shall also not accept the plea unless the convening officer concurs and they are satisfied of the justice of such course. The concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under either sub-rule (1) or (2) of rule 40 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When a court are satisfied that they can properly accept a plea of guilty under either sub-rule (1) or (2) of rule 40, they shall record a finding of guilty in respect thereof.

Pleas on alternative charges

42. (1) When an accused pleads guilty to the first of two or more alternative charges, the court, if they accept the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the court may-

(*a*) proceed as if the accused had pleaded not guilty to all the charges; or

(*b*) with the concurrence of the convening officer (which may be signified by the prosecutor), record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge sheet. Where the court record such findings, the prosecutor shall, before the accused is arraigned on it, withdraw any charge which is alternative to the charge of which the court have found the accused guilty and which is placed after it in the charge sheet.

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PART IX

PROCEDURE AFTER RECORDING A FINDING OF GUILTY

Order of trial where pleas of guilty and not guilty

43. After the court have recorded a finding of guilty, if there is no other charge in the same charge sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge sheet, they shall proceed with the trial as directed by rule 44. If there is another charge in the charge sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge sheet, the court shall not comply with rule 44 until after they have dealt with such other charge or tried such other accused and have announced and recorded their finding in respect thereof.

Procedure on finding of guilty after plea of guilty

44. (1) After the court have recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to rule 43, read the summary or abstract of evidence to the court or inform the court of the facts contained therein:

Provided that if an expurgated copy of the summary or abstract was sent to the president, the prosecutor shall not read to the court those parts of the summary or abstract which have been expurgated or inform the court of the facts contained in those parts, and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

(3) After sub-rules (1) and (2) have been complied with, the accused may-

(*a*) adduce evidence of character in mitigation of punishment; and

(*b*) address the court in mitigation of punishment.

(4) After sub-rule (3) has been complied with, the court shall proceed as directed in sub-rules (1), (2), (3) and (4) of rule 70.

PART X

CHANGES OF PLEA

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Changes of plea

45. (1) An accused who has pleaded not guilty may, at any time before the court close to deliberate on their finding, withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 40 (2)) and in such case the court shall, if they are satisfied that they can accept the accused's changed plea under these Rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 44.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under sub-rule (2), they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 42, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

PART XI

PROCEDURE ON PLEAS OF NOT GUILTY

Application for adjournment of trial after plea of not guilty

46. After a plea of not guilty to any charge has been entered-

(*a*) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these Rules relating to procedure before trial have not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence;

(*b*) if the accused applies for an adjournment-

(i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;

(*c*) the court may grant an adjourment if they think the interests of justice so require.

Case for prosecution

47. (1) The prosecutor may, if he desires, and shall, if required by the court, make an opening address explaining the charge, where necessary, and the nature and general effect of the evidence which he proposes to adduce.

(2) The witnesses for the prosecution shall then be called and give their evidence.

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48. If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused, notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused a reasonable time before the evidence is adduced. If such evidence is adduced without such notice or particulars having been given, the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

Calling of witnesses whose evidence is not contained in the summary or abstract of evidence

49. The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the summary or abstract of evidence nor a witness whom he has notified the accused that he intends to call under rule 48, but if the prosecutor does not intend to call such a witness to give evidence he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires, and if the witness is available.

Notice to an accused that a witness will not be called by prosecutor

PART XII

CALLING AND EXAMINATION OF WITNESSES

50. Save as is otherwise provided by the Act, an oath shall be administered to each witness in accordance with rule 33 before he gives evidence and in the presence of the accused.

Swearing of witness

51. During a trial a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence, the court may direct the witness to withdraw during such discussion.

Exclusion of witnesses from court

52. (1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

Examination of witnesses

(2) The person examining a witness shall put his question to the witness orally and unless an objection is made by the witness, court, judge advocate, prosecutor or by the accused, the witness shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

53. (1) The president, the judge advocate and, with permission of the president, any member of the court may put questions to a witness.

Examination of witnesses by court

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(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

54. (1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may ask for the record to be corrected or explain the evidence which he has given. If any such correction is made or explanation given, the prosecutor and the accused may put such questions to the witness respecting the correction or explanation as seem proper to the court.

Reading back of evidence to witnesses

(2) When a shorthand writer is employed it shall not be necessary to comply with sub-rule (1), if, in the opinion of the court and the judge advocate (if any), it is unnecessary to do so:

Provided that if any witness so demands, sub-rule (1) shall be complied with.

55. (1) The court may, at any time before they close to deliberate on their finding or, if there is a judge advocate, before he begins to sum up, call a witness or recall a witness, if in the opinion of the court it is in the interests of justice to do so. If the court call a witness or recall a witness under this rule, the prosecutor and the accused may put such questions to the witness as seen proper to the court.

Calling of witnesses by court and recalling of witnesses

(2) The prosecutor and the accused may, at any time before the court close to deliberate on their finding or, if there is a judge advocate, before he begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

56. A statutory declaration which is admissible in accordance with the provisions of section *ninety-eight* of the Act shall be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

Statutory declarations

PART XIII

SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASES

57. (1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge. If the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

Submission of no case to answer and power of court to stop a case

(2) The court shall not allow the submission unless they are satisfied that-

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(*a*) the prosecution has not established a *prima facie* case on the charge as laid; and

(*b*) it is not open to them on the evidence adduced to make a special finding under either section *ninety-seven* of the Act or rule 65 (3).

(3) If the court allow the submission they shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith; if the court disallow the submission they shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if they do so they shall also announce such finding in open court forthwith.

PART XIV

CASE FOR THE DEFENCE AND SUMMING UP BY JUDGE ADVOCATE

Explanation to accused of his rights when making his defence

58. (1) After the close of the case for the prosecution, the president or judge advocate (if any) shall explain to the accused that-

(*a*) if he wishes, he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either; and

(*b*) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate (if any), but that, if he makes a statement without being sworn, no one will be entitled to ask him any questions; and

(*c*) whether he gives evidence or makes a statement or remains silent, he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the president or judge advocate has complied with sub-rule (1), he shall ask the accused if he intends to give evidence on oath or to make a statement without being sworn and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself, he may make an opening address outlining the case for the defence before the evidence for the defence is given.

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59. (1) After rule 58 has been complied with, the witnesses for the defence (if any) shall be called and give their evidence. — Evidence for the defence

(2) Rules 50, 51, 52, 53, 54, 55 and 56 shall apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosection.

60. After the witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen. — Evidence in rebuttal

61. (1) After all the evidence has been given, the prosecutor and the accused may each make a closing address to the court. — Closing addresses

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor unless the accused has called a witness to fact other than himself, in which case the prosecutor shall be entitled, subject to sub-rules (3) and (4), to make his closing address after the closing address by the accused.

(3) Where two or more accused are tried jointly, any one of them who has called a witness to fact other than himself shall make his closing address before the closing address by the prosecutor, and any one of them who has called no such witness shall be entitled to make his closing address after the closing address by the prosecutor.

(4) Where two or more accused are represented by the same defending officer or counsel, he may make one closing address only. If any one of the accused for whom he appears has called no witness to fact other than himself, such defending officer or counsel shall be entitled to make his closing address after the closing address by the prosecutor.

62. For the purposes of rules 58 and 61, the handing in by the accused of a statutory declaration shall be treated as the calling of a witness by him. — Handing in of a statutory declaration by the accused

63. After the closing addresses, if there is a judge advocate, he shall sum up the evidence and advise the court on the law relating to the case in open court. — Summing up by judge advocate

PART XV

DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON THE CHARGE

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64. (1) After the closing addresses, or if there is a judge advocate, after his summing up, the court shall close to deliberate on their finding on the charge. Deliberation on finding on the charge

(2) While the court are deliberating on their finding on the charge, no person shall be present except the president and members of the court and any officer under instruction.

(3) If there is a judge advocate and the court, while deliberating on their finding on the charge, require further advice from him, the court shall suspend their deliberation and ask and be given such advice in open court.

65. (1) The opinion of the president and each member as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank. Expression of opinions on, and form of, finding

(2) Save as is otherwise provided in sub-rule (4), the court shall record on every charge on which a plea of not guilty has been recorded-

(*a*) a finding of guilty or a special finding in accordance with section *ninety-seven* or subsection (2) of section *one hundred and eleven* of the Act or sub-rule (3); or

(*b*) a finding of not guilty or of not guilty and honourably acquitted of the charge.

(3) Where the court are of the opinion as regards any charge that the facts which they find to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation which they shall specify in the finding.

(4) Where the court have recorded a finding of guilty on a charge which is laid in the alternative, they shall find the accused not guilty of any charge alternative thereto which is placed before it in the charge sheet and record no finding on any charge alternative thereto which is placed after it in the charge sheet.

66. (1) The finding on each charge shall be announced in open court forthwith. Announcement of finding

(2) Every finding which requires confirmation shall be announced as being subject to confirmation.

(3) The finding shall be in the appropriate form set out in the Forth Schedule.

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PART XVI

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

67. After the court have announced their finding on any charge on which the court have entered a plea of not guilty, if there is another charge in the same charge sheet on which the court have accepted a plea of guilty, the court shall comply with sub-rules (1) and (2) of rule 44 in respect of that charge before proceeding further with the trial.

Completion of procedure on plea of guilty before deliberation on sentence

68. Where there is another charge sheet against the accused before the court, the court shall not comply with rules 69, 70 and 71 until they have arraigned and tried the accused and have complied with rule 66 and, if necessary, with rule 67, in respect of each charge in such other charge sheet unless that charge sheet is withdrawn under rule 81.

Trial of charges in other charge sheets before deliberation on sentence

69. If the findings on all charges against the accused are not guilty, the court shall order the accused to be released and the president and judge advocate (if any) shall date and sign the record of the proceedings. The president or the judge advocate shall then forward it as directed in the convening order.

Release of accused

70. (1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section *ninety-seven* of the Act or rule 65 (3), the court, before deliberating on their sentence, shall whenever possible take evidence of his age, rank and service record. Such service record shall include-

Accused's record and plea in mitigation

(*a*) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled; and

(*b*) particulars of any offence of which the accused has been found guilty during his service and which is recorded in the service books relating to the accused and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in sub-rule (1) may be given by a witness producing to the court a written statement containing a summary of the entries in the service books relating to the accused, after the witness has in court verified such statement and identified the accused as the person to whom it relates. Such statement shall be in the form set out in the Fourth Schedule.

(3) In addition to the evidence contained in the statement referred to in sub-rule (2), it shall be the duty of the prosecutor whenever possible to call as a witness an officer to give to the court any information in the possession of the military authorities regarding-

(*a*) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;

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(*b*) his general conduct in the service; and

(*c*) particulars of offences which do not appear in the statement above referred to of which the accused has been found guilty by a civil court and which are of the same general nature as that of which the accused has been found guilty by the court-martial:

Provided that the court shall not be informed of any such civil offence unless the finding is proved in accordance with section *one hundred and eighty-five* of the Act, or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with sub-rules (2) and (3) and, if the accused so requires, the service books, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service books or such certified copy, the court shall cause the form to be corrected accordingly.

(5) After sub-rules (1), (2), (3) and (4) have been complied with the accused may-

(*a*) give evidence on oath and call witnesses in mitigation of punishment and to his character; and

(*b*) address the court in mitigration of punishment.

71. (1) Before the court close to deliberate on their sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

Request by accused for other offences to be taken into consideration

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the president or judge advocate, who shall ask the accused if he admits having committed them. The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration. This list shall be signed by the president and be attached to the record of the proceedings as an exhibit.

PART XVII

DELIBERATION AND ANNOUNCEMENT ON SENTENCE

72. While the court are deliberating on their sentence no person shall be present except the president, members, judge advocate (if any) and any officer under instruction.

Persons entitled to be present during deliberation on sentence

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73. (1) The court shall award one sentence in respect of all the offences of which the accused is found guilty. The sentence shall be in the appropriate form set out in the Fifth Schedule. Sentence and recommendation to mercy

(2) The opinion of the president and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

(3) When the court have agreed to take into consideration an offence which is not included in the charge sheet, the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which they are taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty, save that they may include in their sentence a direction that such deductions shall be made from the pay of the accused as they would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

(4) The court may make a recommendation to mercy and if they do so shall record in the proceedings their reasons for making it.

74. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if they think that the interests of justice so require, postpone their deliberation upon the sentence to be awarded to any one or more of such accused until they have recorded and announced their findings in respect of all of such accused. Postponement of deliberation on sentence

75. (1) The sentence, and any recommendation to mercy together with the reasons for making it, shall be announced in open court. The sentence shall also be announced as being subject to confirmation. Announcement of sentence and conclusion of trial

(2) When sub-rule (1) has been complied with the president shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the president and judge advocate (if any) shall date and sign the record of the proceedings. The president or the judge advocate shall then forward it as directed in the convening order.

PART XVIII

GENERAL DUTIES OF THE PRESIDENT, PROSECUTOR AND DEFENDING OFFICER OR COUNSEL

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76. It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular- General duties of president

(*a*) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these Rules;

(*b*) to ensure that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;

(*c*) to ensure that an officer under instruction does not express an opinion to the court on any matter relating to the trial before the court have come to their finding, nor on sentence before the court have decided upon the sentence;

(*d*) when there is no judge advocate present, to ensure that a proper record of the proceedings is made in accordance with rule 91 and that the record of the proceedings and exhibits are properly safeguarded in accordance with rule 93.

77. (1) It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court and judge advocate with due respect and to present their cases fairly and in particular- General duties of prosecutor and defending officer or counsel

(*a*) to conform with these Rules and the practice of the civil courts in Zambia relating to the examination, cross-examination and re-examination of witnesses;

(*b*) not to refer to any matter not relevant to the charge before the court; and

(*c*) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of any of the provisions of sub-rule (1), it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

78. (1) Subject to these Rules, the following persons shall be allowed to appear as counsel at a court-martial: Counsel

(*a*) any practitioner as defined in section *two* of the Legal Practitioners Act; and Cap. 30

(*b*) any person referred to in paragraph (*a*) of subsection (2) of section *three* of the Legal Practitioners Act. Cap. 30

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(2) Any right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by rules 24 (*e*), (*g*) and (*h*), 26, 30, 35, 36, 37, 38, 39, 46, 57, 71, 79 (2) and 93 (2) may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than twenty-four hours before his trial.

PART XIX

POWERS AND DUTIES OF THE JUDGE ADVOCATE

General duties of judge advocate

79. (1) The judge advocate shall be responsible for the proper discharge of his functions to the Chief Justice.

(2) The prosecutor and the accused respectively are at all times after the judge advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial whether he is in or out of court, subject when he is in court to the permission of the court.

(3) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise. The court shall accept his advice on all such matters unless they have weighty reasons for not doing so, and if the court do not accept it their reasons for not doing so shall be recorded in the proceedings.

(4) After the closing addresses the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court close to deliberate on their finding. If in the course of deliberating on their finding the court require further advice from the judge advocate, they shall suspend their deliberation and ask and be given such advice in open court.

(5) If, when the court announce a finding of guilty or a special finding under either section *ninety-seven* of the Act or rule 65 (3), the judge advocate is of the opinion that such finding or special finding is contrary to the law relating to the case, he shall once more but not more than once more, advise the court what findings are, in his opinion, open to them. The court shall then reconsider their finding in closed court. The record of the proceedings relating to such reconsideration shall be in the form set out in the Fourth Schedule.

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(6) The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(7) The judge advocate has equally with the president the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.

(8) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 91 and responsible for the safe custody of the record of the proceedings under rule 93.

Judge advocate sitting alone

80. (1) Where there is a judge advocate and-

(*a*) during the course of a trial any question as to the admissibility of evidence arises; or

(*b*) during a joint trial an application is made by any of the accused for a separate trial; or

(*c*) an application is made by an accused that a charge should be tried separately;

the president may direct that the point at issue shall be determined by the judge advocate in the absence of the president and the members of the court and of any officer under instruction. Where the president so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The judge advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with sub-rule (1), hear the arguments and evidence relative to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary. After the judge advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this rule the proceedings before him shall form part of the proceedings of the court, and subsection (1) of section *sixty-two*, sections *sixty-three* and *ninety-two*, subsections (1) and (2) of section *ninety-three*, and sections *ninety-four*, *ninety-eight*, *ninety-nine*, *one hundred* and *one hundred and one* of the Act and rules 33, 50, 51, 52, 53, 54, 55, 56, 77, 78, 84, 85, 86, 90, 91, 92, 93, 96, 97 and 105 shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the president and members of the court, anything which is authorised by those sections and those rules to be done by the court or by the president may be done by the judge advocate when sitting alone.

(4) When a judge advocate is sitting alone in accordance with this rule and a person subject to military law commits an offence against subsection (1) of section *sixty-two* of the Act, the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

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(5) The judge advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

PART XX

WITHDRAWAL AND AMENDMENT OF CHARGE SHEETS AND CHARGES

Withdrawal of charge sheet and charges

81. A court may, with the concurrence of the convening officer (which may be signified by the prosecutor), allow the prosecutor to withdraw a charge before the accused is arraigned on any charge thereon or a charge sheet before the accused is arraigned on any charge therein.

Amendment of charge sheets and charges by court

82. (1) At any time during a trial if it appears to the court that there is in the charge sheet-

(*a*) a mistake in the name or description of the accused;

(*b*) a mistake which is attributable to a clerical error or omission;

the court may amend the charge sheet so as to correct the mistake.

(2) If at any time during a trial at which there is a judge advocate it appears to the court, before they close to deliberate on their finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under sub-rule (1) they may, if such addition, omission or alteration can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

(3) If at any time during a trial at which there is no judge advocate it appears to the court, before they close to deliberate on their finding, that in the interests of justice it is desirable to make any addition to, omission from or alteration in a charge which cannot be made under sub-rule (1), they may adjourn and report their opinion to the convening officer, who may-

(*a*) amend the charge if permissible under rule 83 and direct the court to try it as amended after due notice of the amendment has been given to the accused; or

(*b*) direct the court to proceed with the trial of the charge without amending it; or

(*c*) convene a fresh court to try the accused.

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83. When a court report to the convening officer under either rule 36 (2) or 82 (3), he may amend the charge in respect of which they have reported to him by making any addition to, omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

Amendment of charges by convening officer

PART XXI

SITTINGS AND ADJOURNMENT OF THE COURT

84. Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day and the court shall sit for such time each day as may be reasonable in the circumstances:

Sittings

Provided that the court shall not sit on Sunday, Christmas Day, or Good Friday, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

85. (1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

Adjournment

(2) A court may adjourn at any time to consult the convening officer on a point of law.

(3) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening officer.

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

86. If at any time during a trial before the court close to deliberate on their finding it appears to the court that they should, in the interests of justice, view any place or thing, they may adjourn for this purpose. When the court view any place or thing the president, members of the court, judge advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

View by court

87. (1) If after the commencement of a trial the president dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening officer.

Absence of president, members or judge advocate

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(2) If after the commencement of a trial any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum the court shall adjourn and the president shall report to the convening officer.

(3) If a judge advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court shall adjourn and report to the convening officer.

(4) If the president or a member of the court is absent during any part of a trial, he shall take no further part in it and the like steps shall be taken as if the president or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

PART XXII

INSANITY

Insanity

88. (1) If at any time during a trial it appears to the court that the accused may be unfit to stand his trial by reason of insanity, they shall take evidence as to his mental condition. If the court after considering the evidence are of the opinion that the accused is fit to stand his trial, they shall proceed with the trial; but if they are of the opinion that the accused is unfit to stand his trial by reason of insanity, they shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of their deliberation on their finding on a charge find pursuant to subsection (2) of section *one hundred and eleven* of the Act that the accused was guilty of the offence but was insane at the time of the act or omission which constituted it, their finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under either sub-rule (1) or (2), the president shall announce in open court that the proceedings are terminated and thereupon the president and the judge advocate (if any) shall date and sign the record of the proceedings. The president or judge advocate shall then forward it as directed in the convening order.

PART XXIII

INTERVIEWING AND ATTENDANCE OF WITNESSES

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Interviewing witnesses

89. (1) The prosecution shall not, without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the defence at the taking of the summary of evidence or whose attendance at the trial the accused has requested in accordance with rule 24 (*e*), or who has made a statutory declaration, a copy of which the accused has served on the prosecution in accordance with section *ninety-eight* of the Act.

(2) Except as provided in rule 49, neither the accused nor any person on his behalf shall, without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the prosecution at the taking of the summary of evidence or whose evidence is included in the abstract of evidence, or in respect of whom the prosecution have given the accused notice under rule 48 that they intend to call him as a witness at the trial, or who has made a statutory declaration a copy of which the prosecution have served on the accused in accordance with section *ninety-eight* of the Act.

Procuring attendance of witnesses

90. (1) A witness who is subject to service law may be ordered by the proper military authority to attend at the taking of a summary of evidence or a trial by court-martial.

(2) A witness who is not subject to service law may be summoned to attend-

(*a*) the taking of a summary of evidence by an order under the hand of the commanding officer of the accused; or

(*b*) a trial by court-martial by an order under the hand of an officer authorised to convene a court-martial or of a staff officer on his behalf, or, after the assembly of the court, of the president.

(3) The summons referred to in sub-rule (2) shall, when it relates to the taking of a summary of evidence, be in the appropriate form set out in the First Schedule and, when it relates to a trial by court-martial, be in the appropriate form set out in the Fourth Schedule, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

(4) At the time of service of the summons referred to in sub-rule (2) there shall be paid or tendered any expenses which, by regulations made under the Act, are payable to a witness in respect of his journey to, attendance at and return from the taking of the summary of evidence or the trial, as the case may be:

Provided that for the purpose of this sub-rule-

(i) the tender of a warrant or voucher entitling the witness to travel free of charge shall be deemed to constitute tender of his expenses in respect of any travelling authorised by the warrant or voucher; and

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(ii) the tender of a written undertaking on behalf of the Government to defray at the taking of the summary of evidence or the trial, as the case may be, any other expenses payable under such regulations in respect of the witness's attendance shall be deemed to constitute tender of these expenses.

(5) The provisions of section *one hundred* of the Act shall apply in relation to proceedings at the taking of a summary of evidence as they apply in relation to proceedings at a court-martial and when so applied they shall be construed as though the words "officer taking the summary of evidence" were substituted for the words "president of the court-martial".

PART XXIV

RECORD OF PROCEEDINGS

Record of proceedings

91. The proceedings of courts-martial shall be recorded in accordance with the following provisions:

(*a*) the proceedings of a court-martial shall be recorded in writing in accordance with the appropriate form set out in the Fourth Schedule and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge of the merits of the case;

(*b*) when there is no shorthand writer present, the evidence shall be taken down in narrative form as nearly as possible in the words used:

Provided that if the court, judge advocate, prosecutor or accused consider it necessary any particular question and answer shall be taken down verbatim;

(*c*) when an objection, submission or application is made during a trial at which there is no shorthand writer, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or judge advocate thinks fit:

Provided that if the prosecutor or accused so requests, a note shall be made of the objection, submission or application, the grounds therefor, the advice of the judge advocate (if any) thereon and the decision of the court;

(*d*) when any address by the prosecutor or the accused or summing-up of the judge advocate is not in writing and there is no shorthand writer present, it shall only be necessary to record so much of such address or summing-up as the court or judge advocate thinks proper:

Provided that if the prosecutor or accused so requests a note shall be made of any particular point in such address or summing-up;

(*e*) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but if any comment or report seems to the court to be necessary, the president may forward it to the proper military authority in a separate document.

Exhibits

92. (1) Subject to sub-rule (2), any documents or thing admitted in evidence shall be made an exhibit.

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

(3) Every exhibit shall-

(*a*) be marked with a number or letter and be signed by the president or have a label bearing a number or letter and the signature of the president affixed to it;

(*b*) be attached to or kept with the record of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with the record.

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

Custody and inspection of record of proceedings during trial

93. (1) During a trial at which there is no judge advocate, the record of the proceedings and the exhibits shall be deemed to be in the custody of the president. During a trial at which there is a judge advocate, the record and the exhibits shall be deemed to be in the custody of the judge advocate, save when he is not present in closed court when they shall be deemed to be in the custody of the president.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him, and, if proper precautions are taken for its safety, inspect any exhibit.

PART XXV

CONFIRMATION, REVISION AND PROMULGATION

Confirmation and promulgation

94. (1) When a confirming officer receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision thereon and on any sentence and any order which the court may have made under section *one hundred and twenty-six* of the Act, on the record of the proceedings in the appropriate form set out in the Fourth Schedule, and such record of his decision shall form part of the record of the proceedings.

(2) When a court have accepted a plea of guilty made under rule 40 (2), the confirming officer may confirm their finding notwithstanding that the court have accepted the plea without the concurrence of the convening officer if, in the opinion of the confirming officer, it is in the interests of justice to do so.

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(3) When a court have rejected a plea to the jurisdiction of the court or a plea in bar of trial or have overruled an objection to a charge, it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates.

(4) A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court have rejected a plea to the jurisdiction or a plea in bar of trial or have overruled an objection to the charge, because he disapproves this decision of the court, he shall, when recording his decision under sub-rule (1), state that he has withheld confirmation for this reason.

(5) If the sentence of a court-martial is informally expressed, the confirming officer may, in confirming the sentence, vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears that there is sufficient evidence or a plea of guilty under either sub-rule (1) or (2) of rule 40 to justify the finding of the court, such finding and any lawful sentence consequent thereon may be confirmed, and if confirmed, shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7) When a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof, he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be. The fact of promulgation shall be recorded on the record of the proceedings in the form set out in the Fourth Schedule. If confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

Revision

95. (1) The proceedings and decision of a court on revision shall be recorded on the record of the proceedings in the appropriate form set out in the Fourth Schedule, and the president shall date and sign such record and decision and return it to the confirming officer after it has been signed by the judge advocate (if any).

(2) When an accused is acquitted on revision, the revised finding shall be communicated to the accused in such manner as may be specified by the confirming officer.

PART XXVI

LOSS OF PROCEEDINGS

Loss of original record of proceedings before confirmation

96. (1) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy exists, such copy may, if the president or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

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(2) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and no copy thereof exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming officer to follow the course of the proceedings and to judge of the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used in lieu of the original.

Provided that where part only of the original record of the proceedings of a court-martial has been lost, and the part which remains is sufficient to enable the confirming officer to follow the course of the proceedings and judge of the merits of the case, such remaining part may, with the consent of the accused, be accepted and used as if it were the complete record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and such loss cannot be made good under either sub-rule (1) or (2), the confirming officer shall withhold confirmation and shall record his decision in the appropriate form set out in the Fourth Schedule.

Loss of original record of proceedings after confirmation

97. If after confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the president or the judge advocate to be correct, or a sufficient record of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

PART XXVII

CUSTODY OF THE RECORD AFTER CONFIRMATION AND COST OF COPIES THEREOF

Custody and preservation of record of proceedings after confirmation

98. For the purposes of subsection (1) of section *one hundred and twenty-nine* of the Act, the prescribed period during which the record of the proceedings of a court-martial shall be kept in custody of the Commander shall be six years from the conclusion of the trial.

Cost of copies of record of proceedings

99. The rate at which copies of the record of the proceedings of a court-martial shall be supplied in accordance with subsections (2) and (3) of section *one hundred and twenty-nine* of the Act shall be the estimated cost of the copy required not exceeding three ngwee for every folio of seventy-two words.

PART XXVIII

PETITIONS

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Petitions

100. (1) If an accused who has been sentenced by a court-martial wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming officer in the appropriate form set out in the Seventh Schedule.

(2) If an accused who has been sentenced by court-martial wishes to petition after promulgation against the finding, he shall present a petition to a reviewing authority at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule.

(3) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to a reviewing authority or an officer authorised to reconsider a sentence of a court-martial under section *one hundred and nine* of the Act at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule.

PART XXIX

MISCELLANEOUS PROVISIONS

Notice requiring oral evidence in lieu of statutory declaration

101. A notice under proviso (iii) to subsection (2) of section *ninety-eight* of the Act requiring that oral evidence shall be given in lieu of a statutory declaration shall be in the appropriate form set out in the Fourth Schedule.

Exceptions from Rules on account of exigencies of service

102. (1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in sub-rule (4) impracticable, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the appropriate form set out in the Fourth Schedule.

(2) Any declaration made under sub-rule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under sub-rule (1), it shall not be necessary to comply with any provision of these Rules which is mentioned in such declaration and these Rules shall be construed accordingly.

(4) The provisions of these Rules in respect of which a declaration may be made under sub-rule (1) are-

(*a*) provisos (i) and (ii) to rule 6 (2);

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(*b*) rule 8 (*b*) in so far as it relates to the accused's right to insist that a witness shall be compelled to attend the taking of a summary of evidence for cross-examination;

(*c*) rule 18 in so far as it provides that the documents specified therein must be given to the accused not less than twenty-four hours before the appropriate superior authority investigates and deals summarily with the charge;

(*d*) rule 24 paragraphs (*b*) and (*c*), and paragraph (*a*) in so far as it provides that the documents specified therein shall be given to the accused not less than twenty-four hours before his trial.

(5) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under sub-rule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Exceptions from Rules in interests of security

103. (1) When in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or, if he is not available, of the senior officer on the spot, a charge sheet, summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to an enemy, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the appropriate form set out in the Fourth Schedule specifying the document concerned.

(2) Any declaration made under sub-rule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under sub-rule (1) it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court-martial or is dealth with summarily by an appropriate superior authority, any declaration which has been made in his case under sub-rule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Deviations from forms in Schedules

104. A deviation or omission from a form or form of words set out in a Schedule to these Rules shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

Cases not covered by Rules

105. In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

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FIRST SCHEDULE

(*Rules* 4, 8, 9 *and* 90)

FORMS FOR COMMANDING OFFICERS

1. Delay Report
2. Summary of Evidence
3. Abstract of Evidence
4. Certificate to be Attached to Abstract of Evidence after it has been Handed to the Accused
5. Summons to a Witness to Attend the Taking of a Summary of Evidence

1. DELAY REPORT

Unit Address:
.....
Tel. .....

To: .....
(Convening Officer)

..... [1(7)]EIGHT-DAY DELAY REPORT

Pursuant to section 78 (2) of the Defence Act

Number, rank, name of accused .....

Date placed in arrest ..... 19 .....

Alleged Offence(s) .....

Date of Alleged Offence(s) .....

The accused is in close arrest.
open

The reasons for his retention in arrest are .....

The abstract of evidence summary { was taken on..... 19 .....
has not yet been taken because .....

[2(8)]Application for trial { was made on..... 19 .....
has not yet been made because .....

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2(9) Attorney-General { was consulted on ..... 19 ..... / has not yet been consulted because .....

2(10) Attorney-General's advice { was received on ..... 19 ..... / has not yet been received.

2(11) Action { is being taken / has been taken } { on Attorney-General's advice as follows ..... / ..... / ..... }

2(12) Date of trial { has not yet been fixed. / has been fixed as ..... 19 .....

Reasons for delay since last report .....

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

Officer commanding accused's unit

(*To be signed personally by the C.O.*)

[1] Insert "1st", "2nd", "3rd", "Final", or as the case may be.

[2] Strike out words not applicable.

---

2. SUMMARY OF EVIDENCE

Summary of evidence in the case of ..... (*number, rank, name, unit or other description*).

Taken by [the commanding officer of the accused] [..... ..... (*rank, name, unit*) on the direction of the commanding officer of the accused].

..... (*number, rank, name, unit, or other description*) having been duly sworn states- ..... witness for the prosecution

(Cross-examined by the accused)

Question 1 .....

Answer 1 .....

or

(The accused declines to cross-examine this witness.)

.....

(*Signature and rank (if any) of witness*)

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or

..... witness for the prosecution

..... (*number, rank, name, unit, or other description*).

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page ..... Having regard to ..... (*insert grounds for non-attendance of witness-see rule* 8 (*b*)) the attendance of this witness cannot in my opinion be readily procured.

[The accused does not demand the attendance of this witness for cross-examination.] [The accused demands the attendance of this witness for cross-examination but the witness is not compellable and has refused to attend.[

.....

(*Signature of officer taking the summary of evidence*)

The accused having been duly cautioned in accordance with Rule of Procedure 8 (*c*) reserves his defence.

or

The accused having been duly cautioned in accordance with Rule of Procedure 8 (*c*) elects [to give evidence on oath] [to make a statement without being sworn] and to call a witness(es).

The accused ..... (*number, rank, name, unit, or other description*) having been duly sworn states:

..... witness for the defence

.....

(*Signature and rank (if any) of accused if he signs*)

..... (*number, rank, name, unit, or other description*) having been duly sworn states:

..... witness for the defence

.....

(*Signature and rank (if any) of witness*)

Certified that Rule of Procedure 8 has been complied with.

This summary of evidence was taken by me at ..... in the presence and hearing of the accused on the ..... day(s) of ..... , 19 .....

.....

(*Signature and rank of officer taking the summary of evidence)*

_____

3. ABSTRACT OF EVIDENCE

Abstract of evidence in the case of ..... (*number, rank, name, unit, or other description*) consisting of the ..... (*insert the number of statements*) attached statements and ..... (*insert the number of precis*) precis of evidence of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [..... on the direction of the commanding officer of the accused].

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

(*Signature and rank*)

_____

4. CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

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Certified that I ..... today handed to the accused ..... the abstract of evidence relating to him dated the ..... day of ..... , 19..... and duly cautioned him in accordance with Rule of Procedure 9 (2) and that he [elected to make and sign the statement dated the ..... day of ..... , 19..... which is marked ..... and attached to this certificate] [did not make a statement].

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

(*Signature of certifying officer*)

_____

5. SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE

To .....

WHEREAS a charge has been preferred against.....

AND WHEREAS I have directed a summary of the evidence to be taken at ..... on the ..... day of ..... , 19 .....

YOU ARE PURSUANT TO SECTION 131 OF THE DEFENCE ACT AND RULE 90 OF THE DEFENCE FORCE (PROCEDURE) RULES MADE THEREUNDER HEREBY SUMMONED and required to attend as a witness the taking of the said summary of evidence at ..... on the ..... day of ..... , 19..... at ..... o'clock in the .....noon, and to bring with you the documents hereinafter mentioned, *viz*: .....
.....
.....

Whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of..... , 19 .....

.....
(*Signature, rank and unit*)
Commanding officer of the accused

SECOND SCHEDULE

(*Rules* 13 *and* 14)

CHARGE SHEETS

1. Commencement of Charge Sheets
2. Statement of Offences
3. Illustrations of Charge Sheets

1. COMMENCEMENT OF CHARGE SHEETS

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(1) (*a*) The accused ..... (*number, rank, name and unit*) { an officer / a warrant officer / a non-commissioned officer / a private soldier }

(1) (*b*) The accused..... (*number (if any), rank, name service, former unit a*
law under section 206 (1) (*b*) of the Defence Act is charged with:

(1) (*c*) The accused ..... (*number, rank, name and unit*) an officer of the { Territorial Force of the Army / Auxiliary Air Force

(1) (*d*) The accused ..... (*number, rank, name and unit*) { warrant officer / non-commissioned officer / a private soldier

{ Territorial Force of the Army / Auxiliary Air Force } { undergoing training / performing a duty / serving on the permanent staff of the { Territorial / Auxiliary } when employed in terms of section 193 of the Defence Ac

is charged with:

(1) (*e*) The accused ..... (*number, rank, name and unit*) { an officer / a warrant officer / a non-commissioned officer / a private soldier }

{ Army Reserve / Air Force Reserve } { when employed in terms of section 202 is charged with:

SECTION 207

The accused .....
being liable to trial by court-martial under section 207 (1) of the Defence Act is charged with:

SECTION 120

(1) / (2) } The accused ..... .(*name*) formerly .....
manner in which the accused was formerly subject to military law set out in accordance with the appropriate form in this Schedule
martial under the provisions of section 120 { (1) / (2) } of the Defence Ac

2. STATEMENT OF OFFENCES

Treachery, Cowardice and Offences arising out of Military Service

SECTION 29

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(1) { (a) (b (c (d) (e) (f) (g) (h) } Aiding the enemy with intent contrary to section 29 (1) { (a) (b) (c) (d) (e) (f) (g) (h) } of the

(2) Knowingly and without lawful excuse doing an act { (a) (b) (c) (d) (e) (f) (g) } of se 29 (2

(3) Negligently causing the { capture destruction } by the enemy of aircraft contrary to sect

SECTION 30

(1) (2) { } Communicating with Giving intelligence to } the enemy contrary to section 30 { (1) (2) } of the Defence Act.

