[Chap1201]CHAPTER 12:01

DEFENCE FORCE

ARRANGEMENT OF SECTIONS

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An Act to provide for the establishment, administration, recruitment, conditions of service, training, command and discipline of the Defence Force of Malawi and for connected matters
[1ST SEPTEMBER 2004]

PART I

PRELIMINARY

[Ch1201s1]1. Short title

This Act may be cited as the Defence Force Act.

[Ch1201s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

"acting rank" means rank of any description (however called) such that under regulations made under section 190 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 3;

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

"aircraft material" includes—

(a) parts or 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 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" means the commander or such officer, not below the rank of lieutenant colonel or corresponding rank as may be prescribed;

"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 under section 13;

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

"civil offence" has the meaning assigned to it in section 80 (2);

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

"Commander" means the person appointed as the Commander of the Defence Force under section 161 of the Constitution;

"commanding officer", in relation to a member of the Defence Force, means the prescribed officer having powers of command over that member;

"competent military authority" means the Defence Council 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 Defence Council to be a corps for the purposes of this Act and regulations made thereunder;

"cooperating forces" means the military forces of another country acting in cooperation with the Defence Force under this Act;

"corresponding civil offence" has the meaning assigned to it in section 80 (2);

"corresponding rank", in relation to—

(a) the Defence Force and any cooperating force means such rank in the Defence Force as may be declared by the Defence Council to correspond to a rank in the cooperating force;

(b) services within the Defence Force means such rank in one service as may be declared by the Defence Council to correspond to a rank in another service;

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

"court of appeal" means the Supreme Court of Appeal for Malawi established under the Constitution;

"damage" includes destruction;

"date of attestation", in relation to any person, means the date on which he is attested in accordance with the provisions of this Act;

"decoration" includes medal, medal ribbon, clasp and good conduct badge;

"Defence Council" means the Defence Council constituted under section 10;

"Defence Force" means the Defence Force of Malawi established under Chapter XV of the Constitution;

"Deputy Commander" means a person appointed as the Deputy Commander of the Defence Force under section 191 (2);

"desertion" shall be construed in accordance with section 46 (2);

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

"enemy" includes all persons engaged in armed operations against the Defence Force or any cooperating forces and also includes all armed mutineers, armed rebels and armed rioters;

"field rank" means the rank of major and any higher rank, and "field officer" means a person holding a filed rank;

"Imprisonment and Detention Regulations" means Regulations made by the Defence Council under section 137;

"inland waters" has the meaning assigned thereto in the Inland Waters Shipping Act;

"Medical Board" means a medical board established under regulations made under this Act;

"member" includes an officer and a soldier;

"military police" means the police unit within the Defence Force established under section 191;

"Militia" means persons, other than members of the Regular Force or Reserve Force, trained for military service but called to serve only on emergencies and forming part of the Defence Force as referred to in section 4 (1);

"officer" means a person granted a commission in the Defence Force, but does not include any person who is—

(a) appointed to honorary commissioned rank;

(b) a holder of an honorary appointment;

"oath" includes affirmation and references to swearing shall be construed also as references to affirmations;

"provost officer" means a provost marshal or officer subject to service law appointed to exercise the functions conferred by or under service law on provost officers;

"public property" means any property belonging to any department of the Government or held for the purposes of any such department;

"recruiting officer" means a person authorized as such under section 18;

"Regular Force" means the Regular Force component of the Defence Force referred to in section 4 (1);

"Reserve Force" means the Reserve Force component of the Defence Force referred to in section 4 (1);

"Rules of Procedure" means the Rules of procedure made under section 136;

"service", when used adjectivally, means belonging to or connected with the Defence Force or any part of the Defence Force or any cooperating forces;

"service law" means this Act;

"soldier" does not include an officer but, with the modifications contained in this Act in relation to warrant officers, includes a warrant officer and a non-commissioned officer;

"steals" has the meaning assigned to it in section 271 of the Penal Code; Cap. 7:01

"stoppages" means the recovery, by deductions from the pay of the offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

"unit" means—

(a) any independent portion of the Defence Force which is not higher in the organization of the Defence Force than a battalion or any equivalent body of troops; or

(b) any other body of the Defence Force declared by the Defence Council to be a unit;

"vessel" means any water craft, of whatever description and by whatever name or term called, used or capable of being used as means of transport;

“visiting force” means any body of the forces of a designated country, which for the time being is lawfully present in Malawi in time of peace under a treaty, agreement or arrangement to which the Government is a party.

(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.

[Ch1201s3]3. Active service

(1) In this Act the expression “on active service", in relation to any unit, means that it is engaged in operations against an enemy or during a state of emergency, and, in relation to a person, means that he is serving in or with a unit which is on active service.

(2) Subject to Chapter XVI of the Constitution, where it appears to the President that, by reason of the imminence 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) Subject to section 45 of the Constitution, 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 such 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 force of the declaration the unit shall cease to be deemed to be on active service.

(5) Any declaration under this section shall be by proclamation, which shall be published in the Gazette.

[Ch1201s4]4. Establishment and maintenance of the Defence Force

(1) There shall be established and maintained in Malawi a Defence Force to be known as the Malawi Defence Force (in this Act referred to as the “Defence Force") which shall consist of the following components—

(a) the Regular Force;

(b) the Reserve Force; and

(c) the Militia.

(2) Each of the components of the Defence Force specified in subsection (1) includes the army, the air-wing and the marine.

(3) Subject to Chapter XVI of the Constitution, the components specified in subsection (1) may be formed into units as the Defence Council may from time to time determine.

[Ch1201s5]5. Employment of the Defence Force

The Defence Force shall be charged with the defence of, and maintenance of order in, Malawi and with such other duties as are in accordance with the Constitution and this Act.

[Ch1201s6]6. Employment of the Defence Force outside Malawi

The President may in accordance with Chapter XVI of the Constitution order that the whole or any of the Defence Force be employed out of or beyond Malawi.

[Ch1201s7]7. Cooperation with other forces

(1) If the whole or any part of the Defence Force is required to act in cooperation with any cooperating force, the President may place the Defence Force or that part of the Defence Force under the command of the officer commanding the cooperating force if that officer is senior in rank to all the officers of the Defence Force or of that part of the Defence Force.

(2) Where any part of the Defence Force is acting in cooperation with any cooperating force, the commander or an appropriate superior authority of that part of the Defence Force may, in agreement with the commander or an appropriate superior authority of the cooperating force, define the powers of command and order of precedence of any officer or non-commissioned officer of that part of the Defence Force in relation to an officer or non-commissioned officer of the cooperating force who is of the equivalent rank.

(3) In so far as powers of command depend on rank, any member of any cooperating force—

(a) who is acting in cooperation with any unit of the Defence Force; or

(b) whose unit is acting in cooperation with a unit of the Defence Force,

shall have the same powers as a member of the Defence Force of corresponding rank, and for the purposes of sections 42 and 83 any such member of the cooperating force shall be treated as if he were a member of the Defence Force of corresponding rank.

[Ch1201s8]8. Visiting forces

The President may, on the advice of the Defence Council, permit the presence in Malawi of visiting forces in accordance with the relevant treaty, agreement or arrangement to which the Government is a party.

[Ch1201s9]9. External training and attachments

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

(2) The Commander 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 military forces of that country or territory.

PART II

DEFENCE COUNCIL

[Ch1201s10]10. Constitution of the Defence Council

(1) The Defence Council shall, subject to the powers of command of the President as Commander-in-chief of the Defence Force and subject to this Act, be responsible for the overall control of the Defence Force, and shall perform other functions conferred on it by the Constitution and by this Act.

(2) The members of the Defence Council shall be—

(a) the Minister who shall be Chairman of the Defence Council;

(b) the Secretary for Defence;

(c) the Secretary to the President and Cabinet;

(d) the Commander;

(e) the Deputy Commander; and

(f) the Chief of Staff.

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

(4) In the event of any member being for any reason unable to perform his duties as a member, he may, with the approval of the Chairman, nominate a person to perform such duties during his inability.

(5) The Chairman may nominate any person to perform the duties of the Chairman at any meeting of the Defence Council at which the Chairman is absent.

(6) The majority of the members of the Defence Council shall form a quorum at any meeting of the Defence Council.

[Ch1201s11]11. Performance of functions of the Defence Council

Without prejudice to any other power which may be conferred upon the Defence Council under this Act, the Defence Council may provide for all or any of the following matters—

(a) the organization of the work of the Defence Council and the manner in which it shall perform its functions, duties and responsibilities of the several members thereof;

(b) the procedure to be followed by the Defence Council in conducting its business; and

(c) any other matter which the Defence Council may consider necessary or desirable to provide in order to secure the better performance of the functions of the Defence Council.

PART III

OFFICERS

[Ch1201s12]12. Commissions Board

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

[Ch1201s13]13. Grant of commission

(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 the form set out in the First Schedule.

[Ch1201s14]14. Compulsory resignation

(1) An officer may be required by the Defence Council to resign from the Force in any of the following circumstances—

(a) if he is found guilty of conduct unbecoming of an officer;

(b) if he is sentenced by a civil court to a term of imprisonment, in which case his resignation shall be deemed to have effect from the date of his conviction by that court, or in the event of his appealing against conviction or the sentence, or both, from the date of the dismissal of the appeal, or

(c) if, after due inquiry being made, he is, in the opinion of the Commander, so inefficient as an officer as to be unfit to remain in the Defence Force.

(2) An officer who is required to resign from the Force under subsection (1) shall have a right of appeal to the President under section 196.

[Ch1201s15]15. Compulsory retirement and discharge

(1) An officer shall be required to retire from his employment in the Defence Force—

(a) on being given three month's notice in writing by the Commander should there be no establishment for him in his present rank and no reasonable future prospects of promotion for him;

(b) if he is found by a Medical Board to be mentally or physically unfit for further service;

(c) on completion of his term of engagement except where further engagement from year to year is authorized by the Minister upon recommendation by the Commander; or

(d) whatever the length of his pensionable service, on attaining the age of 55 years.

(2) Notwithstanding subsection (1) (d), an officer may, not less than three months before he attains the age of 55 years, apply in writing to his commanding officer for the grant of permission to continue in his employment in the Force for a further period to be specified in the application not exceeding five years.

(3) Upon receipt of an application under subsection (2), the commanding officer shall—

(a) order the officer to present himself for, and to submit to a medical examination;

(b) obtain a report as to whether the applicant is presently mentally and physically fit to continue his employment for the period so specified; and

(c) forward the application and the report to the appropriate superior authority for a decision as to whether the application is granted or rejected.

[Ch1201s16]16. Appointment and transfer of officers

(1) Every officer upon being granted a commission shall be appointed to one of the components of the Defence Force referred to in section 4 (1).

(2) The Defence council may, upon such terms and conditions as it may prescribe, transfer any officer from the Regular Force to the Reserve Force.

[Ch1201s17]17. Power to make regulations for this Part

(1) Subject to the provisions of this Act, the Minister may with the advice of the Defence Council, make regulations for the better carrying out of this Part.

(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 SERVICES OF SOLDIERS IN THE REGULAR FORCE

Division 1—Enlistment

[Ch1201s18]18. Recruiting officers

Any person authorized 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.

[Ch1201s19]19. Enlistment

(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 age of eighteen years or over the age of twenty-four years.

[Ch1201s20]20. Terms of enlistment

The term for which a person enlisting in the Regular Force may be enlisted shall be seven years colour service and five years from the date of his attestation.

[Ch1201s21]21. Re-engagement and continuation in service

(1) 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.

(2) Any soldier of the Regular Force who has completed seven years of service but is not re-engaged, shall be paid a gratuity as may be prescribed.

[Ch1201s22]22. Prolongation of service

Any soldier of the Regular Force whose service expires during a state of national defence, 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.

Division 2—Discharge and Transfer to Reserve Force

[Ch1201s23]23. Discharge

(1) Save as otherwise provided in this Act, every soldier of the Regular Force, upon becoming entitled to be discharged, shall be discharged with all convenient speed, but until discharged 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 outside Malawi, then—

(a) if he requires to be discharged in Malawi he shall be sent to Malawi free of cost with all convenient speed and shall be discharged on his arrival 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 Malawi 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 authorized by order of the competent military authority.

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

[Ch1201s24]24. Transfer to Reserve Force

(1) Every soldier of the Regular Force upon falling to be transferred to the Reserve Force shall be so transferred 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 outside Malawi, he shall be sent to Malawi free of cost with all convenient speed and shall be transferred to the Reserve Force on his arrival, or, if he consents to his transfer being delayed, within six months from his arrival.

(3) Notwithstanding subsections (1) and (2), the competent military authority may, when a soldier of the Regular Force falls to be transferred to the Reserve Force, discharge him forthwith and in any such case section 23 shall apply.

[Ch1201s25]25. Postponement of discharge or transfer pending proceedings for offences, etc.

(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; but 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.

[Ch1201s26]26. Discharge upon prescribed grounds

An officer or a soldier of the Regular Force may be discharged by the appropriate superior authority, at any time during the currency of any term of engagement—

(a) if within two years after the date of his attestation, his commanding officer considers that he is unlikely to be an efficient member of the Defence Force;

(b) for activities or behavior likely to be prejudicial to the preservation of public security;

(c) if he is convicted of a civil offence for which he is not given the option of a fine;

(d) if he is pronounced by, the Medical Board to be mentally or physically unfit for further service;

(e) on reduction of establishment;

(f) at his own request on compassionate grounds;

(g) if for any reason given to him in writing his services are no longer required;

(h) if he is granted a commission;

(i) if he is sentenced by court-martial to be dismissed from the Defence Force;

(j) if he marries another member of the Defence Force in disobedience to standing orders for peace;

(k) if, in the case of an unmarried female member, she becomes pregnant contrary to standing orders for peace; or

(l) if, in the case of a male member, he is responsible for the pregnancy of a female member contrary to standing orders for peace.

[Ch1201s27]27. Right of soldier to purchase discharge

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

(a) at any time within three months after the date of his first attestation upon payment of a sum not exceeding the equivalent of ninety days pay; or

(b) at any time during his initial engagement with the consent of the Commander upon payment of one half of one month pay for each uncompleted year of service with the Regular Force;

(c) if on continuous service, at any time provided the requirements prescribed in the Defence Force (Regular Force) (Other Ranks) Regulations are complied with, and shall be discharged with all convenient speed, but until discharged shall remain subject to military law under this Act.

(2) Notwithstanding subsection (1), a soldier of the Regular Force shall not be entitled to claim his discharge pursuant to this section while he is required to continue with his colour service under section 22.

(3) For the purposes of subsection (1) (b)—

(a) "pay" means the basic rate of pay plus service pay and pay of rank, but does not include marriage allowance and trade pay; and

(b) "one half of one month's pay" shall be the equivalent of fifteen days pay.

[Ch1201s28]28. Restrictions on reduction in rank of warrant officers and non-commissioned officers

A warrant officer or non-commissioned officer of the Force, other than a lance-corporal, shall not be reduced in rank except by order of a court-martial or the Defence Council or of an officer not below the rank of lieutenant colonel authorized by Regulations made under this Act to act for the purpose of this subsection.

(2) An authorization 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.

[Ch1201s29]29. Right of warrant officer to discharge on reduction to ranks

A warrant officer of the Regular Force who is reduced to the ranks may thereupon claim to be discharged unless a state of national defence, insurrection, hostilities or public emergency exists.

Division 3—Miscellaneous and Supplementary Provisions

[Ch1201s30]30. Rules for reckoning service

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.

[Ch1201s31]31. Validity of attestation and enlistment

(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 from which he made the 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 solider of the Regular Force without having previously made such declaration as may be prescribed 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 appropriate superior authority who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in subsection (1) or (2) 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.

[Ch1201s32]32. False answers in attestation papers

(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 be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against for an offence under subsection (1) notwithstanding that he has since become subject to military law under this Act.

PART V

DISCIPLINE, TRIAL AND PUNISHMENT OF MILITARY OFFENCES

Division 1—Treachery, Cowardice and Other Offences Arising out of Military Service

[Ch1201s33]33. Aiding the enemy

(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 cooperating forces or any part of the Defence Force or of those forces; or

(c) having been made a pensioner 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 authorized by international usage; or

(d) furnishes the enemy with arms or ammunition or with supplies of any description or with anything likely to assist the enemy (whether similar to any of the other things mentioned in this subsection or not), or

(e) harbours or protects the 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 operations in the air fails to use his utmost exertion 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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or life imprisonment.

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

[Ch1201s34]34. Communication with the enemy

(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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to suffer death or life imprisonment.

(2) Any person subject to military law under this Act who, without authority, communicates with or gives intelligence to the enemy shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to life imprisonment.

(3) In this section, the expression "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 the 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 directly or indirectly useful to the enemy, that is to say—

(a) the number, description, armament, equipment, disposition, movement or condition of the Defence Force or of any cooperating forces, or any aircraft of the Defence Force or aircraft of any cooperating forces;

(b) any operation or projected operation of the Defence Force or of any cooperating forces, or aircraft as aforesaid;

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

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

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

(f) munitions of war.

[Ch1201s35]35. Cowardly behavior

(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

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

(c) does any of the acts specified in section 29 (1) (f) to (h) inclusive, 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.

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

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

[Ch1201s36]36. Offences against morale

Any person subject to military law under this Act who—

(a) spreads (whether orally, in writing, by signal or otherwise) reports containing any matter or information relating to operations of the Defence Force or of any cooperating forces, or of any part of the Defence Force or any 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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

[Ch1201s37]37. Becoming prisoner of war through disobedience or willful neglect and failing to rejoin force

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

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

(a) having been captured by the enemy, fails to take any reasonable steps to rejoin the Defence Force or any cooperating forces which is available to him; or

(b) prevents or discourages any other person subject to military law captured by the enemy from taking any reasonable steps to rejoin the Defence Force or any cooperating forces which is available to him or, as the case may be, to that other person,

shall be guilty of an offence.

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

[Ch1201s38]38. Offences by or in relation to sentries, etc.

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

(a) sleeps at his post; or

(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.

(2) For the purposes of subsection (1), a person is drunk if, owing to the influence of alcohol or any intoxicating drug or other substance, whether alone or in combination with any other substance or circumstance, 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 a manner likely to bring discredit to the Defence Force.

(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 cooperating forces 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.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, 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) Reference in this section to a person on guard duty is reference 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 person; 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 or place, or regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

[Ch1201s39]39. Looting

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 or by the High Court, to imprisonment or any less punishment provided by this Act.

Division 2—Mutiny and Insubordination

[Ch1201s40]40. Mutiny

(1) Any person subject to military law under this Act who—

(a) takes part in 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 connexion 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 mutiny, whether actual or intended,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, 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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, 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 at least two of whom are subject to service law—

(a) to overthrow or resist lawful authority in the Defence Force or any cooperating forces or in any part of the Defence Force or of those 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 connexion with operations against, the enemy; or

(c) to impede the performance of any duty or service in the Defence Force or in any cooperating forces or in any part of the Defence Force or of those forces.

[Ch1201s41]41. Failure to suppress mutiny

Any person subject to military law under this Act who, knowing that a mutiny is taking place or is intended fails to use his utmost endeavours to suppress or prevent it or fails to report without delay that the mutiny is taking place or is intended shall, on conviction by court-martial or by the High Court—

(a) if his offence was committed with intent to assist the enemy, be liable to suffer death or life imprisonment; and

(b) in any other case, be liable to life imprisonment.

[Ch1201s42]42. Insubordinate behavior

(1) Any person subject to military law under this Act who—

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

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

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2) If the offence under subsection (1) 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, the offender shall not be liable to be imprisoned for more than two years.

(3) In this section the expression “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 that person’s superior.

[Ch1201s43]43. Disobedience to particular orders

(1) Any person subject to military law under this Act who, in such manner as to show a willful defiance of authority, disobeys any lawful command given or sent to him personally shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military law under this Act who, whether willfully or through neglect, disobeys any lawful command, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(3) If the offence under this section was not committed on active service the offender shall not be liable to be imprisoned for more than two years.

[Ch1201s44]44. Obstruction of provost officers

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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s45]45. Disobedience to standing orders

(1) Any person subject to military law under this Act who contravenes or fails to comply with any provision of standing orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for 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 that may be made by the appropriate superior authority for any formation or unit or body of troops, or for any command or other areas, garrison or place, or for any vessel, train or aircraft.

Division 3—Desertion, Absence Without Leave, etc.

[Ch1201s46]46. Desertion

(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 be guilty of an offence and shall,

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

(2) A person shall not be liable to be imprisoned for more than two years unless—

(a) if the offence was against paragraph (a) of subsection (1), he was on active service or under orders for active service at the time it was committed, or

(b) if the offence was an offence against paragraph (b) of subsection (1), the person in relation to whom it was committed was on active service or under orders for active service at that time.

(3) 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

(b) being an officer, enlists in or enters any part of the Defence Force or other forces without having resigned his commission; or

(c) 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

(d) absents himself without leave with intention to avoid serving at any place outside Malawi 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.

(4) In addition to or in lieu of any punishment authorized by subsection (1), the court-martial or the High Court by which 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.

[Ch1201s47]47. Absence without leave

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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s48]48. Assisting and concealing desertion and absence without leave

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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s49]49. Falsely obtaining or prolonging leave

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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s50]50. Failure to perform military duties

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 before he is permitted to do so shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 4—Malingering and Drunkenness

[Ch1201s51]51. Malingering

(1) Any person subject to military law under this Act who—

(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 or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) In this section the expression "unfit" includes temporarily unfit.

[Ch1201s52]52. Drunkenness

(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 or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) If the offence under subsection (1) 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.

(3) For the purposes of subsection (1) a person is drunk if owing to the influence of alcohol or any intoxicating drug or other substance, whether alone or in combination with any other substance or 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 a manner likely to bring discredit to the Defence Force.

Division 5—Offences Relating to Property

[Ch1201s53]53. Offences relating to public and service property

(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 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) willfully damages, or is concerned in the willful damage of, any public or service property; or

(d) by willful neglect causes damage by fire to and public or service property,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for fourteen years.

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

(a) willfully damages, or is concerned in the willful damage of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces; or

(b) by willful neglect causes damage to, or the loss of, any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces; or

(c) without lawful authority disposes of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for fourteen years.

(3) Any person subject to military law under this Act who, during the active service, willfully 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 cooperating forces shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for life.

(4) If the offender, in committing the offence under subsection (3), did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

[Ch1201s54]54. Offences in relation to property of members subject to service law

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 property belonging to a person subject to service law, knowing it to have been stolen or to have been fraudulently misapplied; or

(c) willfully damages, or is concerned in the willful damage of, any property belonging to a person subject to service law,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s55]55. Miscellaneous offences relating to property

(1) 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, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or of any cooperating forces;

(c) does any act of neglect likely to cause damage or loss of any aircraft, vessel or vehicle or any aircraft material, vessel material or vehicle material of the Defence Force or any forces cooperating 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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) It shall be a defence for any person charged under subsection (1) with the offence of losing any property, clothing, arms, ammunition or other equipment that he took reasonable steps for the care and preservation thereof.

[Ch1201s56]56. Loss and hazarding of aircraft, vessel or vehicle of the Defence Force

(1) Any person subject to military law under this Act who, either willfully or by negligence, causes or allows any aircraft, vessel or vehicle of the Defence Force to be captured, lost, destroyed, damaged, stranded or hazarded shall be guilty of an offence and liable to imprisonment for life or any less punishment provided by this Act.

(2) If the offender, in committing the offence under subsection (1) did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

[Ch1201s57]57. Improper carriage of goods

Any person subject to military law under this Act who, being in command of any aircraft, vessel or vehicle of the Defence Force or being a member of its crew, without lawful authority—

(a) receives or permits to be received on board the aircraft vessel or vehicle any goods or merchandise (not being goods or merchandise received in the course of salvage) intended for disposal or delivery by way of, trade or business, whether on his own account or on account of any other person; and

(b) agrees to carry any goods or merchandise on board the aircraft, vessel or vehicle in consideration of the payment of freight, or demands or receives any payment in respect of such carriage,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 6—Offences Relating to Billeting and Requisitioning of Vehicles, Aircraft or Vessels

[Ch1201s58]58. Billeting offences

Any person subject to military law under this Act who—

(a) knowing that no billeting requisition is in force under Part VIII authorizing him to demand any billets, or that he is otherwise not authorized 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, aircraft or vessel is or is to be billeted in pursuance of a billeting requisition under Part VIII 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, aircraft or vessel; or

(c) commits any offence or any wrongful act against the personal property of the occupier of premises in which he is billeted in pursuance of a billeting requisition under Part VIII or of any other person being in those premises, or against any other property in those premises, or willfully or by willful neglect damages those premises or any such property, shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s59]59. Offences in relation to requisitioning of vehicles, aircraft or vessel

(1) Any person subject to military law under this Act who—

(a) knowing that no requisitioning order is in force under Part VIII authorizing him to give directions for the provision of any vehicle, aircraft or vessel, or that he is otherwise not

authorized to give such directions, gives directions for the provision of the vehicle, aircraft or vessel or orders or procures another person to give such directions; or

(b) in purported exercise of powers conferred by a requisitioning order under Part VIII takes, or orders or procures any other person to take possession of a vehicle, aircraft or vessel, knowing that no requisitioning order is in force under Part VIII under which the taking possession of the vehicle, aircraft or vessel could be authorized, or that the taking possession thereof is otherwise not authorized 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, an aircraft or vessel not being given, or not being retained, under a requisitioning order under Part VIII, shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) Subsection (1) shall apply in relation to animals, food, forage and stores (within the meaning of Part VIII) as it applies in relation to vehicles, aircraft and vessels.

[Ch1201s60]60. Dangerous flying

(1) Any person subject to military law under this Act who, either willfully or by negligence, does any act or makes any omission in flying an aircraft of the Defence Force or in the use of such aircraft or in relation to such aircraft or any material of such aircraft, which act or omission causes or is likely to cause loss of the life of or to cause bodily injury to, any person shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for life or any less punishment provided by this Act.

(2) If, in committing the offence under subsection (1), the offender did not act willfully or with willful neglect, he shall be liable to imprisonment for not more than two years.

[Ch1201s61]61. Low flying

Any person subject to military law under this Act who, being the pilot of an aircraft of the Defence Force, flies the aircraft at a height less than the prescribed height, except—

(a) while taking off or landing; or

(b) in such other circumstances as may be prescribed,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s62]62. Annoyance by flying

Any person subject to military law under this Act who, being the pilot of an aircraft of the Defence Force, flies the aircraft so as to cause or likely to cause unnecessary annoyance to any person shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Division 7—Offences Relating To, and By, Persons in Custody

[Ch1201s63]63. Irregular arrest and confinement

(1) Any person subject to military law under this Act who, when another person also subject to military law under this Act is under arrest—

(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 allegation against that other person investigated by his commanding officer or the appropriate superior authority or, as the case may be, tried by court-martial or by the High Court; 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.

(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.

(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 subsection (2)

he shall be guilty of an offence.

(4) Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s64]64. Permitting escape and unlawful release of prisoners

(1) Any person subject to military law under this Act who willfully 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 or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2) Any person subject to military taw under this Act who—

(a) without proper authority releases 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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s65]65. Resistance to arrest

(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 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 is to apprehend him or in whose custody he is, shall be guilty of an offence.

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

[Ch1201s66]66. Escape from confinement

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 or the High court, be liable to imprisonment for two years or any less punishment provided for by this Act.

Division 8—Offences in Relation to Courts-martial

[Ch1201s67]67. Offences in relation to courts-martial

(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 questions which court-martial has lawfully required him to answer; or

(e) willfully 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 willfully insults any such person while such person is going to or returning from the proceedings, of the court; or

(f) willfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall be guilty of an offence and shall, on conviction by court-martial, other than the court in relation to which the offence was committed or by the High Court, be liable to imprisonment for 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 or by the High Court, may by order under the hand of the presiding officer 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) Reference in subsection (1) (a) to (f), inclusive, to a court-martial shall include references to a court-martial held in pursuance of service law.

[Ch1201s68]68. False evidence

(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 be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for 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.

Division 9—Miscellaneous Offences

[Ch1201s69]69. Injurious disclosures

(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 the enemy shall be guilty of an offence and shall, on conviction by court-martial or the High Court, be liable to imprisonment for ten years or any less punishment provided by this Act.

(2) In this section, the expression "information useful to the enemy" means information as to any matter such that information as to it would or might be directly or indirectly useful to the 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 directly or indirectly useful to the enemy, that is to say—

(a) the number, description, armament, equipment disposition, movement or conditions of any part of the Defence Force or of any cooperating forces, or any aircraft of the Defence Force or aircraft of those forces;

(b) any operations or projected operations of the Defence Force or of any cooperating forces or any aircraft of the Defence Force or of those forces;

(c) any code, cipher 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; and

(f) any munitions of war.

[Ch1201s70]70. Making of false statement on enlistment

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 guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for three months or to any less punishment provided by this Act.

[Ch1201s71]71. Making of false documents

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 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, counsels, 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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s72]72. Scandalous conduct of an officer

Every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer, shall be guilty of the offence and shall, on conviction by court-martial or by the High Court, be cashiered:

Provided that the scandalous behavior is such as to demonstrate that the accused is unfit to remain an officer and it is necessary in the interest of discipline and the good name of the service that the accused should be dismissed from the service.

[Ch1201s73]73. Ill-treatment of officers or men of inferior rank

If—

(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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s74]74. Disgraceful conduct

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 or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s75]75. False accusation, etc.

Any person subject to military law under this Act who—

(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 willfully suppresses any material facts,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s76]76. Attempts to commit military offences

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 be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to the like punishment as for that offence:

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

[Ch1201s77]77. Conduct to the prejudice of military discipline

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 be guilty of an offence and shall, on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch1201s78]78. Political activities

(1) Any person subject to military law under this Act who—

(a) promotes, or is a member of, or takes part in the activities of, any political association;

(b) expresses political views in a public place or in the media; or

(c) addresses any meeting or joins in any demonstration, the purpose of which is to express support for a political association or object, or for a candidate, in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act:

Provided that this section shall not prevent any person from voting in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum.

(2) Voting in a parliamentary, presidential or local authority election or a by-election thereof or in a referendum shall not take place within the premises of the Defence Force and no person shall be permitted to campaign for such vote within such premises.

[Ch1201s79]79. Prize offences

(1) Any person subject to military law under this Act who is in command of an aircraft or a vessel and who—

(a) having taken such aircraft or vessel as prize, fails to send to the High Court or to some other prize court having jurisdiction in the case all the documents found on board, and relating to, such aircraft or vessel;

(b) unlawfully makes any agreement for the ransoming of such aircraft or vessel or any goods taken as prize; or

(c) in pursuance of an agreement referred to in paragraph (b), or otherwise by collusion, restores or abandons such aircraft or vessel or any goods taken as prize,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for five years or any less punishment provided by this Act.

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

(a) strikes or otherwise ill-treats any person who is on board an aircraft or a vessel taken as prize, or who unlawfully takes from such person anything in his possession;

(b) removes out of any aircraft or vessel taken as prize (otherwise than for safekeeping or for some necessary use by the Defence Force) any goods not previously adjudged by a prize court to be lawful prize; or

(c) breaks bulk on board any aircraft or vessel taken as prize, or detained in exercise of any belligerent right or under any law, with intent to embezzle or fraudulently misapply anything therein,

shall be guilty of an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment for five years or any less punishment provided by this Act.

Division 10—Civil Offences

[Ch1201s80]80. Civil offences

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

(2) In this Act, the expression—

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

(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 or by the High Court of an offence against this section shall—

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

(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 Malawi, 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 Malawi if the corresponding civil offence is treason, murder, manslaughter, treason-felony or rape.

(5) Where the corresponding civil offence is murder or manslaughter, 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 of the neglect which caused the death, irrespective of the place of death.

(6) Proceedings for an offence against this section shall be instituted only with the consent of the Director of public Prosecutions.

Division 11—Punishments

[Ch1201s81]81. Punishment of officers

(1) The punishments which may be awarded under this Act to an officer by sentence of court-martial or by the High Court 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.

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

(a) death;

(b) imprisonment;

(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;

(h) reprimand;

(i) admonition; or

(j) stoppages of pay, where the offence has occasioned any expense, loss or damage.

(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 scale.

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

(5) Stoppages (of pay) may be awarded by court-martial or by the High Court either in addition to or without any other punishment.

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

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

Provided that if the court-martial or the High Court 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.

[Ch1201s82]82. Punishment of soldiers

(1) The punishment 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 reference in this Act to punishments provided by this Act are references to those punishments.

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

(a) death;

(b) imprisonment;

(c) discharge with ignominy from the Defence Force;

(d) in the case of the 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 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 warrant officer or non-commissioned officer, reprimand or admonition; and

(l) stoppages (of pay), where an offence has occasioned any expense, loss or damage;

(3) For the purposes of this Part, a punishment specifi2ed in any paragraph in 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 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.

(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 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 rank:

Provided that if the court-martial failed 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 reprimand or admonition may be awarded by 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 (of pay) 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.

[Ch1201s83]83. Field punishment

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 Defence Council, 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.

Division 12—Arrest

[Ch1201s84]84. Power to arrest offenders

(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.

(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 an officer subject to service law of any rank.

(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.

[Ch1201s85]85. Avoiding delay after arrest

(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 practicable, either proceedings shall be taken to deal with the alleged offence or the person shall be released from arrest.

(2) Where 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 either a court-martial for his trial being assembled or the date for his trial by the High Court having been fixed, a special report on the necessity for further delay shall be made by his commanding officer to the Defence Council and the Director of Public Prosecutions in the prescribed manner, and a similar report will be made to those like authorities and in the like manner every eight days until either a court-martial is assembled or the trial by the High Court is commenced 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 section 63 (1), 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 subsection (2).

Division 13—Investigation of, and Summary Dealings With, Charges

[Ch1201s86]86. Investigation of charges by commanding officer

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.

[Ch1201s87]87. Charges to be dealt with summarily or by court-martial

(1) After investigation, a charge against an officer below the rank of colonel or against a warrant officer may be dealt with summarily by the appropriate superior authority in accordance with this Part.

(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 by the appropriate superior authority shall, after investigation—

(a) in the case of an officer of the rank of colonel or above, be remanded for trial by the High Court; or

(b) in any other case, be remanded for trial by court-martial.

(4) Notwithstanding the other provisions of this section, where a commanding officer has investigated a charge against—

(a) an officer or warrant officer; or

(b) 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 commanding officer or appropriate superior authority of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty and, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

(6) A remand for trial by the High Court referred to in subsection (3) (a) shall be deemed to constitute a committal by a magistrate for trial to the High Court for the purpose of section 262 of the Criminal Procedure and Evidence Code.

[Ch1201s88]88. Further proceedings on charges against non-commissioned officers and soldiers

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

(2) If the charge is not one which can be dealt with summarily and 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.

(3) If, the commanding officer shall proceed to deal with the charge summarily, and he records a finding of guilty he may award on, 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 twenty-eight days pay;

(ii) severe reprimand;

(iii) reprimand;

(iv) stoppages (of pay), where the offence has occasioned any expense, loss or damage; and

(v) admonition;

(b) if the accused is a private soldier—

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

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

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

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

(v) extra guards or pickets, and

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

(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 (of pay) have been awarded.

(8) Notwithstanding 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.

(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, the Commander 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.

[Ch1201s89]89. Further proceedings on charges against officers and warrant officers

(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 the appropriate superior authority, who shall determine how the charge is to be proceeded under subsections (2) and (3) of this section.

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

(3) If the charge is not one which can be dealt with summarily or the charge is one which can be dealt with summarily but the appropriate superior authority is of opinion that it should not be so dealt with, the prescribed steps shall be taken with a view to its being tried—

(a) by the High Court in the case of members who are officers of the rank of colonel and above; or

(b) by court-martial in the case of members who are below the rank of colonel.

(4) Where the charge is dealt with summarily by the appropriate superior authority, he shall investigate the charge in the prescribed manner and if, upon such investigation, he determines that—

(a) the accused is guilty of the charge, he shall record a finding of guilty; and

(b) the accused is not guilty of the charge, he shall record a finding of not guilty and accordingly dismiss the charge.

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

(a) forfeiture in the prescribed manner of seniority of rank;

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

(c) severe reprimand;

(d) reprimand;

(e) stoppages (of pay), where the offence has occasioned any expense, loss or damage; and

(f) admonition:

Provided that the appropriate superior authority may not award both forfeiture of seniority of rank and a fine.

(6) Notwithstanding the provisions of subsection (4)—

(3) where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily he may award forfeiture of seniority, a fine or stoppages (of pay); or

(4) where a finding of guilty will involve a forfeiture of pay, the appropriate superior 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 appropriate superior authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(7) If the charge is one which can be dealt with summarily, it may be referred to the Commander for guidance.

[Ch1201s90]90. Dismissal of charges referred to the Commander

(1) Notwithstanding the provisions of sections 88 and 89, where a charge—

(a) has been referred to the Commander with a view to its being tried by court-martial, or

(b) has been referred to the Commander for determination of how it is to be proceeded with,

he may, subject to 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 Commander has so directed or the commanding officer thinks fit.

[Ch1201s91]91. Power of commanding officers to delegate powers

Regulations made under this Act may confer on commanding officers power to delegate the 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.

[Ch1201s92]92. Limitations of powers to summary dealing with charges

(1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by the Commander, shall be such as may be specified by regulations made under this Act.

(2) In such cases as may be specified in that behalf by regulations made under this Act, the powers of a commanding officer to award punishment shall be subject to such limitations as may be so specified.

Division 14—Court-martial: General Provisions

[Ch1201s93]93. Trial by and powers of, court-martial

Subject to this Act, a court-martial convened 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 authorized by this Act for that offence.

[Ch1201s94]94. Officers having power to convene court-martial

(1) A court-martial may be convened by the Commander or by any officer not below field rank authorized by Commander to convene courts-martial.

(2) Any authorization 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 and to the person for the time being performing the duties of his office, or to a named or designated officer and his successor in that office or to a named or designated officer and such person and successors; and

(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.

[Ch1201s95]95. Constitution of court-martial

(1) Every court-martial shall consist of—

(a) an officer designated as the presiding officer appointed by the appropriate superior authority; and

(b) not less than four other members who shall—

(i) all be officers if the accused is an officer;

(ii) include at least one non-commissioned officer if the accused is a non-commissioned officer or a private soldier.

(2) A person officer shall not be appointed to be the presiding officer or a member of a court-martial unless he has served in the Defence Force for—

(a) a period of not less than five years, in the case of an officer; or

(b) a period of not less than seven years, in the case of a non-commissioned officer or a private soldier.

(3) The presiding officer of a court-martial shall be appointed by order of the convening officer and shall not be below the 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 presiding officer of a court-martial shall not be below the rank of major.

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

[Ch1201s96]96. Supplementary provisions as to constitution of court-martial

(1) The officer who convenes a court-martial shall not be a member of that court-martial.

(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 the presiding officer 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 presiding officer, 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.

[Ch1201s97]97. Place for sitting of court-martial and adjournment to other places

(1) Subject to this section, a court-martial shall sit at such place, whether within or outside Malawi, 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.

Division 15—Court-martial: Provisions Relating to Trial

[Ch1201s98]98. Challenges by accused

(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 member.

(2) For the purposes 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 members.

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

(4) If objection is made to the presiding officer, 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 presiding officer.

(5) If objection is made to a member of the court other than the presiding officer, and not less than one-half of the members of the court 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 member.

[Ch1201s99]99. Administration of oaths or affirmations

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

(2) Every witness before a court-martial shall be examined on oath except that where a 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—

(a) he is possessed of sufficient intelligence to justify the reception of the evidence; and

(b) he understands the duty of speaking the truth.

(3) Where the evidence is given on behalf of the prosecution under subsection (2) the accused is not liable to be convicted unless it is corroborated try some other material evidence in support thereof implicating the accused.

(4) The unsworn evidence of a child of tender years may not be corroborated by the unsworn evidence of another child of tender years.

(5) For the purposes of this section, a child of tender years is a child under fourteen years of age but not under eight years of age.

(6) 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 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.

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

(8) For the purposes of this section—

"reasonably practicable" means reasonably practicable without inconvenience or delay; and

"officer under instruction" includes a non-commissioned officer.

[Ch1201s100]100. Court-martial to sit in open court

(1) Subject to 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 interest 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.

[Ch1201s101]101. Dissolution of court-martial

(1) Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interest 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.

(3) If after the commencement of the trial the presiding officer dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then, if the senior member of the court is of the rank of captain or is of higher rank the convening officer may appoint him presiding officer and the trial shall proceed accordingly, but 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.

[Ch1201s102]102. Decisions of court-martial

(1) Subject to 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 presiding officer shall have a second or casting vote.

[Ch1201s103]103. Finding and sentence

(1) Without prejudice to section 100, 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.

(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.

[Ch1201s104]104. Power to convict of an offence other than that charged

(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 80 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 80, 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 Malawi, 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 80 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 Second Schedule may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

[Ch1201s105]105. Rules or evidence

(1) Subject to 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 Malawi, 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 civil courts in Malawi.

(2) Despite the provisions of subsection (1), a statutory declaration shall, in a trial by a 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—

(a) 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 trial, been served on the accused;

(b) 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;

(c) 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 oral evidence to be given in lieu of the declaration; and

(d) in any case, if the court-martial is of opinion that it is desirable in the interest 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 Malawi.

[Ch1201s106]106. Privileges of witnesses and others at court-martial

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.

[Ch1201s107]107. Offences by civilians in relation to court-martial

Where in Malawi 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 or make solemn affirmation 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) willfully insults any person, being a member of a court-martial or a witness or any other parson 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 willfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or

(f) willfully 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 presiding officer 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 parson 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.

Division 16—Confirmation, Revision and Review of Proceedings of Court-Martial

[Ch1201s108]108. Confirmation of proceedings of court-martial

(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 the Defence Council 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 109 and 110 or the provisions of this Act as to confirmation or approval.

[Ch1201s109]109. Petition against finding or sentence

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 the finding or sentence or both.

[Ch1201s110]110. Revision of findings of court-martial

(1) The Defence Council may direct that a court-martial shall revise any findings of guilty come to by the court in any case where it appears to the Defence Council—

(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.

(2) Any direction of the Defence Council under subsection (1) shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reason for the direction.

(3) On any revision of a finding the court shall reconsider the finding, and unless the court adheres to the finding, may substitute the finding with 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 revision of finding the court shall not have power to receive further evidence.

(5) Where on any revision of a finding the court either adheres to the original finding or substitutes the finding with 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 Defence Council shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the Defence Council, 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 the deliberations of the court 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.

[Ch1201s111]111. Powers of the Defence Council on confirmation

(1) Subject to section 110 and to the provisions of this section, the Defence Council 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 the President.

(2) In lieu of withholding confirmation of the finding of a court-martial, the Defence Council may, if—

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

(b) the Defence Council 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 the Defence Council does so it shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised.

(3) Where it appears to the Defence Council that a sentence of a court-martial is invalid, it may, in lieu of withholding confirmation of the sentence, substitute the sentence with 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 its opinion more severe than that punishment or those punishments.

(4) In confirming the sentence of a court-martial, the Defence Council may—

(a) remit in whole or in part any punishment passed 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, the Defence Council may postpone the carrying out of the sentence for such time as seems expedient, and the Defence Council may extend or terminate any postponement ordered under this subsection.

(6) A finding or sentence substituted by the Defence Council, or any sentence having effect after the Defence Council 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 Defence Council determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

[Ch1201s112]112. Approval of death sentence by President

Subject to the proviso to section 150, a sentence of death shall not be carried into effect unless it has been approved by the President.

[Ch1201s113]113. Review of finding and sentence of court-martial

(1) A finding or sentence which has been confirmed may at any time be reviewed by the President and if, after confirmation of a finding or sentence, a petition is duly presented under section 109 against the finding or sentence, then, subject to 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) If an application for leave to appeal is received by the Registrar of the court of appeal under Part VI of this Act, 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.

(3) On a review under this section the President 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 the Defence Council by section 111 (2), (3), and (4),

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.

(4) Where the President exercises any of the powers conferred by subsection (3), the determination shall be promulgated and shall have effect as from the promulgation thereof.

[Ch1201s114]114. Reconsideration of sentences of imprisonment and detention

(1) Sentence of imprisonment and detention passed by courts-martial may be reconsidered by the Defence Council, 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.

Division 17—Review of Summary Findings and Awards

[Ch1201s115]115. Review of summary findings and awards

(1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority mentioned in subsection (2) may at any time review the findings or awards.

(2) The authority for purposes of subsection (1) is—

(a) the Defence Council; or

(b) any officer superior in command to the officer who dealt summarily with the charge.

(3) Where on review under this section it appears to the authority expedient so to do by reason of any mistake of law in the proceedings on the summary dealings 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 findings 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 with another punishment or other 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 authority that a punishment awarded was invalid, or too severe, or, where the award included two or more punishment, 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 with another punishment or other 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.

Division 18—Findings of Insanity

[Ch1201s116]116. Provisions where accused found insane

(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 a 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 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 findings as in subsection (1) or (2) 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 it fit.

(4) A finding under subsection (1) shall not have effect unless and until the finding has been confirmed by the Defence Council and has been promulgated.

(5) Where the court or the Defence Council come to or substitute a finding of guilty but insane the Defence Council or, as the case may be, the President shall not have power to substitute 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.

Division 19—Commencement and Duration of Sentences

[Ch1201s117]117. Commencement of sentences

(1) A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to section 142 (4) (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 119 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 Defence Council and the President determines the suspension, the President 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 President may specify.

[Ch1201s118]118. Duration of imprisonment and detention

(1) Where a soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of section 119 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 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, 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 Defence Council, 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.

(3) In subsection (2), the expression "civil authority" means a civil authority authorized 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 temporally 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 Prisons Act. Cap. 9:02

[Ch1201s119]119. Suspension of sentences

(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.

(2) Without prejudice to section 111 (5), in confirming such a sentence the Defence Council 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 Defence Council or the President, as the case may be.