SECTION 31

(1) Cowardice before the enemy contrary to section 31 (1) of the Defence Act.
(2) Including cowardice before the enemy contrary to section 31 (2) of the Defence Act.

SECTION 32

(*a*) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 32 (*a*) of the Defence Act.
(*b*) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 32 (*b*) of the Defence Act.

SECTION 33

(1) Being captured through disobedience or wilful neglect contrary to section 33 (1) of the Defence Act.

(2) { Failing to take Preventing Discouraging } a person from taking } reasonable steps after capture to rejoin the Defence Force co

SECTION 34

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(1) { Sleeping at his post when on / Sleeping when on / Drunkenness when on / Leaving his post / Absenting himself } when on { guard duty / duty controlling movement } contrary to section 34 (1)

(3) { Striking / Using force against / Compelling a person on } a person on { guard duty / duty controlling movement } { guard duty / duty controlling movement } to let a person pass

SECTION 35

(*a*) (*b*) (*c*) Looting contrary to section 35 { (*a*) (*b*) (*c*) } of the Defence Act.

Mutiny and Insubordination

SECTION 36

{ } contrary to section 36 (1) (*a*) of the Defence Act.

(1) with violence { relating to the enemy }

(2)

(1) (*a*) Mutiny { with violence relating to the enemy } contrary to section 36 (1) (*b*) of the Defence A

(1) (*b*) Incitement to mutiny { with violence relating to the enemy } contrary to section 36 (1) (*b*) of the Defence A

(2) { Mutiny / Incitement to mutiny } contrary to section 36 (2) of the Defence Act.

SECTION 37

(*a*) Failing to suppress or prevent mutiny contrary to section 37 (*a*) of the Defence Act.
(*b*) Failing to report mutiny contrary to section 37 (*b*) of the Defence Act.

SECTION 38

(1) (*a*) { Striking / Using / Offering } violence to } a superior officer contrary to section 38 (1) (*a*) of the Defence Act.

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(1) (*b*) Using { threatening / insubordinate } language to a superior officer contrary to section 38 (1) (*b*) of the Defence Act.

SECTION 39

(1) Disobeying a lawful command with wilful defiance of authority contrary to section 39 (1) of the Defence Act.
(2) Disobeying a lawful command contrary to section 39 (2) of the Defence Act.

SECTION 40

(*a*) Obstructing a { provost officer / person exercising authority under or on behalf of a provost officer } contrary to section 40

(*b*) Refusing to assist a { provost officer / person exercising authority under or on behalf of a provost officer } contrary to section 40

SECTION 41

(1) Disobedience to standing orders contrary to section 41 (1) of the Defence Act.

Desertion, Absence without Leave, etc.

SECTION 42

(1) (*a*) Desertion contrary to section 42 (1) (*a*) of the Defence Act.

(1) (*b*) { Persuading / Procuring } a person to desert contrary to section 42 (1) (*b*) of the Defence Act.

SECTION 43

(*a*) Absence without leave contrary to section 43 (*a*) of the Defence Act.

(*b*) { Persuading / Procuring } a person to absent himself without leave contrary to section 43 (*b*) of the Defence Act.

SECTION 44

(*a*) Assisting a person to desert or absent himself contrary to section 44 (*a*) of the Defence Act.

(*b*) Failing to { report without delay / take steps to cause the apprehension of } { a deserter or absentee / a person attempting to desert or absent himself } contrary to Defenc

SECTION 45

Making a false statement to { obtain / prolong } leave contrary to section 45 of the Defence Act.

SECTION 46

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Failing to attend for military duty
Leaving a military duty without permission } contrary to section 46 of the Defence Act.

Malingering and Drunkenness

SECTION 47

(1) { (*a*) (*b*) (*c*) (*d*) } Malingering contrary to section 47 (1) { (*a*) (*b*) (*c*) (*d*) } of the Defence Act.

SECTION 48

(1) Drunkenness contrary to section 48 (1) of the Defence Act.

Offences Relating to Property

SECTION 49

(1) (*a*) { Stealing / Fraudulently misapplying / Being concerned in / Conniving at } the { stealing of / fraudulent misapplication of } { public service } property c

(1) (*b*) Receiving { public service } property contrary to section 49 (1) (*b*) of the Defence Act.

(1) (*c*) { Wilfully damaging / Being concerned in the wilful damage of } { public service } property contrary to section 49 (1) (*c*) of th

(1) (*d*) By wilful neglect damaging { public service } property by fire contrary to section 49 (1) (*d*) of the Defence Act.

(2) (*a*) { Wilfully damaging / Being concerned in the wilful damage of } { aircraft / aircraft material } contrary to section 49 (2) (*a*) of the Defen

(2) (*b*) By wilful neglect causing { damage to / the loss of } { aircraft / aircraft material } contrary to section 49 (2) (*b*

(2) (c) Without lawful authority disposing of { aircraft / aircraft material } contrary to section 49 (*c*) of the Defence Act.

(3) Causing the { sequestration by / destruction in } a neutral state of aircraft contrary to section 49 (3) of the Defence Act.

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SECTION 50

(*a*) { Stealing / Fraudulently misapplying / Being concerned in / Conniving at } the { stealing of / fraudulent misapplication of } property contrary to section 50 (*a*) of the Defenc

(*b*) Receiving property contrary to section 50 (*b*) of the Defence Act.

(*c*) { Wilfully damaging / Being concerned in the wilful damage of } property contrary to section 50 (*c*) of the Defence Act.

SECTION 51

(*a*) { Losing / Negligently damaging } { public service } property contrary to section 51 (*a*) of the Defence Act.

(*b*) By negligence { losing / damaging } { aircraft / aircraft material } contrary to section 51 (*b*) of the Defence Act.

(*c*) Being guilty of { an act / neglect } likely to cause damage to or the loss of { aircraft / aircraft material } contrary to sectior

(*d*) Negligently damaging { public service } property by fire contrary to section 51 (*d*) of the Defence Act.

(*e*) { Losing / Negligently damaging } his equipment contrary to section 51 (*e*) of the Act.

(*f*) Neglect of { an animal / a bird } contrary to section 51 (*f*) of the Defence Act.

(*g*) Making away with { a decoration granted to him / his equipment } contrary to section 51 (*g*) of the Defence Act.

Offences Relating to Billeting and Requisitioning of Vehicles

SECTION 52

(*a*) { Obtaining / Ordering / Procuring } a person to obtain } billets contrary to section 52 (*a*) of the Defence Act.

(*b*) Corruption in relation to a billeting requisition contrary to section 52 (*b*) of the Defence Act.

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(*c*) { Committing an offence against / Damaging / Damaging property in } { a person / property } in } his billets contrary 52 (*c*) of the Defence Act.

SECTION 53

{ (*a*) / (*b*) } Unlawful requisition contrary to section 53 (1) { (*a*) / (*b*) } of the Defence Act.

(1) (*c*) Corruption in relation to a requisitioning order contrary to section 53 (1) (*c*) of the Defence Act.

Flying Offences

SECTION 54

Doing an act / Neglect } in { flying / the use of aircraft / relation to { aircraft / aircraft material } } causing { loss of life / bodily injury } / likely to cause loss of life or bodily injury } to a person contra

SECTION 55

Signing a certificate relating to { aircraft / aircraft material } without ensuring its accuracy contrary to section 55 of the Defence Act.

SECTION 56

Unlawful low flying contrary to section 56 of the Defence Act.

SECTION 57

Flying an aircraft in a manner causing or likely to cause unnecessary annoyance contrary to section 57 of the Defence Act.

Offences Relating to, and by, Persons in Custody

SECTION 58

(1) (*a*) Delaying { an investigation / a trial } contrary to section 58 (1) (*a*) of the Defencce Act.

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(1) (*b*) Failing to release a person in arrest contrary to section 58 (1) (*b*) of the Defence Act.
(2) Failing to report the offence for which a person has been placed in custody contrary to section 58 (2) of the Defence Act.
(3) (*a*) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 58 (3) (*a*) of the D
(3) (*b*) Failing to hand in a report relating to a person in custody received by him as guard commander contrary to section 58 (3) (*b*) of the Defence A

SECTION 59

(1) Wilfully allowing a person to escape contrary to section 59 (1) of the Defence Act.
(2) (*a*) Releasing a person without authority contrary to section 59 (2) (*a*) of the Defence Act.
(2) (*b*) Allowing a person to escape contrary to section 59 (2) (*b*) of the Defence Act.

SECTION 60

(1) { Refusing to obey / Striking / Using / Offering } violence to { an officer who orders him into arrest contrary to section 60 (1) of the Defence Ac

(2) { Striking / Using / Offering } violence to { a person { whose duty it is to apprehend him / in whose custody he is } contrary to section 60 (

SECTION 61

Escaping from custody contrary to section 61 of the Defence Act.

Offences in Relation to Courts-martial

SECTION 62

(1) { (*a*) / (*b*) / (*c*) / (*d*) / (*e*) / (*f*) } Contempt of a court-martial contrary to section 62 (1) { (*a*) / (*b*) / (*c*) / (*d*) / (*e*) / (*f*) } of the Defence Ac

SECTION 63

(1) Making a false statement contrary to section 63 (1) of the Defence Act.

Miscellaneous Offences

SECTION 64

(1) Disclosing information contrary to section 64 (1) of the Defence Act.

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SECTION 65

Making a false answer on enlistment contrary to section 65 of the Defence Act.

SECTION 66

(1) Making a false statement contrary to section 63 (1) of the Defence Act.

(*a*) { Making / Signing / Making a false entry in a } a false } statement document contrary to section 66 (*a*) of the Defence Act.

(*b*) { Altering / Altering an entry in / Making away with / Suppressing / Defacing } a service document contrary to section 66 (*b*) of the Defence Act.

(*c*) Failing to make an entry in a service document with intent to defraud contrary to section 66 (*c*) of the Defence Act.

(*a*) Being a party to { making / signing / making a false entry in a / altering a / altering an entry in a / making away with a / suppressing a / defacing a } a false } service document } contrary t

{ failing to make an entry in a service document with intent to defraud }

SECTION 67

Scandalous conduct unbecoming the character of an officer contrary to section 67 of the Defence Act.

SECTION 68

(*a*) { Striking / Ill treating } { an officer of inferior rank / an officer of less seniority / a soldier } contrary to section 68 (*a*) of the Defen

(*b*) { Striking / Ill treating } { a warrant officer of inferior rank / a warrant officer of less seniority / a non-commissioned officer of inferior rank / a non-commissioned officer of less seniority / a private soldier } contrary to section 68 (*b*) of the Defen

SECTION 69

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Disgraceful conduct of { a crueel / an indecent / an unnatural } kind contrary to section 69 of the Defence Act.

SECTION 70

(*a*) Making a false accusation contrary to section 70 (*a*) of the Defence Act.

(*b*) { Making a false statement / Wilfully suppressing a material fact } in a complaint contrary to section 70 (*b*) of the Defence Act.

SECTION 71

Attempting to commit a military offence contrary to section 71 of the Defence Act, that is say.....
(*set out the offence*).

SECTION 72

{ An act / Conduct / Neglect } to the prejudice of good order and military discipline contrary to section 72 of the Defence Act.

Civil Offences

SECTION 73

Committing a civil offence contrary to section 73 of the Defence Act, that is to say .....
(*here describe civil offence in such words as sufficiently describe the offence*).

Territorial Force

SECTION 196

(1) { Desertion / Absence without leave } contrary to section 196 (1) of the Defence Act.

Reserve Force

SECTION 204

(1) { Desertion / Absence without leave } contrary to section 204 (1) of the Defence Act.

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CHARGE SHEET

The accused No. 4567 Private John Tembo, 1st Battalion, The Zambia Regiment, a private soldier of the Regular Force is charged with:

1*st Charge*:

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 49 (1) (*A*) OF THE DEFENCE ACT,

in that he

at Lusaka on 1st March, 1964, stole a pair of binoculars, public property.

2nd Charge (alternative to the 1st charge):

RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 49 (1) (*B*) OF THE DEFENCE ACT,

in that he

at Lusaka on 1st March, 1964, did receive a pair of binoculars, public property, knowing them to have been stolen or fraudulently misapplied.

LUSAKA,
12th March, 1964.

To be tried by Court-martial.

LUSAKA,
16th March, 1964.

CHARGE SHEET

The accused No. 2572 Corporal John Bull, a non-commissioned officer of the Territorial Force of the Army when employed in terms of section Thomas Atkins, an airman of the Air Force Reserve when employed in terms of section 202 of the Defence Act, both of Headquarters, Zambia Army,

Both accused jointly.

1*st Charge*:

COMMITTING A CIVIL OFFENCE CONTRARY TO SECTION 73 OF DEFENCE ACT, THAT IS TO SAY COMM

Contrary to Section 247 Of The Penal Code

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in that they

at Mbala on 1st March, 1964, assaulted Jack Sprat.

Corporal Bull only

2nd Charge:

STRIKING A SUPERIOR OFFICER CONTRARY TO SECTION 38 (1) (*A*) OF THE DEFENCE ACT

in that he

when on active service at Mbala on 1st March, 1964, struck No. 1234 Sergeant V. Green, 1st Battalion, The Zam

Aircraftman Atkins only

USING INSUBORDINATE LANGUAGE TO A SUPERIOR OFFICER CONTRARY TO SECTION 38 (1) (*B*) OF THE

in that he

when on active service at Mbala on 1st March, 1964, when asked by Captain J. Bloggs, Royal Army Service Corps, for his particulars rep

LUSAKA,
12th March, 1964.

To be tried by Court-martial.

LUSAKA,
16th March, 1964.

Captair

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THIRD SCHEDULE

(*Rule* 19)

RECORD OF PROCEEDINGS BEFORE AN APPROPRIATE SUPERIOR AUTHORITY

Accused's Number, Rank And Name .....
UNIT .....

1. *Question to be put to the accused by the officer dealing with the case before the charge is read.*
   Q. Have you received a copy of the charge sheet and [summary] [abstract] of evidence not less than 24 hours ago?
   A. .....
   Q Have you had sufficient time to prepare your defence?
   A. .....

2. *The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question*:
   Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?
   A. .....

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

4. *After the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused-*
   Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.
   A. .....
   Q. Do you wish to adduce any other evidence in your defence?
   A. .....

5. *If the accused elects to give evidence or to make a statement or to call witnesses, the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then: (i) consider all the evidence and determine whether the accused is guilty of the offence or not; and (ii) he determines that the accused is guilty examine and consider the accused's record of service. If he intends to award* the punishment of forfeiture of seniority of rank or of a fine or of stoppages *or the finding will involve a forfeiture of pay, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.*
   Q. Will you accept my award or do you elect to be tried by court-martial?
   A .....
   6. FINDING .....
   AWARD .....

Date ..... 19 .....

.....

(*Signature, rank and appointment of appropriate superior authority*)

_____

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FOURTH SCHEDULE

(*Rules* 21, 66, 70, 79, 90, 91, 94, 95, 96, 101, 102 and 103)

COURT-MARTIAL FORMS

1. Convening Orders
2. Declarations under Rules 102 and 103
3. Summons to a Witness to Attend a Court-martial
4. Notices Requiring Oral Evidence to be Given in lieu of a Statutory Declaration
5. Record of Proceedings of a Court-martial
6. Findings
7. Record of Reconsideration of Finding under Rule 79 (5)
8. Service Record of Accused
9. Record of Proceedings on Revision under Section 104 of the Defence Act
10. Confirmation
11. Determination by a Confirming Officer or Reviewing Authority of a Suspended Sentence and Direction that Sentences are to Run Concurrently or Consecutively
12. Direction under Section 118 (3) of the Defence Act
13. Restitution Order
14. Promulgation

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CONVENING ORDERS FOR COURT-MARTIAL

ORDERS BY .....

Commanding .....

(*Place and date*) .....

The detail of officers as mentioned below will assemble at ..... at ..... hours on the ..... day of ..... 19 ..... for the purpose of trying by court-martial the accused person(s) named in the margin.

PRESIDENT

.....

MEMBERS

.....

.....

WAITING MEMBERS

.....

*JUDGE ADVOCATE

The judge advocate has been appointed by or on behalf of the Vice-President .. ..is hereby appointed judge advocate.

* A field officer having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.

The record of the proceedings will be forwarded to .....

Signed this ..... day of ..... , 19 .....

.....

(*Signature, rank and appointment of the convening officer*)

or

.....

(*Signature, rank and appointment of the appropriate staff officer*)

Authorised to sign for .....

(*appointment held by the convening officer*)

* Strike out if not applicable.

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Declaration under Rule of Procedure 102

In the case of .....

I ..... [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the following exigencies of the service, namely ..... . render compliance with the following provisions of the Rules of Procedure ..... impracticable.

Signed at ..... this ..... day of ..... , 19 .....

.....

(*Signature*)

_____

Declaration under Rule of Procedure 103

In the case of .....

I ..... [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the ..... contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

Signed at ..... this ..... day of ..... , 19 .....

.....

(*Signature*)

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3. SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL

To.....

WHEREAS a court-martial [has been ordered to assemble at .....] [has assembled at .....] on the ..... day of ..... , 19 ..... for the trial of .....

YOU ARE PURSUANT TO SECTION 131 OF THE DEFENCE ACT AND RULE 90 OF THE DEFENCE FORCE (PROCEDURE) RULES MADE THEREUNDER SUMMONED and required to attend as a witness at the sitting of the said court at ..... on the ..... day of ..... , 19 ..... at ..... o'clock in the ..... noon and to bring with you the documents hereinafter mentioned, *viz* .... and so to attend from day to day until you shall be duly discharged; whereof you shall fail at your peril.

Given under any hand at ..... on the ..... day of ..... , 19 .....

.....

(*Signature, rank and appointment*)
An officer authorised to convene a court-martial.*
President of the court.*
Authorised to sign for .....
An officer authorised to convene a court-martial.*

*Strike out if not applicable.

_____

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4. NOTICE REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION

Notice by a commanding officer

To.....

I ..... commanding ..... hereby give notice that I require that ..... shall give oral evidence in lieu of [his] [her] statutory declaration dated ..... at your forthcoming trial by court-martial.

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

(*Signature and rank*)
Commanding officer of the accused

Notice by an accused

To ..... commanding .....

I ..... hereby give notice that I require that ..... shall give oral evidence in lieu of [his] [her] statutory declaration dated ..... at my forthcoming trial by court-martial.

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

(*Signature*)

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A PAGE 1

RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Proceedings of a ..... court-martial held at ..... on the ..... day of ..... , 19 ..... by order of ..... Commanding ..... dated the ..... day of ..... , 19.....

PRESIDENT

MEMBERS

JUDGE ADVOCATE

Trial of .....

The court comply with Rule of Procedure 25.

..... not being available owing to ..... the president appoints ..... a qualified waiting member to take his place.

The accused is brought before the court.

Prosecutor .....

Defending [officer] [counsel] .....

At ..... hours the trial begins.

The convening order is read in the hearing of the accused, marked ..... signed by the president and attached to the record.

The names of the president and members of the court are read in the hearing of the accused and they severally answer to their names.

Q Do you object to being tried by me as president, or by any of the officers whose names you have heard read?
A .....

The proceedings relating to the objection(s) are recorded on .....

_____

B PAGE 2

SWEARING

The president, members of the court and judge advocate are duly sworn.

The [following] officers under instruction [listed on page .....] are duly sworn.

Q Do you object to ..... as shorthand writer?
A. .....
.....is duly sworn as shorthand writer.
Q Do you object to ..... as interpreter?
A .....
..... is duly sworn as interpreter.

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SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under Rule of Procedure 35. The proceedings relating to his plea are recorded on page .....

The accused objects to the ..... charge(s) under Rule of Procedure 36. The proceedings relating to his objection(s) are recorded on page .....

The accused offers (*a*) plea(s) in bar of trial under Rule of Procedure 37 in respect of the charge(s). The proceedings relating to his plea(s) are recorded on page ... .

The accused ..... applies under Rule of Procedure 38 to be tried separately. The proceedings relating to his plea(s) are recorded on page .....

The accused applies under Rule of Procedure 39 to have charges ..... and ..... tried separately. The proceedings relating to his application are recorded on page .....

_____

C1 PAGE....

ARRANGEMENT

The charge sheet is read to the accused and he is arraigned on each charge.

The charge sheet is signed by the president and inserted in the record immediately before this page as page(s) .....

Q. Are you guilty or not guilty of the first charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the second charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the third charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the fourth charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the fifth charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the sixth charge against you which you have heard read?
A .....

The accused having pleaded guilty to the ..... . charge(s) Rule of Procedure 41 is duly complied with in respect of [this] [these] charge(s).

The accused' pleas to the remaining charges are recorded overleaf.

C2 PAGE .....

Q Are you guilty or not guilty of the seventh charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the eighth charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the ninth charge against you which you have heard read?
A .....
Q. Are you guilty or not guilty of the tenth charge against you which you have heard read?
A. .....
Q Are you guilty or not guilty of the eleventh charge against you which you have heard read?
A .....
Q Are you guilty or not guilty of the twelfth charge against you which you have heard read?
A. .....

D1 PAGE .....

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PROCEEDINGS ON PLEA(S) OF NOT GUILTY

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. .....

The prosecutor [makes an opening address shortly outlining the facts] [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president, marked and attached to the record].

The witnesses for the prosecution are called.

.....

being duly sworn says:

Continued on page .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (*continued*)

The prosecution is closed.

The accused submits under Rule of Procedure 57 that there is no case for him to answer in respect of the .....charge(s). The proceedings relating to this submission are recorded on pages .....

DEFENCE

Rule of Procedure 58 is complied with.

Q..... Do you apply to give evidence yourself on oath or do you wish to make a statement without being sworn?

A. .....

Q. Do you intend to call any other person as a witness in your defence?

A. .....

Q. Is he a witness as to fact or to character only?

A. .....

* { Q. Do you wish to make an opening address?
A. .....
The accused [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president, marked ..... and attached to the record].

* Strike out if accused does not intend to call witnesses as to fact, other than himself.

(*Where the accused makes a statement without being sworn*)

The accused [makes a statement, which is recorded on page .....] [hands in a written statement which is read, marked ..... and signed by the president, and attached to the record].

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(*Where evidence on oath is given for the defence*)

The witness for the defence (including the accused if sworn) are called, ... being duly sworn says:

Continued on page .....

_____

D5 PAGE .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (*continued*)

The ..... [makes a closing address which is summarised on page .....] [hands in a closing address which is read, marked ..... , signed by the president and attached to the record].

* { Final question addressed to the accused personally.
Q Is there anything further that you wish to say to the court?
A. .....
The accused makes a statement which is recorded on page .....

The court close to deliberate on sentence.

* Strike out if F1 is completed before F2.

_____

F2

PROCEEDINGS ON CONVICTION

(NOTE.-*F2 should be completed before F1 if the accused has pleaded not guilty to all charges.*)

The prosecutor calls evidence as to the accused's character and record. ..... is duly sworn.

Q. Do you produce the service record of the accused?
A. I produce. .....
Q. Have you compared it with the service books?
A. .....
Q. Do the entries on it correspond with the entries in the service books?
A. .....

The ..... is read, marked ..... , signed by the president and attached to the record.

The accused [declines] [elects] to cross-examine this witness [and the cross-examination is recorded on pages .....].

The prosecutor adduces evidence under Rule of Procedure 70 (3) which is recorded on pages .....

* { Final question addressed to the accused personally.
Q Is there anything further that you wish to say to the court?
A. .....
The accused makes a statement which is recorded on page .....

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The court close to deliberate on sentence.

* Strike out if F2 is completed before F1.

_____

SENTENCE

The court sentences the accused .....
.....
to .....

ANNOUNCEMENT OF SENTENCE

The court reopened, the accused is again brought before it.

The sentence (and recommendation to mercy) [is] [are] announced in open court: the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at ..... this ..... day of ..... , 19 .....

.....
.....

Judge Advocate President

_____

CONFIRMATION

1. For minutes of confirmation see the Fourth Schedule to the Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with Rule of Procedure 94 (7).

* { Final question addressed to the accused personally.
Q Is there anything further that you wish to say to the court?
A. .....
The accused makes a statement which is recorded on page .....

The court close to deliberate on sentence.

* Strike out if F1 is completed before F2.

_____

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PROCEEDINGS ON CONVICTION

(NOTE.-*F2 should be completed before* F*1 if the accused has pleaded not guilty to all charges*.)

The prosecutor calls evidence as to the accused's character and record, ... is duly sworn.

Q. Do you produce the service record of the accused?
A. I produce. .....
Q. Have you compared it with the service books?
A. .....
Q. Do the entries on it correspond with the entries in the service books?
A. .....

The ..... is read, marked ..... , signed by the president and attached to the record.

The accused [declines] [elects] to cross-examine this witness [and the cross-examination is recorded on pages .....].

The prosecutor adduces evidence under Rule of Procedure 70 (3) which is recorded on pages .....

* { Final question addressed to the accused personally.
Q Is there anything further that you wish to say to the court?
A. .....
The accused makes a statement which is recorded on page .....

The court close to deliberate on sentence.

* Strike out if F2 is completed before F1.

SENTENCE

The court sentences the accused .....
.....
to .....

ANNOUNCEMENT OF SENTENCE

The court reopened, the accused is again brought before it.

The sentence (and recommendation to mercy) [is] [are] announced in open court; the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at ..... this ..... day of ..... , 19 .....

.....
.....

Judge Advocate President

_____

CONFIRMATION

1. For minutes of confirmation see the Fourth Schedule to the Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with Rule of Procedure 94 (7).

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Acquittal on all charges

not guilty of [the charge] [all the charges].

_____

not guilty of [the charge] [all the charges], and honourably acquit him thereof.

Acquittal on some but not all charges

not guilty of the ..... charge(s) but is guilty of the ..... . charge(s).

not guilty of the ..... charge(s) and honourably acquit him thereof but is guilty of the ..... charge(s).

Conviction on all charges

guilty of [the charge] [all the charges].

Special findings

guilty of the ..... charge [with the exception of the words..... .....] [with the exception that .....].

_____

not guilty of the offence charged but is guilty of .....

_____

No finding on alternative charge.

guilty of the ..... charge; the court record no finding on the ..... (alternative) charge.

Where the accused is unfit to stand his trial by reason of insanity

by reason of insanity unfit to stand his trial.

Accused guilty but insane at the time when the offence was committed

guilty but insane.

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7. RECORD OF RECONSIDERATION OF FINDING UNDER RULE 79 (5)

The judge advocate advises the court that the finding(s) on the ..... charge(s) [is] [are] contrary to the law relating to the case, and that in his opinion the following finding(s) [is] [are] open to them:

.....

The court is closed for reconsideration of finding.

The court on reconsideration find that the accused is .....

The finding(s) on reconsideration [is] [are] read in open court and (with the exception of the finding(s) of "not guilty") [is] [are] announced as being subject to confirmation.

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8. SERVICE RECORD OF ACCUSED

Number *Rank* *Name* *Regiment or Corps*

....

.....

1. He was enlisted on ....., 19 ..... and commissioned on ..... , 19 .....

2. He is serving on a .....

3. His age is ..... years.

4. He is single/married/divorced/widowed and has ..... children under the age of 16 years.

5. His gross rate of pay is ..... per day, but he is .....

6. His reckonable service towards discharge or transfer to the reserve is ..... years.

7. His reckonable service towards pension, gratuity, etc., is ..... years.

8. (*a*) He is entitled to the following decorations and awards:

(*b*) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet:

9. He holds the substantive rank of ..... with seniority from ..... , 19 .....and has held the acting rank of .....continuously since ....., 19 .....

10. He has been awaiting trial for ..... days since he was first, in connection with the matters for which he is before the court, charged or placed in arrest, of which days were spent in civil custody, ... days were spent in close arrest and .....days were spent in open arrest.

11. [He is not now under sentence] [He is now under sentence of ..... beginning on ....., 19....but suspended on ....., 19 ..... and (not yet put into operation again) (put into operation on .... , 19 .....).]

12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandant of a military establishment of the following offences:

	In the last 12 months	During his service
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

13. The detail, according to his conduct sheets, of offences of which he has been convicted by court-martial or of which he has been found guilty during his service by a civil court, offences taken into consideration by such courts and offences of which he has been found guilty by an appropriate superior authority, are set out in the Schedule.

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At ..... on the ..... day of ..... at ..... hours the court reassembled by order of ..... the confirming officer for the purpose of reconsidering their finding(s) on the ..... charge(s).

Present .....
.....

The order directing the reassembly of the court and giving the reasons therefor is read, marked ..... , signed by the president and attached to the record.

The court having considered the observations of the confirming officer and the whole of the record of the proceedings do now revoke their finding(s) on the ..... charge(s) and find that the accused ..... is ..... and [adhere to their sentence] [sentence the accused to ..... in substitution for the original sentence].

or

The court having considered the observation of the confirming officer respectfully adhere to their finding(s) on the ..... charge(s) [and to their sentence] [but sentence the accused ..... in substitution for the original sentence].

or

The court having considered the observations of the confirming officer and the whole of the record of the proceedings do now revoke their finding(s) on the ..... charge(s) and find the accused ..... not guilty of [that] [those] charge(s).

Signed at .....this ..... day of ..... , 19 .....

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

Judge Advocate President

_____

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NOTE.-*These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.*

Confirmed.

_____

I confirm the court's finding(s), sentence and order under section 126 of the Defence Act but [remit .....] [commute. .....].

_____

I confirm the court's finding(s), sentence and order under section 126 of the Defence Act but mitigate the sentence so that it shall be as follows:

_____

I vary the sentence so that it shall be as follows ..... and confirm the finding and sentence as so varied.

_____

I confirm the finding(s) and sentence but [postpone the carrying out of the sentence of ..... until .....] [suspend the sentence of. .....].

_____

I confirm the finding(s) but substitute the sentence of ..... for the sentence of the court.

_____

I substitute a finding of ..... for the finding of the court and confirm the sentence but [remit .....] [commute .....]

_____

I substitute a finding of ..... for the finding of the court on the ..... charge and confirm the finding(s) of the court on the ..... charge(s) and the sentence.

_____

Not confirmed [on the grounds that .....].

_____

I confirm the finding(s) of the court on the ..... charge(s) but do not confirm their finding(s) on the ..... charge(s) (on the grounds that .....). I confirm the sentence but [remit .....] [commute .....].

_____

I refer the finding(s) and sentence to ..... for confirmation.

_____

I confirm the finding(s) of the court on the ..... charge(s) and refer the finding(s) on the..... charge(s) and the sentence to ..... for confirmation.

_____

I confirm the finding(s) of the court but refer the sentence to ..... for confirmation.

[The record] [Part of the record] of the proceedings of the ..... court-martial which tried ..... at..... on the ..... day of ....., 19 ..... having been lost I do not confirm the finding(s) of the court.

Signed at ..... the ..... day of ..... , 19 .....

.....

(*Signature, rank and appointment of*

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11. DETERMINATION BY A CONFIRMING OFFICER OR REVIEWING AUTHORITY OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY

I ..... [the confirming officer] [the reviewing authority] hereby order the accused to be committed to [imprisonment] [detention] under the sentence passed on him by the court-martial held at ..... on the ..... day of ....., 19 ..... and direct that that sentence and the sentence passed on the accused by [this court-martial] [the court-martial held at on ..... day of ..... ., 19 .....] shall run [concurrently] [consecutively].

Date ..... , 19 ....
(*Signature*)

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12. DIRECTION UNDER SECTION 118 (3) OF THE DEFENCE ACT

I ..... [confirming officer] [reviewing authority] hereby direct that the accused ..... (*number, rank, name or other description*) shall not be required to be returned to Zambia until he has served [..... months] [..... years] of the sentence of [imprisonment] [detention] passed on him.

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

.....
(*Signature*)

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In accordance with subsection..... of section 126 of the Defence Act, I ..... hereby order that ..... be [delivered] [paid] to .....

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

.....
(*Signature*)

[Confirming officer]
[Reviewing authority]

_____

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Promulgated and extracts taken at ..... (*place*)
this ..... day of ..... , 19 .....

.....
(*Signature, rank and appointment of officer making the promulgation*)

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THE SCHEDULE HEREINBEFORE REFERRED TO

No.	Rank	Name	of
Description of court or appropriate superior authority	Date and place of trial or summary dealing	Charges on which convicted or found guilt and offences taken into consideration	Sentence or order of the confirmed or award of app superior authority

I HEREBY CERTIFY that this form and schedule contain a summary of entries in the service books relating to the accused.

Signed this day of .....

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FIFTH SCHEDULE

(*Rules* 19 *and* 73)

SENTENCES

1. Sentences

2. Forfeiture of Seniority of Rank

3. Determination of a Suspended Sentence and Direction that Sentences are to Run Concurrently or Consecutively

4. Recommendation under Section 118 (3) of the Defence Act

5. Restitution Order

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1. SENTENCES

NOTE.-*The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.*

OFFICERS

To suffer death.	Death
To be imprisoned for ..... and to be cashiered.	Imprisonment and cashiering
To be cashiered.	Cashiering
To be dismissed from the Defence Force.	Dismissal
(*For form of sentence see* 2 *below*.)	Forfeiture of seniority or rank
To be fined	Fine
To be [severely reprimanded] [reprimanded].	[Severe reprimand] [Reprimand]
To be put under stoppages of pay until he has made good the sum of ..... in respect of	Stoppages

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

To suffer death.	Death
To be imprisoned for ..... and to be reduced to the ranks.	Imprisonment and reduction to the ranks
To be discharged with ignominy from the Defence Force.	Discharge with ignominy

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To be dismissed from the Defence Force (*warrant officers only*).	Dismissal
To undergo detention for ..... and to be reduced to the ranks.	Detention and reduction to the ranks
To undergo field punishment for ..... days and to be reduced to the ranks.	Field punishment and reduction to the ranks
To be reduced [to the ranks] [to the rank of .....].	Reduction to the ranks] [Reduction to .....]
(*For forms of sentence see* 2 *below*.)	Forfeiture of seniority of rank
[To forfeit ..... service.	Forfeiture of service
To be fined	Fine
To be [severely reprimanded] [reprimanded].	[Severe reprimand] [Reprimand]
To be put under stoppages of pay until he has made good the sum of ..... in respect of	Stoppages

PRIVATE SOLDIERS

To suffer death.	Death
To be imprisoned for	Imprisonment
To be discharged with ignominy from the Defence Force.	Discharge with ignominy
To undergo detention for	Detention

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To undergo field punishment for ..... days. _____ Field punishment

To forfeit ..... service. _____ Forfeiture of service

To be fined ..... _____ Fine

To be put under stoppages of pay until he has made good the sum of ..... in respect of ..... _____ Stoppages

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2. FORFEITURE OF SENIORITY OF RANK ARMY OFFICERS

To take seniority in the rank of ..... in the army and in his corps as if his appointment to that rank bore date the ..... day of ..... , 19 .....

or where the officer's rank or seniority in the army and his rank or seniority in his corps differ

To take seniority in the rank of ..... in the army as if his appointment to that rank bore date the ..... day of ....., 19 ..... , and to take seniority in the rank of ..... in his corps as if his appointment to that rank bore date the ..... day of ..... , 19 .....

_____

AIR FORCE OFFICERS

To take seniority in the rank of ..... as if his appointment to that rank bore date the..... day of ..... 19 .....

or

To take precedence in the rank held by him in the Air Force as if his name appeared ..... places lower in the Air Force List for .....

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS IN THE ARMY

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ..... , 19 .....

or

To take seniority in the rank of ..... as if his name appeared next below ..... in the ..... promotion roll serial No. ..... dated the ..... day of ..... 19 .....

_____

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS IN THE AIR FORCE

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ..... , 19 .....