(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 Defence Council or the President, as the case may be, 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 section 82 (1)—

(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 under paragraph (a), the Defence council may exercise those powers on the confirmation of the later sentence;

(c) if neither the court nor the Defence Council exercises the powers under paragraph (a) or (b), the President may exercise those powers on the review of the later sentence;

(d) where the powers under paragraphs (a), (b) or (c) are exercised, whether by the court, the Defence Council or the President, 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 to section 82 (11).

(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 section 114 (2), of a sentence of imprisonment and detention which is suspended shall be three months, and not as specified under that subsection.

[Ch1201s120]120. Restriction on serving of sentences of detention in prisons

A person shall not be required to serve any part of a military sentence of detention in a military or civil prison:

Provided that in such cases and subject to such conditions as may be specified by or under Imprisonment and Detention Regulations he shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under like sentence of a civil court.

[Ch1201s121]121. Special provision as to civil prisons in Malawi

A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under section 140 or Imprisonment and Detention Regulations 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.

[Ch1201s122]122. Special provisions as to carrying out or serving sentences outside Malawi

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

[Ch1201s123]123. Country in which sentence of imprisonment or detention to be served

(1) A person who is serving a military sentence of imprisonment or detention in Malawi, (in so far as may be specified by or under Imprisonment and Detention Regulations) be removed out of Malawi 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.

(2) Subject to the following provisions of this section, a person sentenced under this Act by a court-martial held out of Malawi 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 Malawi.

(3) Where a person has been sentenced under this Act by a court-martial held out of Malawi to imprisonment or detention for more than twelve months, the Defence Council or the President may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to Malawi 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 the Defence Council or the President shall have regard to any recommendation in that behalf made by the court-martial.

(4) Any direction of the Defence Council under this section may at any time be revoked by the Defence Council or by the President, or superseded by any direction of the Defence Council or the President which the Defence Council or the President could have given under subsection (3); and any direction of the President under this section may at any time be revoked by him 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.

[Ch1201s124]124. Duties of officers in charge of prisons and others to receive prisoners

(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.

(2) Where a person is in 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 superintendent or other person mentioned in subsection (1) 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 person is earlier discharged or delivered over in due course of law.

Division 20—Trial of Persons Ceasing to be Subject to Military Law under this Act and Time Limits for Trials

[Ch1201s125]125. Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto

(1) Where an offence under this Act triable by court-marital 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 the Act mentioned in subsection (1) and the provisions of this Act 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 as 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; or

(b) if 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 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 a person, 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.

Division 21—Relation between Military and Civil Courts and Finality of Trials

[Ch1201s126]126. Powers of civil courts

(1) Save as provided in section 151, 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.

(2) Where a person is tried by a civil court for any offence, and he has previously been sentenced by court-martial held under service law to punishment for any act constituting (whether wholly or in part) that offence, or in pursuance of this Act has been punished for any such act by his commanding officer or an appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of service law.

[Ch1201s127]127. Persons not to be tried under this Act for offences already disposed of

(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 the appropriate superior authority; and

(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 the 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 of the appropriate superior authority has been quashed or that the award of that officer or of the appropriate superior authority has been quashed or varied, on the review of such finding or awards;

(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 authorized 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 with the offence; and

(e) a person ordered under section 67 (2), 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 section 143 (2) 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 the appropriate superior authority or before a court-martial, shall not be barred on the grounds of condemnation.

[Ch1201s128]128. Resolution of conflicts of jurisdiction

(1) The decision as to whether an offence shall be dealt with by the military authorities under this Act or by the civil authorities shall be determined by the Attorney General in accordance with the following subsections.

(2) The civil authorities shall exercise jurisdiction in respect of offences committed in Malawi where the offence is one of those referred to in section 80 (4).

(3) The civil authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Malawi not referred to in subsections (4) and (5).

(4) The military authorities shall have the right to exercise jurisdiction in relation to offences under this Act at all times when the person alleged to have committed an offence against this Act is serving outside Malawi.

(5) The military authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Malawi—

(a) if the offence is against the property or security of the Defence; or

(b) if the offence is against the property or person of a person subject to service law; or

(c) if the offence is against the property or person of a dependant of a person subject to service law when such dependant is residing with such person; or

(d) if the offence arises out of an act or omission in the course of official duty.

(6) In cases where the civil authorities and military authorities have primary right to jurisdiction in relation to specific or general offences such authority shall give sympathetic consideration to any request from such other authority for a waiver by that authority of jurisdiction in any particular case or general class of cases; and in particular the civil authorities shall consider waiving their rights of jurisdiction in the case of minor offences where the military authorities can impose a suitable punishment by disciplinary action under this Act without recourse to a civil court.

Division 22— Inquiries

[Ch1201s129]129. Boards of inquiry

(1) Subject to and in accordance with rules made under section 138 (in this Act referred to as “Board of Inquiry Rules"), the Defence Council, 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;

(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 Defence Council or any such officer,

and a board of inquiry shall, if directed so to do by the Defence Council or by such officer, express its 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 the Board of Inquiry Rules who shall be persons subject to service law and the presiding officer 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 the appropriate superior authority, other than proceedings for an offence against section 68 or for an offence against section 80 where the corresponding civil offence is perjury.

[Ch1201s130]130. Inquiries into absence

(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 the 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 Defence Council or by a subsequent board of inquiry, have the like effect as a conviction by a court-martial for desertion.

Division 23— Miscellaneous Provisions

[Ch1201s131]131. Restitution or compensation for theft, etc.

(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 to the person appearing to be the owner of the property or the offender may be ordered to pay to such person such sum as may represent a reasonable value of the property.

(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.

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained by him by the conversion or exchange of any property and unlawfully obtained, 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 that 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 so sold or given, there shall be paid to that 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 order thereof of the property so given, there shall be restored to that 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 which the offender is convicted, by the Defence Council or by the President and in this section the expression "appearing" means appearing to the court, Defence Council or President, as the case may be.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the Defence Council 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.

(10) Where the operation of an order under this section as aforesaid is suspended under subsection (9)—

(a) it shall not take effect if the conviction is quashed on appeal;

(b) the court of appeal may by order annul or vary the order although the conviction is not quashed; and

(c) 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.

(11) 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 of the property, be suspended if the court, the Defence Council or President, in making the order directs to the contrary in any case in which, in the opinion of the court, Defence Council or President, the title to the property is not in dispute.

(12) 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.

[Ch1201s132]132. Appointment of judge advocate

(1) A judge of the High Court may be appointed as judge advocate to serve at any court-martial.

(2) The appointment of a judge advocate under subsection (1) shall be made by the Chief Justice upon request by the convening officer.

[Ch1201s133]133. Promulgation

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 Defence Council or the President, as the case may be, may direct.

[Ch1201s134]134. Custody of proceedings of court-martial and right of accused to copy thereof

(1) The record of the proceedings of a court-martial shall be kept in the custody of the Defence Council 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 this section, any person tried by court-martial shall be entitled to obtain from the Defence Council on demand at any time within the relevant period, and on payment therefor of such sum 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 Defence Council ought to be treated for the purposes of this subsection as his personal representative shall, subject to this section, be entitled to obtain from the Defence Council on demand at any time within the period of twelve months from the death, and on payment therefor of such fees 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 subsection (3) for a copy of the record of any proceedings, the Defence Council 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.

(5) In this section, the expression “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 related 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.

[Ch1201s135]135. Indemnity for prison officers, etc.

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 defeat in a warrant or other instrument made for the purposes of that sentence.

Division 24—Rules of Procedure, etc.

[Ch1201s136]136. Rules of procedure

(1) Subject to this section, the Minister may, with the advice of the Defence Council, 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 the Commander 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 the Commander and commanding officers;

(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 purposes 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 99 in any ease where the accused requires that evidence shall be taken on oath;

(c) in addition to, or in 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 court-martial;

(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 the Commander and commanding officers and otherwise in relation to proceedings prior to trial by courts-martial all or any of the provisions of sections 99, 105, 106 and 107;

(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 vacations 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; and

(l) the forms of orders and other documents to be made for the purposes of any provision of this Act or Rules of Procedure.

(3) Rules of Procedure shall secure that the power to amend charges referred to in subsection (2) (j) shall not be exercisable in circumstances substantially different from those in which charges or informations are amendable by a civil court in Malawi, 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 ruling given to the court by a judge advocate on questions of law;

(b) for requiring or authorizing the presiding officer 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 presiding officer and other members of the court and any officer 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.

(5) In subsection (4) reference to questions of law include references to questions as to the joinder of charges and as to the trial of persons jointly or separately charged.

(6) Rules of Procedure may make provision for determining the cases in which and the extent to which court-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), those Rules 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.

[Ch1201s137]137. Imprisonment and Detention Regulations

The Minister may, with the advice of the Defence Council, 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 establishment 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 establishment or otherwise in military custody;

(e) the temporary release on compassionate grounds of persons serving such sentence in such establishment or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such sentence for good conduct and industry; and

(f) the appointment, powers and duties of inspectors, visitors and superintendents, and of officers and other members of the staff of military establishments.

[Ch1201s138]138. Board of Inquiry Rules

(1) The Minister may, with the advice of the Defence Council, make rules with respect to the convening, constitution and procedure of boards of inquiry.

(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 or affirmation could be dispensed with; and

(b) without prejudice to the provisions of section 130, 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.

[Ch1201s139]139. Miscellaneous regulations

The Minister may, on the advice of the Defence Council, 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 authorized to be prescribed or for which regulations may be made; and

(d) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 136, 137 and 138, and in this section.

Division 25—Interpretation of Part V

[Ch1201s140]140. Interpretation of Part V

(1) In this Part—

"civil prison" means a prison in Malawi 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;

"Judge advocate" means the person appointed under section 132 to serve as judge advocate at a court-martial;

"military establishment" means a military prison or any other establishment under the control of the Defence Council where persons may be required to serve military sentences of imprisonment or detention;

"military prison" means separate premises designated by the Defence Council 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 or the appropriate superior authority.

(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

[Ch1201s141]141. Right of appeal

(1) Subject to this Part, where a person has been convicted by a court-martial—

(a) the person convicted may, with the leave of the court-martial given pursuant to section 142, appeal to the court of appeal against the conviction, or against the sentence, or against both;

(b) the convicted person shall have the right, without leave, to appeal to the court of appeal against any conviction involving a sentence of death; and

(c) the Director of Public Prosecutions may, in any case, within forty days of the promulgation of the conviction, appeal to the court of appeal against the sentence.

(2) Subject to this Part, where a person has been acquitted of a charge by a court-martial, the Director of Public Prosecutions may, within forty days of the acquittal, appeal to the court of appeal against the acquittal on a point of law.

[Ch1201s142]142. Application for leave to appeal

(1) Leave to appeal to the court of appeal shall not be given except in pursuance of an application in that behalf made by or on behalf of the person convicted, 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.

(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 with the registrar of the court of appeal in the presented manner by or on behalf of the appellant within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought.

(3) The court of appeal 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 that the appellant is outside Malawi or otherwise, he has not had a reasonable opportunity of lodging his appeal within forty days.

(4) Where the court of appeal 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.

[Ch1201s143]143. Determination of appeals in ordinary cases

(1) Subject to section 144, on an appeal under this Part against a conviction, the court of appeal 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 court of appeal 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 court of appeal 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 section 127 (3), a new trial by court-martial may be held within such time as the court may order.

[Ch1201s144]144. Powers of court of appeal in special cases

(1) If it appears to the court of appeal 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, 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.

(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 court of appeal 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 court of appeal 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 court of appeal that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or vacations,

the court of appeal 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, 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 court of appeal 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 court of appeal may quash the sentence passed at the trial and order the appellant to be kept in custody under section 116 of this Act in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

[Ch1201s145]145. Commencement of sentence

The term of any sentence passed by the court of appeal under any of the provisions of section 144 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 court of appeal 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.

[Ch1201s146]146. Appeals to be final

Any determination by the court of appeal of any appeal or other matter which it has power to determine under this Part shall be final, and no appeal shall lie from the court of appeal to any other court.

[Ch1201s147]147. Proceedings may be heard in absence of appellants

An appellant shall not be entitled to be present at the hearing of an appeal to the court of appeal 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 court of appeal gives him leave to be present, and accordingly any power of the court under this Part to pass a sentence may be exercised despite the absence of the appellant.

[Ch1201s148]148. Defence of appeals

It shall be the duty of the Director of Public Prosecutions on an appeal against conviction by court-martial to undertake the defence of the appeal.

[Ch1201s149]149. Right of appellant to present his case in writing

An appellant may if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

[Ch1201s150]150. Suspension of death sentence

Where a conviction by court-martial involves sentence of death—

(a) the sentence shall not in any case be executed until the expiration of the period within which the appeal to the court of appeal against the conviction shall be lodged; and

(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 Defence Council, in confirming that sentence certifies that it is essential in the interests of discipline and 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.

[Ch1201s151]151. Person not to be tried again where conviction quashed

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 that offence by a court-martial or by any other court.

[Ch1201s152]152. Removal of prisoners for purposes of this Part

Imprisonment and Detention Regulations may provide in what manner an appellant, when in custody, is to be taken to, kept in custody 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 court of appeal or a judge thereof may order him to be taken for the purpose of any proceedings of the court of appeal.

[Ch1201s153]153. Furnishing on appeal, of documents relating to trial

In the case of every appeal, or application for leave to appeal, under this Part to the court of appeal against a conviction by court-martial, it shall be the duty of the secretary of the Defence Council to furnish to the registrar of the court of appeal, 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 section 110 (1)) the

proceedings with respect to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted.

[Ch1201s154]154. Duties of registrar of court of appeal with respect to appeals, etc.

(1) The registrar of the court of appeal shall take all necessary steps for obtaining the determination of an appeal or application under this Part and shall obtain and lay before the court of appeal 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.

(2) The Registrar of the court of appeal shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal under this Part—

(a) to any person who demands such forms or instructions;

(b) to persons in charge of places where persons sentenced by a court-martial may lawfully be confined for the purpose of serving their sentences; or

(c) to such other persons as he thinks fit.

(3) Every person in charge of such a place of confinement mentioned in subsection (2) 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 an application for leave to appeal under this Part.

[Ch1201s155]155. Saving of powers of reviewing authorities

Nothing in this Part shall affect the exercise by the President of the powers conferred by section 113 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 court of appeal 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.

[Ch1201s156]156. Composition of court of appeal

At the hearing of any appeal from any court-martial, the court of appeal shall consist of an uneven number of judges, not being less than three.

[Ch1201s157]157. Exercise of certain powers of court of appeal by a judge

Any judge of the court of appeal 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 section 142 (1) or (2) 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 mentioned in paragraphs (a), (b), and (c), 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 court of appeal, which shall consist of an uneven number of judges, not being less than three.

[Ch1201s158]158. General provisions as to procedure

(1) Subject to the provisions of this Part, any rules of court in force relating to the hearing of criminal appeals by the court of appeal shall apply to the hearing and determination of an appeal by the court under this Part.

(2) Where under this Part anything is required or authorized to be prescribed it shall be prescribed by rules of court.

PART VII

FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF MAINTENANCE LIABILITIES

[Ch1201s159]159. Forfeitures and deductions; general provisions

(1) No forfeiture of the pay of an officer or a soldier of the Defence Force shall be imposed unless authorized by this Act, other service law or any other law and no deduction from such pay shall be made unless so authorized by regulations.

(2) Regulations shall not authorize the making of any penal deductions, 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) Subsections (1) and (2) shall not prevent the making of regulations providing for the imposition of any forfeiture authorized by this Act or the making of any deduction so authorized, or for the time at which and manner in which sums may be deducted from pay to give effect to authorized 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 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 a 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 a 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 may be prescribed, but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorized to be deducted from the pay of an officer or a soldier of the Defence Force may be deducted from any balance, whether or not presenting pay, which may be due to him as an officer or a 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 the pay of an officer or a soldier may be recovered by deductions from any such balance.

[Ch1201s160]160. Forfeiture of pay for absence from duty

(1) The pay of an officer or a soldier of the Defence Force may be forfeited—

(a) for any day of absence in such circumstances as to constitute an offence under section 46 or 47, if the Defence Council so directs, or for any day of other absence without leave;

(b) for any day of imprisonment, detention or field punishment awarded under service law by a court-martial, appropriate superior authority or commanding officer, or for any day 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, the 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 a 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 Defence Council or an officer authorized by the Defence Council is satisfied—

(a) that he was made a prisoner of war through disobedience to orders or willful 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 any cooperating forces; 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 authorized by international usage,

but, save as so provided, nothing in subsection (1) (a) shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations under this Act, or orders of the Defence Council, may make provision as to the computation of time for the purpose of this section and in particular as to the counting or disregarding of parts of days.

(4) For purposes of this section “a day” shall be deemed to be any period over six hours but not more than twenty-four hours.

[Ch1201s161]161. Deductions for payment of civil penalties

Where a person sentenced or ordered by a civil court, whether within or outside Malawi, 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 a 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.

[Ch1201s162]162. Compensation for loss occasioned by wrongful act or negligence

(1) Without prejudice to the provisions of this Act as to the position of stoppages (of pay) as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations made under this Act, it appears to the Defence Council or an officer authorized by the Defence Council that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or a soldier of the Defence Force (hereinafter referred to as “the person responsible").

(2) The Defence Council or authorized officer, as the case may be, 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.

(3) No order shall be made under the provisions of subsection (2) if, in proceedings before a court-martial under service law, the appropriate superior authority or commanding officer of the person responsible, that person—

(a) has been acquitted in circumstances involving a finding that he was guilty of the wrongful act or negligence in question, or

(b) has been awarded stoppages (of pay) in respect of the same loss or damage, but save as so provided, 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).

[Ch1201s163]163. Deductions for barracks damage

(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 regulations made under this Act, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of the units in occupation of the premises and was so occasioned at a time when they were in occupation thereof but that the persons cannot be identified, any person belonging to any such units or parts of the 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) 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.

[Ch1201s164]164. Remission of forfeitures and deductions

Any forfeiture or deduction imposed under this Part or under regulations made under this Act may be remitted by the Defence Council or in such manner or by such authority as may be provided by such regulations.

[Ch1201s165]165. Enforcement of maintenance and affiliation orders by deduction from pay

(1) Where any court in Malawi 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 spouse or child of that person; 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 a soldier of the Defence Force, then, whether or not he was a member of the Defence Force when the order was made, the Defence Council or an officer authorized by the Defence Council 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 Defence Council or authorized officer may think fit.

(2) Where to the knowledge of the court making any order as mentioned in subsection (1), or an order varying, revoking or reviving any such order, the defendant is an officer or a soldier of the Defence Force the court shall send a copy of the order to the Defence Council or to an officer authorized by the Defence Force.

(3) Where a like order as is mentioned in subsection (1) has been made by a court of a country outside Malawi, and the Defence Council or an officer authorized by the Defence Council is satisfied that the defendant has a reasonable opportunity of appearing in person, or has appeared by a duty authorized legal representative, to defend the case before the court by which the order was made, the Defence Council or the authorized officer shall have the like power under subsection (1) as if the order had been made by such a court in Malawi.

(4) The Defence Council or an officer authorized by the Defence Council 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 in circumstances mentioned in section 160 (1) (a).

(5) In this section—

(a) references to a spouse or child include, in relation to an order made in proceedings in connexion with the dissolution or annulment of a marriage, references to a person who would have been the spouse or child of the defendant if the marriage had subsisted; and

(b) references to a child of a person include references to a child of the spouse of that person, and to a child of that person born out of wedlock or to an adopted child of that person or of the spouse, and in this paragraph "adopted child" means a child adopted, whether alone or jointly, in pursuance of an adoption order made under the Adoption of Children Act. Cap. 26:01 [Ch1201s166]166. Deductions from pay for maintenance of spouse or child

(1) Where the Defence Council or an officer authorized by the Defence Council is satisfied that an officer or a soldier of the Defence Force is neglecting, without any reasonable cause, to maintain the spouse or child under the age of sixteen, the Defence Council or the authorized officer may order such sum to be deducted from his pay and appropriated towards the maintenance of the spouse or child as the Defence Council or the authorized officer thinks fit.

(2) On an application made to the Defence Council or an officer authorized by the Defence Council for an order under subsection (1), the Defence Council or the authorized 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 section 165 (1) or (3) for the making of deductions in favour of any person from the pay of an officer or a 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 the soldier is in a place where process cannot be served on him in

connexion with proceedings for the variation of the order of the court in consequence of which the order under section 165 was made.

(4) The Defence Council or an officer authorized by the Defence Council 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 section 160 (1) (a).

[Ch1201s167]167. Limit of deductions from pay for maintenance of spouse or child

(1) The sums deducted under sections 165 and 166 shall not together exceed one half of the defendant's pay.

(2) Where any deductions have been ordered under either section 165 or 166 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 the Commander or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.

[Ch1201s168]168. Service of process in maintenance proceedings

(1) Any process to be served on an officer or soldier of the Defence Force (in this section referred to as "the defendant") in connexion with proceedings for any such order of a court in Malawi as is mentioned in section 165 (1), 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 on his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.

(2) Where any such process as is mentioned in subsection (1) is serviced in Malawi and the defendant will be required to appear in person at the hearing, then, if his commanding officer certifies to the court by which the process was issued that the defendant is under orders for service out of Malawi 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

BILLETING AND REQUISITIONING OF VEHICLES, AIRCRAFT OR VESSELS

Division 1—Billeting

[Ch1201s169]169. Billeting requisitions

At any time when this section is in operation the Defence Council or any officer authorized by the Defence Council in that behalf not below field rank in Malawi may issue a billeting requisition requiring the officer-in-charge of police for any area in Malawi specified in the requisition to provide billets at such places in that area, for such numbers or members of the Defence Force and, if the requisition so provides, for such number of vehicles, aircraft or vessels in use for the purpose of the Defence Force being vehicles, aircraft or vessels of any kind specified in the requisition, as may be so specified.

[Ch1201s170]170. Premises in which billets may be provided

(1) Billets, other than for vehicles, aircraft or vessels, may be provided in pursuance of a billeting requisition—

(a) in any inn or hotel, whether licensed or not, or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward;

(b) in any building not falling within paragraph (a), being a building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of rates; or

(c) in any dwelling, outhouse, warehouse, barn or stables, but not in any, other premises.

(2) Billets for vehicles, aircraft or vessels may be provided under this section in any building or on any land.

[Ch1201s171]171. Provisions of billets

(1) Where a billeting requisition has been produced to the officer-in-charge of police for the area specified in the requisition he shall, on the demand of the officer commanding any part of the Defence Force or on the demand of an officer or a soldier of the Defence Force authorized in writing by such an officer commanding, billet on the occupiers of premises falling within section 170, being premises at such place in that area as may be specified by the officer or soldier by whom the demand is made, such number of persons or vehicles, aircraft or vessels as may be required by the officer or soldier by whom the demand is made, not exceeding the number specified in the requisition.

(2) Without prejudice to section 172, the officer-in-charge of police for the area specified shall exercise his functions under this section in such manner as in his opinion will cause least hardship to persons on whom the billeting may take place.

(3) The officer-in-charge of police for the area specified in the requisition may, to such extent and subject to such restrictions as he thinks proper, authorize any police officer to exercise his said functions on his behalf, and the provisions of subsections (1) and (2) shall apply accordingly.

[Ch1201s172]172. Billeting schemes

(1) A local authority may make a scheme for the provision of billets in its area in pursuance of billeting requisitions, and where such a scheme is in force the officer-in-charge of police for such area shall so far as the scheme extends exercise his functions under section 171 in accordance with the scheme.

(2) Any scheme under this section may be revoked by the local authority by which it was made, or may be varied by that local authority by a subsequent scheme under this section, where a local authority makes a scheme under this section it shall furnish the officer-in-charge of police for the area to which the scheme relates with a copy of the scheme.

(3) A scheme under this section shall not come into force until approved by the Minister responsible for local government; and that Minister may require the local authority to revoke any

scheme in force under this section and in substitution therefor to submit for his approval a further scheme under this section.

[Ch1201s173]173. Accommodation to be provided and payment therefor

(1) Where persons are billeted in pursuance of a billeting requisition, the occupier of the premises on which they are billeted shall furnish such accommodation (including meals) as the officer or soldier demanding the billets may require, not exceeding such accommodation as may be prescribed by regulations made under this Act.

(2) Where vehicles, aircraft or vessels are billeted in pursuance of a billeting requisition, the occupier of the premises shall furnish standing room for the vehicles, aircraft or vessels.

(3) Where persons or vehicles, aircraft or vessels have been billeted in pursuance of a billeting requisition they may continue to be billeted, so long as section 169 continues in operation, for such period as may be required, and the allotments of billets among the persons or vehicles, aircraft or vessels in question may be varied from time to time.

(4) The occupier on whose premises any person or vehicle, aircraft or vessel is billeted in pursuance of a billeting requisition shall be entitled to receive for the billeting such payment as may be prescribed by regulations made under this Act:

Provided that no payment shall be required in respect of vehicles, aircraft or vessels billeted otherwise than in a building unless the land on which they are billeted—

(a) has its surface made up for the passage or parking of vehicles, aircraft or vessels; and

(b) is not land where vehicles, aircraft or vessels are normally allowed to stand free of charge irrespective of the person by whom they are owned or driven.

(5) Subject to subsection (6), payment for billeting—

(a) shall be made before the persons billeted finally leave, or the vehicles, aircraft or vessels are finally removed from, the premises where they are billeted; and

(b) where the billeting continues for more than seven days shall be made at least once in every seven days.

(6) If for any reason payment for billeting cannot be made, or fully made, as required by subsection (5) (a), there shall be made up with the occupier an account, in such form as may be prescribed by the Defence Council, of the amount due to him; and—

(a) on presentation of the account the local authority for the area in which the premises are situated shall pay to the occupier the amount stated in the account to be due; and

(b) any sums paid by a local authority under paragraph (a) shall be recoverable by them from the Defence Council.

(7) In relation to premises of which there is no occupier the foregoing provisions of this section shall apply as if the person entitled to possession of the premises were the occupier thereof.

[Ch1201s174]174. Appeals against billeting

(1) Any person who—

(a) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting requisition, or

(b) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion,

may apply to a person or persons appointed on behalf of the local authority in accordance with arrangements made by the Minister responsible for Local Government.

(2) On any application on grounds mentioned in subsection (1) (a) the person or persons to whom the application is made may direct the billeting elsewhere of such number of the persons billeted as may seem just or may dismiss the application.

(3) On application on the grounds mentioned in subsection (1) (b) the person or persons to whom the application is made may grant such exemption as may seem just or may dismiss the application.

(4) An application under this section shall not affect billeting pending the determination of the application.

[Ch1201s175]175. Compensation for damage

(1) Where any damage is caused to any premises by the billeting of persons or vehicles in pursuance of a billeting requisition, the occupier of the premises, or if there is no occupier the person entitled to possession thereof, may recover from the Defence Council compensation of an amount equal to the depreciation caused by the damage in the value of the premises.

(2) Where any person other than the recipient of compensation under subsection (1) has any interest in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be just.

(3) A subordinate court shall have jurisdiction to deal with any claim arising under either subsection (1) or (2) irrespective of the amount of the claim.

[Ch1201s176]176. Refusal to receive persons billeted, etc.

Any person who—

(a) refuses to receive any person billeted upon him in pursuance of a billeting requisition or without reasonable excuse fails to furnish him with the accommodation properly required for him;

(b) gives or agrees to give to any person billeted upon him in pursuance of a billeting requisition any money or reward in lieu of receiving any person or vehicle or of furnishing accommodation properly required for him; or

(c) obstructs the billeting in his building or on his land of any vehicle,

shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

[Ch1201s177]177. Application to civilians employed with the Defence Force

In relation to persons employed with any body of the Defence Force not entitled under the provisions of this Part to be billeted, being persons of such descriptions as may be prescribed by regulations made under this Act, those provisions shall apply as they apply in relation to members of the Defence Force.

[Ch1201s178]178. Suspension of laws against billeting

While section 169 is in operation, any part of a law that prohibits, restricts or regulates quartering or billeting on any inhabitants of Malawi shall not apply to such billeting in pursuance of a billeting requisition.

Division 2—Requisitioning of vehicles, aircraft or vessels

[Ch1201s179]179. Requisitioning orders

(1) At any time when this section is in operation the Defence Council or any officer authorized by the Defence Council in that behalf not below field rank in Malawi may issue a requisitioning order authorizing the requisitioning, from among vehicles, aircraft or vessels in any area in Malawi specified in the order, of such vehicles, aircraft or vessels or such number of vehicles, aircraft or vessels of such description, as may be specified in the order.

[Ch1201s180]180. Provisions of vehicles, aircraft or vessels

(1) A requisitioning order may be issued to the officer commanding any part of the Defence Force, or any officer or soldier authorized by him in writing, may give directions for the provision—

(a) in so far as the requisitioning order authorizes the requisitioning of particular vehicles, aircraft or vessels, of all or any of those vehicles, aircraft or vessels; and

(b) in so far as the order authorizes the requisitioning of vehicles, aircraft or vessels of a specified description, of the number of vehicles, aircraft or vessels of that description specified in the order or any lesser number of such vehicles, aircraft or vessels.

(2) A direction under subsection (1) given as respects any vehicle, aircraft or vessel shall be either—

(a) a direction given to the person having possession thereof to furnish it immediately at the place where it is; or

(b) a direction given to the person having procession thereof to furnish it at such place within one hundred and sixty kilometers from the premises of that person and at such time as may be specified by the officer or soldier by whom the direction is given:

Provided that no direction shall be given under paragraph (b) as respects a vehicle, aircraft or vessel which is neither mechanically propelled nor a trailer normally drawn by a mechanically propelled vehicle, aircraft or vessel.

(3) If the officer to whom the requisitioning order was issued, or any officer or soldier authorized by him in writing, is satisfied that the person having possession thereof has refused or neglected to furnish a vehicle, aircraft or vessel in accordance with a direction under any of the provisions of subsection (2), or has reasonable grounds for believing that it is not practicable without undue delay to give a direction to that person, he may take, or authorize any officer or soldier to take, possession of the vehicle, aircraft or vessel; and where possession is taken of a vehicle, aircraft or vessel had been furnished by the person having possession of the vehicle, aircraft or vessel in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

[Ch1201s181]181. Assistance of police authorities

The officer-in-charge of police for any area specified in a requisitioning order shall, on a request to that effect made by or on behalf of the officer to whom the order is issued, give instructions for securing that so far as is practicable police officers will be available, if required, for accompanying officers or soldiers requisitioning vehicles, aircraft or vessels in pursuance of the order.

[Ch1201s182]182. Period for which vehicles, aircraft or vessels to be furnished

Where a vehicle, aircraft or vessel has been furnished in pursuance of a requisitioning order it may be retained, so long as section 178 is in operation, for any period for which it is required for the purpose specified in the order or for any other purposes connected with the needs of any part of the Defence Force.

[Ch1201s183]183. Payment for vehicles, aircraft or vessels furnished

(1) The person by whom a vehicle, aircraft or vessel is furnished in pursuance of a requisitioning order, and is so furnished otherwise than for the purpose of being purchased, shall be entitled to be paid—

(a) a sum for the use of the vehicle, aircraft or vessel calculated, by reference to the period for which possession of the vehicle, aircraft or vessel is retained, at the rate of payment commonly recognized or generally prevailing in the district at the time at which the vehicle, aircraft or vessel is furnished, or, in default of such a rate, such rate as may be just;

(b) a sum equal to the cost of making good any damage to the vehicle, aircraft or vessel not being damage resulting in a total loss thereof or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle, aircraft or vessel is retained and which has not been made good during that period by a person acting on behalf of the Government, and in this paragraph, reference to fair wear and tear shall be construed as reference to such fair wear and tear as might have been expected to occur but for the fact that the vehicle, aircraft or vessel was requisitioned, and

(c) if, during the period for which possession of the vehicle, aircraft or vessel is retained a total loss of the vehicle, air craft or vessel occurs, a sum equal to the value of the vehicle, aircraft or vessel immediately before the occurrence of the damage which caused the loss.

(2) The person by whom a vehicle, aircraft or vessel is furnished in pursuance of a requisitioning order for the purpose of being purchased shall be entitled to be paid the value of the vehicle, aircraft or vessel at the time at which it is furnished.

(3) Where a vehicle, aircraft or vessel is furnished in pursuance of a direction under section 180 (1) (b), then—

(a) for the purposes of subsection (1) (c) and (b) (if that subsection applies) the vehicle, aircraft or vessel shall be deemed to have been furnished at the time; and

(b) in addition to the payments provided for by subsections (1) or (2), the person by whom the vehicle, aircraft or vessel is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.

(4) Where a direction to furnish a vehicle, aircraft or vessel is given under section 180 (2) (b), and after the giving of the direction any damage occurs to the vehicle, aircraft or vessel, whether or not resulting in a total loss thereof, then, if the damage prevents the furnishing of the vehicle, aircraft or vessel in pursuance of the requisitioning order the foregoing provisions of this section shall apply as if the vehicle, aircraft or vessel had been furnished, and, notwithstanding that it may have been required to be furnished for the purpose of being purchased, had been furnished otherwise than for that purpose, subject however to the following modifications, that is to say—

(a) subsection (1) (a), (b) and (c) shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage; and

(b) subsection (3) (b) shall have effect as if for the words “in complying with” there were substituted the words “by reason of anything done for the purpose of complying with”.

(5) Where any person (hereinafter referred to as “a person interested") other than the person by whom a vehicle, aircraft or vessel is required to be furnished has an interest in the vehicle, aircraft or vessel—

(a) the person by whom the vehicle, aircraft or vessel is required to be furnished shall notify any person known to him to be a person interested that the vehicle, aircraft or vessel has been requisitioned; and

(b) any person interested shall be entitled to recover from the person by whom the vehicle, aircraft or vessel was required to be furnished such part, if any of the payment received by him for the vehicle, aircraft or vessel as may be just.

(6) Where, during the period for which possession of a vehicle aircraft or vessel is retained, a total loss of the vehicle, aircraft or vessel occurs, then—

(a) for the purposes of subsection (1) (a) and (b) that period shall be deemed to have come to an end immediately after the occurrence of the loss; and

(b) no claim shall be made for the return of the vehicle, aircraft or vessel, if it still exists, or for payment in respect thereof other than such as is provided for by subsection (1).

[Ch1201s184]184. Avoidance of hardship in requisitioning of vehicles, aircraft or vessels

In deciding which of alternative vehicles, aircraft or vessels is to be specified in an order under section 179, or is to be the subject of a direction under section 180 (1) (b), the officer or soldier by whom the order is issued or direction given shall act in such manner as in his opinion will cause least hardship.

[Ch1201s185]185. Record and inspection of mechanically propelled vehicles, aircraft or vessels

The Defence Council may, by general notice published in the Gazette require persons having in their possession in Malawi mechanically propelled vehicles, aircraft or vessels or trailers normally drawn by mechanically propelled vehicles, aircraft or vessels, if required so to do by such authority or person as may be specified in the notice—

(a) to furnish such authority or person as may be so specified in a return containing such particulars as to the vehicles, aircraft or vessels as may be required in the notice; and

(b) to afford all reasonable facilities for enabling any such vehicle, aircraft or vessel in his possession to be inspected and examined, at such times as may be specified in the notice, by such authority or person as may be so specified.

[Ch1201s186]186. Enforcement of provisions as to requisitioning

(1) If any person—

(a) fails to furnish any vehicle, aircraft or vessel which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle, aircraft or vessel at the time and place at which he is directed to furnish it;

(b) fails to comply with any notice of the Defence Council under section 185; or

(c) obstructs any officer or other person in the exercise of his function under this Part of this Act in relation to the inspection or requisitioning of vehicles,

he shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

(2) without prejudice to any penalty under subsection (1), if any person is obstructed in the exercise of powers of inspection conferred on him by the notice under section 185, a magistrate may, if satisfied by information on oath that the person has been so obstructed, issue a search warrant authorizing a police officer named therein, accompanied by that person, to enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening and to inspect any vehicles, aircraft or vessels which may be found therein.

[Ch1201s187]187. Application to horses, food, forage and stores

(1) Subject to this section, the foregoing provisions of this Part, except such of those provisions as relate only to mechanically propelled vehicles, aircraft or vessels and trailers normally drawn thereby, shall apply to horses, food, forage and stores as they apply to vehicles, aircraft or vessels.

(2) Where stores are required for and can be conveyed with, a vehicle with respect to which a direction is given under section 180 (2) (b), such a direction may be given as well in relation to the stores as in relation to the vehicle, aircraft or vessel, and the foregoing provisions of this Part shall apply accordingly:

Provided that section 183 (4) shall not apply, but if after the giving of the direction the furnishing of the stores is prevented by damage to them or to the vehicle, aircraft or vessel such payment, if any, shall be made in respect of the stores as may be just in all the circumstances.

(3) Notwithstanding the provisions of section 182, food, forage or stores to be furnished in pursuance of a requisitioning order at any time may be required to be furnished for purchase by the Government.

(4) Section 185 shall apply in relation to horses as it applies in relation to mechanically propelled vehicles, aircraft or vessels.

(5) In this section the expression "stores" means any chattel, other than a horse, a vehicle, aircraft or vessel, food or forage, being a chattel required for, or for use in connexion with—

(a) persons or vehicles, aircraft or vessels billeted or to be billeted in pursuance of a billeting requisition or otherwise temporarily accommodated or to be so accommodated; or

(b) vehicles, aircraft or vessels or horses furnished or to be furnished in pursuance of a requisitioning order.

[Ch1201s188]188. Damage by vehicles, aircraft or vessels being delivered for requisitioning

The person using a vehicle, aircraft or vessel for the purpose of its being furnished in pursuance of a direction under section 180 (2) (b) shall be deemed as respects any claim in respect of injury or damage to any other person or property, to be so using the vehicle, aircraft or vessel as a servant of the Government.

[Ch1201s189]189. Bringing into operation of sections 169 and 179

(1) Wherever it appears to the Minister that the public interest so requires, he may by order which shall be published in the Gazette direct that section 169 or 179, or both those sections, shall come into operation either generally or as respects such area in Malawi as may be specified in the order; and that section or those sections, as the case may be, shall come into operation either generally or as respects such area in Malawi as may be specified in the order; and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation so long as the order has effect.

(2) As soon as may be after either of the said sections has been brought into operation on any occasion, the Minister shall report that fact to the Cabinet and National Assembly.

(3) An order under this section shall, subject to any revocation or variation thereof, continue to have effect for the period of one month from the making thereof:

Provided that where, before the expiration of the period for which the order has effect (whether by virtue of the other provisions of this subsection or of this proviso), it is determined by the Minister that the public interest requires that the operation of the order should be extended for such further period as may be specified in the resolution, it shall be extended accordingly.

PART IX

GOVERNMENT AND GENERAL PROVISIONS

Division 1—Command

[Ch1201s190]190. Command and precedence

(1) Officers and soldiers of the Defence Force shall stand with each other in such order of precedence as may be prescribed by the Defence Council.

(2) Officers and soldiers of the armed forces of a friendly country raised outside Malawi may be attached or seconded to the Defence Force with the approval of the Defence Council.

[Ch1201s191]191. Command of Defence Force

(1) The command of the Defence Force shall vest in the Commander appointed under section 161 of the Constitution.

(2) The President shall, in accordance with section 161 of the Constitution, appoint an officer to be the Deputy Commander of the Defence Force.

(3) The Commander and Deputy Commander shall have such rank and title and fulfil such duties and functions as may be determined by the President.

(4) The 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.

(5) The office of the Commander shall, unless the holder is sooner removed, become vacant after the holder has served for a period of four years, but the person holding that office may be appointed for a further period not exceeding two years as the President may consider appropriate.

[Ch1201s192]192. Powers of command of members of cooperating forces

(1) In so far as powers of command depend on rank, a member of the armed forces of a friendly country who—

(a) is acting with; or

(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 42 and 84 any such member of those 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 cooperation with any other force, the 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.

[Ch1201s193]193. Military police

(1) There is hereby established a unit, to be known as military police, which shall be part of the Regular Force, and which shall consist of a provost marshal and such other members as the Commander may determine.

(2) Every member of the military police shall on joining the unit make an oath of allegiance in the form set out in the Third Schedule.

(3) The functions of the military police shall be—

(a) to maintain military discipline;

(b) to maintain the security and orderly regulation as well as ensure protection (including protection against fire and other damage) of—

(i) all public establishments; and

(ii) all public property under the charge of the Defence Force.

(4) In the exercise of their functions under this Act, all members of the military police shall have the same powers and privileges as are by law accorded to civil police, including the power to carry arms; but such powers and privileges shall not apply in relation to a member of

the military police when he is beyond the limits of a public establishment except when that member—

(a) is performing his functions in respect of public property under the charge of the Defence Force; or

(b) is in charge of fresh pursuit of a person who is reasonably suspected of having committed an offence—

(i) in or on such establishment;

(ii) in relation to public property under the control of the Defence Force; or

(iii) in relation to a member of the military police, or to a member of the Defence Force, or to a person employed in the service of a unit of the Defence Force.

(5) For the purposes of this section "public establishment" means—

(a) any establishment of the Defence Force; and

(b) any building or other premises belonging to, or in the occupation of, the Government which the Minister, after consultation with the Minister responsible for matters relating to internal security, may, by order published in the Gazette, declare to be a public establishment for the purposes of this section.

[Ch1201s194]194. Provost marshal

(1) There shall be a provost marshal who shall be appointed by the Commander from among the officers of the Defence Force.

(2) The provost marshal shall—

(a) be responsible for the enforcement of discipline within the Defence Force; and

(b) carry out such other duties as the Commander may assign to him in accordance with this Act.

[Ch1201s195]195. Directorate of Legal Services

(1) There shall be a Directorate of Legal Services within the Defence Force.

(2) The Commander shall appoint an officer to be the Director of Legal Services within the Defence Force.

(3) The Director of Legal Services shall, in relation to service law—

(a) advise the Commander on all legal matters affecting the Defence Force;

(b) prosecute and defend charges before a court-martial;

(c) defend a member of the Defence Force in a civil court or other tribunal in matters pertaining to performance of military duties; and

(d) perform such other duties as the Commander may assign to him in accordance with this Act.

Division 2—Redress of Complaints

[Ch1201s196]196. Complaints by officers

(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 Defence Council.

(2) On receiving any such complaint, it shall be the duty of the Defence Council to investigate the complaint and to grant any redress which appears to it to be necessary or, if the complainant so requires, the Defence Council shall make its report on the complaint to the President in order to receive the directions of the President.

[Ch1201s197]197. Complaints by soldiers

(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 the Defence Council.

(3) It shall be the duty of a commanding officer or the Defence Council to have any complaint received under this section investigated and to take any steps for redress in the matter complained of which appear to be necessary.

Division 3— Exemption for Officers and Soldiers

[Ch1201s198]198. Exemption from service as assessor

An officer or a soldier of the Regular Force shall be exempted from serving as an assessor in any civil court:

Provided that an officer of the rank of captain or above may serve as an assessor in a civil court during any trial for an offence against this Act.

[Ch1201s199]199. Exemption from tolls, etc.

(1) Duties or tolls for passing over any road, ferry or bridge in Malawi shall not be payable in respect of—

(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; and

(d) animals in military service.

(2) In subsection (1) the expression “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.

[Ch1201s200]200. Exemption from taking in execution of property used for military purposes

No judgment, decree or order given or made against an officer or a soldier of the Defence Force by any court in Malawi shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon.

Division 4—Provisions Relating to Deserters and Absentees Without Leave

[Ch1201s201]201. Arrest of deserters and absentees without leave

(1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or a soldier of the Defence Force who has deserted or is absent without leave.

(2) Where no police officer is available any person may arrest any person whom he has reasonable, cause to suspect of being an officer or a soldier of the Defence Force who has deserted or is absent without leave.

(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 a 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 authorizing his arrest.

(4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a subordinate court.

(5) Notwithstanding any other law to the contrary, a person arrested and brought before a subordinate court under this section or section 202 or 203 shall not be admitted to bail.

[Ch1201s202]202. Proceedings before a civil court, where persons suspected of illegal absence

(1) Where a person who is brought before a subordinate court is alleged to be an officer or a soldier of the Defence Force who has deserted or is absent without leave, the provisions under this section shall have effect.

(2) If the person mentioned in subsection (1) 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 under subsection (1) may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose specified in that subsection.

(4) If a person mentioned in subsection (1) does not admit that he is illegally absent from the Defence Force, 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 provided in subsection (2), 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.

[Ch1201s203]203. Deserters and absentees without leave surrendering to police

(1) Where a person surrenders himself to a police officer as being illegally absent from the Defence Force, the police officer shall, unless that person 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, 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 person is illegally absent from the Defence Force, 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.

[Ch1201s204]204. Certificates of arrest or surrender of deserters and absentees

(1) Where a subordinate court in pursuance of section 202 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.

(2) Where a person is delivered into military custody without being brought before a court, whether under section 203 or under any other lawful power, there shall be handed over a certificate in the prescribed form signed by the police officer who causes him to be delivered into military custody, containing the prescribed participation relating to his surrender.

(3) In any proceedings for an offence against section 46 or 47—

(a) a document purporting to be a certificate under either of subsections (1) or (2) of this section, 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; and

(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, as confined on being taken into custody stating the fact, date, time and place of arrest or surrender shall be evidence of the matter in the certificate.

[Ch1201s205]205. Duties of superintendents of prisons and others to receive deserters and absentees

(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 in accordance with the directions of the court under which he is delivered into military custody.

(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.

Division 5—Offences Relating to Military Matters Punishable by Civil Courts

[Ch1201s206]206. Punishment for pretending to be a deserter

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 shall be liable to a fine of K10,000 and to imprisonment for three months.

[Ch1201s207]207. Punishment for procuring and assisting desertion

Any person who—

(a) procures or persuades any officer or soldier of the Defence Force to desert or to absent himself without leave;

(b) knowing that any officer or soldier of the Defence Force 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 shall be liable to a fine of K20,000 and to imprisonment for six months.

[Ch1201s208]208. Punishment for obstructing officers or soldiers in execution of duty

Any person who willfully 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 shall be liable to a fine of K10,000 and to imprisonment for three months.