_____

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3. DETERMINATION OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY

The court hereby order the accused to be committed to [imprisonment] [detention] under the sentence passed on him by the court-martial held at .....
on the ..... day of ..... , 19 .....
and direct that that sentence and the sentence on the accused by this court-martial shall run [concurrently] [consecutively].

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4. RECOMMENDATION UNDER SECTION 118 (3) OF THE DEFENCE ACT

The court recommends that the accused ..... (*number, rank, name or other description*) shall not be required to be returned to Zambia until he has served [..... months] [..... years] of his sentence.

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5. RESTITUTION ORDER

In accordance with subsection ..... of section 126 of the Defence Act,
the court hereby order that .....
be [delivered] [paid] to .....

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SIXTH SCHEDULE

(*Rule* 33)

OATHS AND AFFIRMATIONS

1. Oaths at Investigations by Commanding Officers and Appropriate Superior Authorities
2. Oaths at Court-martial
3. Scottish Oaths
4. Manner of Administering Oaths
5. Solemn Affirmations

1. OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

Witness

I swear by Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

---

2. OATHS AT COURT-MARTIAL

President and members

I swear by Almighty God that I will well and truly try the [accused] [accused persons] before the court according to the evidence, and that I will duly administer justice according to the Defence Act without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Judge advocate

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Defence Act and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial, unless thereunto required in due course of law.

Officer under instruction

I swear by Almighty God that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto required in due course of law.

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Shorthand writer

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

Witness

I swear by Almighty God that the evidence which I shall give before this court-martial shall be the truth, the whole truth, and nothing but the truth.

---

3. SCOTTISH OATHS

The form of Scottish oath shall in each case be the same as the form of oath set out above except that for the words "I swear by Almighty God" shall be substituted the words "I swear by Almighty God and as I shall answer to God at the Great Day of Judgment".

---

4. MANNER OF ADMINISTERING OATHS

Christians taking the oath shall, unless female, remove their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath. Jews shall take the oath in the same manner except that they shall wear their head-dress and hold the Old Testament in their right hand.

---

5. SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words " I (*name in full*) do solemnly, sincerely and truly declare and affirm" and for the word "swear" wherever it occurs the words "solemnly, sincerely and truly declare and affirm".

SEVENTH SCHEDULE

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(*Rule* 100)

PETITIONS

PETITION TO CONFIRMING OFFICER (BEFORE CONFIRMATION)

To the confirming officer.

I ..... having been convicted by court-martial on ..... at ..... and having been sentenced to ..... hereby petition against the finding(s) on the ..... charge(s) and the sentence on the following grounds: .....
.....

_____

PETITION TO REVIEWING AUTHORITY (AFTER PROMULGATION)

To .....

I ..... having been convicted by court-martial on ..... at ..... and having been sentenced to ..... and having had the finding(s) and sentence promulgated to me on ..... hereby petition against the finding(s) on the ..... charge(s) and sentence on the following grounds: .....
.....

Signed .....

Dated .....

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THE DEFENCE FORCE (BOARDS OF INQUIRY) RULES

ARRANGEMENT OF RULES

Rule

1 Title
2 Interpretation
3 Duties of boards
4 Matters for reference to boards
5 Deferring and staying of proceedings
6 Convening
7 Constitution
8 Assembly and procedure
9 Adjournment and reassembly
10 Witnesses
11 Persons who may be affected by the findings
12 Evidence
13. Oaths and affirmations
14. Exhibits
15. Record of proceedings
16. Entries of reports in service books
17. Free copy of proceedings
18. Revocation of Part V of Defence Forces (Discipline) Regulations, 1956

SCHEDULE-Declaration required by rule 4 of the Defence Force (Boards of Inquiry) Rules

SECTION 133-THE DEFENCE FORCE (BOARDS OF INQUIRY) RULES
Rules by the President

Statutory Instrument
61 *of* 1964

1. These Rules may be cited as the Defence Force (Boards of Inquiry) Rules — Title

2. In these Rules, unless the context otherwise requires- — Interpretation

"the authority", in relation to a board, means any Army or Air Force officer empowered by or under these Rules to convene a board;

"board" means board of inquiry;

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"civilian witness" means a person who gives evidence before a board and includes a person to whom subsection (1) of section *two hundred and seven* of the Act applies, and a civilian who is subject to service law under the Acts;

"president" means president of a board;

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

"represented" means represented by an officer or by counsel (which means any practitioner as defined in section *two* of the Legal Practitioners Act) and includes, in the case of a civilian employee in the service of the Government, representation by such person's trade union or staff association representative; and 'representative" shall be construed accordingly. Cap. 30

Duties of boards

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

Matters for reference to boards

4. (1) Subject to the provisions of these Rules, a board shall be convened with reference to-

(*a*) the absence of any person subject to military law under the Act who has been continually absent without leave for a period of not less than twenty-one days and the deficiency (if any) in the clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use, and, if satisfied that such member has absented himself without leave or other sufficient cause, the board shall make a declaration in the form prescribed in the Schedule;

(*b*) the capture of any person subject to military law under the Act by the enemy and his conduct in captivity if, on his return from captivity, the authority considers that there are reasonable grounds for suspecting-

(i) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty; or

(ii) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Defence Force; or

(iii) that having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage; and

(*c*) the death of any person where an inquiry into the death is not required to be held by any civil authority.

(2) Subject to the provisions of these Rules, a board may be convened with reference to any matter which the authority decides to refer to a board.

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Deferring and staying of proceedings

5. (1) Subject to sub-rule (2), where any matter is the subject of investigation under service law or by a civil authority, or of an inquiry under service law, or of proceedings under service law, or of proceedings in a civil court whether within or without Zambia, and-

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

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

(2) The provisions of sub-rule (1) shall not apply to the convening of a board with reference to such absence and such deficiency (if any) as are mentioned in rule 4 (1) (*a*), but, where the authority is satisfied that the absence has terminated, or where the absentee is attached to the United Kingdom Military or Air Forces and the authority is satisfied that an inquiry into the absence is being or will be held under service law, and-

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

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

Convening

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

(*a*) any officer not below the rank of colonel; or

(*b*) any officer who is acting for the time being in place of such an officer; or

(*c*) any officer commanding a unit or detachment of the Defence Force-

(i) with reference to such absence and such deficiency (if any) as are mentioned in rule 4 (1) (*a*);

(ii) if authorised by any such officer as is mentioned in paragraph (*a*), (*b*), or (*c*), with reference to any particular matter or to matters of any specified class or description.

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

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

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(*b*) the order shall specify the terms of reference of the board, and where the matter referred to the board is that mentioned in rule 4 (1) (*a*), it shall be published in military orders;

(*c*) the order may direct the board to make a declaration or recommendation and express their opinion on any question arising out of any matter referred to the board; and

(*d*) the authority may at any time revoke, vary or suspend the order.

Constitution

7. (1) Subject to sub-rule (2), a board shall consist of a president who shall be an officer subject to service law not below the rank of lieutenant. In addition, such officers or warrant officers subject to service law may be appointed as members of the board as the authority convening the board may determine.

(2) Where a board is convened with reference to such absence and deficiency (if any) as are mentioned in rule 4 (1) (*a*), the board shall consist of a president who shall be an officer not below the rank of captain subject to service law, and two members subject to service law one of whom may be a warrant officer.

(3) The authority shall appoint the president by name and each member of the board (if any), either by name or by detailing a commanding officer to appoint from persons under his command an officer of a specified rank or warrant officer.

Assembly and procedure

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

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

Adjournment and reassembly

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

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

Witnesses

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

(2) While a civilian witness is giving evidence before a board he may be represented, but, subject to the provisions of rule 11, his representative shall not be entitled to be present at any other time.

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(3) A civilian witness shall be entitled to receive the same allowance as a witness who appears before the High Court as a witness in criminal proceedings.

Persons who may be affected by the findings

11. (1) Where it appears to the authority or, if a board has been convened, either to the authority or to the president that any witness or other person, being a witness or other person subject to service law, may be affected by the findings of the board, the authority or, as the case may be, the president shall take such steps as are in his view reasonable and necessary to secure that such witness or other person has notice of the proceedings and, if he so desires, has an opportunity of being present and represented, at the sittings of the board, or at such part thereof as the authority or, as the case may be, the president may specify.

(2) Any such witness or other person as is referred to in sub-rule (1) may give evidence, question witnesses or produce any witness to give evidence on the matters which may affect him and, if he is represented, his representative may question witnesses, but a representative shall not address the board except with the permission of the president.

(3) This rule shall also apply to a witness or other person who, though not subject to service law, is in the service of the Government and may be affected in his character or professional reputation by the findings of the board.

(4) If any such witness or other person as is referred to in sub-rules (1) and (3) does not avail himself of his right to be present or to be represented at the sittings of the board, the president of the board may, and shall if requested by such person as aforesaid, ensure that, upon the conclusion of the proceedings of the board, such person as aforesaid is supplied with a copy of the record of the proceedings before such record is forwarded to the authority who convened the board, and in such event the president shall request such person as aforesaid to furnish his comments in writing thereon within a reasonable time fixed by the president. Such comments shall be attached to the record of proceedings.

Evidence

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

Oaths and affirmations

13. (1) Subject to sub-rule (3), every witness before a board shall be examined on oath:

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

(2) Subject to sub-rule (3), an oath shall be administered to any person in attendance on a board as interpreter.

(3) If-

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(*a*) a person objects to taking an oath, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or

(*b*) it is not reasonably practicable without inconvenience or without delaying the proceedings to administer an oath to a person in the manner appropriate to his religious belief;

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

(4) An oath shall be administered, or an affirmation made, before a board in the form and manner prescribed by the Defence Force (Procedure) Rules.

Exhibits

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

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

(3) Every exhibit shall-

(*a*) be marked with a number or letter and be signed by the president or have a label affixed to it bearing a number or letter and the signature of the president;

(*b*) be attached to or kept with the record of the proceedings unless, in the opinion of the board, it is not expedient to attach it to or keep it with the record.

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

Records of proceedings

15. (1) The president shall record, or cause to be recorded, the proceedings of the board in writing and in sufficient detail to enable the authority to follow the course of the proceedings.

(2) Where there is no shorthand writer present, the evidence shall be taken down in narrative form recording as nearly as possible the words used:

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

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

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

Entries of reports in service books

16. Where a board reports that a person subject to military law has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is deficiency in any clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use, a record of the report of such deficiency shall, in addition to a record of the report of such absence required under subsection (1) of section *one hundred and twenty-five* of the Act, be entered in the service books.

Free copy of proceedings

17. A person remanded for trial by court-martial in respect of any matter which has been investigated by a board shall be entitled to a free copy of the record of the proceedings of the board, but not including any report, declaration, opinion or recommendation made therein.

Revocation of Part V of Defence Forces (Discipline)Regulations, 1956

18. Part V of the Defence Forces (Discipline) Regulations, 1956, is hereby revoked.

SCHEDULE

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The Laws of Zambia

(*Rule* 4)

DECLARATION REQUIRED BY RULE 4 OF THE DEFENCE FORCE
(BOARDS OF INQUIRY) RULES

The Board declare that .....
.....
(*number, rank, name and unit*) illegally absented himself without leave (or other sufficient cause) at .....
(*station or place*) on the .....day of
..... , 19 ....., that he is still so absent, and
that on the .....
(*date on which the inventory of kit was taken*) he was deficient, and that he is still deficient of the following articles (*itemise specific articles of clothing, equipment, etc., and the value thereof*):

.....
.....

Names of President and members .....*President*
.....*Members*

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

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THE DEFENCE FORCE (REGULAR FORCE) (ENLISTMENT AND SERVICE) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Interpretation
3. Recruiting officers
4. Notice paper and attestation paper
5. Method of attestation
6. Corps of Instructors
7. Terms of enlistment
8. Re-engagement
9. Discharge
10. Transfer between units of the Regular Force
11. Warrants
12. Revocation of Part I of Defence (Regular Force) (Members) Regulations, 1962

FIRST SCHEDULE-Recruiting officers

SECOND SCHEDULE-Prescribed forms

THIRD SCHEDULE-Grounds for discharge

FOURTH SCHEDULE-Warrant

Statutory Instruments
59 *of* 1964
276 *of* 1966

Regulations by the President

Title

1. These Regulations may be cited as the Defence Force (Regular Force) (Enlistment and Service) Regulations.

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2. (1) In these Regulations, unless the context otherwise requires- Interpretation

"Commander" means and includes the Army Commander and the Air Force Commander;

"enlisted" means enlisted to serve in a unit of the Regular Force of the Defence Force and "enlist" shall be construed accordingly;

"officer in charge of records" means the officer or other person whose duty it is to maintain the records of the Army or the officer or other person whose duty it is to maintain the records of the Air Force, as the case may be.

(2) References in these Regulations to military or Army rank include references to the corresponding Air Force rank.

3. The persons specified in the First Schedule are hereby authorised to act as recruiting officers for the purposes of the Act. Recruiting officers

4. (1) The form of notice paper to be given to a person offering to enlist pursuant to section *fourteen* of the act, other than persons offering to enlist in the Corps of Instructors, shall be in Form 1 in the Second Schedule. Notice paper and attestation paper

(2) The attestation paper which all persons offering to enlist, other than persons enlisting in the Corps of Instructors, shall be required to sign in the presence of a recruiting officer shall be in Form 2 in the Second Schedule.

5. (1) The recruiting officer shall warn the person to be enlisted that if he knowingly makes any false answers to the questions contained in the attestation paper and put to him he shall be guilty of an offence and liable to be punished as prescribed in the Act. Method of attestation

(2) The recruiting officer shall then read or cause to be read to that person the questions set out in the attestation paper having previously satisfied himself that that person has received the notice paper and understands the questions put to him; the recruiting officer shall ensure that the answers are duly recorded in the attestation paper.

(3) The recruiting officer shall then ask the person to make and sign the declaration set out in the attestation paper as to the truth of his answers and shall administer to him the oath of allegiance set out in the attestation paper:

Provided that if the person objects to being sworn and states as a ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, or if it is not reasonably practicable to administer an oath to him in the manner appropriate to his religious belief, the person shall be required to make a solemn affirmation in the form set out in the attestation paper.

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(4) Upon signing the declaration and taking the oath, or, as the case may be, making the solemn affirmation, the said person shall become a member of the Regular Force of the Defence Force and subject to the Act.

(5) The recruiting officer shall, by signature, confirm on the attestation paper that the requirements of the Act and of these Regulations have been duly complied with and, in particular, that any consents required by subsection (2) of section *fourteen* of the Act have been obtained, and shall deliver the attestation paper duly dated to the officer in charge of records, which officer shall, by signing the attestation paper in the appropriate place, signify that the recruit is finally approved for service.

Corps of Instructors

6. Nothing in these Regulations shall affect persons enlisting in the Corps of Instructors who shall be enlisted and discharged upon such terms and conditions as may be prescribed from time to time.

Terms of enlistment

7. (1) The terms of service for which in accordance with subsection (2) of section *fifteen* of the Act a person who has apparently attained the age of eighteen years may be enlisted shall be a term beginning with the date of his attestation and ending with the expiration of a period of twelve years therefrom, being as to a term of seven years' service in the Regular Force, and as to the remainder a term of service in the Reserve Force:

Provided that such person who enlists in and is accepted for service as a member of aircrew in the Air Force shall be enlisted for a term of eight years in the Regular Force and four years in the Reserve Force.

(2) The term of service for which in accordance with subsection (3) of section *fifteen* of the Act a person who has not apparently attained the age of eighteen years may be enlisted shall be a term ending with the expiration of a period of twelve years, beginning with the date on which he attains the apparent age of eighteen years, being as to a term of seven years' service in the Regular Force, and as to the remainder a term of service in the Reserve Force:

Provided that such person who enlists in and is accepted for service as a member of aircrew in the Air Force shall be enlisted for a term of eight years in the Regular Force and four years in the Reserve Force.

Re-engagement

8. (1) A soldier may, on completion of seven years' service in the Regular Force, as provided in regulation 7, or within one year before completing such service, apply to be re-engaged for a further period of continuous service in the Regular Force in accordance with the provisions of section *sixteen* of the Act.

(2) A soldier who has been re-engaged for continous service in the Regular Force may, at any time after the commencement of such re-engagement, terminate his service in the Regular Force by giving to the Commander three months' notice in writing of his intention so to terminate:

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Provided that if such notice is given during a state of war, insurrection, hostilities or public emergency, he may be retained in the Regular Force in accordance with the provisions of section *seventeen* of the Act.

(3) A soldier who has been re-engaged for continuous service in the Regular Force and who terminates such service as provided in sub-regulation (2), shall be liable to serve in the Reserve Force until he reaches the age of forty-five years.

(4) Subject to the provisions of sub-regulations (5) and (6), a non-commissioned officer or private soldier who has been re-engaged for service in the Regular Force under the provisions of this regulation shall retire from the Regular Force on reaching the age of forty-five years.

(5) Notwithstanding the provisions of sub-regulation (4), the President may, in his discretion, permit a non-commissioned officer or private soldier who has been re-engaged for service in the Regular Force to continue to serve in the Regular Force after reaching the age of forty-five years for further periods, not exceeding two years at a time, until he has reached the age of fifty-five years.

(6) Notwithstanding the provisions of sub-regulation (4), the Commander may, in his discretion, permit a non-commissioned officer or private soldier who has been re-engaged for service in the Regular Force-

(*a*) to retire from the Regular Force upon completing twenty years' service in the Regular Force and provided he has reached the age of forty years; or

(*b*) to continue to serve in the Regular Force after reaching the age of forty-five years for further periods, not exceeding one year at a time, until he has reached the age of fifty years and provided he is serving and will continue to serve throughout such further periods of continuous service in a non-combatant post.

(7) Subject to the provisions of sub-regulation (8), a warrant officer who has been re-engaged for service in the Regular Force under the provisions of this regulation shall retire from the Regular Force on reaching the age of fifty years.

(8) Notwithstanding the provisions of sub-regulation (7), the President may, in his discretion, permit a warrant officer who has been re-engaged for service in the Regular Force-

(*a*) to retire from the Regular Force upon completing twenty-five years' service in the Regular Force and provided he has reached the age of forty-five years; or

(*b*) to continue to serve in the Regular Force after reaching the age of fifty years for further periods, not exceeding one year at a time, until he has reached the age of fifty-five years.

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9. (1) Subject to the provisions of subsection (2) of section *twenty-two* of the Act and notwithstanding the provisions of regulation 7, a soldier shall be entitled to claim his discharge from the Regular Force- Discharge

(*a*) at any time within three months after the date of his first attestation upon payment of a sum which shall be fixed by the Commander, but which shall not exceed forty kwacha; or

(*b*) at any time after he has completed three months' service in the Regular Force from the date of his first attestation, with the consent of the Commander, upon payment of one-half of one month's pay for each whole year of service with the Regular Force then remaining uncompleted.

(2) A soldier who is discharged from the Regular Force under the provisions of paragraph (*b*) of sub-regulation (1) and who has completed one year's service in the Regular Force shall be liable to serve in the Reserve Force for a period of five years to which shall be added the total of his service in the Regular Force remaining uncompleted at the time of his discharge.

(3) A soldier may be discharged from the Regular Force at any time during his service in such Force upon any of the grounds set out in column 1 of the Third Schedule, subject to the Special Instruction appearing opposite thereto in column 2 of the said Schedule, and, for the purposes of section *twenty-one* of the Act, the person specified opposite thereto in column 3 of the said Schedule shall be the competent military authority for the purpose specified in column 1 thereof.

(4) A soldier who is discharged under the provisions of this regulation shall be issued with a certificate of discharge signed by his commanding officer.

(5) The certificate of discharge to be issued to a soldier who is discharged shall be in Form 3 in the Second Schedule.

10. A soldier who is enlisted under the Act and appointed by the officer in charge of records to a unit may be transferred to another unit by order of the said officer. Transfer between units of the Regular Force

11. Every soldier who is promoted to the rank of warrant officer shall be issued with a warrant in the form set out in the Fourth Schedule, duly signed by the Army Commander or the Air Force Commander, as the case may be. Warrant

12. Part I of the Defence (Regular Force) (Members) Regulations, 1962, is hereby revoked. Revocation of Part I of Defence (Regular Force) (Memebers) Regulations, 1962

FIRST SCHEDULE

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(*Regulation* 3)

RECRUITING OFFICERS

All officers of the Regular Force;
The High Commissioner for Zambia in London.

SECOND SCHEDULE

PRESCRIBED FORMS

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FORM 1
(*Regulation* 4 (1))

ZAMBIA DEFENCE FORCE
NOTICE PAPER

1. This notice is to be given to a person when he offers to enlist in the Regular Force otherwise than as a member of the Corps of Instructors.
2. This notice sets out the information which you will be required to give to the recruiting officer who will attest you for service in the Regular Force; it also sets out the general conditions of engagement;
3. Under the provisions of the Defence Act, if a person knowingly makes a false answer to any question contained in an attestation paper he shall be guilty of an offence against the Act and liable to the penalty prescribed therein.

QUESTIONS TO BE PUT TO AND INFORMATION TO BE GIVEN BY THE RECRUIT BEFORE ATTESTATION

A*

1. What is your name? .....
.....
Son of .....

2. What is your age? .....years

3. What is the name of your-.....
(*a*) Tribe? .....
(*b*) Chief?.....
(*c*) District?
(*d*) Village?

4. (*a*) What is the name of your next of kin.....
and his/her relationship to you?.....
.....
.....
(*b*) What is his/her-
(i) Chief?.....
(ii) District? .....
(iii) Village? .....

B*

1. (*a*) Surname .....
(*b*) Christian names .....
.....
(*c*) Address .....
.....

2. Date and place of birth .....
.....
(Copy of birth certificate to be produced)

3. Name and address of next of kin
.....
..... Relationship.....

4. *Father*:
Names .....
Address .....
.....
Place of birth .....
Mother:
Names .....
Address .....
.....
Place of birth .....

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*Answer A or B as appropriate.

5. What is your religion? .....

6. Education:
(*a*) At what schools were you educated?

Dates	*Schools*	*Standards passed*
.....	.....	.....
.....	.....	.....
.....	.....	

(*b*) Post-school education:

Dates	*Institution*	*Qualifications*
.....	.....	.....
.....	.....	.....
.....	.....	.....

7. Trade or professional qualifications, if any:
.....
.....

8. Occupation since leaving school:

Dates	*Occupation*	*Employer*	*Reason for leaving*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

9. Present occupation

10. Name and address of employer .....
.....

11. (*a*) Are you married or single? .....
(*b*) Children:

Date of birth	*Sex*	*Names*
.....	.....	.....
.....	.....	.....
.....	.....	.....

(*c*) Date of marriage

12.. Have you served in the armed forces of this or any other territory or in any police force?.....
If so, state-

Force or unit	*Date*	*Nature of duty*	*Rank attained*	*Number*
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

13.. Are you free from debt? If not, list your creditors hereunder:

Name and address of creditor	*Amount of debt*
.....	.....
.....	.....
.....	.....

14. Have you been convicted of any criminal offence in any court of criminal jurisdiction? If so, give the following information:

Offence	*Sentence*	*Date of sentence*	*Court*	*Name convicted under*
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

15. Do you wish to enlist in the Army/Air Force? (Delete whichever is not applicable.)

16. Do you understand that though you will be appointed to a particular unit, you will be liable at any time to be transferred to any other unit if it becomes necessary?.....

17. (*a*) Have you received a Notice Paper stating the liabilities you are incurring by enlisting?.....
(*b*) Do you understand and are you willing to accept these liabilities? .....

18. *Are you willing to serve in the Regular Force, provided your services shall continue to be required, for-
(*a*) a term of seven years with the Regular Force; and
(*b*) a term of five years with the Reserve Force? or

*in the case only of persons enlisting in the Air Force as members of aircrew, for-
(*a*) a term of eight years with the Regular Force; and
(*b*) a term of four years with the Reserve Force? or

*if you have not apparently attained the age of eighteen years are you willing to serve in the Regular Force for the

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* Delete whichever is inapplicable.

NOTE.-A recruit who is unable positively to state his age must complete form "Certificate of Assumed Date of Birth" which he shall receive from the recruiting officer.

GENERAL CONDITIONS OF ENGAGEMENT

1. You will be required to serve as a soldier in the Regular Force for such time as is agreed on attestation, provided your services shall continue to be required.

2. You will be required to carry out the duties ordered by those in authority over you and no claim can be considered at any time that you were enlisted for the performance of any special duties or with the right to be trained in any particular trade. The possibility of employment in a trade depends on the passing of the specified trade test and the existence of a vacancy in that trade.

3. During the period of your engagement you may be discharged from the Regular Force for any of the reasons prescribed in the Third Schedule to the Defence Force (Regular Force) (Enlistment and Service) Regulations.

4. During the last year of your service in the Regular Force you may be allowed, with the approval of the competent military authority, to apply for re-engagement for such further period of service in the Regular Force as may be provided.

5. You may be ordered to serve with any unit of the Regular Force both within and without Zambia and may be attached to other military forces but if you have enlisted in the Air Force you will not normally be ordered to serve with the Army and if you have enlisted in the Army you will not normally be ordered to serve with the Air Force.

6. When you have been enlisted, you will be subject to all the provisions of the Defence Act and to any rules, regulations, orders or instructions made thereunder for the time being in force.

7. If, at the time you become eligible to be transferred to the Reserve Force or discharged from service in the Regular Force, a state of war, insurrection, hostilities or public emergency exists, your service will be prolonged for such additional periods as may be ordered.

8. If you are to be enlisted as a catechist, you will not be required to perform any combatant duties or to carry arms.

9. A person enlisting as a catechist will, on attestation, be promoted to the rank of..... and a person enlisting as an education instructor will, on attestation, be promoted to the rank of .....

(*As amended by No.* 276 *of* 1966)

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FORM 2

(*Regulation* 4 (2))
ZAMBIA DEFENCE FORCE
ATTESTATION PAPER

Army/Air Force No.....
.....
Age.....

Term of engagement:
(*a*) ..... years with the Regular Forcce from .....
..... , 19 ..... and
years with the Reserve Force; or
*(*b*) From....., 19.....
until attaining the apparent age of eighteen years on
..... and then .....
years with the Regular Force and ..... years with the Reserve Force.

* Applicable only to persons who have not attained the apparent age of eighteen years.

QUESTIONS TO BE PUT TO AND INFORMATION TO BE GIVEN BY THE RECRUIT BEFORE ATTESTATION

Under the provisions of the Defence Act, if a person knowingly makes a false answer to any of the questions contained in the Attestation Paper he renders himself liable to punishment.

A*

1. What is your name? .....
.....
Son of .....
2. What is your age? ..... years
.....
3. What is the name of your-.....
(*a*) Tribe? .....
(*b*) Chief? .....
(*c*) District? .....
(*d*) Village? .....
4. (*a*) What is the name of your next of kin and his/her relationship to you?.....
.....
(*b*) What is his/her-.....
(i) Chief? .....
(ii) District? .....
(iii) Village? .....
.....
.....

B*

1. (*a*) Surname.....
(*b*) Christian names .....
.....
(*c*) Address.....
.....
2. Date and place of birth .....
.....
3. Name and address of next of kin
.....
..... Relationship .....
4. *Father:*
Names .....
Address .....
Place of birth .....
Mother:
Names .....
Address .....
.....
Place of birth .....

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* Answer A or B as appropriate.

5. What is your religion? .....

6. Education:

(*a*) At what schools were you educated?

Dates	*Schools*	*Standards passed*
.....	.....	.....
.....	.....	.....
.....	.....	.....

(*b*) Post-school education:

Dates	*Institutions*	*Qualifications*
.....	.....	.....
.....	.....	.....
.....	.....	.....

7. Trade or professional qualifications, if any:

.....

.....

8 Occupation since leaving school:

Dates	*Occupation*	*Employer*	*Reason for leaving*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

9. Present occupation.....

10. Name and address of employer .....

.....

11. (*a*) Are you married or single?

(*b*) Children:

Dae of birth	*Sex*	*Names*
.....	.....	.....
.....	.....	.....
.....	.....	.....

(*c*) Date of marriage

12. Have you served in the armed forces of this or any other territory or in any police force?

If so, state-

Force or unit	*Date*	*Nature of duty*	*Rank attained*	*Number*
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

13. Are you free from debt? If not, list your creditors hereunder:

Name and address of creditor	*Amount of debt*
.....	.....
.....	.....
.....	.....

14. Have you been convicted of any criminal offence in any court of criminal jurisdiction? If so, give the following information:

Offence	*Sentence*	*Date of sentence*	*Court*	*Name convicted under*
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

15. Do you wish to enlist in the Army/Air Force? (Delete whichever is not applicable.)

16. Do you understand that though you will be appointed to a particular unit, you will be liable at any time to be transferred to any other unit if it becomes necessary? .....

17. (*a*) Have you received a Notice Paper stating the liabilities you are incurring by enlisting? .....

(*b*) Do you understand and are you willing to accept these liabilities? .....

18. *|Are you willing to serve in the Regular Force, provided your service shall continue to be required, for-

(*a*) a term of seven years with the Regular Force; and

(*b*) a term of five years with the Reserve Force? or

*in the case only of persons enlisting in the Air Force as members of aircrew, for-

(*a*) a term of eight years with the Regular Force; and

(*b*) a term of four years with the Reserve Force? or

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* Delete whichever is inapplicable.

NOTE.-A recruit who is unable positively to state his age must complete form "Certificate of Assumed Date of Birth" which he shall receive from the recruiting officer.

DECLARATION

*I, ... , son of .....

*I,..... (surname) .... (Christian names), do hereby solemnly declare that the answers made by me to the foregoing questions are true and that I am willing to fulfil the engagement made.

Date ....

Signature or thumbprint of recruit

Signature of witness .....

Oath/Solemn Affirmation to be taken by Recruit on Attestation

* I, ..., son of .....

*I, ... (surname) .... (Christian names) *swear by Almighty God/ *do solemnly and sincerely declare that I will be faithful and bear true allegiance to the President of the Republic of Zambia, and that I will, as in duty bound, honestly and faithfully preserve, protect and defend the President and the Republic against all enemies, and will observe and obey all orders of the President, and of the officer set over me.

(NOTE.-The oath will be sworn/affirmation will be made in a language understood by the recruit on the Bible or in such other manner as he may declare most binding on his conscience.)

CERTIFICATE OF RECRUITING OFFICER

*(*a*) The provisions of section 14 (2) of the Defence Act have been observed;

(*b*) the recruit named above was warned by me that if he knowingly made any false answer to any of the foregoing questions he would be guilty of an offence and liable to be punished as prescribed in the Defence Act;

(*c*) the foregoing questions were then read to the recruit in my presence in a language which he understands;

(*a*) I have taken care that he understands each question, and that his answer to each question has been duly recorded;

*(*e*) the said recruit has made and signed the declaration and taken the oath/made a solemn affirmation before me at .....
on this ..... day of ..... , 19 .....

.....

Signature of Recruiting Officer

.....

Rank

* Delete if not applicable.

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CERTIFICATE OF MEDICAL EXAMINATION

I have today examined .....
in accordance with current instructions and certify that-

*(*a*) he is fit in all respects for military service;

*(*b*) he is unfit for military service; and

*(*c* he is of the apparent age of ..... years ..... months.

.....

Signature of Medical Officer

Date .....

* Delete as applicable.

FINAL APPROVAL

I finally approve the enlistment of the above-named soldier and appoint him to .....

.....

*Officer in charge of *Army/Air Force Records*

Date .....

Place .....

* Delete as applicable.

(*As amended by No.* 276 *of* 1966)

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FORM 3
(*Regulation* 9)

ZAMBIA DEFENCE FORCE
CERTIFICATE OF DISCHARGE

1. Army/Air Force No ..... 2. Surname .....
3. Christian or fore-names .....
4. Place and date of enlistment or commencement of service .....
.....
5. Unit into which enlisted or to which first appointed .....
.....
6. Assessment of conduct and character on leaving service in the Regular Force .....
.....
7. Date of transfer to the Reserve Force .....
8. Rank or appointment on transfer to the Reserve Force .....
.....
9. Cause of transfer to Reserve Force .....
10. Unit from which transferred to Reserve Force. .....
.....
11. Rank or appointment on discharge .....
.....
12. Cause of discharge .....
13. Unit from which discharged .....
14. Service in the Regular Force and with the Reserve Force (if any) on date of discharge .....
15. Total service on discharge .....
16. Trade or other qualifications .....
.....

.....

Signature and rank of issuing officer

Date .....

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THIRD SCHEDULE

(*Regulation* 9 (3))

GROUNDS FOR DISCHARGE

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1	*Cause of Discharge*	2	*Special Instructions*	3	*Competent military authority to authorise discharge*
(i)	Having been attested, but not finally approved.	(i)	Applies only to a recruit who has been attested pending reference to his employer, or to a recruit rejected after attestation by the medical officer and to a recruit who has mis-stated his age on enlistment.	(i)	Recruiting officer.
(ii)	Having been improperly attested.	(ii)	Applies only to a case in which the provisions of these Regulations have been improperly or incorrectly complied with.	(ii)	Commanding Officer, if of field rank, whom failing, the Commander.
(iii)	Having made a false answer on attestation.	(iii)	Any soldier who can be shown to have made a false answer on attestation may be discharged under this serial, whether or not he has been convicted by a court-martial or dealt with summarily under section 65 of the Act, or convicted by a civil court under section 28 of the Act. The Commander will, in the case of such a soldier, decide whether he is to be retained in the Defence Force or not.	(iii)	Commander.
(iv)	Having made a false answer as to his age in his attestation paper.	(iv)	When a soldier is claimed by his parents or guardians- (*a*) a soldier who is between the ages of 17 years and 17 years 6 months when claimed, will be discharged if claimed within two months of enlistment, or if the application discloses the existence of compassionate grounds and the soldier consents; (*b*) before authorising the discharge on compassionate grounds, the competent military authority will satisfy himself regarding the good faith of the applicant, the destitute condition of the parents or near relatives to be supported and the soldier's prospects of obtaining suitable employment. He will also have regard to the conduct of the soldier while in the Force and to his inability to purchase his discharge.	(iv)	Commanding Officer, if of field rank, whom failing, the Commander.
(v)	Having claimed discharge under section 24 of the Act.	(v)	(*a*) Applies only to a soldier who has been reduced to the ranks from the rank of warrant officer and who claims his discharge under section 24 of the Act.	(v)	Commander.

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FOURTH SCHEDULE

(*Regulation* 11)

WARRANT

To: .....

By virtue of the Authority in me vested by the provisions of the Defence Act and regulations made thereunder.

I Do Hereby Appoint you the said ..... to be a Warrant Officer, Class ..... in the ..... . of the Defence Force from the ..... day of ..... ., 19 .....

You are, therefore, carefully and diligently to discharge your duty as such by doing and performing all manner of things thereunto belonging, as required by the said Defence Act and regulations made thereunder, and you are to observe and follow such Orders and Directions as you shall receive from your Commanding or any other your superior Officer.

Given under my hand at ..... this ..... day of ..... 19 .....

Commander.

Warrant Officer Class.....
.....

THE DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Interpretation
3. Commanding officer when more than one unit is placed under command of one officer
4. Delegation of his powers by commanding officer
5. Status of officer to whom commanding officer has delegated his powers
6. Charges with which commanding officer may deal summarily
7. Restriction on powers of punishment of commanding officers
8. Limitation of punishment of acting ranks, etc.
9. Limitation of powers of commanding officers below field rank
10. Limitation of powers of detachment commanders below field rank
11. Powers of subordinate commanders
12. Charges with which appropriate superior authority may deal summarily
13. Limitation of power of punishment of appropriate superior authority
14. Reduction in rank of non-commissioned officers by order following conviction in summary proceedings
15. Revocation of Parts III and IV of Defence Forces (Discipline) Regulations, 1956

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SCHEDULE-Table of civil offences which may be dealt with summarily by commanding officers and appropriate superior authorities

SECTION 210-THE DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS

Statutory Instrument
60 *of* 1964
Act No.
13 *of* 1994

Regulations by the President

1. These Regulations may be cited as the Defence Force (Summary Jurisdiction) Regulations. — Title

2. In these Regulations, unless the context otherwise requires- — Interpretation

"subordinate commander" means the officer commanding a squadron, company or equivalent sub-unit.