[Ch1201s209]209. Punishment for aiding malingering

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 shall be liable to a fine of K20,000 and to imprisonment for six months.

[Ch1201s210]210. Unlawful purchase, etc., of military stores

(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, 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,

shall be guilty of an offence and shall be liable to a fine of K100,000 and to imprisonment for two years.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed any 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 the expression—

"acquire" means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

"dispose" means sell, give in exchange, pledge or otherwise hand over whether, apart from this section, the handing over is lawful or not;

"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 so belonged, and had been so issued or held, 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 person.

[Ch1201s211]211. Illegal dealing in documents relating to pay, pension, mobilization, etc.

(1) Any person who—

(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 connexion 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.

(2) Any person who has in his possession without lawful authority or excuse, the proof of which shall lie on him, any such document as mentioned in subsection (1) or any official document issued in connexion with the mobilization or demobilization of the Defence Force or any member of the Defence Force, shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

(3) 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 person.

[Ch1201s212]212. Unauthorized use of and dealing in decorations, etc.

(1) Any person who—

(a) being a person who is not serving in the Defence Force or any cooperating forces without authority wears in a public place the uniform of any part of the Defence Force or of those forces or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform;

(b) without authority uses or wears any naval, military or air force decoration, or any badge, wound stripe or any emblem supplied or authorized by the Defence Council or by the Government of the country of any cooperating forces;

(c) uses or wears any decoration, badge, wound stripe or emblem so nearly resembling any decoration, badge, wound stripe or emblem, as to be calculated to deceive; or

(d) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, wound stripe or emblem as is mentioned in paragraph (b),

shall be guilty of an offence:

Provided that nothing in this subsection shall—

(i) prevent any person from wearing any uniforms or dress in the course of a stage play performed in a place duly licensed or authorized for the public performance of stage plays or in the case of a musical or circus performance, or in the course of any bona fide military representation; or

(ii) prohibit the use and wearing of ordinary regimental badges or of brooches or of ornaments representing them.

(2) Any person who purchases or takes in pawn any naval, military or air force decoration awarded to any member of the Defence Force or cooperating forces, 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 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 the Defence Forces or of those forces.

(3) Any person who is guilty of an offence under this section shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Division 6—Provisions as to Evidence

[Ch1201s213]213. General provisions as to evidence

(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 in any part of cooperating forces or was discharged from any part of the Defence Force or of those forces at or before any specified time;

(b) held or did not hold at any specified time any specified rank or appointment in any part of the Defence Force or of those forces or had at or before any specified time been attached to any part of the Defence Force or of those forces, 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 authorized to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by or on behalf of the Defence Council, or a person authorized by the Defence Council, 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 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 of the Defence Council and to contain instructions or orders given or made by the Defence Council 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 Defence Council, or by a person authorized by the Defence Council, and stating—

(a) that a decoration of a description specified in or annexed to the certificate is a military decoration; or

(b) that a badge, wound stripe or emblem of a decoration specified in or annexed to the certificate is one supplied or authorized by the Defence Council or by the cooperating forces,

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 authorized 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;

(b) any command or other area, garrison or place; or

(c) any vessel, train or aircraft,

shall, in proceedings against a person, be evidence of the matters stated in the certificate.

[Ch1201s214]214. Proof of outcome of civil trial

(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—

(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; or

(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 authorized 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.

[Ch1201s215]215. Evidence of proceedings of court-marshal

(1) The original record of the proceedings of a court-martial under service law purporting to be signed by the presiding officer 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.

(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.

Division 7—Miscellaneous Provisions

[Ch1201s216]216. Temporary reception in civil custody of persons under escort

(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 or 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 140.

[Ch1201s217]217. Avoidance or assignment of, or charge on, military pay, pension, etc.

(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 or the armed forces of a friendly country 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 bankruptcy trustee in bankruptcy for distribution among creditors.

[Ch1201s218]218. Power of certain officers to make statutory declarations

(1) An officer of the Defence Force or of the armed forces of a friendly country not below field rank (hereinafter referred to as an "authorized officer") may, outside Malawi, take statutory declarations from persons subject to military law under this Act.

(2) A document purporting to have subscribed thereto the signature of an authorized 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.

PART X

MILITIA

[Ch1201s219]219. Composition, discipline and functions of the Militia

(1) The Militia shall consist of citizens of Malawi between eighteen years and sixty years of age who have elected to render part-time service in the Defence Force and are accepted by the Defence Council.

(2) Every member of the Militia shall be subjected to the provisions of this Act for the discipline and administration during training and active service.

(3) Units of the Militia or parts thereof shall train for and undertake military service either independently of, or jointly with, other components of the Defence Force.

(4) A member of the Militia shall at all times be liable to serve anywhere within or outside Malawi, save that a member shall be liable to serve outside Malawi only with the approval of the President.

[Ch1201s220]220. Procedure for enlistment

(1) The term for which a person enlisting in the Militia may be enlisted shall be such term beginning with the date of his attestation as may be prescribed.

(2) A person enlisting in the Militia shall be attested in the same manner as a recruit in the Regular Force and the following provisions of Part IV that is to say—

(a) section 18 (which relates to the mode of enlistment and attestation;

(b) section 31 (which relates to the validity of attestation and enlistment), but omitting the references in that section to the receipt of pay; and

(c) section 32 (which makes recruits punishable for false answers),

shall apply in like manner as if they were re-enacted in this Part of this Act with substitution for the expression “Regular Force” of expression “Militia”.

(3) A person enlisting in the Militia may be attested by any officer and the provisions of Part IV mentioned in subsection (2), together also with section 70 (which relates to false answers on enlistment), shall in their application to the Militia be construed as if the expression “recruiting officer” included an officer of the Defence Force.

[Ch1201s221]221. Training

(1) Subject to this section, a member of the Militia shall receive initial and subsequent military training at such place or places and for such periods as may be determined by the Defence Council and shall fulfil such conditions relating to training as may be prescribed.

(2) The requirement of subsection (1) may be dispensed with in whole or in part with respect to the Militia or any part thereof by the Defence Council and with respect to any individual member of the Militia by his commanding officer subject to any general directions of the Defence Council.

[Ch1201s222]222. Embodiment

(1) Wherever it appears to the President necessary or desirable in the public interest he may by notice published in the Gazette or otherwise—

(a) order the employment of the whole or any part of the Militia; and

(b) order the employment of any member of the Militia for service within or, with his consent, outside Malawi.

(2) Any member of the Militia employed under subsection (1) by reason of an order issued by the President shall remain so employed until released by order of the President.

(3) Every member of the Militia may, when undergoing training under section 221, or when employed under subsection (1), be posted or attached to any unit of the Regular Force or the Reserve Force.

[Ch1201s223]223. Discharge

(1) A member of the Militia shall, save as otherwise provided in this section, be entitled to be discharged before the end of his current term of service on complying with the following conditions—

(a) giving to his commanding officer one month’s notice in writing, or such less notices as may be prescribed, of his desire to be discharged; 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 such property 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 any of the conditions in paragraph (a) or (b).

(2) A member of the Militia may be discharged by his commanding officer—

(a) for disobedience to orders by him while doing any military duty, or for neglect of such duty, or for misconduct by him as a member of the Militia, or for other sufficient cause, the existence and sufficiency of such cause to be judged by the commanding officer; or

(b) within one year of the date of his enlistment if, in the opinion of his commanding officer, he is considered to be either—

(i) unlikely to make an efficient soldier; or

(ii) likely to bring discredit upon the Defence Force.

[Ch1201s224]224. Postponement of discharge

Where the time at which a member of the Militia would otherwise be entitled to be discharged occurs at a time when the Militia or any part thereof is employed under section 222, he may be required to prolong his service for such further term as the President may order.

[Ch1201s225]225. Failure to attend on embodiment or training

(1) Any member of the Militia 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 for assembly on embodiment in accordance with directions given under section 222 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 46 or, as the case may be, section 47.

(2) Sections 201 and 202 shall apply to a deserter or absentee without leave contrary to subsection (1).

(3) Any person who, knowing any member of the Militia to be a deserter within the meaning of this Act, employs or continues to employ him shall be deemed to aid him in concealing himself within the meaning of section 207 (c) (which provides, among other things, for the punishment of persons concealing deserters from the Defence Force).

(4) Where a member of the Militia 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 discharge.

[Ch1201s226]226. Failure to fulfil training obligations

Where a member of the Militia, without leave lawfully granted, or such sickness or other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for preliminary training or for annual training, or fails to attend the number of drills or instructional parades or to fulfil the other conditions relating to preliminary or annual training which may be prescribed, he shall be guilty of an offence and shall be liable to a fine of K10,000.

[Ch1201s227]227. Power to make regulations under this Part

Subject to the foregoing provisions of this Part, the Minister may with the advice of the Defence Council, make regulations for the better carrying out of this Part and generally for the good government and organization of the Militia 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 constitution, powers and functions of the Militia or any part thereof;

(b) the enlistment of persons into, and the discharge of persons from, the Militia;

(c) the pay, allowances, pensions and gratuities of members of the Militia and of their dependants surviving them and the deduction therefrom and the forfeiture thereof;

(d) the calling out of members of the Militia on service in accordance with section 222 and for training, including prescribing the manner in which notification of the places and times appointed for training is to be given;

(e) requiring members of the Militia to report themselves from time to time; and

(f) the attachment of members of the Regular Force to the Militia.

PART XI

RESERVE FORCE

[Ch1201s228]228. Composition

(1) The Reserve Force shall consist of such officers and soldiers who shall be appointed therein under sections 16 (2) and 24.

(2) Retired officers and soldiers of the Defence Force, not exceeding 55 years of age, shall be members of the Reserve Force.

[Ch1201s229]229. Discharge from Reserve Force

(1) An officer or soldier of the Reserve Force may be discharged by the appropriate superior authority at any time during the currency of any term of engagement—

(a) for disobedience to orders issued to him while doing any military duty, or for neglect of such duty, or for misconduct by him as a member of the Reserve Force, or for other sufficient or reasonable cause as may be determined by the commanding officer or appropriate superior authority;

(b) if, in the opinion of his commanding officer or appropriate superior authority, he is considered to be either—

(i) unlikely to make an efficient officer or soldier; or

(ii) likely to bring discredit upon the Defence Force.

(2) A member of the Reserve Force who is discharged from service shall deliver up in good order, fair wear and tear only excepted, all arms, clothing and accoutrements, being public property issued to him, or in cases where for any good or sufficient cause the delivery of the property mentioned is impossible, paying the value of the property.

(3) The commanding officer or approbate superior authority may, if it appears to him that the reasons for which the discharge is claimed are of sufficient urgency or weight, dispense either wholly or in part with all or any of the requirements specified in subsection (2).

[Ch1201s230]230. Reporting of Reserve Force

Officers and soldiers of the Reserve Force shall be required to report to such authority and to attend such examinations before a medical board as may be directed by the Defence Council.

[Ch1201s231]231. Embodiment

(1) The President may, in accordance with chapter XVI of the Constitution, by notice published in the Gazette or otherwise, order the employment of the whole or any part of the Reserve Force.

(2) Where the President has made an order under subsection (1) the Defence Council may order employment of any officer or soldier from the Reserve Force for service within or outside Malawi.

(3) Any officer or soldier of the Reserve Force employed by reason of an order issued pursuant to subsections (1) and (2) shall remain so employed until released by the Defence Council.

(4) 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 Militia or the Reserve Force.

[Ch1201s232]232. Training of Reserve Force

(1) Subject to subsection (2), officers and soldiers of the Reserve Force shall receive continuing military training at such places and for such periods as may be determined by the Defence Council and shall fulfill 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 the Reserve Force or any part thereof by the Defence Council and with respect to any individual member of the Reserve Force by his commanding officer or appropriate superior authority subject to any general directions of the Defence Council.

[Ch1201s233]233. Failure to fulfil training obligations

Where a member of the Reserve Force, without leave lawfully granted, or such sickness or other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for training or fails to attend the number of drills or instructional parades or to fulfil the other conditions relating to training which may be prescribed, he shall be guilty of an offence and he shall be liable to a fine of K10,000.

[Ch1201s234]234. Postponement of discharge

Where the time at which a member 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 under section 231, he may be required to prolong his service for such further term as the Defence Council may order.

[Ch1201s235]235. Failure to attend on embodiment

(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 for assembly on embodiment in accordance with directions given under section 231, shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction, shall be punishable as for an offence under section 46 or, as the case may be, section 47.

(2) Any person who, by any means whatsoever—

(a) procures or persuades any officer or soldier of the Reserve Force to commit an offence of desertion contrary to subsection (1), or attempts to procure or persuade any such officer or soldier to commit such an offence;

(b) knowing that any such officer or soldier is about to commit such an offence aids or assists him in so doing; or

(c) knowing any such officer or soldier to be a deserter contrary to subsection (1), conceals the soldier, or aids or assists him in concealing himself or employs or continues to employ him, or aids or assists in his rescue,

shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for six months.

(3) Sections 201 and 202 shall apply to a deserter or an absentee without leave contrary to subsection (1).

(4) 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 section 207 (c) (which provides, among other things, for the punishment of persons concealing deserters from the Regular Force).

(5) 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.

[Ch1201s236]236. Power to make regulations under this Part

Subject to the foregoing provisions of this Part, the Minister may with the advice of the Defence Council, make regulation for the better carrying out of this Part and generally for the good government and "organization 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 to, 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 231, including prescribing the manner in which notification of the places and time appointed is to be given; and

(d) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

PART XII

APPLICATION OF ACT AND SUPPLEMENTARY PROVISIONS

Division 1—Persons subject to Military Law

[Ch1201s237]237. Persons subject to military law

(1) Subject to sections 239 and 240, 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;

(c) officers and soldiers of the Reserve Force when employed under section 231; and

(d) members of the Militia.

(2) This Act shall apply to the persons subject thereto—

(a) as well outside as within Malawi; and

(b) notwithstanding their attachment under section 7 or 9.

[Ch1201s238]238. Application of Act to civilians

(1) Subject to the modification 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 that part of the Defence Force, and is not subject to service law, as it applies to soldiers subject to military law under this Act.

(2) The modifications referred to in subsection (1) are the following—

(a) the punishment 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 imposed where a charge is dealt with summarily shall, in the use of any offence, be a fine not exceeding K5,000 but no other punishment;

(c) the following provision shall have effect in substitution for section 84 (2), (3) and (4), 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;

(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 the person is employed or which he accompanies; and

(g) for references in section 125 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 section 125 (3) 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.

[Ch1201s239]239. Application of Act to members of friendly forces

(1) Officers, warrant officers and non-commissioned officers who, being members of the armed forces of a friendly country, are subject to military law of that country and are seconded to serve with the Defence Force or any part of the Defence Force shall not be subject to military law under this Act.

(2) In the event of a person referred to in subsection (1) committing an offence against the military law of the country from where he is seconded he may be held, tried and punished in Malawi under the military law of that country for the offence.

[Ch1201s240]240. Application of Act to Militia and Reserve Force

The provisions of Part V relating to the award of fines and stoppages, and Part VII, shall not apply to members of the Militia except when undergoing training either voluntary or as may be prescribed by section 221, or when employed under section 222, or to officers and soldiers of the Reserve Force except when reporting under section 231 or employed under section 231 or section 232.

[Ch1201s241]241. Power to make regulations

Subject to the provisions of this Act, the Minister may, with the advice of the Defence Council, make regulations for the better carrying out of this Act and generally for the good government and organization of the Defence Force and for providing 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) the compensation of persons subject to military law under this Act for total or partial incapacity caused by personal injury sustained by accident arising out of or in the course of discharging military duties under this Act;

(c) the pay, allowances, pensions and gratuities of soldiers and their dependants surviving them, and the deductions therefrom and the forfeiture thereof;

(d) the description, supply, use and disposal of arms, accoutrements, 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) the award of medals to service members, and where appropriate, to civilians for an act or acts done in support of military duties; and

(g) in respect of matters for which regulations may be made under the foregoing provisions of this Act, other than under Part III and Part IV.

[Ch1201s242]242. Powers exercisable in subsidiary legislation

(1) Any power conferred by this Act to make regulations, rules, orders or other instrument shall include power to make provision for specified cases or any class of cases, and to

make different provisions for different cases or any class of cases, and for the purposes of any such instrument, cases or any class of cases may be defined by reference to any circumstances specified in the instrument.

(2) Any such regulations, rules or orders or other instruments as mentioned in subsection (1), may impose conditions, require acts or things to be performed or done to the satisfaction of any persons named therein, whether or not such persons are members of the Defence Force or armed forces of a friendly country, empower such persons to issue orders orally or in writing requiring such acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe 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.

[Ch1201s243]243. Defence Council to act with Solicitor General's advice in certain cases

Notwithstanding the powers conferred upon the Defence Council by sections 108, 110, 111, 115 and 196, those powers shall not be exercised except upon advice of the Solicitor General.

[Ch1201s244]244. Execution of orders, instruments, etc.

(1) Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorized to be made under this Act, by any military officer or authority may be signified under the hand of any officer authorized on 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 authorized shall, unless the contrary is proved, be deemed to be signed by an officer so authorized.

[Ch1201s245]245. Repeal

The Army Act is repealed.

FIRST SCHEDULE

under s. 13(3)

COMMISSION

By His Excellency

The President of the Republic of Malawi and Commander-in-chief of the Malawi Defence Force.

To:

Greetings!

..... Know you that by these Presents, I ..... reposing especial Trust and Confidence in your Loyalty, Courage and Good Conduct, do, by these Presents, constitute and appoint you to be an officer in the Malawi Defence Force from the ..... day of ....., 20..... You are therefore to carefully and diligently discharge your duty as such in the Rank of ..... or in such higher Ranks as I may from time to time hereafter be pleased to promote or to appoint you, and you are at all times to exercise fairness in dealing and disciplining Officers, Men and Women, serving under you and use your best

endeavours to ensure that their discipline is maintained at high standard at all times. And I do hereby command them to obey you as their Superior Officer, and you to observe and follow such Orders and Directions as from time to time you shall receive from me or the Defence Force Council in accordance with the provisions of the Defence Force Act, and the Regulations and Rules made hereunder.

Presented on the ..... day of ....., 20.....

.....

President

SECOND SCHEDULE

under s. 104

OFFENCES OF WHICH ACCUSED MAY BE CONVICTED
BY COURT-MARTIAL

Offence Charged	Alternative Offence
1. Any offence against section 33 (1)	1. Any offence against section 33 (2)
2. Any offence against section 34 (1)	2. Any offence against section 34 (2)
3. Any offence against section 40 (1)	3. Any offence against section 40 (2)
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 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 manner as to show willful 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 section 64 (1)	12. Any offence against section 64 (2)
13. Any offence against section 65 (1) 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 65 involving the use of violence other than striking	14. The corresponding offence involving the offering of violence

THIRD SCHEDULE

OATH OF ALLEGIANCE

I, ... do hereby swear by the Almighty God [or do hereby solemnly and sincerely affirm] that—

(a) I will be faithful and bear true allegiance to the Republic of Malawi;

(b) I will faithfully serve the people and the Republic of Malawi as a member of the military police;

(c) I will obey all laws, and all orders, regulations, directions and instructions, concerning the military police; and

(d) I will discharge all the duties of a member of the military police according to the law, without fear, favour, affection or ill-will.

Sworn [or affirmed] by the said
.....
after the oath had been read over and explained to him in the
..... language, which he acknowledged to understand, at ..... this ..... day of ....., 20.....
.....
Signature or thumb-print of person making the oath

SUBSIDIARY LEGISLATION
RULES OF PROCEDURE (DEFENCE FORCE)
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G.N. 43/2004
RULES OF PROCEDURE (DEFENCE FORCE)
under s. 136

PART I
PRELIMINARY

1. Citation

These Rules may be cited as the Rules of Procedure (Defence Force).

2. Interpretation

In these Rules, except where the context otherwise requires—

"convening a fresh court" includes dissolving the existing court;

"member" when used in relation to a court-martial does not include the presiding officer;

"special finding" means when used in relation to—

(a) section 104 of the Act, any finding which a court-martial may make in accordance with that section;

(b) section 116 of the Act, a finding in accordance with subsection (2) of that section that the accused is guilty but insane;

(c) rule 65 (3) of these Rules, 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

3. Avoidance of delay by commanding officers in investigating charges

(1) When a person is detained by military authority in arrest, his commanding officer shall, unless it is impracticable, within 48 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.

(2) Every case of such a person being detained in arrest beyond the period of 48 hours referred to in this rule without such investigation having begun and the reason therefor shall be reported by his commanding officer to the appropriate superior authority.

4. Eight day delay report

The report required by section 85 (2) 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 appropriate superior authority and a copy thereof shall be sent both to the Defence Council and to the Director of Public Prosecutions.

5. Arrest not to exceed 72 days without permission from higher authority

An accused shall not be held in arrest for more than 72 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.

PART III

INVESTIGATION OF CHARGES BY COMMANDING OFFICERS

6. Methods of investigating charges

(1) Subject to subrule (3), when a commanding officer investigates a charge he shall first read, and if necessary, explain the charge to the accused and shall then—

(a) hear the evidence himself in accordance with rule 7; or

(b) cause the evidence to be reduced to writing in accordance with subrule (2), and read and consider it:

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 the appropriate superior authority a charge against an officer or warrant officer or remands a non-commissioned officer, private soldier or civilian for trail by court-martial he shall cause the evidence to be reduced into writing.

(2) Evidence may be reduced into 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—

(a) the maximum punishment for the offence with which the accused is charged is death; or

(b) the accused, at any time before the charge against him is referred to the appropriate superior authority in accordance with rule 12, requires in writing that a summary of evidence be taken; or

(c) 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 subrule (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.

7. Hearing of evidence by commanding officer

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 evidence orally and in his presence;

(e) the evidence shall not be given on oath unless the commanding officer so directs or 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.

8. Summary of evidence

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—

(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 to testify 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;

(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 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 in accordance with rule 33 by the officer taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter:

Provided that 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

(i) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with this rule.

9. Abstract of evidence

(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—

(a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;

(b) the accused should not be present while 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 the 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 this subrule, 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 any thing 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 as 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 thereafter form part of it. This certificate shall be in the form set out in the First Schedule.

10. Investigation before summary dealing by commanding officer

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.

11. Dismissal of charge by commanding officer

(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 further.

(2) After a commanding officer has referred a charge to the appropriate superior authority in accordance with rule 12, he shall not dismiss it unless it has been referred back to him.

12. Reference of charges to the appropriate superior authority

When a commanding officer submits to the appropriate superior 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 the appropriate superior 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 charges should be proceeded with.

PART IV

PREPARATION OF CHARGE-SHEETS AND FRAMING OF CHARGES

13. Charge-sheets

(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 section 46 (1) (a), section 47 (a), section 55 (a) and (c) (where the charge is connected with a charge under either of the before-mentioned paragraphs) or section 66 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.

14. Charges

(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 shall consist of two parts, namely—

(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; and

(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 lesser degree of

punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted.

15. Joint charges

(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.

16. Construction of charge-sheets and charges

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.

PART V

ACTION BY THE APPROPRIATE SUPERIOR AUTHORITY ON RECEIPT OF A CHARGE

17. Action by appropriate superior authority on receipt of a charge

When the appropriate superior authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer—

(a) deal summarily with it himself, if he has power so to do; or

(b) convene a court-martial to try the accused; or

(c) remand the accused for trial by the High Court.

PART VI

INVESTIGATION OF AND SUMMARY DEALING WITH A CHARGE

18. Documents to be given to officers and warrant officers dealt with summarily

The appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than 24 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.

19. Investigation of and summary dealing with charges against officers and warrant officers

When the 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 of 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 as to his character and in mitigation of punishment;

(d) every witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to every witness and to any interpreter in accordance with rule 33;

(e) when the appropriate superior authority awards the punishment of forfeiture of the seniority of rank the award shall be in the appropriate form set out in the Fifth Schedule; and

(f) a record shall be made of the proceedings in accordance with the form set out in the Third Schedule.

20. Alternative courses open to the appropriate superior authority

The appropriate superior authority shall, if an accused elects to be tried by a court-martial or if 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, convene a court-martial.

PART VII

CONVENING OF COURTS-MARTIAL

21. Duties of convening officer when convening courts-marshal

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;

(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 presiding officer 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 all necessary steps to procure the appointment of a judge advocate by request to the Chief Justice, and failing such appointment, himself appoint a suitable person so to act;

(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 of the trial;

(i) send to the presiding officer 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 an unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copy sent to the presiding officer;

(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 presiding officer;

(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.

22. Appointment of presiding officer and members

The convening officer shall—

(a) appoint the presiding officer of a court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint a member of a specific rank; and

(b) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint a member of specified rank.

23. Officers under instruction

(1) Subject to rule 80, any member subject to service law may, by direction of the convening officer or at any discretion of the presiding officer, remain with a court-martial throughout the proceedings as an officer under instruction.

(2) A member under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

24. Preparation of defence

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 of his choice and with his witness;

(b) a defending officer or counsel shall be appointed by the convening officer 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 at his own expense;

(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 presiding officer;

(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 presiding officer 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, shall—

(i) if necessary have the charge explained to him; and

(ii) be informed that, upon his making a written request to his commanding officer not less than 24 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 section 105 (2) 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 every 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 ground 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 VIII

ASSEMBLY AND SWEARING OF COURT

25. Preliminary matters to be considered by court and beginning of trial

(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 consist of not less than the legal minimum number of members;

(c) that the presiding officer and members are of the required rank;

(d) that the presiding officer 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

(g) that each charge is on its face correct in law and framed in accordance with these Rules.

(2) The presiding officer may—

(a) where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, appoint a duly qualified waiting member to fill that vacancy; and

(b) if the interests of justice so require, substitute a duly qualified waiting member in the place of a member appointed by the convening officer.

(3) If the court is not satisfied on any of the matters mentioned in subrule (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 thereon.

(4) When the court has complied with this rule and is ready to proceed with the trial the presiding officer shall open the court and the trial shall begin.

26. Objections to the court

(1) The order convening the court and the names of the members appointed to try the accused shall be read at the hearing of the accused, who shall be given an opportunity to object to any of those members in accordance with section 98 of the Act.

(2) When a court is convened to try more than one accused, whether separately or jointly, every such accused shall be given an opportunity to object to any member on the court in accordance with the preceding subrule and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the members to whom he objects before any objection is disposed of.

(4) If more than one member 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 presiding officer is objected to, in which case the objection to him shall be disposed of before the objection to any other member.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) A member 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 a member shall be considered in closed court by all the other members on the court including any member who has been appointed by the presiding officer in accordance with subrule (9) in place of any member who has retired.

(8) When an objection to a member is allowed that member shall forthwith retire and take no further part in the proceedings.

(9) When a member objected to (other than the presiding officer) retires and there is a duly qualified waiting member in attendance the presiding officer should immediately appoint him to take the place of the member who has retired.

(10) The court shall satisfy itself 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 presiding officer 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 members available to form a court in compliance with this Act, the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint a waiting member to fill the vacancy or convene a fresh court to try the accused.

27. Swearing of court

(1) Immediately after rule 26 has been complied with, an oath shall be administered to the presiding officer 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 presiding officer first and afterwards to each member of the court. If there is no judge advocate, the oath shall be first administered by the presiding officer to the members of the court and then to the presiding officer by any member of the court already sworn.

(3) A court may be sworn at any 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 presiding officer 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.

28. Swearing of judge advocate

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.

29. Swearing of officers under instruction

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.

30. Appointment and swearing of, and objections to, interpreters and shorthand writers

(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.

(2) Before a person is sworn as an interpreter or as a shorthand 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. No right of objections to judge advocate, prosecutor and member under instruction

The accused shall have no right to object to a judge advocate, prosecutor or member under instruction.

32. Orders of trials

(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.

(2) When a court has been convened to try an 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. Oaths and solemn affirmations

(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:

Provided that—

(a) if any person shall desire to swear with uplifted hand in the form and manner prescribed by the Oaths, Affirmations and Declarations Act, he shall be permitted to do so; Cap. 4:07

(b) 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 presiding officer, a member of the court or the judge advocate.

(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) Section 99 of the Act shall apply to proceedings before a commanding officer, the taking of summaries of evidence and proceedings before the appropriate superior authority as they apply to proceedings before a court-martial.

PART IX

ARRAIGNMENT OF ACCUSED

34. Arraignment of accused

(1) When the court and judge advocate (if any) have been sworn the accused shall be arraigned.

(2) If there be more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there be more than one charge-sheet against the accused before the court, the court shall arraign and try the accused upon the charge or charges contained in the first of such charge-sheets and shall announce their findings thereon and if the accused has pleaded guilty, comply with rule 44 (1) and (2) before they arraign him upon the charge or charges contained in any subsequent charge-sheet.

35. Plea to the jurisdiction of the court

(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 allows the plea they shall adjourn and report to the convening officer.

(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, dissolve the court;

(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.

36. Objection to charge

(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 may, before adjourning under this rule, proceed with the trial of the accused on such other charge or charge-sheet.

(3) Where 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 the accused on 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 the accused on the charge as amended;

(b) if he approves the decision of the court to allow the objection—

(i) direct the court to try the accused on the charge;

(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 the accused on such other charge or charge-sheet only; or

(iii) convene a fresh court to try the accused.

37. Plea in bar of trial

(1) An accused before pleading to a charge may offer a plea in bar of trial in reliance upon section 126 of the Act. If he does so—

(a) the accused may adduce evidence in supporting 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 allows the plea they shall 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 plea—

(i) dissolve the court; 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;

(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.

38. Application by an accused at joint trial to be tried separately

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 courts are of opinion that the interests of justice so require they shall allow the application and try separately the accused who made it.

39. Application by an accused at a trial to have a charge tried separately

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 courts are of opinion that the interest 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.

40. Pleas to the charge

(1) After any pleas under rule 35 or 37, any objection under rule 36, and any application under rule 38 or 39, have been dealt with, the accused shall be required (subject to subrule (2), to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 104 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.

41. Acceptance of pleas of guilty

(1) If an accused pleads guilty to a charge under either rule 40 (1) or (2), the presiding officer 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 rule 40 (1) or (2) if—

(a) the courts are not satisfied that the accused understands the nature of the charge or the effect of his plea;

(b) the presiding officer, 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) Where a plea of guilty under either rule 40 (1) or (2) 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 courts are satisfied that they can properly accept a plea of guilty under either rule 40 (1) or (2), they shall record a finding of guilty in respect thereof.

42. Pleas on alternative charges

(1) When an accused pleads guilty to the first of two or more alternative charges, the courts, 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;

(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 courts have found the accused guilty and which is placed after it in the charge-sheet.

PART X

PROCEDURE AFTER RECORDING A FINDING OF GUILTY

43. Order of trial where plea of guilty and a finding of not guilty

After the courts have recorded a finding of guilty, if there is no other charge in the same charge-sheet 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-sheets, 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.

44. Procedure on finding of guilty after a plea of not guilty

(1) After the courts 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 presiding officer, 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 the record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

(3) After subrules (1) and (2) have been complied with, the accused may—

(a) adduce evidence of character and in mitigation of punishment; and

(b) address the court in mitigation of punishment.

(4) After subrule (3) has been complied with, the court shall proceed as directed in rule 70 (1), (2), (3) and (4).

PART XI

CHANGES OF PLEA

45. Changes of plea

(1) An accused who has pleaded not guilty may at any time before the court close to deliberate on their findings 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) Where courts enter a plea of not guilty in respect of any charge under subrule (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 been withdrawn.

PART XII

PROCEDURE OF PLEAS OF NOT GUILTY

46. Application for adjournment of trial after plea of not guilty

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 has 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 adjournment if they think the interest of justice so require.

47. Case for the prosecution

(1) The prosecutor may, if he desires, and shall, if so 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.

48. Calling of witnesses whose evidence is not contained in the summary or abstract of evidence

If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused a reasonable time shall be given 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 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.

49. Notice to an accused that a witness will not be called by the prosecutor

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.

PART XIII

CALLING AND EXAMINATION OF WITNESSES

50. Swearing of witnesses

Save as is otherwise provided by the Act, an oath shall be administered to every witness in accordance with rule 33 before he gives evidence and in the presence of the accused.

51. Exclusion of witnesses from court

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.

52. Examination of witnesses

(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.

(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. Examination of witnesses by court

(1) The presiding officer, the judge advocate and, with permission of the presiding officer, any member of the court may put question to a witness.

(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. Reading back of evidence to witnesses

(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 question to the witness respecting the correction or explanation as seem proper to the court.

(2) When a shorthand writer is employed it shall not be necessary to comply with subrule (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 subrule (1) shall be complied with.

55. Calling of witnesses by court and recalling of witnesses

(1) The Courts 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 interest of justice to do so. If the court call a witness under this rule, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the courts 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. Statutory declarations

A statutory declaration which is admissible in accordance with section 106 of the Act may be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

PART XIV

SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASES

57. Submission of no case to answer and power of court to stop a case

(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.

(2) The court shall not allow the submission unless they are satisfied that—

(a) the prosecutor 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 104 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 of 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 XV

CASE FOR THE DEFENCE

58. Explanation to accused of his rights when making his defence

(1) After the close of the case for the prosecution, the presiding officer or judge advocate (if any) should 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;

(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;

(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 presiding officer or judge advocate has complied with paragraph (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.

59. Evidence for the defence

(1) After rule 58 has been complied with, the witnesses for the Defence (if any) shall be called and give their evidence.

(2) Rules 50, 51, 52, 53, 54, 55 and 56 shall apply as well to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

60. Evidence in rebuttal

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.

61. Closing address

(1) After all the evidence has been given the prosecutor and the accused may each make a closing address to the court.

(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 subrules (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.

62. Handing in of a statutory declaration by the accused

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.

PART XVI

SUMMING UP BY JUDGE ADVOCATE

63. Summing up by judge advocate

After the closing address, 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.

PART XVII

DELIBERATION ON, AND ANNOUNCEMENT OF FINDING ON THE CHARGE

64. Deliberation on finding on the charge

(1) After the closing address, or if there is a judge advocate after his summing up, the court shall close to deliberate on their finding on the charge.

(2) While the courts are deliberating on their finding on the charge no person shall be present except the presiding officer 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. Expression of opinions on, and form of finding

(1) The opinion of the presiding officer 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.

(2) Save as is otherwise provided in subrule (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 104 or section 116 (2) of the Act or subrule (3); or

(b) a finding of not guilty, and honourably acquitted of the charge.

(3) Where the courts 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 courts 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. Announcement of finding

(1) The finding on each charge shall be announced in open court forthwith.

(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 Fourth Schedule.

PART XVIII

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

67. Completion of procedure on plea of guilty before deliberation on sentence

After the courts have announced their finding on any charge on which the courts have entered a plea of not guilty, if there is another charge in the same charge-sheet on which the courts have accepted a plea of guilty the court shall comply with rule 44 (1) and (2) in respect of that charge before proceeding further with the trial.

68. Trial charges in other charge-sheets before deliberation on sentence

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.

69. Release of the accused

If the findings on all charges against the accused are not guilty, the court shall order the accused to be released and the presiding officer and judge advocate (if any) shall date and sign the record of the proceedings. The presiding officer or the judge advocate shall then forward it as directed in the convening order.

70. Accused's record and plea in mitigation

(1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 104 of the Act or with 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—

(a) any recognized acts of gallantry of 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 subrule (1) may be given 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 subrule (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;

(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 214 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 subrules (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 of such certified copy, the court shall cause the form to be corrected accordingly.

(5) After subrules (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 mitigation of punishment.

71. Request by accused for other offences to be taken into considerations

(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.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the presiding officer 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 presiding officer and be attached to the record of the proceedings as an exhibit.

72. Persons entitled to be present during deliberations

While the courts are deliberating on their sentence no person shall be present except the presiding officer, members, judge advocate (if any) and any officer under instruction.

73. Sentence and recommendation to mercy

(1) The court shall award a sentence in respect of each offence of which the accused is found guilty. The sentence shall be in the appropriate form set out in the Fifth Schedule.

(2) The opinion of the presiding officer 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 courts 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 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 be included 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 recommendation to mercy and if they do so shall record in the proceedings their reasons for making it.

74. Postponement of deliberation

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.

PART XIX

ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

75. Announcement of sentence and conclusion of trial

(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.

(2) When subrule (1) has been complied with the presiding officer shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the presiding officer and judge advocate (if any) shall date and sign the record of the proceedings, the presiding officer or the judge advocate shall then forward it as directed in the convening order.

PART XX

GENERAL DUTIES OF THE PRESIDING OFFICER, PROSECUTOR AND THE DEFENDING OFFICER OR COUNSEL

76. General duties of the presiding officer

It shall be the duty of the presiding officer 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—

(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 a consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witness 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 courts have come to their finding, nor on sentence before the courts 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. General duties of the prosecutor and defending officer or counsel

(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—

(a) to conform with these Rules and the practice of the civil courts in Malawi relating to the direct 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 subrule (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. Counsel

(1) Subject to these Rules, any person entitled under the law for the time being in force to practice as a legal practitioner shall be allowed to appear as counsel at a court-martial.

(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 trial 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 XXI

POWERS AND DUTIES OF THE JUDGE ADVOCATE

79. General duties of judge advocate

(1) The judge advocate shall be responsible to the Chief Justice for the proper discharge of his functions.

(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 he recorded in the proceedings.

(4) After the closing address 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 announced a finding of guilty or a special finding under either section 104 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 him. The court shall then reconsider their finding in closed court. The record of proceedings relating to such reconsideration shall be in the form set out in the Fourth Schedule.

(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 presiding officer 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.

80. Judge advocate sitting alone

(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 presiding officer may direct that the point at issue shall be determined by the judge advocate in the absence of the presiding officer and the members of the court and of any officer under instruction. Where the presiding officer 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 presiding officer and members of the court and any officer under instruction have withdrawn in accordance with subrule (1), hear the arguments and evidence relevant 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 presiding officer 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 sections 67 (1), 68, 99, 100 (1) and (2),

101, 105, 106 and 107 of the Act and rules 33, 50, 51, 52, 53, 54, 55, 56, 77, 78, 79, 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 presiding officer and members of the court, and anything which is authorized by those sections and those rules to be done by the court or by the presiding officer 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 section 67 (1) of the Act, the judge advocate shall report the occurrence to the presiding officer, who shall take such action as he considers appropriate.

(5) The judge advocate shall be responsible for ensuring that the presiding officer 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 XXII

WITHDRAWAL AND AMENDMENT OF CHARGE-SHEETS AND CHARGES

81. Withdrawal of charge-sheets and charges

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 thereon, or a charge-sheet before the accused is arraigned on any charge therein.

82. Amendment of charge-sheets and charges by the court

(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 in 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 subrule (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 subrule (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 the accused on the charge 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 accused on the charge without amending it; or

(c) convene a fresh court to try the accused.

83. Amendment of charges by convening officer

When a court report to the convening officer under either rule 36 (2) or rule 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.

PART XXIII

SITTINGS AND ADJOURNMENT OF THE COURT

84. Sittings of the court

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:

Provided that the court shall not sit on Saturday, Sunday, or any public holiday, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

85. Adjournment

(1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

(2) A court may adjourn at any time to consult 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. View by court

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 presiding officer, members of the court, judge advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

87. Absence of presiding officer, members or judge advocate

(1) If after the commencement of a trial the presiding officer dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening officer.

(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 number of members, shall continue with the trial, but if reduced below the legal minimum number of members the court shall adjourn and the presiding officer 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 presiding officer 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 presiding officer 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 XXIV

INSANITY

88. Insanity

(1) If not 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 findings 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 section 116 (2) 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 subrule (1) or subrule (2) the presiding officer shall announce in open court that the proceedings are terminated and thereupon the presiding officer, and the judge advocate (if any) shall date and sign the record of the proceedings. The presiding officer or judge advocate shall then forward it as directed in the convening order.

PART XXV

INTERVIEWING AND ATTENDANCE OF WITNESSES

89. Interviewing of witnesses

(1) The prosecution shall not without the consent of the convening officer, or, after the trial has begun, without the consent of the presiding officer, 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 105 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 presiding officer, interview any witness who was called for the prosecution at the taking of the summary evidence or whose evidence is included in the abstract of evidence, or in respect of whom the prosecution has 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 105 of the Act.

90. Procuring attendance of witnesses

(1) A witness who is subject to service law may be ordered by the Commander 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 authorized to convene a court-martial or of a staff officer on his behalf, or, after the assembly of the court, of the presiding officer.

(3) The summons referred to in subrule (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 other person at the witness's normal place of abode.

(4) At the time of service of the summons referred to in subrule (2) there shall be paid or tendered any expenses which by regulation made by the Defence Council 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 subrule—

(a) 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 authorized by the warrant or voucher; and

(b) the tender of a written undertaking on behalf of the Defence Council 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 107 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 "presiding officer of the court-martial".

PART XXVI

RECORD OF PROCEEDINGS

91. Record of proceedings

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 should 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 presiding officer may forward it to the proper military authority in a separate document.

92. Exhibits

(1) Subject to subrule (2), any documents or thing admitted in evidence shall be made an exhibit.

(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 presiding officer 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 presiding officer or have a label bearing a number or letter and signature of the presiding officer 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 subrule (3) (b), the presiding officer shall ensure that proper steps are taken for its safe custody.

93. Custody and inspection of record during trial

(1) During a trial at which there is no judge advocate, the record of the proceedings and the exhibits shall be deemed to be of proceedings in the custody of the presiding officer. During a trial at which there is a judge advocate the record and the exhibits shall he 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 presiding officer.

(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 XXVII

CONFIRMATION, REVISION AND PROMULGATION

94. Confirmation and promulgation

(1) When the Defence Council receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, they shall record their decision thereon and on any sentence and any order which the court may have made under section 131 of the Act, on the record of the proceedings in the appropriate form set out in the Fourth Schedule, and such record of their 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 Defence Council may confirm their finding notwithstanding that the courts have accepted the plea without the concurrence of the convening officer if, in the opinion of the Defence Council, it is in the interest of justice to do so.

(3) When a court have rejected a plea to the jurisdiction of the court or plea in bar of trial or have overruled an objection to a charge, it shall not be necessary for the Defence Council to approve specifically the decision of the court, but their approval shall be implied from their confirming the finding on the charge to which the plea or objection relates.

(4) The Defence Council may state their reasons for withholding confirmation in any case, but if they withhold 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 they disapprove this decision of the court, they shall, when recording their decision under subrule (1) state that they have withheld confirmation for this reason.

(5) If the sentence of the court-martial is informally expressed, the Defence Council may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6) Wherever it appears that there is sufficient evidence or a plea of guilty under either rule 40 (1) or (2) 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 the Defence Council have confirmed a finding and sentence of a court or have withheld confirmation thereof, they shall send the record of the proceedings to the commanding officer of the accused for the 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 the 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 Defence Council 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.

95. Revision

(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 presiding officer shall date and sign such record and decision and return it to the Defence Council, 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 Defence Council.

PART XXVIII

LOSS OF PROCEEDINGS

96. Loss of original record of proceedings before confirmation

(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 presiding officer or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

(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 Defence Council 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 Defence Council 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 subrule (1) or subrule (2) the Defence Council shall withhold confirmation and shall record their decision in the appropriate form set out in the Fourth Schedule.

97. Loss of original record of proceedings after confirmation

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 presiding officer 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 constituted 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 XXIX

CUSTODY OF RECORDS AFTER CONFIRMATION AND COST OF COPIES THEREOF

98. Custody and preservation of record of proceedings after confirmation

For the purposes of section 134 (1) of the Act the prescribed period during which the record of the proceedings of a court-martial proceedings shall be kept in custody of the Defence Council shall be six years from the conclusion of the trial.

99. Cost of copies of record of proceedings

The rate at which copies of the record of the proceedings of a court-martial shall be supplied in accordance with section 134 (2) and (3) of the Act shall be estimated at such cost as the Minister may prescribe from time to time on the advice of the Defence Council.

PART XXX

PETITIONS

100. Petitions

(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 Defence Council 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 the President 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 the Defence Council at any time within six months of promulgation in the appropriate form set out in the Seventh Schedule.

PART XXXI

MISCELLANEOUS PROVISIONS

101. Notice requiring oral evidence in lieu of statutory declaration

A notice under provision (c) of section 105 (2) of the Act requiring that oral evidence shall be given in lieu of a statutory declaration in appropriate form set out in the Fourth Schedule.

102. Exceptions from rules on account of the exigencies of the service

(1) Where in the opinion of the appropriate superior authority the exigencies of the service render compliance with all or of the service any of the provisions of the rules mentioned in subrule (3) impracticable, the appropriate superior authority may make a declaration to that effect in the appropriate form set out in the Fourth Schedule.

(2) When a declaration has been made under subrule (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.

(3) The provisions of these Rules in respect of which a declaration may be made under subrule (1)—

(a) provisions (a) and (b) to rule 6 (2);

(b) rule 8 (b) insofar 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 insofar as it provides that the documents specified therein must be given to the accused not less than 24 hours before the appropriate superior authority investigates and deals summarily with the charge;

(d) rule 24, paragraphs (b) and (c), and paragraph (d) insofar as it provides that the documents specified therein shall be given to the accused not less than 24 hours before his trial.

(4) 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 subrule (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.

103. Exceptions from rules in the interest of security

(1) When in the opinion of the appropriate superior authority 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 appropriate superior authority may make a declaration to that effect in the appropriate form set out in the Fourth Schedule specifying the document concerned.

(2) When a declaration has been made under subrule (1) it shall not be necessary to give to the accused any documents 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.

(3) If an accused is brought to trial by court-martial or is dealt with summarily by the Commander, any declaration which has been made in his case under subrule (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.

104. Deviations from the forms in the Schedules

A deviation or omission from a form or form of words set out in a Schedule shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

105. Cases not covered by rules

In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

FIRST SCHEDULE

FORMS FOR COMMANDING OFFICERS

1. Heading for all Forms
2. Delay Report
3. Summary of Evidence
4. Abstract of Evidence
5. Certificate to be attached to Abstract of Evidence after it has been handed to the Accused
6. Summons to a Witness to attend the taking of a Summary of Evidence

FORM 1—HEADING FOR ALL FORMS IN THIS SCHEDULE

THE DEFENCE FORCE ACT

THE RULES OF PROCEDURE (DEFENCE FORCE)

FORM 2—DELAY REPORT

Rule 4

Unit Address:

.....