3. When a unit or a detachment is placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, that officer is the commanding officer of a member of the unit or detachment so placed under his command who is charged with an offence, and the officer commanding the latter unit or detachment is a subordinate commander for the purposes of these Regulations. — Commanding officer when more than one unit is placed under command of one officer

4. (1) Subject to regulation 11, a commanding officer may delegate to a subordinate commander, whatever his rank may be, who is under his command and directly responsible to him in disciplinary matters, the power to investigate and deal summarily with charges with which he himself may so deal: — Delegation of his powers by commanding officer

Provided that such delegation shall not include-

(i) the power to remand the accused for trial by court-martial; and

(ii) the power to order the taking of a summary of evidence or the making of an abstract of evidence.

(2) When a commanding officer delegates the power to investigate and deal summarily with charges in accordance with sub-regulation (1), he may, in addition to the restrictions imposed by the said regulation 11, impose such further restrictions as seem to him to be proper upon the exercise of that power by the officer to whom it is delegated.

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5. An officer who has had delegated to him by his commanding officer under regulation 4 (1) power to investigate and deal summarily with charges is, while exercising such power in respect of any person, the commanding officer of that person for the purposes of the Act.

Status of officer to whom commanding officer has delegated his powers

6. A commanding officer may deal summarily with a charge under any of the following sections of the Act.

Charges with which commanding officer may deal summarily

34; 35 (*c*); 38; 39 (2); 40; 41; 43; 44; 45; 46; 47 (1) (*a*); 48; 49 (1) (*a*) (where the subject-matter does not exceed in value three hundred fee units); 49 (1) (*c*); 49 (1) (*d*); 49 (2); 50 (*a*) (where the subject-matter does not exceed in value twenty kwacha); 50 (*c*); 51; 55; 58; 59 (2); 60; 61; 64; 65; 66 (*a*); 66(*b*); 68(*b*); 71 (where the principal offence can be dealt with summarily by virtue of this regulation); 72 and 73 (where the civil offence is one which is specified in the Schedule).

(*As amended by Act No.* 13 *of* 1994)

7. A commanding officer shall not award-

Restriction on powers of punishment of commanding officers

(*a*) punishment of detention where the charge is laid under section *seventy-three* of the Act, and the civil offence is one of those referred to in item (2), (3) or (4) of the Schedule;

(*b*) the punishment of stoppages exceeding six hundred penalty units without permission from higher authority.

(*As amended by Act No.* 13 *of* 1994)

8. (1) After a lance-corporal has been reduced to the ranks in accordance with subsection (4) of section *eighty-one* of the Act, his commanding officer shall not, without permission of higher authority, award him any punishment in respect of an offence which he had committed before he was so reduced.

Limitation of punishment of acting ranks, etc.

(2) After an acting warrant officer or acting non-commissioned officer has been reverted to his permanent rank or ordered to assume an acting rank lower than that held by him but higher than his permanent rank in accordance with subsection (5) of section *eighty-one* of the Act, his commanding officer shall not, without permission of higher authority, award him any punishment in respect of an offence which he has committed before he was so reverted, or, as the case may be, ordered to assume a lower acting rank.

9. A commanding officer who is below field rank shall not, without permission of higher authority, award detention or field punishment for a period exceeding seven days or a fine exceeding the equivalent of seven day's pay.

Limitation of powers of commanding officers below field rank

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

Limitation of powers of detachment commanders below field rank

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

11. (1) A subordinate commander to whom power to investigate and deal summarily with charges has been delegated under regulation 4 (1) shall not award a punishment against a non-commissioned officer above the rank of corporal.

Powers of subordinate commanders

(2) Subject to any restriction which may be imposed by the commanding officer under regulation 4 (2), a subordinate commander may award the following punishments:

(*a*) if the accused is a non-commissioned officer below the rank of sergeant-

(i) a fine of a sum not exceeding the equivalent of seven days' pay;

(ii) reprimand or admonition;

(iii) where the offence has occasioned any expense, loss or damage, stoppages not exceeding three hundred penalty units;

(*b*) if the accused is a private soldier-

(i) a fine of a sum not exceeding the equivalent of seven days' pay;

(ii) where the offence has occasioned any expense, loss or damage, stoppages not exceeding twenty kwacha;

(iii) confinement to barracks for a period not exceeding seven days;

(iv) extra guards or pickets;

(v) admonition.

(*As amended by Act No.* 13 *of* 1994)

12. An appropriate superior authority may deal summarily with a charge against an officer or warrant officer under any of the following sections of the Act:

Charges with which appropriate superior authority may deal summarily

34; 35 (*c*); 38; 39(2); 40; 41; 43; 44; 45; 46; 47 (1) (*a*); 48; 49 (1) (*a*) (where the subject-matter does not exceed in value twenty kwacha); 50 (*c*); 51; 55; 58; 59 (2); 60; 61; 64; 65; 66 (*a*); 666 (*b*); 71 (where the principal offence can be dealt with summarily by virtue of this regulation); 72 and 73 (where the civil offence is one which is specified in the Schedule).

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13. An appropriate superior authority shall not award the punishment of stoppages exceeding three thousand penalty units.

Limitation of power of punishment of appropriate superior authority

(*As amended by Act No.* 13 *of* 1994)

14. Notwithstanding any other provision of these Regulations, where a charge against a non-commissioned officer of the Regular Force has been dealt with summarily by his commanding officer under the provisions of section *eighty-one* of the Act and such commanding officer has recorded a finding of guilty in respect of such charge, an officer not below the rank of colonel may, whether in addition to or in lieu of any punishment which may have been awarded by such commanding officer, order that such non-commissioned officer shall be reduced to the ranks or to any less reduction in rank.

Reduction in rank of non-commissioned officers by order following conviction in summary proceedings

15. Parts III and IV of the Defence Forces (Discipline) Regulations, 1956, are hereby revoked.

Revocation of Parts III and IV of Defence Forces (Discipline) Regulation, 1956

SCHEDULE

(*Regulations* 6 *and* 12)

TABLE OF CIVIL OFFENCES WHICH MAY BE DEALT WITH SUMMARILY BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES

1. Theft, where the subject-matter does not exceed in value K20.	Cap. 87
2. Common assault contrary to section 247 of the Penal Code.	Cap. 464
3. Careless driving of a motor vehicle contrary to section 195 of the Roads and Road Traffic Act.	Cap. 464 Cap. 464
4. Reckless and dangerous driving of a bicycle or tricycle, not being a motor vehicle, contrary to section 196 as read with section 225 of the Roads and Road Traffic Act.	Cap. 464 Cap. 464
5. Careless driving of a bicycle or tricycle, not being a motor vehicle, contrary to section 195 as read with section 225 of the Roads and Road Traffic Act.	Cap. 464
6. Taking and driving away a motor vehicle without the owners' consent or other lawful authority contrary to section 229 (3) of the Roads and Road Traffic Act.	

DEFENCE (REGULAR FORCES) (OFFICERS) REGULATIONS

ARRANGEMENT OF SECTIONS

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21. Fuel, water and sanitary services.
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27. Chief of General Staff's and Chief of Air Staff's allowance.
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It is hereby notified that the Minister of Defence has, in terms of section 155 of the Defence Act, 1955, made the following regulations:-

Title

1. These regulations may be cited as the Defence (Regular Forces) (Officers) Regulations, 1960.

Interpretation of terms

2. In these regulations, unless inconsistent with the context "African Members Regulations" means the Defence (Regular Force) (African Members) regulations, 1956, published in Federal Government Notice No. 79 of 1956;

"Chaplain" means an officer holding the rank or appointment of chaplain;

"Child" means an unmarried legitimate or legitimated son or daughter (including a posthumous child, a step-child or a child legally adopted) under the age of eighteen years of an officer;

"Contribute" means to pay contributions to the Federal Government in terms of Part VIII;

"Contributions" means

(*a*) The amounts contributed by an officer to the Federal Government in terms of Part VIII, excluding any interest paid in terms of paragraph (*e*) of subsection (3) of section 72; and

(*b*) The amounts, if any, contributed by an officer to the Federal Government in terms of Part VIII of the European Members Regulations, excluding any interest paid in terms of paragraph (*g*) of subsection (2) of section 85 of those regulations; and

(*c*) The amounts, if any, paid by an officer before the fixed date to-

(i) The Consolidated Revenue Fund under the Uniformed Forces Pensions Act, 1948, of Southern Rhodesia, as amended by the Defence (Interim) Act, 1954, excluding any amounts paid in terms of section 5 or any interest paid in terms of paragraph (*b*) of subsection (1) of section 22 or subsection (4) of section 26 of the said Uniformed Forces Pensions Act, 1948, as amended as aforesaid;

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(ii) The consolidated Revenue Fund of Southern Rhodesia under the Uniformed Forces Pensions Act, 1948, of Southern Rhodesia, excluding any amounts paid in terms of section 5 or any interest paid in terms of paragraph (b) of subsection (1) of section 22 or subsection (4) of section 26 of the said Act;

(iii) The Police and Permanent Force Pension Fund establishment under the Police Amendment Act, 1938 of Southern Rhodesia;

"Contributor Pensionable Service" means

Pensionable service in respect of which contributions have been or are being paid;

"Dental Officer"

(*a*) For the purposes of section 11, 13 or 25, means an officer appointed as a Dental officer in the Regular Force;

(*b*) For the purposes of any other provisions of these regulations, means

(i) An officer appointment as a dental officer in the Regular Force;

(ii) A dental surgeon of the Ministry of Health

(iii) Any other person authorized by the Minister to carry out the functions of a dental officer under these regulations;

"Dependant", in relation to a living or deceased officer or other person, means the wife, widow, child, or such other relative dependent on him for maintenance as the Minister of Finance may recognize for the purpose of these regulations;

"Director of Medical Services" means the person appointed by regulation as Director of Medical Services for the Defence Forces;

"Disabled officer" means an officer who is placed on the retired list following a finding by a medical board that he is mentally or physically unfit for further service;

"Dismissal", amended by S.I. 217 of 1965.

"European Members Regulations" means the Defence (Regular Force) (European Members) Regulations, 1956, published in Federal Government Notices Nos. 78 of 1956 and 107 of 1956;

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"Former rate of pay", in relation to an officer on first appointment to commissioned rank or on promotion to higher rank, means the annual rate of pay receivable by that officer immediately before such appointment or promotion;

"Gratuity" means a lump sum payment;

"Interest" means compound interest calculated in such manner as the Minister of Finance may determine;

"Leave", in relation to an officer, means leave of absence from the duties of that officer;

"Legal Officer" means an officer appointed as a legal officer in the Regular Force;

"Medical board" means a medical board constituted under section 3 of the Defence (Medical and Pensions Boards) Regulations, 1960;

"Medical officer"

(*a*) For the purposes of section 11, 13 or 25, means an officer appointed as a medical officer in the Regular Force;

(*b*) For the purposes of any other provisions of these regulations, means

(i) An officer appointed as a medical officer in the Regular Force;

(ii) A medical officer of the Ministry of Health;

(iii) Any other person authorized by the Minister to carry out the functions of a medical officer under these regulations;

"Medical practitioner" means a person registered as a medical practitioner under the provisions of any law, including a Territorial law;

"Medium service officer" means an officer who is appointed or deemed to have been appointed to employment in the Regular Force on a medium service engagement;

"Non-commissioned Pensionable emoluments", in relation to an officer who, immediately prior to his appointment to commissioned rank in the Regular Force, was a member of the Regular Force subject to the provisions of the African Members Regulations, means the annual rate of pensionable emoluments receivable by him under those regulations on the day before his appointment to commissioned rank;

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"Non-contributory pensionable service" means pensionable service in respect of which contributions have not been paid;

"Officer" means a male officer attested in the Regular Force, but does not include any person who is-

(*a*) appointed to honourary commissioned rank; or

(*b*) the holder of an honourary appointment;

"Official quarters" means quarters provided by the Federal Government;

"Other employment in the service of the Crown or a Commonwealth country" Means pensionable employment, otherwise than as a member of the Defence Forces of the Federation, under the government of any part of Her Majesty's dominions (including the Federation or a Territory) or under a Commonwealth country not forming part of Her Majesty's dominions;

"Pension" means an annual pension payable during the lifetime of the recipient unless, in terms of these regulations, it is payable for a shorter period;

"Pensionable emoluments", in relation to an officer, means

(*a*) The pay due to that officer in terms of these regulations; and

(*b*) Any quarters allowance payable to that officer in terms of section 18;

"Pensionable service" means pensionable service in accordance with the provisions of section 72;

"Pensions Appeal Board" means the Military Pensions Appeal Board established by section 5 of the Defence (Medical and Pensions Boards) Regulations, 1960;

"Pensions Board" means the Military Pensions Board established by section 4 of the Defence (Medical and Pensions Boards) Regulations, 1960;

"Permanent service officer" means an officer who is appointed or deemed to have been appointed to employment in the Regular Force on a permanent engagement;

"Private medical practitioner" means any medical practitioner other than a medical officer;

"Resignation", in relation to an officer, means resignation from his employment in the Regular Force in terms of section 8, and "resign" shall be constructed accordingly;

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"Retirement", in relation to an officer, means retirement from his employment in the Regular Force in terms of section 9, and "retire" shall be constructed accordingly;

"Retire Pensionable emoluments", in relation to an officer who retires, is placed on the retired list following a finding by a medical board that he is mentally or physically unfit for further service, or dies, means

(*a*) If his pensionable service amounts to 35 years or less, the annual rate of pensionable emoluments receivable by him at the date on which his retirement or placing on the retired list takes effect, or on which he dies as the case may be;

(*b*) If his pensionable service amounts to more that 35 years, the annual rare of pensionable emoluments receivable by him at the date on which he completed 35 year of pensionable service;

"Service" means service in the Regular force and "serve" shall be constructed accordingly;

"Service Property" means any property of any mess or other institution, organization or association whatsoever of members of the Defence Force.

"Special medial board" means a special medical board constituted under section 6 of the Defence (Medical and Pension Boards) Regulations, 1960;

"Unit", in relation to an officer, means the unit in which that officer is serving.

Application of these regulations

3. The Provisions of these regulations shall not apply to an officer who is attached or seconded to any other Her Majesty's Forces in terms of subsection (2) of section 22 of the Act, unless the terms and conditions fixed by the Minister provide that they shall apply.

PART I

APPOINTMENT TO EMPLOYMENT, PERIOD OF SERVICE AND TERMINATION THEREOF

Classes of engagement and employment in the Regular force as an Officer

4. (*a*) For the purposes of these of regulations, there shall be two classes of engagement of officers in the Regular Force, to be styled medium service engagements and permanent engagement.

(*b*) The Ministry may appoint to employment in the Regular Force, on either a medium service engagement or a permanent engagement, any person holding commissioned rank in the Defence Forces

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Provided that nothing in this subsection contained shall be construed as authorizing the transfer to the Regular Force, except in time of war, of a member of the Territorial Force or a reserve.

(*c*) Every officer who, immediately prior to the date of commencement of these regulations or the date of his appointment to commissioned rank, whichever is the later, was serving on an unexpired medium service

or permanent engagement in accordance with the provisions of the European Members Regulations, shall, for the purposes of these regulations, be deemed to have been appointed to employment in the Regular Force on a medium service engagement or a permanent engagement, as the case may be, in terms of subsection (2).

Period of engagement

5. (1) Subject to the provisions of these regulations-

(*a*) The period of engagement of a medium service Officer shall be ten years;

(*b*) The period of engagement of a medium service officer who, immediately prior to the date of commencement of these regulations or the date of his appointment to commissioned rank, whichever is the later, was service on an expired medium service engagement in accordance with the provisions of the European Members Regulations, shall be the unexpired portion of the period for which he was engaged under those regulations.

Alteration of class engagement

6. (1) The Ministry may at any time, with the consent of a medium service officer, alter that officer's class of engagement to a permanent engagement.

(2) Where an officer's class of engagement has been altered to a permanent in terms of subsection (1), that officer shall be deemed to have been a permanent service officer as from the date of his appointment to employment in the Regular Force on a medium service engagement.

Restriction of right to resign or retire from employment in the Regular Force

7. No officer shall be at liberty to resign or retire from his employment in the Regular Force during his period of engagement except as provided by section 8 or 9.

Resignation

8. (1) In this section-"travelling expenses", in relation to officer, means the amount of the expenses, if any, incurred by the Federal Government before the date of appointment of that officer to commissioned rank in granting free travelling facilities to such officer and in respect of his dependants, if any, from his place of residence to the place where he was required to report for the purpose of taking the oath prescribed under section 19 of the Act or by under any Federal or Territorial Law repealed by the Act.

(2) An officer who is not entitled or required to retire from his employment in the Regular Force in terms of section may resign from his employment in the Regular Force during his period of engagement on giving three months' notice in writing to the Commander of his intention to do so and on paying to the Federal Government any amount which he is liable to pay to the Federal Government in terms of this section:

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Provided that if such notice is given while he is on active service or employed in terms of section 38 of the Act, or while he is under the orders of a superior officer to hold himself in readiness for such service or employment, his resignation shall not take effect until a period of on month has elapsed from the date on which such active service or employment is completed or on which such orders are rescinded, as the case may be.

(3) An officer who resigns from his employment in the Regular Force during the first three years of his period of engagement shall be liable to pay to the Federal Government a sum calculated in accordance with the following provisions-

(a) If his resignation takes effect before the expiry of one year from the date of his engagement under the provisions of the European Members Regulations, or, if he was not engaged under the provisions of those regulations, then from the date of his appointment to commissioned rank, his travelling expenses and, in addition, £75;

(*b*) If his resignation takes effect after the expiry of one year but before the expiry of two years from the appropriate date specified in paragraph (*a*), two thirds of his travelling expenses and, in addition, sixty thousand kwacha;

(*c*) If his resignation takes effect after the expiry of two years but before the expiry of three years from the appropriate date specified in paragraph (*a*), one third of his travelling expenses and, in addition, thirty thousand kwacha.

(4) Without derogation from the foregoing provisions of this section, a member of the Regular Force who is appointed to commissioned rank after being attached, with his consent, to any other Her Majesty's Forces in terms of subsection (2) of section 22 of the Act for training as an officer and resigns from his employment in the Regular Force before he has served for six years as an officer, shall be liable to pay to the Federal Government-

(*a*) If his resignation takes effect before the expiry of one year from the date of his appointment to commissioned rank, four million, five hundred thousand kwacha or a sum equal to the full amount of the expense incurred by the Federal Government in respect of his attachment to such Forces, whichever is the less;

(*b*) If his resignation takes effect after the expiry of one year but before the expiry of three years from such date, three million, seven hundred and fifty thousand kwacha or a sum equal to five-sixths of such expenses, whichever is the less;

(*c*) If his resignation takes effect after the expiry of two years but before the expiry of three years from such date, three million kwacha or a sum equal to two-thirds of such expenses, whichever is the less;

(*d*) If his resignation takes effect after the expiry of three years but before the expiry of four years from such date, two million, two hundred and fifty thousand kwacha or a sum equal to one-half of such expenses, whichever is the less;

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(*e*) If his resignation takes effect after the expiry of four years but before the expiry of five years from such date, one million, five hundred thousand kwacha or a sum equal to one-third of such expenses, whichever is the less;

(*f*) If his resignation takes effect after the expiry of five years but before the expiry of six years from such date, seven hundred and fifty thousand kwacha or a sum equal to one-third of such expenses, whichever is the less.

Retirement

9. (1) A permanent service officer whose pensionable service amounts to ten or more years may retire from his employment in the Regular Force on giving six months' notice in writing to the Commander of his intention to do so:

Provided that if such notice is given while the officer is on active service or employed in terms of section *thirty-eight* of the Act, or while he is under the orders of a superior officer to hold himself in readiness for such service or employment, his retirement shall not take effect until a period of one month has elapsed from the date on which such active service or employment is completed or on which such orders are rescinded, as the case may be.

(2) The Ministry may on six months notice, require a permanent service officer whose pensionable service amounts to ten years or more to retire from his employment in the Regular Force:

Provided that the President may retire without notice a permanent service officer upon payment of six month's salary in lieu of notice.

(3) A permanent service officer shall, whatever the length of his pensionable service, retire from his employment in the Regular Force on attaining the age of 50 years:

Provided that, if the Minister considers that it is desirable in the public interest, he may allow that officer to continue to serve in the Regular Force until he attains the age of 55 years, unless that officer is, on notice of 12 in the Regular Force before attaining that age.

(4) A permanent service officer who has continued to serve in the Regular Force in terms of subsection (3) shall retire from his employment in the Regular Force on attaining the age of 55 years:

Provided that, if the Governor-General considers that it is desirable in the public interest, he may allow that officer to continue to serve in the Regular Force for further periods, not exceeding 12 months at a time, until he attains the age of 60 years.

(5) A permanent service officer who has continued to serve in the Regular Force in terms of subsection (4) shall retire from his employment in the Regular Force on attaining the age of 55 years.

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(6) A medium service officer shall be deemed to have retired from his employment in the Regular Force on the expiry of the period of his engagement.

(*As amended by S.I. No.* 81 *of* 1992)

Regulation 10, revoked by Defence Regular Force Pensions Regulations, Regulation 40(b).

Dismissal

10A. (1) The President may, upon the recommendation of the Commander, cancel and order his removal from office if he is satisfied that such officer is inefficient or unsuitable to remain in the Regular Force or that the conduct of such officer is likely to bring discredit upon the Defence Force.

(2) Any person whose commission has been cancelled by the President under the provisions of subsection (1) shall forthwith be dismissed from the Defence Force.

(3) Any decision of the President to cancel the Commission of an officer under subsection (1) shall be final and shall not be questioned in any proceedings whatsoever.

(4) An officer who is dismissed shall be liable to pay to the Government such sum, if any, as he would have been liable to pay to the Government in terms of subsections (3) and (4) of section 8 had he resigned instead of being which his dismissal takes effect:

Provided that the provisions of this section shall not have effect in relation to an officer who is dismissed because he is considered to be inefficient or unsuitable to remain in the Regular Force.

(*As amended by S.I. No.* 217 *of* 1965)

PART II

PAY AND ALLOWANCES

Pay

11. (1) Subject to the provisions of these regulations Pay-

(*a*) An officer, other than a medical officer, dental officer, legal officer or chaplain, shall be paid at the annual rate of pay prescribed in Part 1 of the First Schedule for an officer holding the rank and having the years of service in that rank which are applicable to him.

(*b*) A medical officer, dental officer, legal officer or chaplain shall be paid at the annual rate of pay prescribed in Part 11 of the First Schedule for an officer holding the rank and appointment and having the years of service in that rank and appointment which are applicable to him.

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(2) Where the rate of pay applicable to an officer was, immediately before the date of commencement of these regulations, determined in pursuance of the provisions of section 20 of the Defence (Regular Force) (European Members) (Amendment) Regulations, 1957 (No 2), published in Federal Government Notice No. 136 of 1957, the rate of pay applicable to that officer shall continue to be determined in pursuance of those provisions.

(3) An officer whose initial annual rate of pay is determined-

(*a*) On first appointment to commissioned rank, under the provisions of subsection (1), (2), or (3) of section 12. or

(*b*) On promotion to higher rank, under the provisions of subsection (1), (2) or (3) of section 13.

shall be deemed, for the purposes of determining the annual rate of pay which is thereafter applicable to him, to have served in the rank to which he is appointed or promoted, as the case may be, for the period in relation to which such initial annual rate of pay is prescribed.

Pay on first appointment of a member Regular Force to commissioned rank.

12. (1) Where, immediately prior to his appointment to commissioned rank (not being the rank of second lieutenant or pilote officer), an officer was a member of the Regular Force in receipt of a trade pay allowance, the initial annual rate of pay applicable to him on such appointment shall be the annual rate of pay prescribed for the rank to which he is appointment next above an amount equal to the sum of his annual trade pay allowance and his former rate of pay.

(2) Where, immediately prior to his appointment to the rank of second lieutenant or pilot officer, an officer was a member of the Regular Force in receipt of an annual rate of pay higher than that prescribed for a second lieutenant or pilot officer, the initial annual rate of pay applicable to him on such appointment shall, until such time as he becomes qualified in terms of these regulations to be paid at a higher rate, be his former rate of pay together with the rate pay allowance, if any, of which he was in receipt immediately before such appointment.

(3) Where, immediately prior to his appointment to commissioned rank, an officer (not being an officer to whom the provisions of subsection (1) or

(2) apply) was a member of the Regular Force, the initial annual rate of pay applicable to him on such appointment shall be determined as follows-

(a) If is former rate of pay is the same as, or higher than the lowest annual rate prescribed for the rank to which he is appointed, the initial annual rate of pay applicable to his shall be the annual rate of pay prescribed for the rank to which he is appointed next above his forma rate of pay;

(b) If his former rate of pay is lower that the lowest annual rate of pay prescribed for the rank to which he is appointed, the initial annual rate of pay applicable to him shall be such lowest rate.

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Pay on promotion

13. (1) Where, immediately prior to his promotion to higher-rank, an officer-

(*a*) Held the rank of major or squadron leader; and

(*b*) was in receipt of a professional or technical allowance; the initial annual rate of pay applicable to him on such promotion shall the annual rate of pay prescribed for the rank to which he is promoted next above an amount equal to the sum of his annual professional or technical allowance and his former rate of pay.

(2) On the promotion to higher rank of an officer to whom the provisions of subsection (1) do not apply and who is not a medical officer, dental officer or legal officer, the initial annual rate of pay applicable to his in such higher rank shall be determined as follows-

(*a*) If his former rate of pay is the same as, or higher than, the lowest annual rate prescribed for the rank to which he is promoted, the initial annual rate of pay applicable to him shall be the annual rate of next above his former rate of pay;

(*b*) If his former rate of pay is lower than the lowest annual rate of pay prescribed for the rank to which he is promoted, the initial annual rate of pay applicable to him shall be such lowest rate.

(3) On the promotion to higher rank of a medical officer, dental officer or legal officer, the annual rate of pay applicable to him shall be such annual rate of pay prescribed for a medical officer, dental officer or legal officer as the Minister determines.

(4) When an officer is temporarily appointed to higher rank the annual rate of pay applicable shall, during the subsistence of his temporary appointment, be-

(*a*) The lowest prescribed annual rate applicable to an officer holding that higher rank; or

(*b*) The lowest prescribed annual rate applicable to an officer holding that higher rank which is next above the annual rate of pay applicable to the temporarily appointed officer in his substantive rank; whichever is the higher.

(5) The appointment of an officer to act in a higher rank shall not affect annual rate of pay which is applicable to that officer under the provisions of these regulations.

Acting allowance

14. (1) Subject to the provisions of this section, an officer who is appointed to act for the Commander during the subsistence of his acting appointment, be paid an acting allowance at the rate prescribed in Part I of the Second Schedule.

(2) Subject to the provisions of this section, an officer who is appointed to act-

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(*a*) For an officer holding a rank; or

(*b*) In a vacancy in a unit carrying a rank; which is higher than his temporary or substantive rank and is listed in the first column of Part II or the Second Schedule shall, during the subsistence of his acting appointment, be paid an acting allowance at the rate specified opposite thereto in the second column of Part II of the said Schedule.

(3) No acting allowance shall be paid to an officer if the officer for whom he is appointed to act has himself been appointed to act in a higher rank or appointment:

Provided that the provisions of this subsection shall not apply to an officer appointed to act for an officer holding the rank of-

(*a*) Lieutenant-colonel or wing Commander or any higher rank; or

(*b*) Major Squadron Leader who commands a unit which is on detachment.

(4) If the rate of acting allowance together with the rate of pay due to an officer in his temporary or substantive rank exceeds-

(*a*) If he is appointed to act for an officer, the rate of pay applicable to that officer; or

(*b*) If he is appointed to act in a vacancy in a unit, the lowest rate of pay prescribed for the rank carried by that vacancy;

The acting allowance payable in terms of this section shall be reduced by the amount of the excess.

(5) Save as provided in subsection (6), no acting allowance shall be paid in terms of this section to an officer whose acting appointment subsists for a period of less than 30 consecutive days.

(6) An officer acting for the Commander shall be paid an acting allowance in terms of this section notwithstanding that his acting appointment subsists for a period of less than 30 consecutive days.

15. An officer who is serving in a unit included in the Air Force and who is classified by the Commander as being eligible for appointment to flying duties shall be paid a flying allowance at the rate prescribed in the Third Schedule for an officer holding the rank which is applicable to him.

Flying pay allowance

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Marriage allowance

16. (1) Subject to the provisions of this section, a marriage allowance at the rate of seven hundred and fifty thousand kwacha per annum shall be paid to any officer whose rate of pay does not exceed one million, three hundred and fifty six thousand kwacha per annum and who-

(*a*) is maintaining or contributing towards the maintenance of his wife; or

(*b*) Being a widower or divorcee, is maintaining or contributing towards the maintenance of a child.

(2) Where two or more members of the Regular Force are contributing towards the maintenace of a child, only one marriage allowance shall be payable under this section and section 22 of the European Members Regulations and it shall be paid:-

(*a*) To such member; or

(*b*) To such members in such proportions; as the

Minister may from time to time determine.

Children's allowance

17. (1) Subject to the provisions of this section, an officer who is maintaining or contributing towards the maintenance of a child or children shall be paid a children's allowance in respect of each child at the rate prescribed in the Fourth Schedule for an officer entitled to the rate of pay which is applicable to him.

(2) Where two or more members of the Regular Force are contributing towards the maintenance of a child, only one children's allowance shall be payable under this section and section 23 of the European Members Regulations and it shall be paid-

(*a*) To such member or

(*b*) To such members in such proportions; as the Minister may from time to time determine.

Quarters allowance

18. (1) Subject to the provisions of this section, a quarters allowance at the rate specified in subsection (2) shall be paid to an officer who-

(*a*) Does not reside in official quarters; or

(*b*) Being married, maintains a home for his wife or children and is required for the performance of his duties to reside in official quarters away from his wife or children.

(2) The rate of the quarters allowance payable to an officer in terms of subsection (1) shall be:-

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(*a*) One-sixth of his rate of pay; or

(*b*) three hundred and seventy eight thousand kwacha per annum; whichever is the less.

(3) No quarters allowance shall be paid to an officer mentioned in paragraph (b) of subsection (1) who resides in official quarters away from his wife or children at his own request or for his own convenience.

(4) No quarters allowance shall be payable in terms of this section in respect of a period of less than seven days.

Supplementary quarters allowance

19. (1) The Commander may, under such conditions as he may determine, grant an officer who is entitled to be paid a quarters allowance under section 18 a supplementary quarters allowance at a rate not exceeding the difference between the rate of quarters allowance payable to him inerms of section 18 and three hundred and seventy eight thousand kwacha per annum.

(2) The Commander may at nay time review, alter, or withdraw entirely a supplementary quarters allowance allowance granted to an officer in terms of this section.

Entertainment allowance

20. (1) An officer who performs the functions and duties of:-

(*a*) An area or Group Commander; or

(*b*) The Commanding Officer, Depot the Royal Rhodesia Regiment; or

(*c*) The Commanding officer of Thornhill Air Station or New sarum Air Station;

shall in respect of the period during which he performs such functions and duties, be paid an entertainment allowance at rate of one hundred and fifty thousand kwacha per annum.

(2) An officer who performs the functions and duties of the senior military representative in Nyasaland shall, in respect of the period during which he performs such functions and duties, be paid an entertainment allowance at the rate of seventy five thousand kwacha.

(3) An officer who perform the functions and duties of a commanding officer of a Battalion shall, in respect of the period during which he performs such functions and duties, be paid an entertainment allowance at the rate of seventy five thousand kwacha per annum.

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(4) For the avoidance of doubt, it is hereby declared that an officer who performs functions and duties which qualify him for the payment of more than one entertainment allowance under this section shall be paid every entertainment allowance for which he so qualifies, so, however, that the aggregate of such allowances paid to any one officer shall in no case exceed the rate of one hundred and fifty thousand kwacha per annum.

Fuel, water and sanitary services

21. (1) An officer who is married and who resides in official quarters shall be paid a fuel allowance at the rate of eighteen thousand kwacha per annum.

(2) An officer who resides in official quarters shall be provided free of charge with sanitary services and with such quantities of water as the Commander may determine.

Rations

22. An officer may be issued with free rations for such periods and in such circumstances as the Minister may determine.

Servant allowance

23. An officer who is not provided with a batman shall be paid a servant allowance at the rate of thirty six thousand kwacha per annum.

Native language allowance

24. (1) Subject to the provisions of this section, if an officer is successful in passing:-

(*a*) A written and oral native language examination of a standard approval by the Minister, he shall be paid a gratuity of thirty thousand kwacha.

(*b*) An oral native language examination of a standard approved by the Minister, he shall be paid a gratuity of twelve thousand kwacha.

(2) An officer shall not, in respect of the same oral examination, be paid both the gratuities mentioned in this section.

Professional and technical

25. (1) A medical officer, dental officer or legal officer shall be paid a professional allowance at the rates prescribed in this section.

(2) The rate of professional allowance payable to a medical officer or dental officer whose period of service amounts to five or more years and who has the rank of major or any higher rank shall be four hundred and fifty thousand kwacha.

(3) The rate of professional allowance payable to a medical officer or dental officer who is not entitled to be paid at the rate prescribed in subsection (2) shall be three hundred thousand kwacha per annum.

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(4) The rate of professional allowance payable to a legal officer shall be three hundred and seventy five kwacha per day.

(5) The Minister may grant an officer who is technically qualified and who holds a rank not higher than that of manor or squadron leader a technical allowance at the rate of three hundred and seventy five kwacha per day.

Refund of additional insurance premiums

26. (1) Subject to the provisions of subsection (2), an officer serving in a unit included in the Air Force whose life is insured against death or accident shall be refunded half the amount of any additional premiums which he is required to pay by reason of the nature of his duties in the Air Force.

(2) Where the sum in respect of which the life of an officer referred to in subsection (1) is so insured exceeds four million, five hundred thousand kwacha on the amount by which that sum exceeds four million, five hundred thousand kwacha.

Chief of General Staff's and Chief of Air Staff's allowance

27. An officer who holds the appointment of Chief of General Staff or Chief of Air Staff shall be paid an allowance at the rate of three hundred thousand kwacha per annum.

No pay or allowances in certain circumstances

28. Notwithstanding the provisions of these regulations, an officer shall not be paid any pay or allowances in respect of any period during which-

(*a*) He is undergoing a sentence of imprisonment imposed under the Act by a court martial or civil court or;

(*b*) he is being treated as an in-patient at a hospital for an illness or injury if-

(i) he has been convicted by a court martial, prescribed officer or civil court of an offence under the Act; and

(ii) A medical officer certifies that his illness or injury has been occasioned by such offence;

or

(*c*) He is absent in circumstances constituting the offence of deserting or absenting himself without leave.

Deductions from pay and allowances

29. (1) The Commander may authorize the deduction from the pay and allowances due to an officer in terms of these regulations of-

(*a*) Any liquidated amount which that officer is liable to pay to the Federal Government or to any mess, institution, organization or association whatsoever of members of the Defence Force.

(*b*) Any amount which that officer has previously been paid in pay and allowances in excess of the amount which is due to him in terms of these or any other regulations.

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(2) If, after perusing the proceedings of any board of inquiry, the Commander is satisfied-

(*a*) That loss or destruction of or damage to Federal Government property or service property has been occasioned by the deliberate or negligent act of an officer; and

(*b*) That such officer will not be charged before a court martial, prescribed officer or civil court with an offence under the Act arising out of such loss destruction or damage;

he may authorize the deduction from the pay and allowance due to such officer in terms of these or any other regulations of such amount not exceeding-

(i) The value of the loss, destruction or damage; or

(ii) seventy five thousand kwacha

whichever is the less, as in the circumstances he may deem equitable compensation for the loss, destruction or damage.

(3) Any officer from whose pay and allowances a deduction has been made in terms of subsection (2) may, within the period of 14 days immediately following the date when the deduction was made, appeal in writing to the Minister against much deduction and the Minister may confirm, modify or set aside the deduction.

PART III

LEAVE AND LEAVE BENEFITS

30. For the purposes of this Part, leave shall be divided into the following classes:- Classification of leave

(*a*) Occasional leave;

(*b*) Vacational leave;

(*c*) Sick leave;

(*d*) Urgent private affairs leave;

(*e*) Study leave.

31. (1) The Minister may in accordance with the provisions of this Part:- Persons empowered to grant leave

(a) Grant leave of any class to the Commander;

(b) Grant study leave to an officer.

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(2) The Commander may, in accordance with the provisions of this Part, grant an officer under his command leave of any class other than study leave.

(3) An officer may, in accordance with the provisions of section 33, grant occasional leave to another officer under his command.

Pay and allowances during leave

32. (1) The Commander may authorize the payment in advance of the pay and allowances due to an officer in respect of a period of leave granted to him in accordance with the following provisions:-

(a) If the officer has been granted a period of vacation leave which immediately precedes the date on which his retirement, resignation or placing on the retired list takes effect, the pay and allowances due in respect of the whole of that period;

(b) If the officer has been granted a period of sick leave or a period of vacation leave which does not immediately proceed the date on which his retirement, resignation or placing on the tired list takes effect and-

(i) the leave is to be spent within the Federation or in the Union of South African, the pay and allowances due in respect of a period of two months or the period of the leave, whichever is the less;

(ii) The leave is not to be spent within the Federation or in the Union of South Africa, the pay and allowances due in respect of a period of three months or the period of the leave, whichever is the less.

(2) Where a period of leave with pay is granted to an officer under this Part, the officer shall, in respect of such period, be paid the amount of his pensionable emoluments and of any other allowances for which he is eligible under these regulations;

Provided that, if the period of such leave exceeds 30 days, no fuel allowance or servant allowance shall be paid to the officer in respect of the period of leave.

(3) Where a period of leave with half-pay is granted to an officer under this Part, the officer shall in respect of such period, be paid half the amount of his pay and the full amount of any allowances for which he is eligible under these regulations:

Provided that, if the period of such leave exceeds 30 days, no fuel allowance or servant allowance shall be paid to the officer in respect of the period of leave.

(4) Where a period of leave with reduced pay is granted to an officer under this Part, the officer shall, in respect of such period, be paid such amount of his pay and of any allowances for which he is eligible under these regulations as the Minister may in each case determine.

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(5) Where a period of leave without pay is granted to an officer under this Part, the officer shall not be paid any pay or allowances in respect of that period.

Occasional leave

33. (1) In this section, "year" means a period of twelve months ending on the 31st December.

(2) Subject to the provisions of this section, an officer may during any year be granted occasional leave with pay for one or more periods not exceeding 14 days in all.

(3) If an officer was appointed to commissioned rank after the 1st January in any year, then-

(*a*) In the case of an officer who was not a European member of the regular Force immediately prior to his appointment to commissioned rank, the occasional leave which may be granted to him shall be reduced in proportion to the period in that year during which he was not an officer;

(*b*) In the case of an officer who was a European member of the Regular Force immediately prior to his appointment to commissioned rank, the occasional leave which may be granted to him shall be reduced by the number of days occasional leave, if any, which had been granted to and taken by him during that year under the provision of the European members regulations.

(4) Any period of occasional leave taken by an officer during the period extending from the 1st January, 1960, until the date of commencement of these regulations shall be deemed to have been taken under the provisions of this section.

(5) Any period of occasional leave which is not taken during the year in which it may be granted shall not be taken in any other year.

(6) Any Sunday or Public holiday which falls within a period of occasional leave shall not be reckoned as part of that period.

(7) For the avoidance of doubt, it is hereby declared that occasional leave may be granted so as to immediately proceed and, additionally or alternatively, follow any period of vacation leave.

Accrual of vacational leave

34. (1) In this section "qualifying service", in relation to an officer, means the period that has elapsed since the date of commencement of these regulations or the date of his appointment to commissioned rank, whichever is the later.

(a) The period of any vacation leave, sick leave occasioned by his own misconduct or urgent private affairs leave taken during such period; and-

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(b) Any period after that date in respect of which, by virtue of the provisions of section 28, no pay or allowances were paid to him.

(2) Subject to the provisions of this section, vacational leave shall accrue to an officer at the following rates:-

(a) For every period of qualifying service amounting to less than 365 days, 53 days;

(b) For every period of qualifying service amounting to less than 365 days such number of days as bears the same proportion to that period as 53 bears to 365.

(3) Any vacation leave which, immediately before the date of commencement of these regulations, had accrued or was deemed to have accrued to an officer under the provisions of the European Members regulations and had not been taken by him, shall be deemed to have accrued in terms of this section.

(4) Where a member of the Regular Force is appointed to commissioned rank on or after the date of commencement of these regulations, any vacation leave which, immediately before the date of his appointment to commissioned rank, had accrued or was deemed to have accrued to him under the provisions of the law then applicable to him and had not been taken by him shall be deemed to have accrued in terms of this section.

(5) subject to the provisions of subsection (6), vacation leave shall not accrue to an officer in terms of this section in excess of 230 days, save that an officer on service outside the Federation which is declared to be "active service" by the Minister for the purpose of this subsection, shall be permitted to accrue vacation leave in excess of 230 days up to a maximum of 350 days during such service and during a period of six months immediately following his return to the Federation from such service, so, however, that any leave in excess of 230 days shall be forfeited at the end of a period of eighteen months after the date on which he returned to the Federation after such service.

(6) Not withstanding anything in this section contained, any officer who, immediately before the date of commencement of these regulations, has vacation leave accrued to him in respect of which the provisions of paragraph (*b*) of subsection (3) of section 80B of the Southern Rhodesia Staff Corps Regulations, 1947, published in Southern Rhodesia Government Notice No. 836 of 1947 as amended, applied, shall continue to enjoy the benefits conferred by such provisions.

Grant of vacation leave

35. (1) An officer may be granted vacation leave with pay for any period or part thereof which has accrued to him in terms of section 34 but not exceeding 184 days in respect of any one continuous period.

(2) If an officer is granted only a portion of the total vacation leave which has accrued to him, he may be granted the remaining portion at a later date, together with any further vacation leave which has accrued to him at that date.

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Sick leave

36. (1) An officer may at any time be granted sick leave for a period not exceeding 365 days on the following leave conditions-

(a) When the period exceeds 90 days, the officer shall furnish a medical certificate as to the state of his health to the Commander at the end of every month;

(b) The first 180 days of any period shall be with pay and any subsequent period shall be with half pay.

(2) If an officer is absent from duty or detained in hospital on the orders of a medical officer and in the opinion of the Commander, such absence or detention is rendered necessary by the misconduct of the officer, the Commander may direct that the period of such absence or detention be taken as vacation leave or, if the officer is not eligible for the grant of any vacational leave which may subsequently accrue to the officer.

Urgent private affairs leave

37. (1) An officer wishing to absent himself from duty on urgent private fairs who-

(*a*) is not eligible for the grant of a period of vacation leave or occasional leave; or

(*b*) is eligible for the grant of a period of vacation leave or occasional leave which is insufficient for the purpose;

may be granted urgent private affairs leave for such period as the Commander may determine.

(2) An officer shall only be granted urgent private affairs leave if all periods of vacation leave and occasional leave which he is eligible to be granted are taken in conjunction therewith.

(3) The first 90 days of any period of urgent private affairs leave granted in terms of this section shall be with pay and any subsequent period of such leave shall be without pay.

(4) Any period of urgent private affairs leave with pay granted to an officer in terms of this section shall be deducted from any period of vacation leave which may subsequently accrue to the officer after he returns to duty and, if before a period of vacation leave equivalent to the period of urgent private affairs leave with pay granted to him has accrued the officer retires, resigns, if placed on the retired list or is dismissed, the pay and allowances paid to him in respect of that period of urgent private affairs leave shall be a debt due by him to the Federal Government.

Study leave

38. (1) In this section, "period of the course study leave relation to an officer, means the period commencing on the first day on which the officer is required to report at the place where a course of study is to be held and ending on the last day on which he is required to be in attendance.

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(2) Subject to the provisions of this section, an officer may be granted study leave with pay, for a period not exceeding 184 days, for the purpose of-

(*a*) Undertaking a post-graduate or refresher course at a university or at a professional institute in a subject directly connected with or related to his official duties; or

(*b*) Obtaining a special diploma or qualification which it is desirable that he should possess in order to carry out duties which he may be called upon to perform; or

(*c*) Obtaining training or experience in specialized subjects;

if, in the opinion of the Minister, any such purpose is directly in the interests of the Federal Government.

(3) Study leave with pay may only be granted if:-

(*a*) The period of such study leave does not exceed one half of the period of the course of duty; and

(*b*) Accrued vacation leave of an amount at least equal to the period of such study leave, is taken in conjunction therewith; and

(*c*) The total period of all leave taken is equal to or grater than-

(i) The period, if any, necessary to make the journey to and from the place at which the course of study is to be held; plus

(ii) The period of the course of study; plus

(iii) An additional period of fourteen days to be known as a rest period;

Provided that, if any part of the journey to or from the place at which the course of study is to be held, is made by sea, the amount of such rest period shall be reduced by any period actually spent at sea.

(4) Notwithstanding the provisions of section 35, an officer to whom study leave with pay is granted may, if the circumstances so require, be granted accrued vacation leave for a period equal to-

(*a*) The period, if any necessary to make the journey to and from the place at which the course of study is to be held; plus

(*b*) Half the period of the course of study; plus

(*c*) The rest period of 14 days;

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Provided that the amount of accrued vacation leave which may be so granted to him shall not exceed 230 days.

(5) If an officer is granted accrued vacation leave in excess of 184 days under subsection (4), the period of study leave granted to him amy exceed 184 days, but any period of study leave so granted in excess of 184 days shall be study leave without pay.

(6) Study leave without pay or with reduced pay may be granted, for such period as the Minister may determine, to an officer warded a scholarship or grant for purposes which, in the opinion of the Minister, do not warrant the grant of study leave with pay.

(7) An officer to whom study leave with pay has been granted, shall not again be granted study leave with pay until a period of not less than ten years has elapsed since the first day of his last absence from duty on vacation leave taken in conjunction with study leave with pay.

(8) If, before the expiry of three years from the date of his return to duty, an officer to whom study leave with pay or with reduced pay has been granted retires, resigns, if placed on the retired list following a finding by a medical board that he is mentally or physically unfit for further service, or is dismissed, he shall pay to the Federal Government:-

(a) If the retirement, resignation, placing on the retired list or dismissal takes effect before the expiry of one year from the date of his return to duty, a sum equal to the pay or reduced pay received by him during the period of study leave together with the amount of any fees refunded to him under section 39;

(b) If the retirement, resignation, placing on the retired list of dismissal takes effect after the expiry of one year, but before the expiry of two years from the date of his return to duty, two thirds of the sum payable under paragraph (*a*);

(c) If the retirement, resignation, placing on the retired list or dismissal takes effect after the expiry of two years but before the expiry of three years from the date of his return to duty, one-third of the sum payable under paragraph (*a*);

and any amount payable by an officer under this subsection, shall be a debt due by him to the Federal Government.

Payment tuition and examination fees

39. (1) Subject to the provisions of this section, an officer to whom study leave with pay or with reduced pay has been granted shall be refunded the amount of-

(*a*) The tuition fees for his course on the production by him of a receipt showing payment of the fees; and

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(*b*) The fees for any examination which is an integral part of his course on the production by him of-

(i) A receipt showing that pay of such fees has been made; and

(ii) Evidence that he has successfully passed the examination.

(2) No refund of tuition fees to an officer under this section shall exceed one hundred and fifty thousand kwacha unless, before the grant of study leave to that officer, the Minister of Finance approved a refund in his case exceeding one hundred and fifty thousand kwacha.

Grant of free rail fares on taking leave

40. (1) Subject to the provisions of this section, an officer who has completed three years' service and who proceeds on vacation leave for a period of not less than 30 days shall be paid:-

(*a*) If he is not proceeding overseas or by sea from one coastal port to another between Beira and Cape Town, an amount equal to the const of a first-class return rail fare from the appropriate point of departure by rail nearest to his station to the railway station nearest to his destination;

(*b*) If his journey to a destination in the Union of South African or Portuguese East Africa includes a journey by sea from one coastal port to another between Beira and Cape Town, an amount equal to the cost of a first-class return rail fare from the appropriate point of departure by rail nearest to his station to the railway station of the port of embarkation or disembarkation, whichever is the further from the point of departure by rail nearest to his station.

(*c*) If he proceeds overseas by sea or air, an amount equal to the cost of a first-class return rail fare to Cape Town from the appropriate point of departure by rail nearest to his station;

(*d*) If he proceeds to a place within the Federation, an amount equal to the cost of the first-class rail fares referred to in paragraph (a) in respect of his dependants;

(*e*) If-

(i) He proceeds to a place outside the Federation; and

(ii) His dependants are to return to the Federation; an amount equal to the cost of the first-class rail fares referred to in paragraph (*a*), (*b*) or (*c*), as the case may be, in respect of his dependants;

Provided that no amount which may be payable under this subsection shall, in respect of each person, exceed the cost of a first-class return rail fare at civil servants' concession rates from the appropriate point of departure to cape Town by the most direct route.

(2) The benefits referred to in subsection (1) shall not be granted unless the officer undertakes, in writing, that he will proceed on vacation leave to his destination by a named route and, if the circumstances so require, that his dependants have preceded him or will proceed him or will accompany him or will join him during his vacation leave and are to return to the Federation.

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(3) An officer who fails to comply with the undertaking given by him in terms of subsection (2) shall, save as may otherwise be authorised by the Commander, refund the cost or part thereof of any first-class return rail fare paid to him in terms of this section.

(4) An officer may subsequently be granted the benefits referred to in subsection (1) after a period of three years have elapsed between the first day of his last vacation leave in respect of which a benefit was granted and the first day of the vacation leave in respect of which application for the grant of a benefit is made.

Provided that, if an officer proceeds on vacation leave for a period of not less than 30 days before such period of three years has elapsed, he may be granted a proportion of the benefits referred to in subsection (1) which bear the same relation to the full benefits as the number of completed months which have elapsed bears to such period of three years.

(5) For the purpose of this section, "dependant" means-

(a) The wife of an officer

(b) Any child of an officer wholly dependent on him; who precedes him or accompanies him or joins him on vacation leave.

41. (1) Subject to the provisions of this section, a person who- Grant of free rail fares on retirement

(a) Is an officer and who proceeds on vacation leave pending retirement on pension;

(b) Was an officer and who leaves the Federation after his retirement on pension shall be granted in respect of himself and each of his dependants the benefits specified in subsection (2) for a journey beyond the borders of the Federation.

(2) The benefits referred to in subsection (1) shall be-

(*a*) If the person is proceeding overseas or by sea from one coastal port to another between Beira and Cape Town an amount equal to the cost of single or return first-class rail fares by the most direct route from the railway station nearest to his last place of duty to the railway station nearest to his destination;

(*b*) If the person's journey to a destination in the Union of South Africa or Portuguese East Africa includes a journey by sea from one coastal port to another between Beira and Cape town, an amount equal to the cost of single or return first-class rail fares by the most direct route from the station nearest to his last place of duty to coastal port of embarkation or disembarkation whichever is the further from the railway station nearest to his last place of duty;

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(*c*) If the person proceeds overseas by sea or air, an amount equal to the cost of single or return first-class real fares from the railway station nearest to his last place of duty to Cape Town; Provided that-

(i) In the case of single journey, a person shall be entitled only to an amount equal to the cost of single first class rail fare and, in any case, shall not be entitled for a benefit in respect of himself or a dependant exceeding the cost of a first-class rail fare from the railway station nearest to his last place of duty to Cape Town.

(ii) In the case of a return journey, the benefit in respect of the person or a dependant shall not exceed the cost of a first-class rail fare at civil servants' concession rates from the railway station nearest to the person's last place of duty to Cape Town.

(3) The widow of a person who was an officer and his children dependent upon her may be granted the benefits conferred by section if such person-

(*a*) Dies before retirement on pension; or

(*b*) having retired on pension, dies within twelve months of the benefits to which he was entitled under this section.

(4) A person who receives the benefits conferred by section 40 when proceeding on vacation leave pending retirement shall not be entitled to the benefits conferred by this section.

(5) Nothing in this section contained shall entitled a person or his dependants to be granted the benefits conferred by this section on more than one occasion.

(6) No claim for the benefits conferred by this section shall be granted unless it is supported by a certificate that they will be used for the journey in respect of which the claim was made and, in the case of a claim made in respect of a person's dependants, particulars are given.

(7) For the purpose of this section, "dependant", in relation to a person referred to in subsection (1), means-

(*a*) The wife of that person;

(*b*) Any child of that person who was, at the date on which that person ceased to be an officer, under the the age of eighteen years and wholly dependent on him;

who precedes him, accompanies him or follow him on any journey with respect to which a benefit may be granted under this section.

Payment in respect of accrued leave

42. (1) On the death of an officer, there shall be paid either to his widow or to his dependants, as the Minister may determine, the cash equivalent of any vacation leave accrued to him, calculated at the rate of pay and allowances which he would have received had be proceeded on vacation leave on the day immediately preceding the date of his death.

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(2) An officer who retires or who is placed on the retired list following a finding by a medical board that he is mentally or physically unfit for further service, shall be paid the cash equivalent of any vacation leave accrued to him, calculated at the rate of pay and allowances which he would have received had he proceeded on vacation leave on the day immediately proceeding the date on which his retirement takes effect.

(3) An officer who resigns and whose pensionable service amounts to five or more years shall be paid half the cash equivalent of any vacation leave, not exceeding 184 days, accrued to him, calculated at the rate of pay and allowances which he would have received had he proceeded on vacation leave on the day immediately preceding the date on which his resignation takes effect.

(4) Save as provided by this section, no payment shall be made of the cash equivalent of any vacation leave accrued to an officer.

PART IV

MEDICAL BENEFITS

Medical examination

43. The Commander may at any time order an officer to present himself for and to submit to a medical examination at the expense of the Federation Government by-

(*a*) A medical officer;

(*b*) A private medical practitioner;

(*c*) A medical board.

Medical and hospital

44. (1) An officer shall while stationed or on leave within the Federation, and while outside the Federation on active service or other duty, be entitled to receive the following benefits free of charge in respect of himself and his dependent.

(*a*) Attendance and treatment by a medical officer;

(*b*) such medical treatment by persons other than of medical officers as is, before the commencement of such treatment, authorized by a medical officer.

(2) If, while an officer is stationed or on leave within the Federation or is outside the Federation on active service or other duty, a medical officer authorizes the admission to a Federal Government hospital of such officer or of any of his dependants, such officer shall not be required to pay any of the hospital fees which would normally be incurred during the period the officer or any such dependant is kept at the hospital and shall be entitled, in addition, to have the patient transported to the hospital free of charge.

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(3) If the Director of Medical Services is satisfied that no medical officer was available to authorise-

(*a*) The medical treatment of an officer or his dependant referred to in paragraph (*b*) of subsection (1); or

(*b*) The admission to a Federal Government hospital of an officer or his dependant referred to in subsection (2);

and that such treatment or admission was necessary in the circumstances, he may authorize such treatment or admission and thereupon the officer shall be entitled to the benefits conferred by subsection (1) or (2) as if the treatment or admission had been authorized by a medical officer.

(4) If an officer on leave outside the Federation requires medical or hospital treatment for himself in respect of an illness, injury or disability which is attributable to his service within the Federation, the Director of Medical Services shall authorize him to be provided, free of charge, with such medical or hospital treatment (including transport to a hospital) as the Director of Medical Services considers necessary in the circumstances.

(5) If while an officer is stationed or on leave within the Federation or is outside the Federation on active service or other duty, it is necessary for him or any of his dependants to be admitted to a hospital and no Federal

Government hospital is available for the purpose, the Government hospital is available for the purpose, the Director of Medical Services shall authorize the admission of such officer or dependant to such other hospital or institution as may be named by him, and thereupon the officer shall be entitled to have the patient to the hospital or other institution paid by the Federal Government.

Additional medical services

45. Without derogation from the provisions of section 44-

(*a*) The Director of Medical Services may authorize the payment to an officer of any medical or surgical expenses incurred by the officer within the Federation in respect of himself or any of his dependants, other than medical or surgical expenses incurred in connection with the confinement of the wife of the officer;

(*b*) If the Director of Medical Services certifies that specialist medical or surgical advice or treatment is required by an officer and that such advice or treatment is not available within the Federation, the Minister may authorize the payment of any or all of the expenses incurred by him in obtaining such advice or treatment.

Dental treatment

46. An officer shall, while stationed or on leave within the Federation and while outside the Federation on active service or there duty, be entitled to free dental treatment by a dental officer in respect of himself.

Treatment by oculists

47. (1) If the examination and treatment of an officer's eyes by an oculist is authorized by a medical officer, any costs thereby incurred shall be paid by the Federation Government.

(2) The cost of a standard type of frame and lenses prescribed for an officer by an oculist or optician shall be paid by the Federal Government.

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PART II

TRANSFERS AND TRAVELLING ON DUTY

Allwance for subsistance and travelling expenses

48. The Minister may, with the concurrence of the Minister of Finance, authorize the payment to an officer in respect of any period during which he is required to travel on duty of-

(*a*) an allowance sufficient to cover the reasonable expenses incurred by the officer on travelling and subsistence;

(*b*) An allowance sufficient to cover other reasonable out-of pocket expenses incurred by the officer.

Allowance relieving or special duty

49. The Minister may, with the concurrence of the Minister of Finance, authorize the payment to an officer who is required to undertake relieving or special duty of an allowance sufficient to cover the reasonable expenses thereby incurred by the officer.

Expenses on transfer at the request of an officer

50. An officer who is posted on transfer at his own request shall not be entitled to a refund of any of the expenses incurred thereby.

Expenses on transfer other than at the request of an officer

51. (1) Subject to the provisions of this section, an officer who is posted on transfer other than at his own request shall be entitled to the following benefits-

(*a*) Allowances at the rates authorize under section 48 in respect of himself and each of his dependant over the age of 12 years;

(*b*) allowances at half the rates authorized under section 48 in respect of each of his dependants under the age of 12 years:

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(*c*) Either-

(i) Reimbursement of the expenses necessarily incurred in transporting-

A. Himself, his dependants, and not more than two domestic servants;

B. The household and personal effects (including domestic animals) not exceeding 15,000 lb. in weight belonging to himself, his dependants, and not more than two domestic servants;

C. A reasonable amount of excess luggage belonging to himself, his dependants, and not more than two domestic servants by passenger train; or

(ii) If he is authorized by the Commander to travel by a private motor vehicle in respect of which a comprehensive policy of insurance or a policy of insurance in respect of full third party risks, together with, in either case an employers' indemnity extension is in force-

A. A mileage allowance at a rate fixed by the Minister with the concurrence of the Minister of Finance; and

B. Reimbursement of the expenses necessarily incurred in transporting the persons (other than himself), effects and luggage referred to in subparagraph (i) which could not reasonably have been transported in such private motor vehicle; his household effects, a gratuity of-

(i) In the case of an officer without any dependant, eleven thousand two hundred and fifty kwacha;

(ii) in the case of an officer with one or more dependants, thirty thousand kwacha;

(*e*) Reimbursement of any reasonable expenses incurred in employing professional packers.

(2) The allowances payable under paragraphs (a) and (b) of subsection (1) may be paid in respect of any of the following periods, that is to say-

(*a*) Any period immediately preceding the date of transfer of the officer or immediately following the date of arrival of the officer at the station to which he is posted on transfer, not exceeding 22 days in all, during which the officer and his dependants necessarily incurred the expenses of accommodation at a hotel, club, boarding-house or rest-house;

(*b*) Where the cost of sleeping accommodation and meals is not included in the fares paid for transportion the officer and his dependants to the station to which he is posted on transfer, the period during which the officer and his dependants were in transit thereto.

(3) No allowance shall be paid under paragraph (e) of subsection (1) unless the authority of the Commander to employ professional packers has first been obtained.

(4) If an officer travels by a mode of transport which, after making due allowance for any consequent saving in travelling and subsistence and other allowances and benefits, is more expensive than another mode of transport which is available and reasonably suitable, the officer shall be reimbursed as if he had travelled by the less expensive mode of transport, unless the Minister is satisfied that, owing to urgency or other reasons, the additional expense was justified.

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52. An officer may be paid in advance the full amount of any allowances and, additionally or alternatively, other benefits which it is estimated will be payable to him under this Part in respect of any posting on transfer or travelling on duty, but any payment so made shall, immediately following the termination of the period in respect of which the payment has been made, be adjusted to the actual amount of the allowances and, additionally or alternatively, to there benefits which are payable to him.

Advances of allowances and other benefits payable under this part

53. An officer shall, in respect of any period during which he attends a camp or training and during such other periods as the Minister may determine, be paid a field allowance prescribed in the Fifth Schedule for an officer holding the rank which is not applicable to him.

Field allowance

PART VI

DRESS AND EQUIPMENT

54. (1) An officer shall provide himself with such clothing and personal equipment as will enable him to appear in all orders of dress, and shall maintain it in a serviceable condition.

Clothing and equipment.

(2) On first appointment to commissioned rank an officer shall be paid a gratuity of one hundred and twelve thousand five hundred kwacha for the purpose of providing himself with such clothing and personal equipment as will enable him to appear in all orders of dress.

(3) If a new or altered order of dress is adopted after the first appointment of an officer to commissioned rank, he shall be entitled to be granted a free issue of any additional clothing and personal equipment required to enable him to appear in the new or altered order of dress, or, in lieu thereof, to the paid the amount of any expenses necessarily incurred by him in providing himself with such clothing and equipment.

(4) An officer shall, on every anniversary of the date of his appointment to commissioned rank, be paid a gratuity of thirty thousand kwacha for the purpose of maintaining his clothing and personal equipment in a serviceable condition.

55. (1) An officer serving in a unit included in the Air Force shall be issued with any flying and camping equipment necessary to enable him to perform his duties.

Flying and camping equipment

(2) Any flying and camping equipment issued to an officer shall remain the property of the Federal Government, and an officer may at any time be ordered by the Commander to return all or any items thereof.

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(3) An officer who fails when ordered to so do return any item of flying or camping equipment issued to him shall be liable to pay an amount equal to the cost thereof to the Federal Government, unless he can show that such items was stolen, lost, or destroyed and that he took all reasonable precautions to prevent its theft, loss or destruction.

(4) Any flying and camping equipment issued to an officer in terms of subsection (1) shall be maintained in a serveable condition at the expense of the Federation Government.

56. An officer shall not wear any article forming part of the uniform of the Defence Force which he is not authorized to wear. — Wearing of uniform

Regulations 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88 have been revoked by Defence (Regular Force) Pensions) Regulations, reg 40(b).

PART IX

MISCELLANEOUS PROVISIONS

89. No officer shall marry without obtaining the consent of the Commander. — Marriage

90. An officer shall, if required by the Commander to do so, reside in official quarters. — Occupation of official quarters

91. Except with the written consent of the Minister and in accordance with such directions, if any, as the Minister may from time to time give him, an officer shall not- — Engagement in profit trade or business

(*a*) Engage for profit in any business or occupation other than his official duties;

(*b*) be or become a director or engage directly or indirectly in the management or direction of any public company or syndicate.

92. No officer shall- — Participation in political activities

(*a*) Belong to any political organization or take any active part in political matters;

(*b*) Belong to any organization which is banned or prescribed by or under any law, including a Territorial law;

(*c*) Attend any political meeting or assembly when in a uniform of the Defence Forces; or

(*d*) Be a member of a Municipal Council.

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93. (1) If an officer deserts and there is no likelihood of of his immediate arrest, the Commander may, on the expiration of one month after the date of desertion, authorize the sale by auction of any private effects or personal property left by the officer. Sale of effects of derserter

(2) The proceeds of any sale of private effects or personal property of an officer who has deserted, together with the amount of pay and allowances due to him at the date of desertion, shall be applied firstly to the liquidation of any sums due by the that officer to the Federal Government and thereafter to the liquidation of any sums due by that officer to a mess or other institution, organization or association of members of the Defence Forces.

94. The amount of pay reasonable expenses incurred in burying an officer shall be paid by the Federal Government. Funerall expenses

95. Where any mess or other institution, organization or association of officers has been constituted at a station, the Commander may order all the officers at that station or any class of those officers to be members of that mess, institution, organization or association and to pay such subscriptions as re due by the members thereof. Messes and other institutions

FIRST SCHEDULE

(*Section* II)

PART I

RATES OF PAY FOR OFFICERS OTHER THAN MEDICAL OFFICERS, DENTAL OFFICERS, LEGAL OFFICERS AND CHAPLAINS

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	Rank	Year of service in rank	Rate Per annum K
1.	Major-General Air Vice-Marshal		4,492,500
2.	Brigadier Air Commodore		3,780,000
3.	Colonel Group Captain	First Year Second Year Third Year Fourth Year and subsequent years	3,151,575 3,231,900 3,307,500 3,387,825
4.	Lieutenant-Col Wing Commander	First Year Second Year Third Year and subsequent Years	2,835,000 2,915,325 2,990,925
5.	Major Squadron leader	First Year Second Year Third Year Fourth Year Fifth Year Sixth Year and subsequent Years	2,348,325 2,409,750 2,475,900 2,553,075 2,633,400 2,712,150
6.	Captain Flight-Lieutenant	First Year Second Year Third Year Fourth Year Fifth Year Sixth Year Seventh Year and subsequent Years	2,159,550 2,220,750 2,286,900 2,348,325 2,409,750 2,475,900 2,553,075
7.	Lieutenant Flying officer..	First Year Second Year Third Year Fourth Year Fifth Year Sixth Year Seventh Year Eighth Year Ninth Year and subsequent Years	1,578,150 1,639,800 1,701,000 1,767,150 1,828,800 1,890,000 1,956,150 2,017,800 2,079,000
8.	Second Lieutenant Pilot officer	First Year Second Year and subsequent Years	1,181,250 1,261,800

PART II

RATES OF PAY FOR MEDICAL OFFICERS, DENTAL OFFICERS, LEGAL OFFICERS AND CHAPLAINS

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	Rank or appointment	*Year of service in rank or appointment*	*Rate per annum K*
1.	Medical Offer holding the rank of lieutenant		2,100,000
2.	Medical officer, dental officer or legal officer holding any rank other than that of Lieutenant	First Year Second Year Third Year Fourth Year Fifth Year Sixth Year Seventh Year Eighth Year Ninth Year Tenth Year Eleventh Year Twelfth Year and subsequent Years	2,159,550 2,220,750 2,286,900 2,348,325 2,409,750 2,475,900 2,553,015 2,633,400 2,712,150 2,835,000 2,915,325 2,990,925
3.	Chaplain (Fourth Class)	First Year Second Year Third Year Fourth Year and subsequent Years	2,041,200 2,907,900 2,159,550 2,216,250
4.	Chaplain (Third Class)	First Year Second Year Third Year Fourth Year Fifth Year and subsequent Years	2,254,050 2,310,750 2,271,950 2,442,825 2,523150
5.	Chaplain (Second Year)	First Year Second Year Third Year and subsequent Years	2,768,850 2,820,825 2,868,015
6.	Chaplain (First Year)	First Year Second Year Third Year Fourth Year	2,995,650 3,052,350 3,099,600 3,156,300

SECOND SCHEDULE

(*Section* 14)

RATES OF ACTING ALLOWANCE

PART I

Acting appointment	*Rate per month K*
Acting Commander	15,000

PART II

	Rank	*Rate per month K*
1.	Field Rank	11,250
2.	Captain or Flight-Lieutenant	7,500

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THIRD SCHEDULE

(*Section* 15)

RATES OF FLYING PAY ALLOWANCE

	Rank	Rate per day K
1.	Air Commodore	244
2.	Group Captain	488
3.	Wing Commander	825
4.	Squadron Leader	825
5.	Flight-Lieutenant	825
6.	Flying Officer	675
7.	Pilot Officer	600

FOURTH SCHEDULE

(*Section* 17)

RATES OF CHILDREN'S ALLOWANCE

	Rate of pay of officers per annum	*Rate of allowance per annum for first child*	*Rate of allowance per annum for each additional child*
1.	Not exceeding k1,839,000	k90,000	k36,000
2.	k1,788,000 to k1,839,000	k82,500	k36,000
3.	k1,840,500 to k1,890,000	k75,000	k36,000
4.	k1,891,500 to k1,998,000	k67,500	k36,000
5.	k1,999,500 to k2,052,000	k60,000	k36,000
6.	k2053500 to k2,103,000	k52,500	k36,000
7.	k2,104,500 to k2,628,000	k45,000	k36,000
8.	k2629500 to k2,731,500	k34,500	k27,000
9.	k2,733,000 to k2,835,00	k24,000	k18,000
10.	k2,836,500 to k2,940,000	k12,000	k9,000
11.	Exceeding k2,940,000	NIL	NIL

FIFTH SCHEDULE

(*Section* 53)

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RATES OF FIELD ALLOWANCE

	Rank	Rate per day
1.	Major or squadron leader or any higher rank	k300
2.	Captain or flight-lieutenant	k338
3.	Lieutenant or flying officer	k225
4.	Second lieutenant or pilot officer	k225

SIXTH SCHEDULE

(*Section* 65)

RATES OF PENSION PAYABLE IN RESPECT OF CHILDREN

1. If the member or person receiving a pension leaves a widow, the pension in respect of his children shall be at the following rates-

For one child	A pension equal to twenty-five per centum of his widow's pension.
For two children	A pension equal to forth per centum of his widow's pension.
For three children	A pension equal to fifty per centum of his widow's pension.
For four children	A pension equal to sixth per centum of is widow's pension.
For five or more children	A pension equal to sixty-six and two-thirds per centum of his widow's pension:

Provided that if owing to the death or remarriage of the widow her pension ceases, the pension in respect of the children shall be at the rates prescribed in paragraph.

2. If the member or person receiving a pension leaves no widow, the pension in respect of his children shall be at the following rates-

For two children	A pension equal to fifty per centum of the pension that would have been payable to his widow had he left one.
For three children	A pension equal to eight per centum of the pension that would have been payable to his widow had he left one.
For four children	A pension equal to one hundred and twenty per centum of the pension that would have been payable to his wide had he left one.
For five or more children.	A pension equal to one hundred and thirty-three and one-third per centum of the pension that would have been payable to his widow had he left one.

Supplement to the Federal Government Gazette dated 27th May, 1960. Printed by the Government Printer, Salisbury.

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The Laws of Zambia

CHAPTER 122 THE HOME GUARD ACTCHAPTER 122

THE HOME GUARD ACT

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MEMBERS, ENLISTMENT, ATTESTATION, ETC.

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HOME GUARD PROBING COMMITTEE

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ALLOWANCE, TRAINING, DISCHARGE, ETC.

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CHAPTER 122

HOME GUARD

32 *of* 1971
13 *of* 1994

An Act to make provision for the establishment, maintenance, discipline and administration of the Home Guard; and to provide for matters incidental thereto or connected therewith.

[21*st January*, 1972]

PART I PRELIMINARYPART I

PRELIMINARY

1. This Act may be cited as the Home Guard Act. Short title

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2. (1) In this Act, unless the context otherwise requires- Interpretation

"active service" shall have the meaning assigned thereto in section *three* of the Defence Act; Cap. 106

"Army" means the Regular Force of the Army referred to in subsection (1) of section *four* of the Defence Act; Cap. 106

"citizen" means a citizen of Zambia; Cap. 106

"Commander" means the Commander of the Home Guard;

"commanding officer", in relation to a guardsman, means the officer for the time being commanding the unit, sub-unit, branch or detachment of the Home Guard to which the guardsman belongs or is attached;

"date of attestation", in relation to any person, means the date on which he is attested in accordance with the provisions of this Act;

"Defence Force" shall have the meaning assigned thereto in section *two* of the Defence Act; Cap. 121

"guardsman" means a member of the Home Guard other than an officer;

"member" means a guardsman or an officer;

"officer" means an officer of the Home Guard appointed as such by the President;

"serviceman" shall have the meaning assigned to it in section *two* of the Zambia National Service Act;

"unit" means a body of the Home Guard declared to be a unit by the Commander, and "sub-unit", "branch" and "detachment" shall be construed accordingly.