Tel.: .....

To: The Commander, Defence Force;

and The Director of Public Prosecutions.

* ..... EIGHT DAY DELAY REPORT

Pursuant to the Defence Force Act, section 85 (2)

Number, rank name of accused ....

Alleged Offence(s)

..... Date of alleged offences

.....

† The accused is in close/open arrest.

The reasons for his retention in arrest are .....

† The abstract/summary of evidence {was taken on ....., 20.....

{has not yet been

{taken because .....

{was made on ....., 20.....

† Application for trial {has not yet been

{made because .....

† The Director of

Public Prosecutions {was consulted on ....., 20.....

{has not yet been

{consulted because .....

† The Director of

Public Prosecutions'

advice {was received on ....., 20.....

{has not yet been

{received

{is being taken }

† Action { }

{has been taken} on Director of .....

Public Prosecutions' .....

advice as .....

follows .....

{has not yet been fixed }

† Date of trial {

{has been fixed as .....,

20.....

Reasons for delay since last report .....

Date ....., 20..... .....

Officer commanding accused's unit

(To be signed personally by the C.O.)

FORM 3—SUMMARY OF EVIDENCE

Rule 8

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, or other description), having been duly sworn states—

(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)

or

Witness ..... (number, rank, name, unit, or other description).

of the

prosecution

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 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 demand 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 8 (c) reserves his defence

or

The accused having been duly cautioned in accordance with rule 8 (c) elects (to give evidence on oath) (to make a statement without being sworn) and to call a witness(s).

Witness for the defence The accused ..... (number, rank, name, unit, or other description) having been duly sworn states—

.....

(Signature and rank (if any)

of accused, if he signs)

Witness for the defence ..... (number, rank, name, unit, or other description) having been duly sworn states—

.....

(Signature and rank
(if any) of witness)

Certified that rule 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 ....., 20 .....

.....

(Signature and rank of officer
taking the summary of evidence)

FORM 4—ABSTRACT OF EVIDENCE

Rule 9

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 ....., 20 .....

.....

(Signature and rank)

FORM 5—CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Rule 9 (2)

Certified that I ..... today handed to the accused ..... the abstract of evidence relating to him dated the ..... day of ....., 20 ..... and duly cautioned him in accordance with rule 9 (2) and that he (elected to make and sign the statement dated the ..... day of ....., 20 ..... which is marked ..... and attached to this certificate) (did not make a statement).

Dated ....., 20 .....

.....

(Signature of certifying officer)

FORM 6—SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE

Rule 90 (3)

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 ....., 20 .....

YOU ARE, PURSUANT TO SECTION 136 OF THE DEFENCE FORCE ACT AND RULE 90 OF THE RULES OF PROCEDURE (DEFENCE FORCE), MADE THEREUNDER, HEREBY SUMMONED and required to attend as a witness on the taking of the said summary of evidence at ..... on the ..... day of ....., 20 ..... 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 ....., 20.....

.....

(Signature, rank and unit)

Commanding Officer of the accused

SECOND SCHEDULE

CHARGE-SHEETS

1. Heading for all Forms in this Schedule
2. Commencement of Charge-Sheets
3. Statement of offences
4. Illustrations of Charge-Sheets

FORM 1—HEADING FOR ALL FORMS IN THIS SCHEDULE

THE DEFENCE FORCE ACT

THE RULES OF PROCEDURE (DEFENCE FORCE)

FORM 2—COMMENCEMENT OF CHARGE-SHEETS

SECTION 237

(1)

(a)

The accused .....

(Number, rank, name and unit) {an officer }

{a warrant officer }

{a non-commissioned officer }

{a private soldier }

of the regular force

charged with—

(2) (b) The accused.....(number (if any), rank, name, service, former unit and unit to which attached) being subject to military law under section 237 (1) (b) of the Act is charged with —

(3)

(c)

The accused .....

(number, rank, name and unit) {an officer }

{a warrant officer }

{a non-commissioned officer }

{a private soldier }

of the

(Defence Force Reserve) {when employed in terms of section 231 of the Act is

{charged with—

SECTION 238

The accused …… (name and brief description) being liable to trial by court-martial under section 238 (1) of the Act is charged with—

SECTION 125

(1) } The accused …….. (name) formerly

} ……

} (former military description including the manner in which the accused was

} formerly subject to military law set out in accordance with the appropriate form

} in this Schedule) and now liable to trial by court-martial under section 125

} (1) and (2) of the Act is charged with—

(2) }

FORM 3—STATEMENT OF OFFENCES

TREACHERY, COWARDICE AND OFFENCES ARISING OUT OF MILITARY SERVICE

SECTION 33

{(a)}

{(b)}

{(c)} {(a)}

{(b)}
{(c)}
(1) {(d)}
{(e)}
{(f)}
{(g)}
{(h)} Aiding the enemy with intent {(d)}
{(e)}
{(f)}
{(g)}
{(h)} contrary to section 33(1)
of the Act

{(a)}
{(b)}
{(c)} of section 33 (1) of
the Act contrary to
(2) Knowingly and without lawful excuse doing an act specified in paragraph (b)
{(d)}
{(e)}
{(f)}
{(g)} section 33 (2) of the
said Act

(3)
Negligently causing the {capture }
{ }
{destruction } by the enemy of
aircraft contrary to
section 11(3) of the
Act
SECTION 34
(1) {Communicating } the enemy
{with }
{Giving intelligence to} {(1)}
{ }
{(2)} contrary to section 34
of the Act

SECTION 35

(1) Cowardice before the enemy contrary to section 35 (1) of the Act.

(2) Inducing cowardice before the enemy contrary to section 35 (2) of the Act.

SECTION 36

(a) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 36 (a) of the Act.

(b) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 36 (b) of the Act.

SECTION 37

(1) Being captured through disobedience or willful neglect contrary to section 37 of the Act.

{reasonable steps after capture,
(2) {Failing to }
{take }
{ }
{ }
{Preventing }
{ }
{ }
{Discouraging }

a person
from taking {
{
{to rejoin
{The Defence
{Force
{of the country to
{which the officer
{or soldier
{is attached
{ {contrary to section 37}
{(2) of the Act }
{ }
{ }
{ }
{ }

{ }
{ }
SECTION 38

{Sleeping at his
{post when on
{
{Sleeping when
{on
{ {guard duty }
{duty controlling }
{movement }
{guard duty }
{duty controlling }
{movement }
{ }
contrary to section 38 (1) (a) of
the Act

contrary to section 38 (1) (a) of
the Act
(1) {
{Drunkenness
{when on
{
{Leaving }
{his post }when
{Absenting }on
{himself }
{Striking {
{ {a
{Using force {person
{against {on
{ { {guard duty }
{duty controlling }
{movement }
{ }
{guard duty }

{duty controlling}
{movement }
{ }
} }
}guard duty }
}duty }
}controlling }
}movement }
contrary to section 38 (1) (a) of
the Act

contrary to section 38 (1) (a) of
the Act

contrary to section 38 (1) (a) of
the Act
(3) {
{
{
{compelling }
{a person on }
{ }

{guard duty }
{duty }to let a
controlling }person
{movement }pass }contrary to section
}38 (3) of the
}Act
}
}
}

SECTION 39

(a)}
(b)} Looting, contrary to section 39
(c)} {(a)}
{(b)} of the Act.

{(c)}

MUTINY AND INSUBORDINATION

SECTION 40

{with violence}

(1) (a) Mutiny{

{relating to the enemy

{ }contrary to section 40 (1)

}(a) of the Act.

}

(b) Incitement to mutiny {with violence

{

{relating to the enemy}

}contrary to section 40 (1)

}(b) of the Act

(2) {Mutiny

{Incitement to

{mutiny }contrary to section 40 (2) of the Act

}

}

SECTION 41

(a) Failing to suppress or prevent mutiny contrary to section 41 (a) of the Act.

(b) Failing to report mutiny contrary to section 41 (b) of the Act.

SECTION 42

{Striking }

(1) (a) {Using

{Offering }violence to a superior officer contrary to

}section 42 (1) (a) of the Act

{threatening }language to a superior

(b) Using }officer contrary to section

{insubordinate}42 (1) (b) of the Act

SECTION 43

(1) Disobeying a lawful command with wilful defiance of authority contrary to section 43 (1) of the Act.

(2) Disobeying a lawful command contrary to section 43 (2) of the Act.

SECTION 44

{provost officer }

(a) Obstructing a {person exercising

{authority under

{or on behalf of a

{provost officer } contrary to section 44

} (a) of the Act

}

(b) Refusing to assist a {person exercising

{authority under

{or on behalf of a

{provost officer } contrary to section

} 44 (b) of the

} Act

}

SECTION 45

(1) Disobedience to standing orders contrary to section 45 (1) of the Act.

DESERTION, ABSENCE WITHOUT LEAVE, ETC.

SECTION 46

(1) (a) Desertion contrary to section 46 (1) (a) of the Act.

(b) {Persuading

{Procuring }a person to desert contrary to section 46 (1) (b)

} of the Act

SECTION 47

(a) Absence without leave contrary to section 47 (a) of the Act.

(b) {Persuading

{Procuring }a person to absent himself without leave contrary to

}section 47 (b) of the Act.

SECTION 48

(a) Assisting a person to desert or absent himself contrary to section 48 (a) of the Act.

{report without

{delay

{take steps }

}

} {a deserter

{or absentee
{a person }
}
}contrary to
(b) Failing to {to cause the
{apprehending
{of
{ }
}
}
} {attempting
{to desert or
{absent
{himself }section
}48 (b) of the
}Act
}

SECTION 49

{ obtain } leave contrary to section
Making a false statement to {
{
prolong }49 of the Act
}

SECTION 50

Failing to attend for military duty }contrary to section 50 of
Leaving a military duty without permission }the Act

MALINGERING AND DRUNKENNESS

SECTION 51

[(a)]
[(b)] [(a)]
[(b)]
(1) [(c)] Malingering contrary to
[(d)] section 59(1) [(c)] of the
[(d)] Act

SECTION 52
Drunkenness contrary to section 52 (1) of the Act.

OFFENCES RELATING TO PROPERTY
SECTION 53

{Stealing } } { }
{Fraudulently misapplying } {public property
{ } {stealing or } }contrary to
(1) (a) {Being }
{concerned
{in
{Conniving
{at {fraudulent
}the
}
}
} }
{misapplication
{of
{
{ }
}service
}
}
} {section 53
}(1) (a) of the
}Act
}

(1)
(b)
Receiving {public
{service }property contrary to section 53(1) (b)
}of the Act
{Wilfully damaging }
{Being concerned } {public
{ }

}property contrary
(c) {in the willful }
{damage of } {
{service
{ }to section 53 (1)
}(c) of the Act

(d)
By wilful neglect
damaging {
{public
{service }property by fire contrary to
}section 53 (1) (d) of the
}Act

(2)

(a) {Wilfully
{Damaging
{Being concerned
{in the wilful
{damage of {
{aircraft
{
{material
{ }
}
}contrary to section
}53 (2) (a) of the
}Act
(b) By willful
neglect
causing {damage
{to the
{loss of }
}
} {aircraft
{
{material }contrary to section

}53 (2) (b) of the
}Act

(c)
Without lawful authority
disposing of {aircraft
{
{material }contrary to section
}53 (2) (c) of the Act
(3) Causing the {sequestration by
destruction in }a neutral state of aircraft
}contrary to section
}53 (3) of the Act

SECTION 54
{Stealing
{fraudulently } }
(a) {misapplying
{Being
{concerned in}
{Conniving at} }
}the {stealing of
{fraudulent
{misapplication of }property contrary
}to section 54 (a) of
}the Act
(b) Receiving property contrary to section 54 (b) of the Act.

(c) {Wilfully damaging
{Being concerned in the
{wilful damage of }
}property contrary to section
}54 (c) of the Act

SECTION 55
(a) {Losing
{Negligently damaging }
} {public property

{service }contrary
}to section 55 (a) of
}the Act

(b) By negligence {losing
{damaging } {aircraft
{
{material }
}contrary to section
}55 (b) of the Act

(c)
Being
guilty of {an act
{neglect
{
{ }likely to
}cause
}damage or
}the loss of {aircraft
{aircraft
{material
{ }contrary to section
}55 (c) of the Act

(d)
Negligently damaging{public
{service
{ }property by fire contrary to
}section 55 (d) of the Act

(e) {Losing
{Negligently damaging }his equipment contrary to section 55 (e) of the
}Act

(f) Neglect of {an animal
{a bird {contrary to section 55 (f) of the Act

(g)
Making away with {a decoration
{granted to him
{his equipment }
}contrary to section 55 (g)
}of the Act

OFFENCES RELATING TO BILLETING AND REQUISTIONING OF VEHICLES
SECTION 58

(a) {Obtaining
{Ordering
{
{Procuring }
}
}
}a person to obtain
}billets contrary to
}section 58 (a)
}of the Act

(b) Corruption in relation to a billeting requisition contrary to section 58 (b) of the Act.

{Committing an offence against
{Damaging
{ }
{Damaging property in }a person
}property
} }in
} }his billets
}contrary to
}section 58 (c)
}of the Act

SECTION 59

(1) {(a)} Unlawful requisitioning contrary {(a)} of the
{(b)} to section 59(1) {(b)} Act

(c) Corruption in relation to a requisitioning order contrary to section 59 (1) (c) of the Act.

OFFENCES RELATING TO AND BY PERSONS IN CUSTODY

SECTION 63

(1)
(a)
Delaying {an investigation
{a trial
{ }contrary to
}section 63 (1) (a)
}of the Act

(b) Failing to release a person in arrest contrary to section 63 (1) (b) of the Act

(2) Failing to report the offence for which a person has been placed in custody contrary to section 63 (2) of the Act.

(3) (a) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 63 (3) (a) of the Act.

(b) Failing to hand in a report relating to a person in custody received by him as guard commander contrary to section 63 (3) (b) of the Act.

SECTION 64

(1) Wilfully allowing a person to escape contrary to section 64 (1) of the Act.

(2) (a) Releasing a person without authority contrary to section 64 (2) (a) of the Act.

(2) (b) Allowing a person to escape contrary to section 64 (2) (b) of the Act.

SECTION 65

(1) {Refusing to obey
{Striking
{Using
{Offering

}violence to
}
}an officer who orders him into arrest
}contrary to section 65 (1) of the
}Act

(2)

{Striking
{Using
{Offering

}
}violence to
}

}a person
} {whose duty
{is to
{apprehend
{him
{in whose
{custody he
{is }
}contrary to
}section 65
}(2) of the
}Act

SECTION 66
Escaping from custody contrary to section 66 of the Act.

OFFENCES IN RELATION TO COURTS-MARTIAL
SECTION 67

(1) {(a)}
{(b)}
{(c)}
{(d)}
{(e)}
{(f)}

Contempt of a court-martial {(a)}
{(b)}
{(c)}
{(d)}
{(e)}
{(f)} contrary to
section 67 (1)
of the Act

SECTION 68
(1) Making a false statement contrary to section 68 (1) of the Act.
SECTION 69
(2) Disclosing information contrary to section 69 (1) of the Act.
SECTION 70
Making a false answer on enlistment contrary to section 70 of the Act.

SECTION 71

(a) (Making
{Signing
{Making a false entry in a }
}a false }
{service document contrary to section
}71 (a) of the Act

(b) {Altering
{Altering on entry in
{Making away with

{Suppressing
{Defacing }
}
}a service document contrary to section
}71 (b) of the Act
}

(c) Failing to make an entry in a service document with intent to defraud contrary to section 71 (c) of the Act.

{Making } }
{signing }a false}
{making a false entry}
{in a }
{altering a }
{altering an entry }service }
(a) Being part to {in a }document }
(making away })
{with a} }
{suppressing a} }contrary to section
{defacing a } }71 (d) of the
{failing to make an entry in a }Act
{service document with intent }
{to defraud }

SECTION 72

Scandalous conduct unbecoming the character of an officer contrary to section 72 of the Act.

SECTION 73

(a) {Striking
{
{Ill-treating } {an officer of inferior rank
} {an officer of less seniority
} {a soldier
{a warrant officer of inferior
{rank

{a warrant officer of less
{seniority }contrary to section
}73 (a) of the
}Act
}
}
}
}

(b) {Striking
{
{Ill-treating } {a non-commissioned officer
} {of inferior rank
} {a non-commissioned officer
{of less seniority
{a private soldier }
}contrary to section
}73 (b) of the
}Act
}

SECTION 74

Disgraceful conduct of {a cruel
{an indecent
{an unnatural }
(kind contrary to section 74
} of the Act

SECTION 75

(a) Making a false accusation contrary to section 75 (a) of the Act.

(b) {Making a false statement
{Wilfully suppressing a material fact }in a complaint contrary to
}section 75 (b) of the
}Act.

SECTION 76

Attempting to commit a military offence contrary to section 76 of the Act that is to say (set out the offence).

SECTION 77
An act
Conduct
Neglect }
}to the prejudice of good order and military discipline contrary
}to section 77 of the Act

CIVIL OFFENCES
SECTION 80

Committing a civil offence contrary to section 80 of the Act, that is to say …… (here describe the civil offence in such words as sufficiently describe the offence).

MILITIA
SECTION 225

(1) {Desertion
{Absence without leave }contrary to section 225 of the Act

RESERVE FORCE
SECTION 225

(1) {Desertion
{Absence without leave }contrary to section 225 (1) of the Act.

FORM 4—ILLUSTRATION OF CHARGE-SHEETS

CHARGE-SHEET

The accused, No. 4567 Private John Bandawe, C Company Detachment, 1st Battalion, the Malawi Rifles (K.A.R.), a private soldier of the regular force, is charged with—

1st charge STEALING PUBLIC PROPERTY CONTRARY TO SECTION 53 (1) (a) OF THE ACT

in that he

at Lilongwe on 1st August, 2000, stole a pair of binoculars, public property.

2nd charge (alternative to the 1st charge) RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 53 (1) (b) OF THE ACT

in that he

at Lilongwe on 1st August, 2000, did receive a pair of binoculars, public property, knowing them to have been stolen or fraudulently misapplied.

ZOMBA, 12th August, 2000.

MAJOR A. PHIRI
Commanding C Company Detachment,
1st Battalion, The Malawi Rifles (K.A.R.)
Commanding Officer of the accused

To be tried by Court-Martial
ZOMBA, 16th August, 2000.

B. BANDA
Colonel, Commander
Malawi Defence Force

CHARGE-SHEET

The accused, No. 2572 Corporal John Mbera, a non-commissioned officer, and No. 6789 Private Thomas Chingana, a private soldier of the Defence Force Reserve, when employed in terms of section 231 of the Defence Force Act, both of Headquarters, Malawi Defence Force, are charged with—

Both accused jointly

1st Charge COMMITTING A CIVIL OFFENCE CONTRARY TO SECTION 80 OF THE ACT, THAT IS TO SAY COMMON ASSAULT CONTRARY TO SECTION 253 OF THE PENAL CODE

in that they

at Zomba on 1st August, 2000, assaulted Evans Kalua.

Corporal Mbera only

STRIKING A SUPERIOR OFFICER CONTRARY TO SECTION 42 (1) (a) OF THE ACT

in that he

when on active service at Zomba on 1st August, 2000, struck No. 1234 Sergeant V. Namame, 1st Battalion, the Malawi Rifles (K.A.R.)

Private Chingana only

USING INSUBORDINATE LANGAUGE TO A SUPERIOR OFFICER CONTRARY TO SECTION 42 (1) (b) OF THE ACT

in that he

when on active service at Zomba on 1st August, 2000, when asked by Captain J. Bloggs, Royal Army Service Corps, for his particulars replied, “Don’t be nosy", or similar words.

ZOMBA, 30th October, 2000

MAJOR C. HARA

Officer Commanding, Headquarters Detail,
Malawi Defence Force
Commanding Officer of the accused
To be tried by Court-Martial
ZOMBA, 1st November, 2000.
MAJOR L. MHANGO
Authorized to sign for Commander
Malawi Defence Force

THIRD SCHEDULE
RULES OF PROCEDURE (DEFENCE FORCE)
RECORD OF PROCEEDINGS BEFORE THE APPROPRIATE SUPERIOR AUTHORITY
ACCUSED'S NUMBER, RANK AND NAME .....
UNIT .....

1. Question to be put to the accused by the appropriate superior authority 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 appropriate superior authority shall then read the charge(s) to the accused and ask 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 appropriate superior authority shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

4. After the summary of abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the appropriate superior authority 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 appropriate superior authority shall then:

(i) consider all the evidence and determine whether the accused is guilty of the offence or not; and

(ii) if he determines that the accused is guilty, examine and consider the accused's record of service. If he intends to award the punishment of forfeiture of seniority of rank or of a fine or of stoppages or the finding will involve a forfeiture of pay, 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 ....., 20.....

.....

Signature

FOURTH SCHEDULE

COURT-MARTIAL FORMS

1. General heading for all Forms in this Schedule
2. Convening orders
3. Declarations under rules 102 and 103
4. Summons to a Witness to Attend a Court-Martial
5. Notices Requiring Oral Evidence to be Given in lieu of a Statutory Declaration
6. Record of Proceedings of a Court-Martial
7. Findings
8. Record of Reconsideration of Finding under rule 79
9. Service Record of Accused
10. Record of proceedings on Revision under section 110 of the Act
11. Confirmation
12. Determination by a Confirming Officer or Reviewing Authority of a Suspended Sentence and Direction that Sentences are to Run Concurrently or Consecutively
13. Direction under section 123 (3) of the Act
14. Restitution order
15. Promulgation

FORM 1—GENERAL HEADING FOR ALL FORMS IN THIS SCHEDULE

RULES OF PROCEDURE (DEFENCE FORCE)

FORM 2—CONVENING ORDERS

Rule 21

CONVENING ORDERS FOR A COURT-MARTIAL

Orders by .....

Commanding Officer or Appropriate Superior Authority

(Place and date) .....

The details of officers as mentioned below will assemble at ..... at ..... hours on the ..... day of ....., 20 ..... for the purpose of holding a court-martial to try the accused persons named in the margin.

Name, etc., of accused.

.....

.....

.....

.....

PRESIDING OFFICER

.....

MEMBER(S)

.....

.....

.....

WAITING MEMBER(S)

.....

.....

JUDGE ADVOCATE

The judge advocate is a Judge of the High Court of Malawi and has been appointed by the Chief Justice. An officer of the rank of major or above 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 in an envelope marked confidential to .....

Signed this ..... day of ....., 20.....

.....

(Signature, rank and appointment of the convening officer)

or

.....

(Signature, rank and appointment of the appropriate staff officer)

An officer authorized to sign for

`

.....

(Appointment held by the convening officer)

FORM 3—DECLARATION UNDER RULES 102 AND 103

rule 102

Declaration under rule 102

In the case of .....

I 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 ....., 20.....
.....