(2) For the purposes of this Act and the Defence Act as applied to the Home Guard- Cap. 106

(*a*) a reference to being on duty shall be construed as a reference to being present for the purpose of performing any duty required in accordance with the provisions of this Act;

(*b*) the period during which the whole or a part of the Home Guard is employed under order of the President under section *nineteen* shall be deemed to begin as soon as the order is made.

PART II ESTABLISHMENT OF THE HOME GUARD AND ITS COMMANDAND FUNCTIONSPART II

ESTABLISHMENT OF THE HOME GUARD AND ITS COMMAND AND FUNCTIONS

3. There is hereby established a force to be known as the Home Guard (in this Act referred to as "the Home Guard"). Establishment of the Home Guard

4. The supreme command of the Home Guard shall vest in the President and he shall hold the office of the Commander-in-Chief of the Home Guard. Supreme command of the Home Guard

5. (1) The President may appoint a suitable person as Commander of the Home Guard (hereinafter called "the Commander"). Command of the Home Guard

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(2) The Commander shall, subject to the provisions of this Act and subject to the orders and directions of the Minister, have the command, superintendence, direction and control of the Home Guard.

(3) The Commander may, subject to the general instructions of the Minister and to the provisions of this Act, from time to time make standing orders for the general management of the members of the Home Guard in relation to their training, arms and accoutrement, clothing and equipment, places of residence, classification of duties, as well as their distribution and inspection, and such other orders and instructions as he may deem expedient for preventing neglect and for promoting efficiency, discipline and good management of the Home Guard.

(4) The Commander may delegate to any officer such duties, functions and powers (other than the power of delegation) as he may from time to time deem expedient.

Functions of the Home Guard

6. The functions of the Home Guard shall be the defence of the Republic and the maintenance of public order and public safety.

Duties of members of the Home Guard

7. Every member of the Home Guard shall-

(*a*) perform such duties and carry out such training as may be directed by the officers senior to or placed in command over him;

(*b*) obey and execute promptly all orders lawfully issued to him by the officers senior to or placed in command over him.

PART III MEMBERS, ENLISTMENT, ATTESTATION, ETC.PART III

MEMBERS, ENLISTMENT, ATTESTATION, ETC.

Composition of the Home Guard

8. (1) The Home Guard shall consist of such number of officers and guardsmen as may from time to time be determined by the President.

(2) All the officers and guardsmen shall be liable to serve in any part of Zambia and, in so far as is herein provided, elsewhere.

Members of the Home Guard to be members of the Defence Force

9. Every member of the Home Guard shall, when on duty, and during any period when the President has ordered employment of the whole or any part of the Home Guard under the provisions of section *nineteen*, be subject to military law and shall be deemed, as far as may be, a member of the Defence Force-

(*a*) if serving as an officer in the Home Guard, as an officer; and

(*b*) otherwise as a soldier:

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Provided that this section shall not render a member of the Home Guard liable to proceedings for an offence under section *seventy-three* of the Defence Act (which provides for the punishment under military law of civil offences). Cap. 106

10. (1) A citizen aged between eighteen and forty-five years may enlist in the Home Guard. Eligibility for enlistment

(2) A citizen to whom the provisions of subsection (5) of section *five* of the Zambia National Service Act apply shall enlist in the Home Guard. Cap. 121

11. Any person authorised in that behalf by the Commander (hereinafter referred to as "a recruiting officer") may enlist recruits in the Home Guard in the prescribed manner. Recruiting officer

12. (1) A person offering to enlist in the Home Guard shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating such other things as may be prescribed, and a recruiting officer shall not enlist any person in the Home Guard unless satisfied by that person that he has been given such a notice, understands it, and wishes to be enlisted. Enlistment

(2) A person on joining the Home Guard shall make the declaration set out in the Schedule.

(3) The term for which a person may be enlisted in the Home Guard shall be such term commencing with the date of his attestation as may be prescribed.

13. (1) When a person has made the declaration set out in the Schedule upon his attestation- Validity of attestation and enlistment

(*a*) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;

(*b*) after the expiration of a period of three months from the date on which he made the said declaration, he shall be deemed to have been validly enlisted, notwithstanding any non-compliance with the requirements of this Act or any regulations made thereunder as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper), and he shall be deemed to be a member of the Home Guard until his discharge.

(2) Where a person has received any allowance, including transport fares, without having previously made the declaration set out in the Schedule-

(*a*) he shall be deemed to be a member of the Home Guard until discharged;

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(*b*) he may claim his discharge at any time, and, if he makes such claim, the claim shall be submitted as soon as may be to the competent authority in the Home Guard who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in the foregoing provisions of this section shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

False answers in attestation papers

14. (1) If a person appearing before a recruiting officer for the purposes of being enlisted in the Home Guard knowingly makes a false answer to any question contained in the attestation paper and put to him by, or by the direction of, the recruiting officer, he shall commit an offence against this section and shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

(*As amended by Act No.* 13 *of* 1994)

Cap. 106

(2) For the avoidance of doubt, it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to military law under this Act or the Defence Act.

Prohibition of non-citizens from enlisting or serving in the Home Guard

15. (1) A person who is not a citizen shall not enlist or serve in the Home Guard.

(2) If a person who is not a citizen enlists or serves in the Home Guard, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

(*As amended by Act No.* 13 *of* 1994)

PART IV HOME GUARD PROBING COMMITTEEPART IV

HOME GUARD PROBING COMMITTEE

Home Guard Probing Committee

16. (1) There is hereby established a Home Guard Probing Committee (hereinafter referred to as "the Probing Committee").

(2) The Probing Committee shall consist of a chairman and four other members who shall all be appointed by the Minister.

(3) A member of the Probing Committee shall be appointed for a period of two years.

(4) The functions of the Probing Committee shall be-

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(*a*) to consider the cases of hardship to individual persons resulting from their liability to join, enlist or continue in the Home Guard; and

(*b*) such other functions as the Minister may prescribe.

(5) Notwithstanding anything to the contrary contained in this Act or any other written law, the Probing Committee may exempt any person or class of persons from liability to join, enlist or continue in the Home Guard.

PART V ALLOWANCE, TRAINING, DISCHARGE, ETC.PART V

ALLOWANCE, TRAINING, DISCHARGE, ETC.

Allowance

17. (1) A member of the Home Guard shall not be entitled to any pay for his service in the Home Guard, but he may be given such allowance as the Minister may prescribe in respect of performance of duty during the period when the President has ordered the employment of the whole or a part of the Home Guard under section *nineteen*.

(2) Different amounts of allowance may be prescribed in respect of different ranks of members of the Home Guard.

Training

18. (1) Subject to the provisions of this section, every member of the Home Guard shall attend for training at such place or places and for such periods as may be determined by the Commander and shall fulfil such conditions relating to training as may be prescribed.

(2) The requirements of subsection (1) may be dispensed with in whole or in part with respect to any unit, sub-unit, branch or detachment by the Commander, and with respect to any individual member of the Home Guard by his commanding officer, subject to any general directions of the Commander.

Embodiment

19. (1) Whenever it appears to the President necessary or desirable in the public interest, he may-

(*a*) order the employment of the whole or any part of the Home Guard; and

(*b*) order the employment of any member of the Home Guard for service within or, with his consent, outside Zambia.

(2) Any member of the Home Guard employed in terms of subsection (1) by reason of an order issued by the President shall remain so employed until released by the President.

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(3) Every member of the Home Guard may, when undergoing training under section *eighteen*, or when employed in terms of subsection (1), be posted or attached to any unit of the Regular Force, any unit, sub-unit, branch or detachment of the Home Guard or the Zambia Combined Cadet Force established under section *three* of the Combined Cadet Force Act. Cap. 118

20. (1) Subject to the provisions of this Act, a member of the Home Guard upon becoming entitled to be discharged shall be discharged with all convenient speed, but until discharge shall remain a member of the Home Guard. Discharge

(2) Except in pursuance of the order of a court-martial, a member of the Home Guard shall not be discharged unless his discharge has been authorised by order of the competent authority in the Home Guard.

(3) Subject to the provisions of this Act, a member of the Home Guard shall be entitled to be discharged at any time on complying with the following conditions:

(*a*) giving to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged and stating his reasons therefor; and

(*b*) delivering up in good order, fair wear and tear only excepted, all arms, clothing and appointments, being public property issued to him or, in cases where for any good or sufficient cause the delivery of the property aforesaid is impossible, paying the value thereof:

Provided that it shall be lawful for the commanding officer, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with all or any of the provisions of this section.

(4) If the commanding officer is of the opinion that the reasons for requesting a discharge given in a notice under paragraph (*a*) of subsection (3) are frivolous, he shall transmit the notice together with the grounds upon which he formed his opinion to a committee appointed for this purpose by the Minister and-

(*a*) if the committee by a majority vote agrees with the opinion of the commanding officer that the reasons given in the notice are frivolous, the member of the Home Guard shall be so informed and, upon communication of such information to the member of the Home Guard, the notice shall not be deemed to be a notice complying with the requirements of paragraph (*a*) of subsection (3);

(*b*) if the committee by a majority vote disagrees with the opinion of the commanding officer, the reasons given in the notice shall not be considered as frivolous, and the commanding officer shall be so informed and such decision shall be binding on the commanding officer.

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(5) Subject to the approval of the Commander, a member of the Home Guard may be discharged by his commanding officer-

(*a*) for disobedience to lawful orders while doing any military duty or for neglect of such duty, or for misconduct by him as a guardsman or for other sufficient cause;

(*b*) within one year of the date of his enlistment if, in the opinion of his commanding officer, he is considered either-

(i) unlikely to make an efficient member of the Home Guard; or

(ii) likely to bring discredit upon the Home Guard.

Postponement of discharge

21. Where the time at which a member of the Home Guard would otherwise be entitled to be discharged occurs at a time when the Home Guard or any part thereof is employed in terms of section *nineteen*, he may be required to prolong his service for such further term as the President may order.

PART VI DISCIPLINEPART VI

DISCIPLINE

Failure to attend on embodiment
Cap. 106

22. (1) Any member of the Home Guard who, except with leave lawfully granted or on account of such sickness or such other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembly on embodiment in accordance with the directions given under section *nineteen* shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction by court-martial shall be punishable as for an offence under section *forty-two* or, as the case may be, section *forty-three* of the Defence Act.

Cap. 106

(2) Sections *one hundred and seventy-three* and *one hundred and seventy-four* of the Defence Act shall apply to a deserter or absentee without leave contrary to subsection (1).

Cap. 106

(3) Any person who, knowing any guardsman to be a deserter within the meaning of this Act or the Defence Act, employs or continues to employ the guardsman shall be deemed to aid him in concealing himself and shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(4) Where a guardsman deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account for the purpose of discharge.

(*As amended by Act No.* 13 *of* 1994)

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23. Where a member of the Home Guard, except with leave lawfully granted or on account of such sickness or such other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for his initial or periodical training, or fails to attend the number of drills or instructional parades or to fulfil any other conditions relating to his initial or periodical training which may be prescribed, he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred penalty units.

Failure to fulfil training obligation

(*As amended by Act No.* 13 *of* 1994)

24. Any person who-

(*a*) causes or attempts to cause or does any act calculated to cause disaffection amongst the members of the Home Guard; or

(*b*) induces or attempts to induce, or does any act calculated to induce, any member of the Home Guard to desert or to commit any breach of discipline;

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Person causing disaffection amongst members of the Home Guard

(*As amended by Act No.* 13 *of* 1994)

PART VII MISCELLANEOUSPART VII

MISCELLANEOUS

25. A person shall not, by reason of his membership of the Home Guard, be rendered incapable of being elected or of sitting and voting as a member of the National Assembly.

Membership of the Home Guard not a disqualification for membership of the National Assembly

26. The units raised, established and the persons enlisted or appointed, and acts and things done, before the commencement of this Act, by the Government for the purpose of an organisation named the Home Guard shall, from the commencement of this Act, be deemed to have been raised, established, enlisted, appointed or done under this Act.

Transitional provisions

27. The expenditure incurred in consequence of the coming into operation of this Act shall be charged on the general revenues of the Republic.

Expenditure

28. Nothing in this Act shall exempt any person from being prosecuted under any other law in respect of any offence made punishable by this Act:

Power to prosecute under other law not affected

Provided that no person shall be punished twice for the same offence on account of the same facts.

PART VIII EMPLOYER'S OBLIGATIONPART VIII

EMPLOYER'S OBLIGATION

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Employer's obligation

29. (1) Any person who, having power to give reasonable facilities to an employee for enabling him to join, or to do any duty or training in, the Home Guard, refuses to give such reasonable facilities shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(2) Any employer, manager or person in charge of an employee who by words, conduct or otherwise compels, induces or prevails upon such employee to refrain from joining, or doing any service or training in, the Home Guard, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(*As amended by Act No.* 13 *of* 1994)

PART IX REGULATIONSPART IX

REGULATIONS

Regulations

30. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act and for the good administration and organisation of the Home Guard.

(2) Without prejudice to the generality of subsection (1), such regulations may make provisions with respect to all or any of the following matters, that is to say:

(*a*) prescribing anything which under this Act may or is to be prescribed;

(*b*) the constitution, administration, powers, duties and functions of the Home Guard;

(*c*) the recruitment and enlistment of persons into, and the discharge of persons from, the Home Guard;

(*d*) the allowances to be paid to the members of the Home Guard;

(*e*) the calling out of the members of the Home Guard on service in accordance with section *nineteen*;

(*f*) the training, including the manner in which notification of the places and times appointed for training is to be given;

(*g*) the description, supply, use and disposal of arms, ammunition, accoutrements, uniforms, emblems and badges of rank;

(*h*) requiring members of the Home Guard to report themselves from time to time;

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(*i*) the formation, maintenance, control and administration of units, sub-units, branches and detachments of the Home Guard;

(*j*) the appointments which may be held by members of the Home Guard;

(*k*) the granting of certificates or other awards to the members of the Home Guard who reach such standards of proficiency in training as may be prescribed;

(*l*) the grant of medals and decorations to members of the Home Guard;

(*m*) the preservation of property of the Government issued to the Home Guard or any part thereof, the determining of responsibility for loss or damage caused to such property and the recovery of compensation for such loss or damage;

(*n*) generally for the good order and management of the Home Guard.

PART X APPLICATION OF THE DEFENCE ACT TO THE HOME GUARDPART X

APPLICATION OF THE DEFENCE ACT TO THE HOME GUARD

Application of the Defence Act. Cap. 106

31. (1) Notwithstanding anything contained in the Defence Act, the provisions of Parts I, II, III, V, VI, VII, VIII and XI of that Act shall apply to the Home Guard and to the members of the Home Guard-

(*a*) when the President has ordered the employment of the whole or any part of the Home Guard under section *nineteen*; or

(*b*) when on duty pursuant to any other provisions of this Act.

Cap. 106

(2) For the purpose of the application of the Defence Act to the Home Guard and to the members thereof-

(*a*) a guardsman shall be deemed a soldier of the Regular Force of the Army;

(*b*) an officer in the Home Guard shall be deemed an officer in the Regular Force of the Army; and

(*c*) ranks of officers in the Home Guard shall correspond to such ranks of officers in the Regular Force of the Army as the Minister may prescribe.

Cap. 106

(3) Where there is a conflict, in relation to the Home Guard or members thereof, between the provisions of this Act and the provisions of the Defence Act, the provisions of this Act shall prevail.

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32. (*Had its effect*)

33. The Territorial Force constituted under the provisions of the Defence Act is hereby dissolved and shall cease to exist as from the commencement of this Act.

Dissolution of the Territorial Force.
Cap. 106

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The Laws of Zambia

SCHEDULE

(*Sections* 12 *and* 13)

THE HOME GUARD ACT

DECLARATION

I, ..., *do swear by Almighty God/do solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to the President of the Republic of Zambia, that during my service with the Home Guard I will preserve, protect and defend the Constitution of Zambia, as by law established, and will obey all lawful orders of the President and of all officers placed over me and will subject myself to all written law relating to the Home Guard.

.....
Signature or Thumbprint of the member of the Home Guard

*Sworn or Declared and Affirmed at ..... this ..... day of ..... 19.....

Before me

.....
Commanding Officer, the Home Guard

*Delete whichever is inapplicable

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THE IMMIGRATION AND DEPORTATION ACT

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THE TANGANYIKA VICTORIA MEMORIAL INSTITUTE ACT

ARRANGEMENT OF SECTIONS

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1. Short title
2. Building to be known as the Tanganyika Victoria Memorial Institute
3. Trustee of Institute and vesting of land and building
4. Articles and property of Institute vested in Committee
5. Existing members
6. Committee of Management
7. Duration of office of Committee
8. First election of Committee
9. Appointment of provisional Committee
10. Chairman of and powers and duties of Committee
11. Maintenance of Institute
12. Damage by fire
13. Bank account and investment of funds
14. Accounts
15. Exemption from rates
16. Legal proceedings and service of process

CHAPTER 176

TANGANYIKA VICTORIA MEMORIAL INSTITUTE

42 *of* 1929
8 *of* 1934
15 *of* 1934

An Act to make further provision for the control and maintenance of the Victoria Memorial Institute at Mbala.

[*27th November*, 1929]

1. This Act may be cited as the Tanganyika Victoria Memorial Institute Act.

Short title

2. The building (hereinafter referred to as "the Institute") erected at Mbala by public subscription to the memory of Her late Most Gracious Britannic Majesty Queen Victoria, shall continue to be known as "The Tanganyika Victoria Memorial Institute" and may be used as a Library, Museum, and Sports and Social Club.

Building to be known as the Tanganyika Victoria Memorial Institute

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3. The Institute together with the land being subdivision No. T56 in the Mbala Township in extent 0.4626864 of an hectre and on a portion of which said land the same has been erected shall be vested in a trustee in trust for the people of the Mbala, Isoka and Mporokoso Districts to be used for the purposes mentioned in section *two*. The District Secretary for the time being of the Mbala District shall be such trustee and is hereinafter referred to as "the trustee".

(*As amended by Nos*. 8 *and* 15 *of* 1934)

Trustee of Institute and vesting of land and building

4. All movable property or articles of whatever nature now belonging to the Institute or now kept therein are hereby vested in the Committee of Management hereinafter mentioned.

Articles and property of Institute vested in Committee

5. The subscribers to the fund for the erection of the Institute and all persons who are members of the Institute at the commencement of this Act shall be deemed to be members of the Institute as hereby constituted.

Existing members

6. The general direction and management of the Institute shall be entrusted to a Committee of Management (hereinafter referred to as "the Committee") consisting of seven members of whom one shall be the trustee or some person from time to time nominated by him, and the remainder shall be elected by the members.

Committee of Management

7. The members of the Committee, other than the trustee or the person from time to time nominated by him, shall hold office for one year and shall be eligible for re-election by the members.

Duration of office of Committee

8. The first election of the members of the Committee shall take place on such day in April, 1930, in the Institute or at such other place at Mbala as the Committee may appoint and thereafter on such day in April of every year and at such place at Mbala as the Committee may appoint.

First election of Committee

9. Until such election in the year 1930 as is mentioned in the last preceding section takes place, the Committee shall consist of the trustee and of such other persons not exceeding six as the trustee may nominate.

Appointment of provisional Committee

10. The Committee shall elect one of their members as chairman who besides an original vote shall have a casting vote. Four members of the Committee shall form a quorum. In the event of the decease, resignation or incapacity to serve on the Committee of one or more members of the Committee, the Committee shall have the power to appoint some suitable person or persons to the vacancy or vacancies caused thereby. The Committee shall have power-

Chairman of and powers and duties of Committee

(*a*) to frame, alter and repeal rules for all or any of the following purposes: that is to say prescribing:

(i) the manner in which persons may become and may cease to be members of the Institute and may be expelled from membership;

(ii) the subscription or classes of subscription, entrance fee or fees (if any) which shall be payable;

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(iii) different classes of members;

(iv) the qualifications for election as a member of the Committee and the mode of election of the Committee;

(v) the circumstances under which a member of the Committee may cease or shall be deemed to have ceased to be a member thereof;

(vi) the manner in which the annual or special meeting of the members may be summoned and the procedure to be observed and the business which may be transacted thereat;

and generally for the good management of the Institute. Such rules to be in force and take effect when published in the *Gazette*;

(*b*) to appoint, remunerate or dismiss all officers and to administer all property belonging to the Institute;

(*c*) generally to do everything necessary for the efficient control and management of the Institute.

Maintenance of Institute

11. It shall be the duty of the Committee to maintain and keep the Institute in good repair and condition out of the moneys received by them on behalf thereof and to insure and keep the building insured against damage by fire in such an amount and in such insurance office as the trustee may approve. Within one month of the 31st March of every year the Committee shall make such provision as the trustee may think necessary for the maintenance and repair of the building during the ensuing year.

Damage by fire

12. In the event of the Institute being destroyed or damaged by fire, the Committee shall apply all moneys received by them by virtue of any such insurance as is mentioned in the last preceding section in rebuilding or reinstating the Institute.

Bank account and investment of funds

13. All moneys received on behalf of the Institute shall be paid to the credit therof into such bank as the Committee may from time to time appoint and it shall be lawful for the Committee to invest such part of such moneys as may not be required for immediate use.

Accounts

14. The accounts of the Institute shall be made up to the 31st March in each year by the treasurer or secretary, as the case may be, and shall be duly audited by a competent auditor.

Exemption from rates

15. Notwithstanding anything to the contrary contained in any written law, the Institute shall be exempted from the payment of all municipal rates and taxes.

Legal proceedings and service of process

16. In any legal proceedings instituted by or against the Institute it shall be lawful to do so by the style or description of "The Committee of the Tanganyika Victoria Memorial Institute" and the service of all legal process shall be effected on the secretary.

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THE VICTORIA MEMORIAL INSTITUTE (REPEAL) ACT

ARRANGEMENT OF SECTIONS

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1. Short title
2. Property of Institute
3. Court to give orders and directions

CHAPTER 177

VICTORIA MEMORIAL INSTITUTE (REPEAL) 5 *of* 1952

An Act to make provision for the disposal of the property of the trust of the Victoria Memorial Institute.

[24*th July*, 1952]

1. This Act may be cited as the Victoria Memorial Institute (Repeal) Act. Short title

2. All property of whatever nature of the Victoria Memorial Institute which is at the commencement of this Act vested in the trustees or the Committee of Management of the said Institute shall continue to be vested in the said trustees or Committee of Management respectively until such time as orders and directions have been made or given in respect of that property by the High Court under the provisions of section *three*. Property of Institute

3. A Judge of the High Court shall give such orders and directions as to the disposal of the property mentioned in section *two* as may seem to him to be just and equitable. Court to give orders and directions

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THE WAR GRAVES AND MEMORIAL ACT

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2. Interpretation
3. War cemeteries and war graves
4. War memorials
5. Rights and powers of Commission
6. Offences and penalties
7. Vesting of scheduled memorials in the President
8. Saving

SCHEDULE-War memorials

CHAPTER 179

WAR GRAVES AND MEMORIALS

28 *of* 1967
13 *of* 1994

An Act to make provision for vesting the control of war graves, war cemeteries and war memorials in the Commonwealth War Graves Commission; to vest the ownership of the memorials in the Schedule; and to provide for connected matters.

[14*th April*, 1967]

1. This Act may be cited as the War Graves and Memorials Act. — Short title

2. In this Act, unless the context otherwise requires- — Interpretation

"Commission" means the Commonwealth War Graves Commission;

"Commonwealth Force" means a military, naval or air force raised in any country or territory which, during the whole or any part of the war periods, formed part of the Britannic dominions;

"died" means died from wounds inflicted, accident occurring or disease contracted while on active service;

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"war cemetery" means a piece of land which is declared under this Act to be a war cemetery;

"war grave" means a grave which is declared under this Act to be a war grave;

"war memorial" means a memorial which is declared by or under this Act to be a war memorial;

"war periods" means-

(*a*) the period extending from the 4th August, 1914, until the 31st August, 1921; and

(*b*) the period extending from the 3rd September, 1939, until the 31st December, 1947.

War cemeteries and war graves

3. (1) The President may, by statutory order, declare-

(*a*) to be a war cemetery any piece of land in which is buried or is proposed to be buried the remains of officers or men of a Commonwealth Force who died during the war periods;

(*b*) to be a war grave any piece of land, not being part of a war cemetery, in which is buried the remains of any officer or man of a Commonwealth Force who died during the war periods.

(2) Whenever the President is satisfied that any human remains buried in a war grave have been removed therefrom in accordance with the provisions of this Act, he may, by statutory order, revoke the declaration made under subsection (1) relating to that grave.

War memorials

4. (1) The memorials together with the land adjacent thereto described in the Schedule, formerly known as the Northern Rhodesia War Memorial and the Northern Rhodesia Police War Memorial, are hereby declared to be war memorials.

(2) The President may, by statutory order, declare any other memorial, together with the land adjacent thereto, erected in memory of officers or men of a Commonwealth Force who died during the war periods to be a war memorial.

Rights and powers of Commission

5. (1) Subject to the provisions of this Act and notwithstanding anything contained in any other written law, the control of any war cemetery, war grave or war memorial shall be vested in the Commission to the exclusion of any other person or authority.

(2) For the fulfilment in Zambia of the purposes of the Commission under the charters providing for the establishment and operation of the Commission, the Commission shall have power-

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(*a*) to maintain in proper order, to beautify and to enclose any war cemetery, war grave or war memorial;

(*b*) to erect in any war cemetery or on any war grave such gravestones, tablets and monuments as it may think fit.

(3) Notwithstanding anything contained in Part XIII of the Public Health Act, where the Commission is satisfied that, by reason of its situation or for any other reason, a war grave cannot be properly maintained in its existing position, the Commission may, with the consent of the President and subject to such conditions as he may impose, exhume the remains from the grave and remove them for reinterment in a proper manner in such other grave or cemetery as may be approved by the President for the purpose. Cap 295

(4) The President shall not consent to the exhumation and removal of any remains from a war grave under the powers conferred by subsection (3) unless he is satisfied either-

(*a*) that the exhumation and removal accords with the wishes of the legal personal representative or next of kin of the person whose remains are proposed to be removed; or

(*b*) that the Commission after having made such reasonable inquiry as may be practicable, has been unable to communicate with the legal personal representative or next of kin of the person whose remains are proposed to be removed and has no reason to believe that such representative or next of kin objects to the removal.

6. (1) Any person who- Offences and penalties

(*a*) buries any human remains in a war cemetery or war grave; or

(*b*) wilfully destroys, injures, defiles, disfigures or defaces any war memorial or any building, wall, fence, gate, tree, plant, monument, tablet, inscription or gravestone in or around a war cemetery, war grave or war memorial; or

(*c*) disturbs the soil of any grave or war cemetery; or

(*d*) obstructs the Commission or any servant or agent of the Commission in the exercise of its rights under this Act;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

(2) The provisions of subsection (1) shall not apply in relation to anything done by or on the authority of the Commission under the powers conferred upon the Commission by this Act.

(*As amended by Act No.* 13 *of* 1994)

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7. (1) The Zambia War Memorial together with the land adjacent thereto described in the Schedule is hereby vested in the President to the intent that the said memorial shall be and remain as a permanent memorial to those residents of the former Protectorate of Northern Rhodesia now known as the Republic of Zambia who died during the war periods. Vesting of scheduled memorials in the President

(2) The Zambia Police War Memorial together with the land adjacent thereto described in the Schedule is hereby vested in the President to the intent that the said memorial shall be and remain as a permanent memorial to those members of the Northern Rhodesia Police now known as the Zambia Police Force who died during the war periods.

(3) Notwithstanding anything contained in the Lands and Deeds Registry Act, the Registrar shall, without any application being made to him in that behalf, register the transfer effected by this section and for that purpose shall make such entries in the registers kept by him as are necessary. Cap. 185

(4) In this section, "the Registrar" means the Registrar appointed to the Registry of Deeds in Lusaka under the Lands and Deeds Registry Act. Cap. 185

8. Nothing in this Act shall affect the right of the owner of any grave in a war cemetery, not being a grave in which is buried the remains of any officer or man of a Commonwealth Force who died during the war periods, to have access to and maintain such grave, or confer on the Commission any right to interfere with any such grave or with any gravestone, tablet or monument thereon. Saving

SCHEDULE

(*Section* 4)

WAR MEMORIALS

1. *The Zambia War Memorial*: The Memorial erected in the vicinity of the Victoria Falls together with the land set aside by the British South Africa Company for the purpose, being Plot No. 266, Livingstone (Suburban) on a portion of which the Memorial has been erected, the boundaries whereof are shown on a certain diagram dated the 18th July, 1923, signed by the Director of Surveys and deposited in the Survey office of the Government.

2. *The Zambia Police War Memorial*: The Memorial erected at Livingstone together with the land set aside by the British South Africa Company for the purpose, being Plot No. 265, Livingstone (Suburban) on a portion of which the Memorial has been erected, the boundaries whereof are shown on a certain diagram dated the 18th July, 1923, signed by the Director of Surveys and deposited in the Survey office of the Government.

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SECTION 3-THE WAR CEMETERY (DECLARATION) ORDER

Statutory Instrument 387 *of* 1969

Order by the President

1. This Order may be cited as the War Cemetery (Declaration) Order. Title

2. The piece of land described in the Schedule is hereby declared a war cemetery. Declaration of war cemetery

SCHEDULE

(*Paragraph* 2)

WAR CEMETERY

Subdivision B of Stand No. 578, Ndola.

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THE LANDS ACT

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MEMBERS, SERVICEMEN, REGISTRATION, ENLISTMENT, ETC.

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POSTPONEMENT CERTIFICATE, NATIONAL SERVICE HARDSHIP COMMITTEE

AND EXEMPTION

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58. Repeal

FIRST SCHEDULE-Declaration

SECOND SCHEDULE-Class of persons liable to be called up for the Service

CHAPTER 121

ZAMBIA NATIONAL SERVICE

35 *of* 1971
13 *of* 1994

An Act to make provision for the establishment, maintenance, government and discipline of the Zambia National Service; and to provide for matters incidental thereto or connected therewith.

[21*st January*, 1972]

PART I

PRELIMINARY

1. This Act may be cited as the Zambia National Service Act. Short title

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Interpretation

2. In this Act, unless the context otherwise requires-

"appropriate authority" means the authority charged, in accordance with this Act, with responsibility for the matter in question:

Provided that the reference to appropriate authority in section *seventeen* and, in so far as it relates to persons seconded to the Service, in sections *eighteen* and *nineteen*, shall be construed as a reference to such appropriate authority aforesaid acting with the concurrence of such person having authority in or over that part of the civil or military service of the Republic from which such person is seconded as may be appointed by the President;

"appropriate tribunal" means a commanding officer or a board consisting of not less than two senior officers appointed by the Commandant;

"Assistant Commandant" means a senior Serviceman in charge of a Wing at the Headquarters of the Service;

"citizen" means a citizen of Zambia;

"Commandant" means the Commandant of the Zambia National Service appointed under the provisions of section *twenty-one*;

"commanding officer" means a senior officer of the Service designated as such by rules made under section *twenty-three*;

"Defence Force" means the Defence Force of Zambia referred to in section *four* of the Defence Act; Cap. 106

"enlistment notice" means the enlistment notice provided for in section *eleven*;

"local authority" means-

(*a*) a city council;

(*b*) a municipal council; or

(*c*) a township council; or Cap. 281

(*d*) a district council:

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"member", in relation to the Service, includes a Serviceman enlisted or engaged under section *five* or *eleven*, a person seconded to the Service in accordance with the provisions of section *seventeen* and a person appointed to the permanent staff under section *six*;

"city council", "municipal council", "district council" and "township council" have the meanings assigned thereto in section *two* of the Local Government Act; Cap. 281

"national service register" means the register required to be kept by the Commandant under the provisions of section *eight*;

"postponement certificate" means a certificate which may be granted under the provisions of section *twelve*;

"Registrar" means the person appointed under section *eight* to keep the national service register;

"Regular Force" has the meaning assigned thereto in section *two* of the Defence Act; Cap. 106

"Service" means the Zambia National Service established under section *three*;

"Serviceman" means a member of the Service enlisted or engaged under section *five* or *eleven* or appointed to the permanent staff under section *six*.

PART II ESTABLISHMENT OF THE ZAMBIA NATIONAL SERVICEPART II

ESTABLISHMENT OF THE ZAMBIA NATIONAL SERVICE

Establishment of the Service

3. (3) There shall be established and maintained a service to be known as the Zambia National Service (hereinafter called "the Service").

(2) The functions of the Service shall be the training of citizens to serve the Republic and the employment of its members in tasks of national importance and otherwise in the service and defence of the Republic.

(3) The Service shall organise and run such leadership and other courses for citizens as the Minister may, by statutory instrument, prescribe. The Minister may, in such statutory instrument, prescribe-

(*a*) the duration of such courses;

(*b*) the person or class of persons liable to attend such courses; and

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(*c*) matters incidental to or connected with such courses.

(4) The supreme command of the Service shall vest in the President and he shall hold the office of Commander-in-Chief of the Service.

(5) Subject to the provisions of this Act, the powers conferred on the President by subsection (4) shall include-

(*a*) the power to determine the operational use of the Service;

(*b*) the power to appoint members and to dismiss them.

(6) The President may, by direction in writing and subject to such conditions as he may think fit, delegate to the Minister, the Commandant or any other person any of the powers mentioned in subsection (5).

PART III MEMBERS, SERVICEMEN, REGISTRATION, ENLISTMENT, ETC.PART III

MEMBERS, SERVICEMEN, REGISTRATION, ENLISTMENT, ETC.

Membership of the Service

4. (1) The Service shall consist of such number of members as may, from time to time, be determined by the President.

(2) The members of the Service shall be-

(*a*) persons who enlist voluntarily under section *five*;

(*b*) persons who are enlisted under section *eleven*;

(*c*) persons who are appointed to the permanent staff under section *six*; and

(*d*) persons in the civil or military service of the Republic who are seconded to the Service under section *seventeen*.

Servicemen

5. (1) The appropriate authority may enlist into the Service a male or female citizen who, at the time of his first enlistment, is between the ages of eighteen and thirty-five years (both ages inclusive).

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(2) Subject to the provisions of subsection (3), every citizen, whether enlisted voluntarily under subsection (1), or in consequence of an enlistment notice under section *eleven*, shall be enlisted to serve in the Service for a period of two years.

(3) A citizen who is a member of the class specified in the Second Schedule may-

(*a*) serve in the Service for a period of two years as provided in subsection (2); or

(*b*) in the case of a person to whom the provisions of paragraph (*b*) or (*c*) of the Second Schedule apply, serve in the Service for a period of three months during any vacation period and a further period of one month immediately after he ceases to be a student and thereafter, in lieu of serving in the Service, pay every month for a period of twenty months such proportion of his monthly total earnings as the Minister may by regulation prescribe; or

(*c*) serve in the Service for such period as the Minister may, by statutory instrument, prescribe and thereafter, in lieu of service with the Service, pay every month for the period which falls short of his two year period of service such proportion of his monthly total earnings as the Minister may by regulation prescribe.

(4) The Minister may, by statutory instrument, prescribe the proportion of monthly total earnings of a member of the class specified in the Second Schedule which is payable to the Service under paragraph (*b*) or (*c*) of subsection (3).

(5) After the completion of his engagement with the Service, under the provisions of subsection (2) or paragraph (*a*), (*b*) or (*c*) of subsection (3), a Serviceman shall form part of the Home Guard as defined in any written law relating to the Home Guard (hereinafter referred to as "the Home Guard") and shall be liable to such duties as are provided in any written law applicable to a member of the Home Guard. Cap. 122

(6) A member may, during the period of his service, be seconded to any person, with the consent of such person, for the purpose of undergoing a period of apprenticeship in any business, trade, profession or vocation and the Minister may, by statutory instrument, prescribe terms and conditions of such apprenticeship.

(7) Every Serviceman shall, on first joining the Service, make the declaration set out in the First Schedule.

(8) For the purpose of subsection (6), a person includes the Government, a local authority or any company or association or body of persons, corporate or unincorporate.

6. (1) Notwithstanding the provisions of section *five*, appointments may be made to the permanent staff of the Service on terms other than those prescribed in the said section and a citizen appointed to the permanent staff shall, so long as he holds such appointment, be a Serviceman. Appointments to permanent staff

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(2) Subject to the provisions of this section, power to appoint persons to hold or to act in any office in the permanent staff of the Service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the President.

(3) The President may, by directions in writing and subject to such conditions as he thinks fit, delegate any of his functions under subsection (2) to any person.

Liability to be called up for the Service

7. (1) Subject to the provisions of this Act, every citizen, male or female, who has attained the age of eighteen years and has not attained an age above thirty-five years and is a member of the class specified in the Second Schedule shall be liable to have his name entered in the national service register and to be called upon to serve in the Service in accordance with the provisions of this Act.

(2) The Minister may, by statutory instrument, add to, amend, vary or replace the Second Schedule.

(3) Notwithstanding the provisions of subsection (1), a citizen who is a member of the class specified in the Second Schedule shall not be liable to be called upon to serve in the Service so long as he is a student engaged in studies:

Provided that, for the purpose of this section, a student shall be deemed to be not engaged in studies during any vacation period and he may be called up for service during any such vacation period.

(4) For the purpose of this section and the Second Schedule, a student means a full-time student.

Appointment of Registrar of Service

8. The Commandant shall be Registrar and he shall keep a register of persons who are liable under this Act to be called up for national service (in this Act referred to as "the national service register") and shall perform such other duties in connection with the said register and the enlistment of members of the Service as may be prescribed in this Act.

Rules relating to registration

9. (1) The Minister may, by statutory instrument, make rules in relation to the following matters:

(*a*) requiring the persons in charge of secondary schools or other educational or professional institutions to furnish to the Registrar particulars about students attending such schools or institutions who may be liable under this Act to be called up for the Service; and

(*b*) requiring persons whose names have been entered on the national service register to furnish to the Registrar such particulars as may be prescribed.

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(2) Rules made under subsection (1) may make different provision in relation to different classes of persons subject to registration, and may exclude provision for any class of persons subject to registration with respect to which the Minister is satisfied that sufficient particulars can be ascertained otherwise than by virtue of such rules.

Registration

10. (1) It shall be the duty of the Registrar to ensure that the names and particulars of persons liable under this Act to be called up for the Service received by him are entered in the national service register.

(2) The Registrar shall from time to time make any necessary alteration to any entry therein and shall remove from the said register the name of every person who dies before being called up for the Service or who ceases to be liable to be called up for the Service.

(3) If at any time before being called up for the Service a person whose name is entered in the national service register changes his name or address, he shall forthwith notify the change to the Registrar and, if he fails to do so, he shall be guilty of an offence and on conviction liable to a fine not exceeding three hundred and fifty penalty units

(*As amended by Act No.* 13 *of* 1994)

Obligation of persons liable to report and service of enlistment notice

11. (1) Every person who, upon the commencemnt of this Act, is, or at any later date becomes, liable to be called upon to serve in the Service in accordance with the provisions of this Act, shall, within three months of the commencement of this Act or his so becoming liable, as the case may be, present himself in person to such authority or person as may be prescribed by the Minister by statutory instrument to furnish his name and particulars for entering the same in the national service register.

(2) Any person who, being liable under this Act to be called upon to serve in the Service, fails without reasonable excuse to present himself in person to the authority or person prescribed under subsection (1) within the period specified in the said subsection shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

(3) The Registrar may cause to be served on any person who is liable under this Act to be called up for the Service a written notice (in this Act referred to as "an enlistment notice") stating that he is called up for the Service and requiring him to present himself at such place and time, and to such authority, as may be so specified in the notice; and, subject to this section, the person upon whom the notice is served shall be deemed, as from the day so specified in the notice, to have been duly enlisted in the Service and the period for which he is enlisted shall begin on the said day or such later day as he may in fact present himself for service.

(4) Where an enlistment notice has been served on any person, the Registrar may, at any time while that person remains liable under this Act to be called up for the Service, cancel the notice or cause to be served on him a further enlistment notice varying the original notice by altering the place or time at which he is thereby required to present himself.

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(5) Where, at the beginning of the day specified in an enlistment notice or the day on which the person to whom the notice relates is thereby required to present himself, any of the following conditions is fulfilled, that is to say:

(*a*) a postponement certificate relating to him is in force; or

(*b*) any application or appeal made by him under section *twelve* is pending;

the enlistment notice served on him shall be of no effect.

(6) An enlistment notice served upon any person shall cease to have effect if before the day on which he is thereby required to present himself he ceases to be liable under this Act to be called up for the Service.

(7) There shall be paid to persons required to present themselves in accordance with enlistment notices served upon them, such travelling and other allowances as the Minister may, by statutory instrument, prescribe.

(8) Any person upon whom an enlistment notice has been served who, being liable to be called up for the Service, fails without reasonable excuse to present himself in accordance with the provisions of such notice shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

(9) A person who is not a citizen shall not enlist to serve in the Service.

(10) If a person who is not a citizen enlists in the Service or does not disclose his nationality when he presents himself for enlistment to the appropriate authority of the Service under the provisions of this Act, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

(*As amended by Act No.* 13 *of* 1994)

PART IV POSTPONEMENT CERTIFICATE, NATIONAL SERVICE HARDSHIP COMMITTEE AND EXEMPTIONPART IV

POSTPONEMENT CERTIFICATE, NATIONAL SERVICE HARDSHIP COMMITTEE AND EXEMPTION

12. (1) Subject to this section, any person upon whom an enlistment notice has been served under section *eleven* or his employer may apply in a prescribed manner for a certificate of postponement of liability under this Act to be called up for the Service (in this Act referred to as a "postponement certificate") on the ground that exceptional hardship would ensue if he were called up for the Service, and may, on that ground, apply in the prescribed manner for the renewal of any postponement certificate granted to him.

Postponement certificate

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(2) Where application for a postponement certificate or for the renewal of a postponement certificate is made, that application shall be considered by a National Service Hardship Committee constituted under subsection (3).

(3) National Service Hardship Committees shall be appointed for such areas or regions as the Minister may determine and shall consist of a chairman and three other members all of whom shall be appointed by the Minister.

(4) An application for the grant of a postponement certificate may be made at any time after an enlistment notice has been served on the applicant but before the day specified in the notice as the day on which he is thereby required to present himself.

(5) An application for the renewal of a postponement certificate shall be made at least fourteen days before the expiration of the period for which that certificate was granted or last renewed.

Appeals from determination of National Service Hardship Committee

13. An applicant for a postponement certificate or the renewal of a postponement certificate who is aggrieved by the determination of a National Service Hardship Committee may, in the prescribed manner, appeal to the Minister whose decision shall be final.

Revocation of postponement certificate

14. (1) If, at any time while a postponement certificate is in force, it appears to the Registrar that, by reason of any change in the circumstances of the person to whom the certificate was granted, the certificate ought to be revoked or the period for which it was granted ought to be shortened, the Registrar may apply to the National Service Hardship Committee and the Committee may either refuse the application or cancel the certificate or vary it by shortening the said period.

(2) Where an application is made under subsection (1), the person to whom the postponement certificate in question was granted shall be entitled to be heard on the application, and if he is aggrieved by the determination of the National Service Hardship Committee, he may, in the prescribed manner, appeal to the Minister whose decision shall be final.

Provisions as to National Service Hardship Committees

15. (1) The Registrar or any person authorised by him shall be entitled to be heard on any application before a National Service Hardship Committee.

(2) No determination of an appeal to the Minister or any application to a National Service Hardship Committee or the determination thereof shall be questioned in any court of law.

Exemption from liability

16. The Minister may, by statutory instrument, exempt any person or any class of persons from liability under this Act to be called upon to serve in the Service.

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17. (1) Any citizen who is in the civil or military service of the Republic may, if he so wishes and the appropriate authorities approve, be seconded for employment within the Service. Seconded members

(2) The period of secondment shall be such period as shall be agreed upon at the commencement of the employment, and, subject in each case to such limitations aforesaid, the secondment may, if the person seconded so wishes and the appropriate authorities so approve, be renewed from time to time.

(3) Where a person is first seconded for employment with the Service in any particular rank, he shall not thereafter be required to serve in any rank junior thereto without his consent, and if he can no longer be employed in the rank at which he was first seconded or in any rank senior thereto, his secondment shall, if he wishes, be forthwith terminated.

18. Notwithstanding the foregoing provisions of this Act but subject to the provisions of subsection (3) of section *seventeen*, any member of the Service whose engagement or secondment expires during a state of war, insurrection, hostility or public emergency may be retained in the Service and his engagement or secondment prolonged for such further period as the appropriate authorities, with the approval of the President direct. Prolongation of engagement and secondment

19. The appropriate authority may, at any time during the term of an engagement or period of secondment, discharge a member of the Service or terminate his secondment, as the case may be, if, for any reason, his services are no longer required. Discharge

PART VI UNITS, COMMANDANT AND RANKS OF THE SERVICEPART VI

UNITS, COMMANDANT AND RANKS OF THE SERVICE

20. (1) The Service shall be divided into such numbers and descriptions of branches, units, sub-units, camps and settlements, as the Minister may from time to time direct. Units of the Service

(2) Subject to subsection (3), any Serviceman may be posted to and employed in any branch, unit, sub-unit, camp or settlement of the Service.

(3) Where a Serviceman is seconded specifically for a particular description of branch, unit, sub-unit, camp or settlement of the Service, he shall be posted only to a branch, unit, sub-unit, camp or settlement of that description.

21. The President may appoint an experienced member of the Service or an officer of the Regular Force to be the Commandant of the Service. Appointment of Commandant

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Powers of Commandant

22. (1) Subject to this Act and to the direction of the President and the Minister, the Commandant shall have the command, superintendence, direction and control of the Service.

(2) The Commandant may, subject to the general instructions of the Minister and to the provisions of this Act, from time to time make standing orders for the general government of Servicemen in relation to their training, arms, accoutrements, clothing, equipment, places of residence, classification and duties as well as their distribution and inspection and such other orders and instructions as he may deem expedient for preventing neglect and for promoting efficiency and discipline of Servicemen in the discharge of their duties.

(3) Save where a contrary intention appears, the Commandant may delegate to a Serviceman not below the rank of Assistant Commandant the duties, powers and functions vested in him by this Act or any other written law.

(4) The President may, in the event of the Commandant being for any reason absent, appoint another person to act as Commandant during the period of the Commandant's absence and the person so acting shall perform the functions of the Commandant under this Act.

Ranks and administration

23. (1) There shall be such other ranks of the Service as may be prescribed by rules made by the Minister under section *fifty*, and such rules-

(*a*) shall prescribe the relative seniority of the various ranks; and

(*b*) may prescribe the authority or authorities in whom the power to make appointments or promotions to, or reduction from, such ranks shall be vested.

(2) The administration of the Service throughout Zambia shall be vested in the Commandant.

(3) The control of the Service in any branch, unit, sub-unit, camp or settlement shall be vested in such Serviceman as may be appointed, subject to the approval of the Minister, by the Commandant.

(4) A Serviceman in charge of a branch, unit, sub-unit, camp or settlement shall carry out the orders of the Commandant in all matters including discipline, internal administration and training of the Servicemen under his command.

PART VII DUTIES AND EMPLOYMENT OF THE SERVICEPART VII

DUTIES AND EMPLOYMENT OF THE SERVICE

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24. (1) Every member of the Service shall- Duties of Servicemen

(*a*) perform such duties and carry out such training as may be directed by the officers senior to or placed in command over him;

(*b*) obey and execute promptly all orders lawfully issued to him by the officers senior to or placed in command over him.

(2) Without prejudice to the generality of the foregoing provisions of this section, members of the Service may be trained in the use of arms and weapons of war.

25. (1) The President may, during a state of war, insurrection, hostility or public emergency or during any period when a declaration made under the Constitution has effect- Employment of Servicemen in times of emergency

(*a*) call out the Service or any part or member thereof;

(*b*) order that the Service or any part thereof be employed to serve with the Defence Force or otherwise in the defence of the Republic.

(2) Where any part of the Service is, in pursuance of an order made under this section, serving with the Defence Force or otherwise in the defence of the Republic, it shall be governed by, and subject to, the Defence Act, and the members of the Service for the time being serving with such part shall be deemed to be subject to that Act, within the meaning of section *two hundred and six* thereof. Cap. 106

(3) Where any part of the Service is, in pursuance of an order made under this section, serving with the Defence Force or otherwise in the defence of the Republic, the President shall make rules declaring which rank of the Service corresponds to which rank in the Defence Force and may make rules relating to the command of such part by members of the Defence Force.

26. (1) The President may, at any time, order such part or members of the Service as he may think fit to proceed for service to a friendly neighbouring State. President may send Servicemen to friendly neighbouring States

(2) For the purpose of this section, "friendly neighbouring State" means any State having a common border and friendly relations with the Republic and any such other State as the President may declare to be a friendly neighbouring State.

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(3) All the members of the Service serving outside the Republic under the provisions of this section shall be under the orders of their own superior officers, and shall, in so far as appertains to their terms and conditions of service and the maintenance of discipline, be subject to the provisions of this Act and shall, so far as is possible, perform duties of a like nature to those which they may be required to perform under this Act in Zambia, so however that, except as aforesaid, nothing in this section shall operate contrary to the general law for the time being in force in such friendly neighbouring State which shall apply to and be observed by such members of the Service.

PART VIII EMPLOYER'S OBLIGATIONSPART VIII

EMPLOYER'S OBLIGATIONS

Prohibition of dismissal of employees by reason of liability for service

27. (1) If the employer of any person liable to be called up terminates his employment without his consent-

(*a*) after he is informed by the employee that an enlistment notice is served upon him under the provisions of section *eleven*; and

(*b*) does so solely or mainly by reason of any duties or liabilities which that employee is, or may become, liable to perform or discharge by reason of his being called up for the Service;

the employer shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding three months, and the court by which he is convicted may order him to pay to the employee, whose employment has been terminated, as compensation for any loss suffered or likely to be suffered by him by reason of the termination, a sum not exceeding an amount equal to three months' remuneration at the rate at which his remuneration was last payable to him by his employer.

(2) Save as provided in this section, an employer is not liable to pay to an employee any remuneration for the period during which the employee is serving in the Service.

(3) If a person in employment of the Government, a local authority or an organisation prescribed under the provisions of subsection (4) is called up for the Service, the period during which he serves with the Service shall be treated as a period of service with his employer for all purposes, including his remuneration.

(4) The Minister may, by writing under his hand, prescribe any company or association or body of persons, corporate or unincorporate, in which the Government holds, directly or indirectly, shares or any other interest, as a prescribed organisation for the purpose of subsection (3).

(5) If an employee in employment of any person, other than the Government, a local authority or an organisation prescribed under the provisions of subsection (4), is serving in the Service pursuant to his being called up for the Service, the employer shall pay him for a period of three months, from the day he starts serving with the Service, his monthly remuneration at the rate at which his remuneration was last payable to him by the employer immediately before he commenced serving with the Service, and such period of three months shall be deemed as a period of service with his employer for all other purposes.

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(6) For the purpose of subsection (1), an employer shall be deemed to have terminated his employee's employment in contravention of subsection (1) unless the employer shows a lawful reason for such termination of employment other than the reason mentioned in paragraph (*b*) of subsection (1).

(7) For the purpose of subsection (1), an employer means-

(*a*) in a case where the employing authority is a body corporate, the individual or group of individuals who is empowered to terminate and who has in fact terminated the employment of an employee; and

(*b*) in any other case, the individual who is empowered to terminate and has in fact terminated the employment of the employee.

(*As amended by Act No.* 13 *of* 1994)

PART IX DISCIPLINEPART IX

DISCIPLINE

Method of dealing with disciplinary matters

28. Disciplinary control over Servicemen shall be exercised as is provided in this Part.

Offences against discipline by Servicemen below the rank of Commandant

29. (1) A Serviceman below the rank of the Commandant commits an offence against discipline if he is guilty of-

(*a*) disobedience to orders, that is to say, if he disobeys, or without good and sufficient cause omits or neglects to carry out any lawful order, written or otherwise;

(*b*) insubordinate or oppressive conduct, that is to say, if he-

(i) is disrespectful in word, act or demeanour to a Serviceman superior to him in rank;

(ii) is oppressive or tyrannical in conduct towards a Serviceman inferior to him in rank;

(iii) uses obscene, abusive or insulting language to any other Serviceman;

(iv) assaults any other Serviceman;

(v) wilfully or negligently makes any false complaint against any other Serviceman;

(vi) fails to report any complaint or report made against any other Serviceman;

(vii) talks or is inattentive or otherwise misbehaves himself on parade;

(viii) being under arrest or in confinement, leaves or escapes from his arrest or confinement before he is set at liberty by proper authority;

(ix) resists an escort whose duty it is to apprehend him or to have him in charge;

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(*c*) neglect of duty, that is to say, if he-

(i) neglects, or without good and sufficient cause omits, promptly and diligently to attend to or carry out anything which it is his duty as a Serviceman to attend to or to carry out;

(ii) idles or gossips or sits or lies down without reasonable cause when on duty;

(iii) sleeps when on duty;

(iv) fails to report any matter which it is his duty to report;

(v) without reasonable cause omits to make any necessary entry in any official document, book or paper;

(vi) refuses, or without good and sufficient cause omits to make or send a report or return which it is his duty to make or send;

(*d*) discreditable conduct, that is to say, if he acts in a disorderly manner, or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Service;

(*e*) absence without leave or being late for duty, that is to say, if he-

(i) without reasonable cause or excuse is absent without leave from, or is late for, parade or other duty; or

(ii) leaves without right of permission or lawful reason any service camp or quarters;

(*f*) falsehood or prevarication, that is to say, if he-

(i) knowingly makes or signs any false statement in any official book or document;

(ii) wilfully or negligently makes any false, misleading or inaccurate statement;

(iii) without good and sufficient cause destroys or mutilates any official document or record, or alters or erases any entry therein;

(*g*) breach of confidence, that is to say, if he-

(i) divulges any matter which it is his duty to keep secret;

(ii) without proper authority communicates to the press, or to any unauthorised person any matter concerning the Service;

(iii) without proper authority shows to any person outside the Service any book or written or printed document belonging to the Service;

(iv) makes or joins in making any anonymous communication to a Serviceman superior in rank to him;

(v) signs or circulates any petition or statement with regard to any matter concerning the Service, except through the proper channels of correspondence to the Commandant;

(vi) calls or attends any unauthorised meeting to discuss any matter concerning the Service;

(*h*) malingering, that is to say, if he feigns or exaggerates any sickness or injury with a view to evading duty;

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(*i*) uncleanliness, that is to say, if he, while on duty, is without reasonable cause improperly dressed or dirty or untidy in his clothing or accoutrements;

(*j*) damage to property, that is to say, if he-

(i) wilfully or by carelessness causes any waste, loss or damage to any article of clothing or accoutrements, or to any book, document or other property belonging to the Service, issued to him or used by him or entrusted to his care;

(ii) fails to report any such loss or damage as aforesaid however caused;

(*k*) drunkenness, that is to say, if he, while on or off duty, is unfit for duty through the consumption of intoxicating liquor or drugs;

(*l*) entering licensed premises, that is to say, if he enters any public bar licensed for the sale of intoxicating liquor when on duty except when his presence is required there in the execution of his duty;

(*m*) discharging without orders or just cause any firearm which has been issued to him;

(*n*) neglecting or failing to report the fact that he is suffering from venereal or other contagious disease;

(*o*) any other act, conduct, disorder or neglect to the prejudice of good order and discipline not hereinbefore specified;

(*p*) conniving at or knowingly being an accessory to any offence against discipline under this Act.

(2) An offence against discipline under this section shall be inquired into, tried and determined and the offender shall be liable to suffer punishment, according to the degree and nature of the offence, in accordance with the provisions of this Part:

Provided that a Serviceman shall not be found guilty of an offence under paragraphs (*c*) (ii), (*c*) (iii) or (*i*) of subsection (1) unless it is proved that, at the time when the offence was committed, he was on a specific duty for which he was specifically detailed.

Procedure as to inquiries into disciplinary offences

30. (1) Where it appears to a senior officer that there is a *prima facie* case against a Serviceman (hereinafter in this Act referred to as "the defaulter") for an offence against discipline, he shall frame a charge or charges against the defaulter.

(2) The senior officer aforesaid may-

(*a*) if he is not a commanding officer report the charge to his commanding officer, who may either proceed to hear the charge or charges himself or remit the case to another appropriate tribunal to hear the charge or charges; or

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(*b*) if he is a commanding officer may proceed to hear the charge or charges himself or remit the case to another appropriate tribunal to hear the charge or charges.

(3) The defaulter shall be informed of the date and time at which he will be required to appear before the appropriate tribunal.

(4) The charge or charges shall first be read over to the defaulter who shall be required to plead guilty or not guilty to each charge separately, and the defaulter shall be afforded an opportunity to make a defence and adduce evidence for that purpose.

(5) At the conclusion of the hearing the appropriate tribunal may-

(*a*) give its finding forthwith and, if it finds the defaulter guilty of any of the charges against him or, if the defaulter has pleaded guilty thereto, may impose a punishment; or

(*b*) reserve its findings until a later date and, if it finds the defaulter guilty of any of the charges against him, may impose a punishment.

(6) The findings and punishment shall be recorded and communicated personally to the defaulter.

31. (1) Where the defaulter pleads or is found guilty but the appropriate tribunal considers that the offence warrants dismissal from the Service, it shall not make an award but- Disposition of serious offences

(*a*) if the appropriate tribunal is not a commanding officer, it shall send a report to the commanding officer of the defaulter together with a copy of the proceedings, its findings and the reasons therefor; or

(*b*) if the appropriate tribunal is a commanding officer, he shall send a report to the Commandant together with a copy of the proceedings, his findings and the reasons therefor.

(2) On receipt of a report and the other documents referred to in subsection (1), a commanding officer may-

(*a*) confirm all or any of the findings or substitute for any finding of the appropriate tribunal any other finding at which the tribunal could have arrived upon the evidence and refer the report and such other documents to the Commandant for the latter to impose a punishment; or

(*b*) quash any finding of guilt and acquit the defaulter in respect thereof or order a re-trial on such charge or charges as he may specify.

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(3) On receipt of the report and such other documents as aforesaid, the Commandant may-

(*a*) confirm all or any of the findings or substitute for any finding of the appropriate tribunal or any finding substituted by the commanding officer any other finding at which the tribunal could have arrived upon the evidence and impose a punishment in relation thereto (in which case he shall notify the appropriate tribunal); or

(*b*) quash any finding of guilt and acquit the defaulter in respect thereof or order a re-trial on such charge or charges as he may specify.

(4) Notification of the findings and punishment shall be personally communicated to the defaulter.

Punishments

32. (1) One or more of the following punishments may be imposed by any appropriate tribunal upon a defaulter who has pleaded guilty or who has been found guilty of an offence against discipline:

(*a*) reduction in rank;

(*b*) confinement in a guardroom, or restriction to the confines of any camp or other area where a part of the Service is stationed, for not more than fourteen days;

(*c*) a fine not exceeding thirty penalty units;

(*d*) stoppage of allowance;

(*e*) extra drills or parades;

(*f*) dismissal from the Service.

(2) The Commandant may impose any punishment which an appropriate tribunal is competent to impose and, where a defaulter has pleaded guilty or has been found guilty of an offence against discipline, may dismiss the defaulter from the Service.

(*As amended by Act No.* 13 *of* 1994)

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Appeals

33. (1) Any Serviceman aggrieved by any finding of an appropriate tribunal or any award of an appropriate tribunal may, within seven days of the notification to him thereof, appeal to the Commandant in writing and the Commandant may quash, confirm or vary any finding of the appropriate tribunal or substitute therefor any finding at which the appropriate tribunal could have arrived upon the evidence, including any additional evidence which the Commandant, in his discretion, admits at the hearing of the appeal and may quash, confirm or remit any punishment imposed by the appropriate tribunal or may substitute therefor any punishment which the appropriate tribunal could have imposed.

(2) Where the Commandant hears any new evidence on appeal, he shall give the appellant an opportunity of being present and putting questions to any witnesses so heard.

(3) Any Serviceman aggrieved by the finding or award of the Commandant under the provisions of subsection (1) of this section, or subsection (3) of section *thirty-one*, may, within fourteen days of the notification to him thereof, appeal to the President in writing and the President may confirm or vary any finding of the Commandant and may vary, remit or confirm any punishment imposed or confirmed by the Commandant and in all such cases the decision of the President shall be final.

(4) In every case in which an appeal is lodged, the punishment shall be suspended during the hearing of the appeal.

Fines to be recovered by stoppage of allowance

34. (1) All fines imposed on a defaulter in respect of offences against discipline under this Part may be recovered by stoppage of the defaulter's allowance due at the time of committing such offences and thereafter accruing due.

(2) The amount of stoppage in respect of any punishment authorised by this Part shall be in the discretion of the appropriate tribunal by whom the punishment was imposed or subject to the discretion of the Commandant, but shall in no case exceed one-half of the monthly allowance of the defaulter and, whenever more than one order of stoppage is in force against the same Serviceman, so much only of his allowance shall be stopped as shall leave him a residue of at least one-half of his allowance.

(3) Where more than one order of stoppage is made upon the same Serviceman, the orders later in date shall if necessary be postponed as to their enforcement until the earlier orders have been discharged.

Suspension of Serviceman

35. The Commandant or a commanding officer, where a charge alleging an offence against discipline or an offence against the Act has been laid or is about to be laid against a Serviceman, may suspend that Serviceman from the performance of his duties with the Service.

Servicemen subject to disciplinary code

36. (1) Subject to subsection (2), every Serviceman shall be subject to the disciplinary code under the provisions of this Part.

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(2) A person seconded to the Service shall not be subject to the disciplinary code under the provisions of this Part but shall remain subject to the law, regulations, rules and orders governing that part of the service of the Republic from which he was seconded to the Service:

Provided that-

(i) nothing in this subsection shall preclude such a person from being proceeded against under any appropriate provision of any such law, regulation, rule or order for a dereliction of duty while seconded to the Service; and

(ii) nothing in this subsection shall preclude such a person from exercising any function under the disciplinary code or shall be construed as derogating from the status or authority attaching to the rank he holds.

Active participation in trade union forbidden

37. (1) It shall not be lawful for any member of the Service to take active part in-

(*a*) any trade union, or any body or association affiliated to a trade union; or

(*b*) any body or association the objects of which, or one of the objects of which, is to control or influence conditions of employment in any trade or profession; or

(*c*) any body or association the object of which is to control or influence the pay, pensions or conditions of service of the Service.

(2) Any member of the Service who contravenes the provisions of this section shall be liable to be dismissed and shall forfeit any pay or allowances due to him.

(3) If any question arises as to whether any body is a trade union or association affiliated to a trade union or a body within the meaning of this section, the question shall be decided by the Minister whose decision shall be final and conclusive and shall not be questioned in any proceedings.

(4) For the purpose of this section, "trade union" has the same meaning as it has in the Labour and Industrial Relations Act or any law repealing and replacing the same. Cap. 269

PART X MISCELLANEOUS OFFENCESPART X

MISCELLANEOUS OFFENCES

Mutiny

38. (1) Any member of the Service who takes part in a mutiny shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding five years.

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(2) For the purpose of this section, "mutiny" means a combination between two or more members of the Service or between persons at least two of whom are members of the Service-

(*a*) to overthrow or resist lawful authority in the Service; or

(*b*) to disobey any such authority in such circumstances as to make the disobedience subversive of discipline.

Desertion

39. (1) Any member who deserts from the Service shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred penalty units or to imprisonment for a term not exceeding six months, or to both.

(2) No person shall be found guilty of the offence of desertion unless the court is satisfied that he intended not to return to the Service.

(*As amended by Act No.* 13 *of* 1994)

Absence from duty

40. Any member who absents himself from duty without leave or reasonable cause for a period of twenty-one days shall be guilty of an offence and shall be liable on conviction to the forfeiture of any pay and allowances due and payable to him.

Persons causing disaffection, etc.

41. Any person who-

(*a*) causes or attempts to cause or does any act calculated to cause disaffection amongst members of the Service; or

(*b*) induces or attempts to induce, or does any act calculated to induce, any member of the Service to desert or to commit any breach of discipline;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(*As amended by Act No.* 13 *of* 1994)

Offences relating to arms, ammunition, accoutrements, etc.

42. (1) When a member of the Service ceases to belong to the Service, all powers and authority vested in him by or under this Act shall immediately cease and determine and he shall forthwith deliver up to the person appointed by the Commandant for that purpose all arms, ammunition, accoutrements, clothing, uniforms and other appointments which have been supplied to him or entrusted to his care and which are the property of the Republic.

(2) Any member of the Service who, having ceased to belong to the Service, fails to deliver up any arms, ammunition, accoutrements, clothing, uniforms or other appointments as required by this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

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(3) Any person, not being a member, who is found in possession of any arms, ammunition, accoutrements, clothing, uniforms or other appointments belonging to the Service and who fails to account satisfactorily for his lawful possession thereof shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(4) Any person who, without lawful authority-

(*a*) sells or otherwise disposes of, or purchases or otherwise acquires, anything which has been supplied to, or is intended for supply to, a member for use in the execution of his duty; or

(*b*) aids or abets any person in selling or disposing of or purchasing or acquiring any such thing;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding six months.

(*As amended by Act No.* 13 *of* 1994)

Power to prosecute under other written law not affected

43. Nothing in this Act shall exempt any person from being proceeded against under any other written law in respect of any offence made punishable by this Act, or from being liable under any written law to other or higher penalty or punishment than is provided for such offence by this Act:

Provided that no person shall be punished twice for the same offence.

PART XI ADVISORY COMMITTEEPART XI

ADVISORY COMMITTEE

Establishment of the Zambia National Service Advisory Committee

44. (1) There shall be a Zambia National Service Advisory Committee (hereinafter referred to as "the Advisory Committee") which shall advise the Minister on such matters of policy and matters affecting the command, discipline and administration of the Service as may be referred to it, from time to time, by the Minister.

(2) The President may appoint such number of members of the Advisory Committee as he deems fit.

(3) A member of the Advisory Committee shall be appointed by virtue of the office he holds and not in his individual capacity.

PART XII FINANCEPART XII

FINANCE

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Finance

45. Any expenditure incurred for the establishment, maintenance and operation of the Service under the provisions of this Act shall be charged on the general revenues of the Republic.

Validation of acts done and contracts made before the establishment of the service

46. (1) Any acts done and expenses incurred, before the date of the establishment of the Service, by the Minister or by any person or body authorised by the Minister so to do on behalf of the Republic (which they or any of them are hereby empowered and shall be deemed always to have been empowered so to do) in connection with the establishment of the Service shall be deemed to have the same effect and validity as if the Service had been in existence when the acts were done or expenses incurred and as if such acts has been done and such expenses incurred by the Government for the Service.

(2) Where, before the establishment of the Service, any contract had been entered into by the Minister or by any person or body authorised by the Minister so to do for the benefit, use or purposes of the Service (which they or any of them are hereby empowered and shall be deemed always to have been empowered so to do) and any other person-

(*a*) for the employment of that person in any capacity relating to the exercise and performance of the functions of the Service; or

(*b*) for the provision of machinery, equipment, plant, buildings, housing or services to be used for the purposes of the Service; or

(*c*) relating to the exercise and performance of the functions of the Service;

then any such contract shall have effect and be enforceable in the same manner as if the Service had been in existence at the date of the contract and the Government had been a party thereto in the place of the Minister or person or body who entered into the contract in the circumstances mentioned in this section.

(3) As from the date of the establishment of the Service, any such contract as is mentioned in subsection (2) shall not be enforceable against the Minister or person or body who entered into the contract on behalf of the Service, and the Minister, person or body is hereby released from all liability under the contract.

(4) This section shall have effect notwithstanding any other provisions of this Act and notwithstanding that this Act had not been enacted at the time when the acts were done or the expenses were incurred or the contracts were entered into.

Allowances

47. (1) The Minister may, by statutory instrument, prescribe the pay, allowances or gratuities payable to members.

(2) Different provisions may be made under subsection (1) for different classes of members.

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48. (1) The President may, by statutory instrument, make regulations prescribing the payment of pensions or gratuities in respect of service of the Servicemen or any of them. Pensions and gratuities

(2) Without prejudice to the generality of subsection (1), such regulations may prescribe-

(*a*) the conditions under which pensions or gratuities may be paid, the period of service qualifying for, and the methods of payment of, pensions or gratuities;

(*b*) the payment of pensions or gratuities to the Servicemen who become incapacitated for service by sickness, accident or disability incurred in the discharge of their duties, and the payment of gratuities to the Servicemen who otherwise become incapacitated for service;

(*c*) the conditions under which a pension or gratuity may be paid to or for the benefit of any relative or dependant of a Serviceman who dies from sickness, accident, or disability contracted in the discharge of his duty or who dies while serving in the Service;

(*d*) that pensions or gratuities shall be liable to forfeiture or non-payment for misconduct.

(3) Notwithstanding anything to the contrary contained in the Public Service Pensions Act, the President may, by statutory instrument, provide that all or any of the provisions of the said Act with such modification as he may prescribe, shall apply in relation to the Servicemen or any of them. Cap. 260

PART XIV MISCELLANEOUS PROVISIONSPART XIV

MISCELLANEOUS PROVISIONS

49. Notwithstanding anything contained in any other written law, a member when on duty shall be deemed to be a workman, and the Government shall be deemed to be the employer of such member for the purposes of the Workers' Compensation Act. Member deemed to be a workman. Cap. 271

50. (1) The Minister may, by statutory instrument, make regulations, rules and orders for the better carrying out of the provisions of this Act and the general administration of the Service. Regulations, rules and orders

(2) Without prejudice to the generality of subsection (1), such regulations, rules or orders may relate to the following matters:

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(*a*) prescribing anything which under this Act may or is to be prescribed;

(*b*) the establishment, organisation and distribution of the Service, the conditions of appointment and service and the various ranks and appointments therein;

(*c*) the duties to be performed by members and their guidance in the discharge of such duties;

(*d*) the allowances payable to members;

(*e*) the description and issue of arms, ammunition, accoutre-ments, uniforms, emblems and badges of rank;

(*f*) the conditions governing resignation, dismissal, discharge, reduction in rank or reversions of members;

(*g*) leave conditions of the Service;

(*h*) the issue in specified circumstances of fresh postponement certificates in place of certificates which have been lost, destroyed or defaced;

(*i*) the principles to be applied and the circumstances to which regard is and is not to be had, on the hearing of any application for the grant, renewal, cancellation or variation of a postponement certificate;

(*j*) generally for the good order and administration of the Service.

(3) Subject to the provisions of this Act, regulations, rules or orders made under the provisions of this section may, subject to any restrictions or exceptions therein contained, empower the Commandant and other members of the Service having command of any branch, unit, sub-unit, camp or settlement of the Service to make general, special, routine and standing orders with respect to all or any of the following matters, that is to say:

(*a*) the discipline, good order and guidance of the branch, unit, sub-unit, camp or settlement under his command;

(*b*) the organisation and duties of the branch, unit, sub-unit, camp or settlement under his command;

(*c*) the distribution, posting, transfer, attachment and inspection of personnel; and

(*d*) the description, supply, use and disposal of arms, accoutre-ments, clothing, uniforms and other stores.

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PART XV DISSOLUTION OF ZAMBIA YOUTH SERVICE BOARDPART XV

DISSOLUTION OF ZAMBIA YOUTH SERVICE BOARD

51. In this Part, unless the context otherwise requires- Interpretation

"Board" means the Zambia Youth Service Board established under section *four* of the Zambia Youth Service Act. Cap. 143

52. (1) From the commencement of this Act the Board shall exist for the purpose of winding up its affairs and for no other purpose. Winding up of affairs of the Board

(2) Notwithstanding anything to the contrary contained in the Zambia Youth Service Act or any other written law, the Board shall have, for the purpose of winding up its affairs, power to do anything which is necessary or expedient for that purpose or is incidental thereto, including in particular, but without prejudice to the generality of that power, power to enter into and carry out agreements and arrangements for the transfer of its property, rights, liabilities and obligations to any person or the Government. Cap. 143

(3) The Minister may issue to the Board directions in respect of the exercise of powers under subsection (2) and the Board shall act in accordance with such directions.

(4) When the Minister is satisfied that all necessary agreements and arrangements have been made for the winding up of the Board so that it may be dissolved, he may, by statutory instrument, order that the Board shall be dissolved on such date as may be appointed in the statutory instrument (in this Part referred to as "the appointed date").

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Vesting of lands and personal property in, and transfer of contractual and other rights and libilities to, the Government

53. Upon the dissolution of the Board pursuant to section *fifty-two-*

(*a*) all lands, leaseholds, estates, tenancies, interests or rights in, to, over or arising out of the ownership, possession or occupation thereof which were subsisting immediately prior to the said dissolution and were vested in, held or enjoyed by the Board shall, by virtue of this section and without further assurance, be transferred to and vested in the Government to the extent of the title of the Board therein, subject however to any mortgages, charges, leaseholds, tenancies or other rights, legal or equitable, subsisting in any other person in, to, over or arising out of such property at the date of the said dissolution;

(*b*) all personal property and all rights in, to, over or arising out of the ownership or possession of such property which were subsisting immediately prior to such dissolution and were vested in, held or enjoyed by the Board, shall, by virtue of this section and without further act, be transferred to and vested in the Government to the extent of the title of the Board therein, subject however to any rights or interests, legal or equitable, subsisting in any other person in, to, over or arising out of such personal property on the date of the said dissolution;

(*c*) the benefits of all deeds, contracts (other than contracts of personal services), bonds, shares, securities, or things in action which were subsisting immediately prior to such dissolution and were vested in the Board shall, by virtue of this section and without further act, endorsement or document of transfer, be transferred to and vested in, and shall ensure to the benefit of the Government in the same manner as if the Government had been a party to such deeds, contracts, bonds, shares or securities instead of the Board, and in the same manner as if the Government at all times had been entitled to the benefit of all such things in action instead of the Board, subject however to any rights, interest or claims, legal and equitable, subsisting in any other person, in, to, over or arising out of, or in respect of, any such deeds, contracts, bonds, shares, securities, or things in action on the date of the said dissolution;

(*d*) all subsisting and future liabilities or obligations arising out of any deed, contract (other than a contract for personal service), bond, share, security or thing in action, and all such liabilities in tort, imposed upon, suffered or incurred by the Board shall, by virtue of this section, be transferred to, imposed upon, suffered and incurred by the Government, in the same manner as if the Government had been a party to each such deed, contract, bond, share or other security instead of the Board, and in the same manner as if the Government at all times had been the party bound or obliged by or under each such thing in action or liable by reason of each tort instead of the Board.

Registration of property to be transferred by the Board

54. Whenever in pursuance of the provisions of this Part, any property, rights, liabilities or obligations of the Board are transferred by it in respect of the transfer of which any written law provides for registration, it shall be the duty of the Board to make an application in writing to the proper officer of the appropriate registration authority for the registration of such transfer and it shall be the duty of such officer to make such entries in the appropriate register as shall give effect to such transfer and, where appropriate, to issue to the transferee concerned a Certificate of Title in respect of the said property or to make necessary amendments to the appropriate register, as the case may be, and if presented therefor, to make endorsements on the deeds relating to the title, right or obligation concerned; and no registration fees, stamp duty or other duties shall be payable in respect thereof.

Completion of acts

55. Where anything has been commenced by or under the authority of the Board prior to the date of its dissolution and such thing was done in relation to any property, real or personal, deeds or other rights or liabilities transferred by virtue of this Part to the Government, such thing may be carried on and completed by the Government instead of the Board in like manner and to the same extent as such thing might have been carried on and completed, but for the provisions of this Part, by the Board.

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56. (1) Where any person who was in the service of the Board immediately before the date of its dissolution agrees to transfer from that service to the employment of the Service, he shall, so long as he continues in such employment and until he is served by the Service with a statement in writing offering new terms and conditions of employment, enjoy such terms and conditions of employment with the Service as are, in aggregate, not less favourable than he enjoyed immediately before the date of the dissolution of the Board, and his service with the Board shall be treated as service with the Service for the purpose of determining rights to or eligibility for pension, gratuity, leave pay and travel fare in respect of his service.

Terms of service of employees of the Board transferred to the Services

(2) The new terms and conditions offered under the provisions of subsection (1) to a person who is required to perform duties reasonably comparable to the duties performed by him immediately before he transferred his employment to the Service shall be no less favourable than those enjoyed by him, while in the employment of the Board.

57. The units raised, established and maintained and the persons enlisted or appointed, before the enactment of this Act, by the Government for the purpose of an organisation named the National Service shall, from the commencement of this Act, be deemed to have been raised, established, maintained, enlisted or appointed under this Act.

Transitional provisions

58. The Zambia Youth Service Act is hereby repealed from such date as the Minister may, by statutory instrument, appoint.

Repeal. Cap. 232 of the 1971 edition

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FIRST SCHEDULE

(*Section* 5)

THE ZAMBIA NATIONAL SERVICE ACT

DECLARATION

I,.....*do swear by Almighty God/do solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to the President of the Republic of Zambia, that during my service with the Zambia National Service I will preserve, protect and defend the Constitution of Zambia, as by law established, and will obey all lawful orders of the President and of all officers placed over me and will subject myself to all written law relating to the said Service.

.....

Signature or Thumbprint of Serviceman

*Sworn or Declared and Affirmed at ..... this .....

day of ....., 19..... Before me .....

(*Signature of Magistrate or Superior Serviceman*)

* Delete whichever is not applicable.

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SECOND SCHEDULE

(*Sections* 5 *and* 7)

CLASS OF PERSONS LIABLE TO BE CALLED UP FOR THE SERVICE

Every citizen who-

(*a*) has, on or after the commencement of this Act, completed in the Republic or elsewhere an academic year in Form V or its equivalent and ceases to be a student; or

(*b*) has enrolled or who enrols as a student, either before or after the commencement of this Act, at any University or University College in the Republic or elsewhere; or

(*c*) having completed an academic year in a Form not lower than Form V or its equivalent, has enrolled or enrols as a student, either before or after the commencement of this Act, at any of the institutions prescribed by the Minister for this purpose;

and who is not a person exempted under section *sixteen*, shall be the class of persons liable to be called up to serve in the Zambia National Service.

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SUBSIDIARY LEGISLATION

THE NATIONAL SERVICE (GENERAL) REGULATIONS

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Statutory Instrument
2 *of* 1973
128 *of* 1985

Regulations by the Minister

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PART I PRELIMINARYPART I

PRELIMINARY

1. These Regulations may be cited as the National Service (General) Regulations. — Title

2. In these Regulations, unless the context otherwise requires- — Interpretation

"Act" means the Zambia National Service Act. — Cap. 121

"Hardship Committee" means the National Service Hardship Committee appointed under section *twelve* of the Act;

"Service" means the Zambia National Service established under section *three* of the Act;

"register" means the National Service register required to be kept by the Registrar under the provisions of section *eight* of the Act.

PART II REGISTRATIONPART II

REGISTRATION

3. (1) The Registrar shall keep a National Service register and shall cause to be entered therein the names and such other particulars, as he may deem necessary, of persons liable under the Act to be called up for the Service. — National Service register

(2) A person who becomes liable to be called upon to serve in the Service shall within three months of his so becoming liable report in person to the District Executive Secretary of the District in which he resides and furnish his names and such other particulars as may be required for entering the same in the register.

(3) A citizen who wishes to be enlisted voluntarily under the provisions of subsection (1) of section *five* of the Act shall furnish to the office of the District Executive Secretary of the District in which he resides, his names and such other particulars as may be required for entering the same in the register.

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(4) The heads of Secondary Schools shall furnish to the Registrar the names of, and such other particulars as may be required by the Registrar relating to, the students leaving such schools after completing Form V or its equivalent.

(5) The institutions mentioned in the First Schedule hereto are hereby prescribed for the purposes of paragraph (*c*) of the Second Schedule to the Act.

(6) The Registrar of the University of Zambia and the heads of the institutions mentioned in the First Schedule hereto shall furnish to the Registrar the names of, and such other particulars as may be required by the Registrar relating to, the students attending the University or institutions mentioned in the First Schedule hereto.

(7) The Secretary of the Bursaries Committee of the Government and the Director of Civil Service Training shall furnish to the Registrar the names of, and such other particulars as may be required by the Registrar relating to, the students on the list of students receiving bursaries and studying outside Zambia.

PART III ENLISTMENT NOTICEPART III

ENLISTMENT NOTICE

Enlistment notice

4. (1) The Registrar may cause to be served on any person who is liable to be called up for the Service under the Act a written notice (hereinafter called "enlistment notice").

(2) The enlistment notice shall be in the form prescribed in the Second Schedule hereto and shall be issued not less than one month before the person is called up for the Service.

(3) In a case where transport is not provided by the Service, there shall be paid to a person required to present himself in accordance with an enlistment notice served upon him, such cheapest bus or train fare, from his usual place of residence to the place where he is required to present himself, as he may have actually paid.

Postponement certificate

5. (1) Any person upon whom an enlistment notice has been served or his employer may apply to the Hardship Committee for a postponement certificate or a renewal of postponement certificate, as the case may be, in the form prescribed in the Third Schedule.

(2) In determining an application for the grant or renewal of a postponement certificate regard shall be had to such matters as may be mentioned in the application.

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Appeal to the Minister

6. A person aggrieved by the determination of a Hardship Committee may appeal to the Minister in the form prescribed in the Fourth Schedule hereto.

PART IV NATIONAL SERVICE HARDSHIP COMMITTEESPART IV

NATIONAL SERVICE HARDSHIP COMMITTEES

National Service Hardship Committees

7. (1) A Hardship Committee shall be established in each district of Zambia.

(2) A Hardship Committee shall consist of the District Executive Secretary who shall be the Chairman of the Committee and three other members appointed by the Minister on the recommendation of the Cabinet Minister for the Province.

(3) A Hardship Committee shall meet as often as the Chairman considers necessary for the disposal of applications for postponement certificates or renewals thereof:

Provided that it shall meet not less than three times in a year.

(4) At any meeting of a Hardship Committee, three members shall constitute a quorum.

(5) If the District Executive Secretary is absent at any meeting of a Hardship Committee, the members present shall elect one of them as Chairman of the meeting.

(6) Each member of a Hardship Committee shall have one vote at any meeting of the Committee and the Chairman shall have a casting vote in addition to a deliberate vote.

(7) The Assistant District Executive Secretary of the District for which a Hardship Committee is established shall be the Secretary of the Hardship Committee, but he shall not be considered a member of the Hardship Committee.

(8) An application for a postponement certificate or for a renewal thereof shall be sent to the office of the District Secretary.

(9) A person who is-

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(*a*) mentally ill; or

(*b*) blind; or

(*c*) physically handicapped; or

(*d*) serving a sentence of imprisonment or is in detention;

shall during the period of any of the disabilities mentioned in paragraphs (*a*) to (*d*), be exempt from liability under the Act to be called up for the Service.

PART V TRAINING IN SERVICEPART V

TRAINING IN SERVICE

8. (1) The Service may offer to the Servicemen the following training, that is to say- Training

Training

(*a*) military training;

(*b*) training in agriculture;

(*c*) training in trades and skills;

(*d*) political education;

(*e*) training in culture of Zambia; and

(*f*) any other training which the Commandant may consider necessary.

(2) Training mentioned in paragraphs (*a*), (*b*) and (*e*) of sub-regulation (1) shall be given to all Servicemen.

9. (1) A leadership course of thirty days shall be organised and run by the Service. Leadership course

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(2) The following classes of persons shall be eligible to join a leadership course:

(*a*) Cabinet Ministers;

(*b*) Deputy Ministers;

(*c*) Members of the National Assembly;

(*d*) District Executive Secretaries;

(*e*) Public officers of and above the rank of Assistant Secretary;

(*f*) Councillors of a council as defined in the Local Government Act; Cap. 281

(*g*) Heads of the instutions mentioned in the First Schedule hereto and heads of all secondary schools in Zambia;

(*h*) such senior members of the staff of any company or association or body of persons, corporate or unincorporate in which the Government holds, directly or indirectly, any shares or any other interest as may be nominated by such company or association, or body of persons in consultation with the Commandant.

(3) The Commandant shall in consultation with the persons mentioned in sub-regulation (2) make arrangements for them to attend the leadership course mentioned in sub-regulation (1) at such places and times as may be found mutually convenient.

Period not counted as service

10. A Serviceman shall be deemed not to be serving with the Service during any period-

(*a*) when he is serving a sentence of imprisonment; or

(*b*) when he is absent without leave; or

(*c*) before he first presents himself pursuant to an enlistment notice.

PART VI GENERAL PROVISIONSPART VI

GENERAL PROVISIONS

Servicemen's monthly allowance

11. There shall be paid to a Serviceman who is not in receipt of any other income for or during the period he spends with the Service a monthly allowance of K6.

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Record of Servicemen

12. (1) There shall be maintained in the register a record of every Serviceman as follows:

(*a*) a photograph with his signature endorsed on it;

(*b*) name, address and other particulars;

(*c*) progress report;

(*d*) leave of absence;

(*e*) sick leave;

(*f*) character; and

(*g*) distinction obtained.

(2) When a Serviceman completes satisfactorily his period of service in accordance with the provisions of the Act, he shall be issued with a certificate to that effect.

Proportion of monthly total earning prescribed under section 5 (4)

13. The proportion of monthly total earning which a member is required to pay the Service under subsection (4) of section *five* of the Act is ten per centum of his monthly total earning.

Registrar's duty to notify the Commander of the Home Guard

14. The Registrar shall provide in writing the Commander of the Home Guard with the names of, and such other particulars as the Commander may require of, all Servicemen who complete their engagement with the Service under the provisions of subsection (2) or paragraph (*a*), (*b*) or (*c*) of subsection (3) of section *five* of the Act.

PART VII BRANCHES, CAMPS, UNITS AND RANKS IN THE SERVICEPART VII

BRANCHES, CAMPS, UNITS AND RANKS IN THE SERVICE

Branches and units of the Service

15. (1) The Service shall have the following branches at its Headquarters:

(*a*) the Administrative Branch;

(*b*) the Training Branch;

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(*c*) the Political Education Branch;

(*d*) the Development Branch; and

(*e*) the Finance Branch.

(2) The Service shall operate the following camps:

(*a*) the National Service Training Camp;

(*b*) the National Service Production Camp.

(3) The National Service Training Camp shall be divided into the following units:

(*a*) the Military Training Unit;

(*b*) the Administrative Unit;

(*c*) the Skills Training Unit;

(*d*) the Agricultural Unit; and

(*e*) the Cultural Unit.

(4) The National Service Production Camp shall be divided into the following units:

(*a*) the Agricultural Unit;

(*b*) the Administrative Unit;

(*c*) the Cultural Unit; and

(*d*) the Operational Unit.

16. (1) Ranks in the Service shall be as follows and the relative seniority of a rank shall be in the order in which it is mentioned herein: Ranks in the Service

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(*a*) *Commissioned Officers*:

(i) the Commandant;

(ii) the Chief Master;

(iii) Senior Master;

(iv) Assistant Senior Master;

(v) Master;

(vi) Assistant Master;

(vii) Junior Master;

(*b*) Non-Commissioned Officers*:*

(i) Chief Prefect;

(ii) Prefect;

(iii) Assistant Prefect;

(iv) Cadet Prefect;

(*c*) *Others*:

Serviceman.

(2) Appointments, promotion or demotion of an officer of the Service to a rank mentioned in paragraph (*a*) of sub-regulation (1) shall be made by the President on the advice of the Minister.

(3) Appointments, promotion or demotion of an officer of the Service to a rank of Chief Prefect or below shall be made by the Minister on the recommendation of the Commandant.

PART VIII UNIFORMS, WEAPONS AND OTHER MILITARY STORESPART VIII

UNIFORMS, WEAPONS AND OTHER MILITARY STORES

17. In these Regulations unless the context otherwise requires "uniform" means the dress for a class of Servicemen, approved by the Zambia National Service Advisory Committee. Interpretation

18. (1) The Commandant may issue to Servicemen uniforms, weapons and other necessary articles for the due discharge of their duties. Uniforms, weapons, etc.

(2) A Serviceman shall wear uniform at all times except-

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(*a*) on public holidays or when on leave of absence;

(*b*) when he is permitted or required by his superior officer to wear clothes other than uniform.

(3) On termination of his engagement with the Service, a Serviceman shall deliver to such person or authority as his superior officer directs him all uniforms, weapons and other things issued to him by the Service or any person on behalf of the Service.

(4) A Serviceman shall be issued with an identity card bearing his photograph.

PART IX STAFF REGULATIONSPART IX

STAFF REGULATIONS

Probation period

19. (1) Every person who is appointed to a post in the permanent staff of the Service and not engaged on a temporary basis will be appointed initially on probation.

(2) The minimum probation period for any Serviceman to be served will be six months from the date on which the Serviceman takes up his duty on first appointment.

(3) After completing the period of six months' probation, a Serviceman whose service has been satisfactory will be confirmed in his appointment on a direction of the Commandant to that effect.

(4) On confirmation, a Serviceman shall be considered an established Serviceman.

Salary scale

20. (1) The Minister, in consultation with the Zambia National Service Advisory Committee may determine from time to time the salary scale applicable to Servicemen.

(2) The annual increment in the salary of a Serviceman will be dependent on a satisfactory report of his superior officer.

Resignation, discharge or retirement

21. (1) A Serviceman shall not resign or be retired or discharged without due notice or payment of salary in lieu thereof as prescribed in this regulation.

(2) A Serviceman may resign after giving-

(*a*) in the case of an established Serviceman, two month's notice; or

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(*b*) in the case of a Serviceman on probation, one months' notice.

(3) The Service may discharge, dismiss or retire a Serviceman on giving-

(*a*) in the case of an established Serviceman, two months' notice; or

(*b* in the case of a Serviceman on probation, one month's notice.

(4) In lieu of giving due notice under sub-regulation (1) or (2), a payment equivalent to the salary for the notice period may be paid.

(5) On termination of appointment of a Serviceman, other than by way of dismissal, a Serviceman shall be given a certificate of service by the Commandant.

Housing

22. (1) A Serviceman may be provided with free living quarters.

(2) A Serviceman who is absent from his station, whether on leave or otherwise, may retain his living quarters for such period as the Commandant or a person authorised by him may direct.

(3) Where a Serviceman uses water and electricity at his living quarters, he shall pay-

(*a*) any water charges that becomes payable in excess of K6 per month; and

(*b*) any electricity charges that becomes payable in excess of K10 per month.

Leave

23. (1) Subject to the exigencies of the Service a Serviceman will qualify for leave at the following rates for each month of qualifying service:

(*a*) Commissioned Officers 3 days;

(*b*) Non-Commissioned Officers 2^{1}_{2} days;

(*c*) any Serviceman other than those mentioned in paragraphs (*a*) and (*b*) 1^{1}_{2} days.

(2) Leave may not be accumulated in excess of-

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(*a*) in the case of a Commissioned Officer 210 days;

(*b*) in any other case 150 days:

Provided that where a Serviceman applies for leave and his application is not approved because of the needs of the Service, he may be permitted to accumulate leave in excess of the limits prescribed in paragraph (*a*) or (*b*), as the case may be.

(3) A Serviceman who has been granted leave may be required to return before his leave period expires if the Commandant so directs.

(4) For the purpose of this regulation, qualifying service means time spent on duty or on sick leave with full pay. A Serviceman's first period of qualifying service will begin on the day he takes up duty. Subsequent periods of qualifying service will begin on the day he returns to duty after each period of leave of thirty days or more.

(5) A Serviceman may be granted sick leave-

(*a*) when he is ill or injured if-

(i) the illness or injury prevents him from carrying out his duties; and

(ii) the illness or injury was not caused by his own conduct or by his failure to take reasonable precautions;

(*b*) if he has had dental treatment;

(*c*) when due to illness or injury he is confined to his house or to a hospital or similar institution for a period not less than fourteen days whilst on leave.

(6) A Serviceman may be granted not more than 180 days sick leave on full salary and 180 days sick leave on half salary in any period of two years ending on the final day of the sick leave granted him.

(7) A Serviceman shall without undue delay inform his superior officer of his being unable to perform his duties because of illness or injury.

(8) Study leave may be granted to a Serviceman who-

(*a*) is nominated by the Service to attend a course of study;

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(*b*) attends a course of study at his own request, with the approval of the Service which approval will be given if it appears that the additional training or qualification which the Serviceman will obtain is of value to the Service; or

(*c*) is granted a bursary or other award to follow a course of study.

(9) If paid study leave is granted to a Serviceman in receipt of a bursary or other award, his salary for the study period will be reduced by an amount equivalent to the value of the bursary or other award.

(10) A Serviceman proceeding on leave for thirty days or more shall be entitled to travel benefits for himself, wife and dependants under the age of eighteen years, if any.

(11) A Serviceman who goes on not less than thirty days leave may, also, if he chooses, commute for cash not less than thirty days nor more than eighty days of his remaining accumulated leave.

(12) When a Serviceman commutes leave for cash the commutation payment will be calculated at the full rate of his salary as on the first day of his leave.

(13) Notwithstanding the provisions of sub-regulation (1), the Commandant may authorise commutation of leave for cash in the case of a Serviceman who could not be granted leave for thirty days or more due to exigency of the Service.

(14) Casual leave on full pay may be granted to a Serviceman-

(*a*) for the purpose of attending to domestic problems;

(*b*) for sitting an examination;

(*c*) attending court when required to do so.

(15) A married woman in the Service shall be entitled to a paid maternity leave of ninety days.

24. (1) A Serviceman shall be eligible for free transport for himself, his wife and children under the age of eighteen years, when he travels from home to his station either on vacation leave or on retirement as follows: Travel benefits

Rail *Motor Bus*

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(*a*)	Serviceman whose annual salary is more than K2,900	First Class	First Class
(*b*)	Serviceman whose annual salary is less than K2,900	Second Class	Second Class

(2) The maximum free transport of baggage of a Serviceman travelling from his home to station on first appointment, from station to station on transfer and from station to his home on retirement or on vacation leave shall be as follows:

Commissioned Officer	2,500 kg
Non-Commissioned Officer	1,000 kg

(3) An upset allowance shall be paid to a Serviceman who is transferred, for reasons other than disciplinary reasons, from one station to another station at the following rates:

Serviceman	*Rate*
Single	K20
Married	K40

(4) A Serviceman shall be paid a subsistence allowance of K8 per day when he is out of the station on duty.

(5) A Serviceman who is acting in any rank of or above an Assistant Master shall be eligible to receive an acting allowance if he acts for thirty days or more; the acting allowance shall be the difference between such Serviceman's salary and the salary of the post in which he is acting.

Medical treatment

25. (1) A Serviceman shall get medical treatment free of charge; where a Serviceman or his dependant has to travel from his station to the hospital, the Service may provide transport or pay the actual cost of the journey to the Serviceman for the travel from the station to the nearest hospital.

(2) Where the Commandant is satisfied, on the recommendation of a medical practitioner, that the Government or Mission Hospital is not in a position to provide the medical or dental treatment required by a Serviceman, he shall authorise a payment of the whole or part of any charges actually incurred for such treatment elsewhere.

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Seconded members

26. (1) Where a person who is in the Civil or military service of the Republic is seconded to the Service, he shall receive from his parent organisation the salary he would have received if he were not seconded.

(2) In addition to the salary mentioned in sub-regulation (1), the person seconded from the Civil or military service of the Republic shall be entitled to an allowance equivalent to the difference between the salary he would have received if he were not seconded and the salary of the post in which he is serving with the Service, if such salary is higher than the salary he would have received if he were not seconded.

(3) An allowance given to a seconded person under the provisions of sub-regulation (2) shall not be counted for the purposes of pension or gratuity applicable to such seconded person under the rules of the Civil or military service of the Republic from which he is seconded.

(4) Where a seconded person intends to apply for a permanent post in the Service, he shall submit his application to the Commandant who shall transmit it to the appropriate authority with his comments thereon.

(5) Where a seconded person occupies his own house he will continue to receive housing allowance at the rate at which he would have got if he were not seconded.

PART X PREPARATION OF A CHARGE SHEETPART X

PREPARATION OF A CHARGE SHEET

Provisions applicable to offences under Part IX of the Act

27. The provisions of Part X and Part XI shall apply to offences specified under Part IX of the Act.

Offences to be specified in charge sheet with necessary particulars

28. (1) Every charge shall contain and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

(2) The charge sheet shall also contain the name, rank and unit of the accused person. The charge sheet shall in its layout follow with appropriate amendment the illustrations set out in the Fifth Schedule hereto.

(3) Any offences under Part IX of the Act may be charged together in the same charge sheet if the offences charged are found on the same facts or form or are a part of, a series of offences of the same or similar character.

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(4) Where more than one offence is charged in a charge sheet, a description of each offence so charged shall be set out in a separate paragraph of the charge.

(5) Where, before trial, or at any stage of a trial the tribunal is of the opinion that the accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge sheet, or for any other reason it is desirable to direct that any person so charged should be tried separately for any one or more offences charged in a charge, the tribunal may order a separate trial of any count or counts of such charge.

Joinder of two or more accused in one charge

29. The following persons may be joined in one charge and may be tried together, namely-

(*a*) persons accused of the same offence committed in the course of the same transaction;

(*b*) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(*c*) persons accused of different offences committed, in the course of the same transaction.

Procedure rules in dealing with charges summarily

30. (1) Any infringement of the provisions of Part IX of the Act dealing with discipline in the Service must be dealt with promptly, and any Serviceman accused of any offence thereunder must be informed of the charges against him within forty-eight hours by his superior officer.

Cap. 121

(2) Wherever any person subject to the Zambia National Service Act, 1971, having been taken into custody, is likely to remain in custody for a period longer than forty-eight hours without being brought before an appropriate tribunal a report on the necessity of keeping the Serviceman in further custody shall be made forthwith to the Commandant by the Commanding Officer of the Serviceman.

(3) Any conviction of a Serviceman shall be recorded in the Serviceman's Record Sheet of Offences as well as the Minor Offence Book in the forms prescribed in the Sixth Schedule hereto.

(4) At any trial of a Serviceman, there shall be produced the Minor Offence Book and if required, the Serviceman's Record Sheet of Offences.

(5) When transmitting the record of proceedings to the Commandant as required by the Act, it shall be necessary to accompany it with the Form Z specified in the Fifth Schedule hereto.

PART XI TRIAL PROCEDUREPART XI

TRIAL PROCEDURE

Trial procedure

31. (1) After the charge sheet has been prepared by the officer preparing the charge and handed over to the Commanding Officer, appropriate tribunal or Commandant, the accused will be marched in with an escort of an equal rank.

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(2) The charge or charges will be read out and explained to the accused.

(3) The accused shall then be asked whether he pleads "guilty" or "not guilty". Where an accused pleads "not guilty"-

(*a*) each prosecution witness shall give his evidence orally in the presence of the accused or a written statement made by the witness shall be read out to the accused:

Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

(*b*) the accused shall be allowed to cross-examine any prosecution witness;

(*c*) the accused may, on his own behalf, give evidence orally;

(*d*) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence.

(4) After the conclusion of the evidence, the evidence shall be weighed and a finding of guilty or not guilty shall be entered.

(5) If the accused pleads guilty or is found guilty, he shall be permitted to give a plea in mitigation or bring character witnesses.

PART XII ADVISORY COMMITTEEPART XII

ADVISORY COMMITTEE

32. (1) The Advisory Committee shall consist of members who shall all be appointed in writing by His Excellency the President. Composition of Advisory Committee

(2) The Secretary of the Advisory Committee will be the Permanent Secretary of the Ministry responsible for the services who shall convene the meetings of the Advisory Committee and take minutes of the proceedings of every such meeting so convened.

(3) The quorum at any meeting of the Advisory Committee shall be the Chairman and three members or in the absence of the Chairman any four members.

(*As amended by S.I. No.* 128 *of* 1985)

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FIRST SCHEDULE

(*Regulation* 3 (5))

INSTITUTIONS PRESCRIBED BY THE MINISTER FOR THE PURPOSE OF PARAGRAPH (*C*) OF THE SECOND SCHEDULE TO THE ACT

1. All Teachers' Training Colleges in Zambia
2. All Medical Training Institutions in Zambia
3. National Institute of Public Administration
4. Natural Resources Development College
5. National College of Management and Development Studies
6. Evelyn Hone College of Applied Arts and Commence
7. Lusaka Trades Training Institute
8. Livingstone Trades Training Institute
9. Lukashya Trades Training Institute-Kasama
10. Northern Technical College-Ndola
11. Zambia Institute of Technology:

    (i) Kitwe;

    (ii) Luanshya
12. Mansa Trades Training Institute
13. Choma Trades Training Institute
14. Nkumbi International College-Kabwe
15. Monze College of Agriculture

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SECOND SCHEDULE

(*Regulation* 4 (2))

ENLISTMENT NOTICE

(*Under Section* 11)

To .....

Address .....

.....

You are liable to be called up under the provisions of section 7 (1) or 5 (1)* and you are hereby called up for Service and are required to present yourself:

(*a*) To .....
(*Name of authority*)

(*b*) at .....
(*Place*)

(*c*) on ..... (*Date and time*)

Dated this ..... day of ....., 19.....

at .....

Registrar,
Zambia National Service

* Strike out whichever is not applicable.

NOTE-This enlistment is of no effect if-

(*a*) a postponement certificate relating to you is in force;

(*b*) any application or appeal by you under section 12 is pending.

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THIRD SCHEDULE

(*Regulation* 5 (1))

APPLICATION FOR A POSTPONEMENT CERTIFICATE OR RENEWAL THEREOF

National Service Hardship Committee

Name and address of person on whom enlistment notice is served .....

.....

Date of enlistment notice .....

Date of postponement certificate (if applicable) .....

.....

Name and address of applicant .....

.....

I hereby apply for postponement of my or my employee's liability to be called up for the Service on the grounds mentioned herein.

**Grounds of application*:

(*a*) medical reasons;
(*b*) domestic problems;
(*c*) academic or professional examination;
(*d*) commitment to business or other urgent duties;
(*e*) any other ground;

and details of the grounds are as follows:

.....

.....

.....

.....

Dated this ..... day of ....., 19.....

.....
Signature of Applicant

* Delete whichever is not applicable.

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FOURTH SCHEDULE

(*Regulation* 6)

APPEAL TO THE MINISTER

The Minister of .....
Ministry of.....
Lusaka
Applicant's name .....
Applicant's address .....
.....

I hereby appeal against the determination of *my application for a postponement certificate or my application for renewal of postponement certificate by the National Service Hardship Committee on the following grounds:

(*a*) .....

(*b*) .....

(*c*) .....

(*d*) .....

2. I also refer to my original application which contains the grounds for making such application.

Dated this ..... day of ....., 19.....

.....
Signature of Applicant

* Delete whichever is not applicable.

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FIFTH SCHEDULE

(*Regulation* 28 (2))

CHARGE SHEET

The accused, No. ..... Rank .....
Name .....
Unit .....

Time and place of offence:
Time .....
Date .....
Place .....

Nature and particulars of the offence.....
.....
.....
.....
.....
.....
.....

Number	*Name*	*Rank*	*Unit*

Award

Date .....

Reviewing Authority
President.....
Member .....
Member .....
Member .....
Member .....

ILLUSTRATION OF A CHARGE SHEET

The accused, No. 731 Prefect Jack Mule, Kafue Military Training Camp, the Zambia National Service, a Non-Commissioned Officer is charged with-

1*st Charge*

DISOBEDIENCE TO ORDERS CONTRARY TO SECTION 29 (1) (*a*) of the ZAMBIA NATIONAL SERVICE ACT, 1971

in that he
at Kafue Military Training Camp on 1st December, 1971, at approximately 0915 hours when verbally ordered by No. 171 Master Verod Mwanga, Kafue Military Training Camp, the Zambia National Service, to take defaulters for extra drill refused to comply and did not do so.

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2nd Charge

USING INSUBORDINATE LANGUAGE TO A SUPERIOR OFFICER CONTRARY TO SECTION 29 (1) (*B*) (I) OF THE ZAMBIA NATIONAL SERVICE ACT, 1971

in that he

at Kafue Military Training Camp on 1st December, 1971, at approximately 0915 hours when asked by No. 124 Assistant Master Paul Banda, Kafue Military Training Camp, the Zambia National Service, for his number, name and rank replied "Buzz off you stupid idiot" or words to that effect.

Kafue

1st December, 1971

To be tried by appropriate Tribunal or Commandant.

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Form Z

COMMANDING OFFICER TO TRIBUNAL

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(*Regulation* (30) (5))

To .....
No. .....
Rank .....

Name of accused .....

Date of first trial by Commanding Officer
.....

Place of trial .....
Alleged offence .....
.....
.....
.....
.....
.....

State whether accused was-

*Confined

In Guardroom

Suspended

Application for trial

(*a*) Date .....

(*b*) Reason .....
.....
.....

Date of submission .....
Expected date of trial by tribunal .....
Fixed as....., 19.....

.....
Signature of Commanding Officer

N.B.-To be signed personally by the Commanding Officer.

* Delete whichever is not applicable.

TO COMMANDANT
The appropriate tribunal declares that.....
.....
No. .....
Rank .....
Name .....
Unit .....
was committed to this appropriate tribunal on .....
19....., for trial on the following offence(s).....
.....
.....
.....
.....
.....
.....
.....
.....

Verdict by appropriate tribunal .....
.....
.....
.....

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SIXTH SCHEDULE

(*Regulation* 30 (3))

ZAMBIA NATIONAL SERVICE

RECORD SHEET OF OFFENCES

Service Number ..... Rank ..... Names .....
Unit.....

Serial No.	Description of Reviewing Authority	Date	Charges on which convicted	Award	Awards on review or consideration

I hereby certify that this Form and Schedule contains a summary of entries as can be found in the Minor Offence Book.

Signed this ..... day of ....., 19.....

SPECIMEN OF A MINOR OFFENCE BOOK

Serial No.	No., rank and name of the accused	Offence	Witnesses	Verdict	Award	Signature and date of the Reviewing Officer

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SECTION 48-THE ZAMBIA NATIONAL SERVICE (PENSIONS) (APPLICATION) REGULATIONS

Statutory Instrument
99 *of* 1976

Regulations by the President

1. These Regulations may be called the Zambia National Service (Pensions) (Application) Regulations, 1976. — Title

2. The Defence (Regular Force) (Pensions) Regulations shall apply to all Servicemen of the Zambia National Service as they apply to persons in the service of the Regular Force, as if service in the Zambia National Service were service in the Regular Force. — Application. Cap. 106

SECTION 16-THE ZAMBIA NATIONAL SERVICE (ZAMBIA COMBINED CADET FORCE) (EXEMPTION) ORDER

Statutory Instruments
137 *of* 1975

Order by the Minister

1. This Order may be cited as the Zambia National Service (Zambia Combined Cadet Force) (Exemption) Order, 1975, and shall come into operation on the 1st June, 1975. — Title and commencement

2. There shall be exempt from liability under the Act to be called upon to serve in the Service any person belonging to the Zambia Combined Cadet Force who has completed an academic year in Form V and has passed Parts II and III of the Zambia Combined Cadet Force training. — Exemption

SECTION 16 AND 50-THE ZAMBIA SERVICE (OBLIGATORY SERVICE) (EXEMPTION) ORDER

Statutory Instruments
47 *of* 1981

Order by the Minister

1. This Order may be cited as the Zambia National Service (Obligatory Service) (Exemption) Order, — Title

2. The persons specified in the Schedule hereto are exempted from liability to serve in the Service. — Exemption from service

SCHEDULE

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(*Paragraph* 2)

1. All female persons serving at National Service Training Camps
2. All female persons serving at National Service Production Camps

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