Signature

Declaration under rule 103

rule 103

In the case of .....

I hereby declare that in my opinion he .....contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

Signed at ..... this ..... day of ....., 20.....
.....

Signature

FORM 4—SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL

rule 90 (3)

To .....

WHEREAS a court-martial (has been ordered to assemble at ....) (Has assembled at .....) on the ..... day of ..... , 20..... for the trial of .....

YOU ARE, PURSUANT TO SECTION 136 OF THE ACT AND RULE 90 (3) OF THE RULES OF PROCEDURE (DEFENCE FORCE), MADE THEREUNDER, SUMMONED and required to attend as a witness at the sitting of the said court at ..... on the ..... day of....., 20..... at ..... o'clock in the ..... noon and 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 your hand at ..... on the ..... day of ....., 20.....
.....

(Signature)
Presiding Officer of the Court *
Authorized to sign for Commander, Malawi Defence Force.

FORM 5—NOTICES UNDER SECTION 105 OF THE ACT, REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION

Notices 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.

Dated ....., 20.....

.....

(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.

Dated ....., 20.....

.....

Signature

FORM 6—RECORD OF PROCEEDINGS OF A COURT-MARTIAL

rule 91

A

PAGE 1

RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Proceedings of a ..... court-martial held at ..... on the ..... day of ..... , 20..... by order of ..... convening officer ..... dated the ..... day of ....., 20.....

PRESIDING OFFICER
MEMBERS
JUDGE ADVOCATE

Trial of .....

The court comply with rule 25 .... not being available owing to ..... the presiding officer 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 presiding officer and attached to the record.

The names of the presiding officer 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 presiding officer, 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 presiding officer, 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 interpreter.

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under rule 35. The proceedings relating to his plea are recorded on page .....

The accused objects to the ..... charge(s) under rule 36. The proceedings relating to his plea are recorded on page .....

The accused objects to the ..... charge(s) under rule 36. The proceedings relating to his objection(s) are recorded on page .....

The accused offers (a) plea(s) in bar of trial under rule 37 in respect of the ..... charge(s). The proceedings relating to his plea(s) are recorded on page .....

The accused ..... applies under rule 38 to be tried separately. The proceedings relating to his application are recorded on page .....

The accused applies rule 39 to have charges ..... and ..... tried separately. The proceedings relating to his application are recorded on page .....

C1

PAGE .....

ARRAIGNMENT

The charge-sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the presiding officer 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 41 is duly complied with in respect of (this) (these) charge(s).

The accused's pleas to the remaining charges are recorded overleaf.

C2

PAGE .....

Q. Are your 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 .....

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 summarized below) (hands in a written address which is read signed by the presiding officer marked ..... and attached to the record).

D2

PAGE .....

First witness for the Prosecution

The witness for the prosecution is called ..... being duly sworn says:

(continued on page.....)

D3

PAGE .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (continued)

The prosecution is closed.

The accused submits under rule 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 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 summarized below) (hands in a written address which is read, signed by the presiding officer marked ..... and attached to the record).

D4

PAGE .....

(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 presiding officer, and attached to the record).

(Where evidence on oath is given for the defence).

First witness for the defence

The witnesses for the defence (including the accused if sworn) are called for the ..... being duly sworn says—

(continued on page.....)
D5
PAGE .....
PROCEEDINGS ON PLEA(S) OF NOT GUILTY (continued)

The ..... (make a closing address which is summarized on page .....) (Hands in a closing address which is read, marked ..... signed by the presiding officer and attached to the record).

The note of the summing-up of the judge advocate is recorded on page .....

FINDING(S)

The court close to deliberate on their finding(s).

The court find that the accused ..... is:

(see Fourth Schedule)

ANNOUNCEMENT OF FINDINGS

The court being reopened the accused is again brought before it.

The finding(s) (is) (are) read and (with the exception of the finding(s) of “not guilty") (is) (are) announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES

The accused is released

Signed at ..... this ..... day of ..... , 20 .....

.....

Judge Advocate

.....

Presiding Officer

E

PAGE .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY

The accused .....

..... is found guilty of the charge(s). The finding(s) (is) (are) read in open court and (is) (are) announced as being subject to confirmation.

The (summary) (abstract) of evidence is read to the court by the prosecutor, marked ..... , signed by the presiding officer and attached to the record.

or

The prosecutor informs the court of the facts contained in the (summary) (abstract) of evidence which is marked ..... signed by the presiding officer and attached to the record.

F1

PAGE .....

PROCEEDINGS ON CONVICTION

(NOTE—F2 should be completed before F1 if the accused has pleaded not guilty to all charges. F1 should normally be completed before F2 if the accused has pleaded guilty to any charge but the presiding officer may in his discretion complete F2 before F1 if there is no danger of the accused making an inconsistent plea.)

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. .....

The evidence for the defence as to the accused's character and in mitigation of punishment is recorded on pages .....

Q. Do you wish to address the court in mitigation of punishment?

A. .....

The ..... (makes an address in mitigation of punishment, which is summarized (below) (on page .....) (hands in an address to the presiding officer and attached to the record)).

The list of offences which the court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked ..... signed by the presiding officer 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

PAGE .....

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 presiding officer 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.

G

PAGE .....

The court sentence 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 presiding officer announces that the trial is concluded.

Signed at ..... this ..... day of .....

....., 20 .....

.....

Judge Advocate

.....

Presiding Officer

H

PAGE .....

CONFIRMATION

1. For minutes of confirmation see Fourth Schedule to the Rules of Procedure.

Promulgation should be recorded immediately below the minute of confirmation in accordance with Rule 94 (7).

FORM 7—FINDINGS

rule 65 and 66

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 .....).

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 reasons of insanity unfit to stand his trial.

Accused guilty but insane at the time when the offence was committed guilty but insane.

FORM 8—RECORD OF RECONSIDERATION OF FINDING UNDER RULE 79 (5)

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.

FORM 9—SERVICE OF ACCUSED

SERVICE RECORD OF ACCUSED

Number Rank Name Regiment

.....

1. He was enlisted on ....., 20..... and commissioned on ....., 20 .....
2. He is serving 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 recognizable service towards discharge or transfer to the service is ..... years.
7. His recognizable 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 .....

20 ..... and has held the acting rank of ..... continuously since 20 .....

10. He has been awaiting trial for ..... days since he was first, in connexion 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 open arrest.

11. (He is not now under sentence) (He is now under sentence) of ..... beginning on ..... 20 ..... but suspected on ..... 20 ..... and not yet put into operation again/put into operation on ..... 20 .....

12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandment of a military establishment of the following offences—

	In the last 12 months	During his service
For		
For		
For		
For		
For	times	
times		
times		
times		
times	times	
times		
times		
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 the appropriate superior authority, are set out in the Schedule hereto.

FORM 10—RECORD OF PROCEEDINGS ON SECTION 110 OF THE ACT

rule 95 (1)

At ..... on the ..... day of ..... at ..... hours the court reassembled by order of the Defence Council 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 presiding officer and attached to the record.

The court having considered the observations of the Defence Council 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 observations of the Defence Council respectfully adhere to their finding (s) on the ..... charge(s) and to their sentence) (but sentence the accused ..... to ..... in substitution for the original sentence).

or

The court having considered the observation of the Defence Council 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 ....., 20 .....

.....

Judge Advocate

.....

Presiding Officer

FORM 11—CONFIRMATION

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

We confirm the court's finding(s), sentence and order under section 131 of the Defence Force Act but (remit .....) (commute .....).

We confirm the court's finding(s), sentence and order under section 131 of the Defence Force Act but mitigate the sentence so that it shall be as follows—

We vary the sentence so that it shall be as follows ..... and confirm the findings and sentence as so varied.

We confirm the finding(s) and sentence but (postpone the carrying out of the sentence of ..... until ..... suspend the sentence of .....).

We confirm the finding(s) but substitute the sentence of ..... for the sentence of the court.

We substitute a finding of ..... for the finding of the court and confirm the sentence but (remit .....) (commute .....)

We substitute a finding of ..... for the finding of the court on the ..... charge(s) and confirm the finding (s) for the court on the ..... charge(s) and the sentence.

Not confirmed (on the grounds that .....)

We confirm the finding(s) of the court on the ..... charge(s) but do not confirm their findings(s) on the ..... charge(s) (on the grounds that .....).

We confirm the sentence but (remit .....) (commute .....).

(The record) (Part of the record) of the proceedings of the ..... court-martial which tried ..... at ..... on the ..... day of ..... , 20 ..... having been lost, we do not confirm the finding(s) of the court.

Signed at ..... this ..... day of ..... , 20.....

.....

Signature, rank or title of person signing for Defence Council

FORM 12—DETERMINATION UNDER SECTION 119 BY THE DEFENCE COUNCIL OR PRESIDENT OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY

(The Defence Council) (President) hereby order(s) the accused to be committed to (imprisonment) (detention) under the sentence passed on him by the court-martial held at ..... on the ..... day of ....., 20 ..... and direct(s) that that sentence and the sentence passed on the accused by (this court-martial) (the court-martial held at ..... on ..... day of ....., 20 .....) shall run (con-currently) (consecutively).

(Date) .....

.....

(Signature) (for the Defence Council) (President)

FORM 13—DIRECTION UNDER SECTION 23 (3) OF THE DEFENCE FORCE ACT

(The Defence Council) (President) hereby direct(s) that the accused ..... (number, rank, name or other description) shall not be required to be returned to Malawi until he has served (..... months) (..... years) of the sentence of (imprisonment) (detention) passed on him.

Dated ..... 20 .....

.....

(Signature) (for the Defence Council) (President)

FORM 14—RESTITUTION ORDER

In accordance with subsection ..... of section 131 of the Act
I ..... hereby order that .....
be (delivered) (paid) to .....
Dated ....., 20 .....
.....
(Signature) (for the Defence Council) (President)

FORM 15—PROMULGATION UNDER SECTION 133 OF THE ACT

Promulgated and extracts taken at ..... (place) this
..... day of ....., 20.....
.....
(Signature, rank and appointment of officer
making the promulgation)

THE SCHEDULE HEREINBEFORE REFERRED TO IN FORM 9

No. Rank Name of Regiment or Corps
Appropriate superior authority or description of Court Date and place of trial or summary dealing Charges on which convicted or found guilty and offences taken into consideration
Sentence or order of the court as confirmed or award of appropriate superior authority
Punishment remitted on review or reconsideration

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

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 ....., 20 .....
.....
(Name, rank and appointment
of officer signing)

FIFTH SCHEDULE

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

(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

Death To suffer death

Imprisonment and cashiering To be imprisoned for ..... and to be cashiered.

Cashiering To be cashiered.

Dismissal with disgrace To be dismissed with disgrace from the Defence Force.

Dismissal To be dismissed from the Defence Force.

Forfeiture of seniority of rank (For form of sentence see (2) below).

Forfeiture of a sum from pay To forfeit ..... from his pay.

(Severe reprimand) (Reprimand) To be (severely reprimanded) (reprimanded).

Stoppages To be put under stoppages of pay until he has made good the sum of ..... in respect of .....

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

Death To suffer death.

Imprisonment and reduction to the ranks To be imprisoned for ..... and to be reduced to ranks.

Discharge with ignominy To be discharged with ignominy from the Defence Force.

Dismissal with disgrace To be dismissed with disgrace.

Dismissal To be dismissed from the Defence Force.

Detention and reduced to the ranks To undergo detention for ..... and to be reduced to the ranks.

Field punishment and reduced to the ranks To undergo field punishment for ..... days and to be reduced to the ranks.

Dismissal from the Militia To be dismissed from the Militia (non-commissioned officers to the Militia only).

(Reduction to the ranks) (Reduction to .....) To be reduced (to the ranks) (to the rank of .....).

Forfeiture of seniority of rank (For forms of sentence see (2) below).

Forfeiture of service To forfeit ..... service.

Forfeiture of pay To forfeit ..... days pay.

Forfeiture a sum of from pay To forfeit ..... from his pay.

(Severe reprimand) (reprimand) To be (severely reprimanded) (reprimanded).

Fine To be fined .....

Stoppages To be put under stoppages of pay until he has made good the sum of ..... in respect of .....

SOLDIERS

Death To suffer death

Imprisonment To be imprisoned for .....

Discharge with ignominy To be discharged with ignominy from the Defence Force.

Dismissal with disgrace To be dismissed with disgrace.

Detention To undergo detention for .....

Field punishment To undergo field punishment for ..... days

Dismissal from the Militia To be dismissed from the Militia (members of Militia only).

Forfeiture of service To forfeit ..... Service.

Forfeiture of pay To forfeit ..... days pay.

Forfeiture of a sum from pay To forfeit ..... from his pay.

Fine To be fined .....

Stoppages To be put under stoppages of pay until he has made good the sum of .....1 in respect of 2

(2) FORFEITURE OF SENIORITY OF RANK DEFENCE FORCE OFFICERS

To take seniority in the rank of ..... in the Defence Force as if his appointment to that rank bore date the ..... day of ..... , 20.....

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS IN THE DEFENCE FORCE

To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ..... 20 .....

or

To take seniority in the rank of ..... as if his name appeared next below ..... 1 in the promotion roll ..... dated the..... day of ....., 20.....

(3) DETERMINATION OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY 2

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 ....., 20 ....., and direct that, that sentence and the sentence passed on the accused by this court-martial shall run (concurrently) (consecutively).

SIXTH SCHEDULE

OATHS AND AFFIRMATIONS

(1) Oaths at investigations by commanding officers and appropriate superior authorities.

(2) Oaths at courts-martial.

(3) Manner of administering oaths.

(4) Solemn affirmation.

(1) OATHS AT INVESTIGATION 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 COURTS-MARTIAL

Presiding Officer 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 Force 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 to the presiding officer 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 Force 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 discover the vote or opinion on any matter of the presiding officer 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 presiding officer or any member of this court-martial unless thereunto required in due course of law.

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) MANNER OF ADMINISTERING OATHS

Christians taking the oath shall, 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. Members of any other religion to make an oath binding upon their conscience.

(4) SOLEMAN AFFIRMATION

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

Rule 100

PETITIONS

(1) PETITIONS

Petitions to confirming officer (before confirmation)

To the confirming officer.

I ..... 1 having been convicted by court-martial on ..... 2 at ..... 3 and having been sentenced to ..... 4 hereby petition against the finding(s) on the ..... charge(s)5 and the sentence 6 on the following grounds—

.....

.....

.....

.....

Signed .....

Dated .....

Appeal petition to the Defence Council (after promulgation)

To the Defence Council.

I ..... 1 having been convicted by court-martial on ..... 2 at ..... 3 and having had the finding(s) and sentence promulgated to me on ..... 8 hereby petition against the finding(s) on the ..... charge(s) (and the sentence 9) on the following grounds:

.....

.....

.....

.....

Signed 7

Dated .....

Petition to reviewing authority (after promulgation)

To .....

I ..... 1 having been convicted by court-martial on ..... 2 at ..... 3 and having been sentence to ..... 4 and having had the finding(s) and sentence promulgated to me on ..... 8 hereby petition against the finding(s) on the .....charge(s)5 and sentence 6 on the following grounds—

.....

.....

Signed 7

Dated ..... DEFENCE FORCE (CAMPAIGN MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of the medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 44/2004

DEFENCE FORCE (CAMPAIGN MEDAL) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Campaign Medal) Regulations.

2. Description

(1) The medal shall be designated the "Campaign Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of bronze, bearing crossed rifles positioned upright and on the reverse the inscription "FOR CAMPAIGN" circumscribing the badge of the Defence Force, and the name of the campaign shall be inscribed on the bar of the ribbon.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be maroon with two stripes in the centre.

3. Eligibility for the award of the medal

(1) The medal shall be awarded to officers, warrant officers, non-commissioned officers and private soldiers, and where appropriate to civilians, who actively participate in a designated campaign against the enemy or hostile force or forces in any act or acts against the enemy or hostile force or forces in any theatre of operation:

Provided that such campaign shall have been sanctioned by the State as provided for in Chapter XVI of the Constitution to protect national interest vital to national integrity.

(2) A clasp shall be awarded for any subsequent operation in the same campaign.

4. Recommendation

(1) Recommendation for the medal shall be made by the commanding officer or appropriate superior authority and, in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

5. Loss and replacement

(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. Grant

There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (EFFICIENCY MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of the medal or clasp
4. Double qualifying service
5. Single qualifying service
6. Certain breaks not to interfere with continuity of service
7. Medal may be worn with or without clasps
8. Application for the medal or clasp
9. Authority for the award of the medal or clasp
10. Loss and replacement of the medal or clasp
11. Forfeiture and restoration of the medal or clasp

DEFENCE FORCE (EFFICIENCY MEDAL) REGULATIONS

under s. 241

G.N. 45/2004

1. Citation

These Regulations may be cited as the Defence Force (Efficiency Medal) Regulations.

2. Description

(1) The medal shall be designated as the "Efficiency Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of silver and shall be oval in shape and shall bear a relief on obverse the Presidential Effigy and on the reverse the inscription "FOR EFFICIENT SERVICE".

(3) The medal shall be worn suspended on the left breast by a green ribbon 3.2 cm with yellow stripes down the edges.

(4) There shall be inscribed on the amount of the medal the words "MALAWI DEFENCE FORCE" to denote that, at the time the recipient qualified for the award, he was serving in the Defence Force of the Republic of Malawi.

3. Eligibility for the award of the medal or clasp

(1) The medal and the clasp to the medal shall be rewards to officers, warrant officers, non-commissioned officers and soldiers of proven capacity in the Defence Force.

(2) To be eligible for the award of the medal, officers, warrant officers, non-commissioned officers and soldiers shall fulfill the following conditions—

(a) in the case of those in the Regular Force, they shall have completed sixteen years continuous efficient service; and

(b) in the case of those in the Militia, they shall have attended a minimum of ten training periods or double qualifying service,

and in either case shall have been certified throughout their service as efficient by the commanding officers of their respective units.

(3) To be eligible for the award of the clasp to the medal, officers, warrant officers, non-commissioned officers and soldiers shall fulfil the following conditions—

(a) further to completion of the qualifying service for the medal under subregulation (2)—

(i) in the case of those in Regular Force, they shall have completed another five years of continuous efficient service;

(ii) in the case of those in the Militia, they shall have attended a minimum of five periods of training and double qualifying service referred to regulation 4,

and in either case they have been throughout such further service as efficient by the commanding officers of their units;

(b) be serving in the Defence Force at the time the qualifying period is completed.

(4) Additional clasps may be awarded for every subsequent period of five years continuous efficiency service completed.

4. Double Qualifying Service

Officers, warrant officers, non-commissioned officers and soldiers in the Militia in which training in peace time is a prescribed condition of service and who were embodied or called out for service shall count such embodied service subsequent (including any emergency service and any period, with the Defence Force) as double qualifying service towards the award of the medal or clasp, but such embodied service shall count double only between the dates on which the member was embodied or called out for service and the date of his demobilization.

5. Single Qualifying Service

Officers, warrant officers, non-commissioned officers and soldiers shall be reckoned as single qualifying service if it is—

(a) service in the Militia, in which training in peace time is a prescribed condition of service;

(b) service in the Regular Force;

(c) service in the Regular Force or in the Militia and any break in such service is due to no fault of the member and does not exceed six months.

6. Certain breaks not to interfere with continuity of service

The following shall not be regarded as breaking continuity of service—

(a) periods of desertion or absence without leave of officers, warrant officers, non-commissioned officers or soldiers of the Militia during embodiment or training either in camp or barracks, if after the offence has been dealt with they continue to serve; and

(b) periods of detention or imprisonment during period of continuous training or embodiment.

7. Medal may be worn with or without clasps

The medal may be worn with or without clasps only if the full qualifying service for each award was completed separately.

8. Application for the medal or clasp

(1) Application for the medal or clasp shall be made in writing and shall be forwarded to the Commander.

(2) The Commander shall recommend to the President only such officers, warrant officers, non-commissioned officers and soldiers as are in every way worth of the award of the medal or clasp.

9. Authority for the award of the medal or clasp

(1) The medal or clasp shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(2) A register of the names of those to whom the medal or clasp has been awarded shall be kept by the Commander.

10. Loss and replacement of the medal or clasp

(1) When a medal or clasp has been lost it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the rank, name and unit of the person to whom the medal or clasp belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal or clasp has been lost through careless or neglect, replacement may be recommended at the holder's expense, but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal or clasp shall not be made until a period of six months has elapsed after the date on which the loss was reported.

11. Forfeiture and restoration of the medal or clasp

(1) The President may cancel and annul the award of the medal or clasp to any officer, warrant officer, non-commissioned officer or soldier who suffers death by sentence of a court-martial, or is dismissed or discharged from the Defence Force for misconduct, or is convicted by a civil court of any offence of a disgraceful or fraudulent nature.

(2) Notice of cancellation and annulment of the award of a medal or clasp shall, in every case, be published in the Gazette.

(3) The President may restore a medal or clasp cancelled or annulled under the provision of subregulation (1).

(4) Notice of restoration of a medal or clasp shall, in every case, be published in the Gazette.

DEFENCE FORCE (BRAVERY MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of the medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 46/2004

DEFENCE FORCE (BRAVERY MEDAL) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Bravery Medal) Regulations.

2. Description

(1) The medal shall be designated the "Bravery Medal" and as hereinafter referred to as "the medal".

(2) The medal shall be of silver, bearing a lion charging for a prey and on the reverse the inscription "FOR BRAVERY" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be green on the left and right marked with black stripes on either side and the centre marked with a red stripe 0.5 cm in width.

3. Eligibility for the award of the medal

(1) The medal shall be awarded to an officer, warrant officer, non-commissioned officer and a private soldier who—

(a) shows courage in action and sets an example of bravery, gallantry and devotion to duty; or

(b) renders bravery action during active service.

(2) A clasp shall be awarded for any subsequent act or acts.

4. Recommendation

(1) Recommendation for the award of the medal shall be by the commanding officer or appropriate superior authority and in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

5. Loss and replacement

(1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. Grant

Every recipient of the medal shall be awarded an amount to be determined by the President.

DEFENCE FORCE (COMMENDABLE ACT MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation

2. Description
3. Eligibility for the award of medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 47/2004

DEFENCE FORCE (COMMENDABLE ACT MEDAL) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Commendable Act Medal) Regulations.

2. Description

(1) The medal shall be designated the "Commendable Act Medal" hereinafter referred to as "the medal".

(2) The medal shall be of silver, bearing a lion charging for a prey and on the reverse the inscription "FOR COMMENDABLE ACT" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be black, red and green with white stripes in between the other colours.

3. Eligibility for the award of medal

(1) The medal shall be awarded to officers, warrant officers, non-commissioned officers and private soldiers for exceptionally diligent, courageous, and outstanding act or acts in peace-time.

(2) A clasp shall be awarded for subsequent act or acts.

4. Recommendation

(1) Recommendation for the award of the medal shall be by the commanding officer or appropriate superior authority and in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers, who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

5. Loss and replacement

(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. Grant

There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (REGULAR FORCE) (OFFICERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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PRELIMINARY

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G.N. 48/2004
6/2010

DEFENCE FORCE (REGULAR FORCE) (OFFICERS) REGULATIONS

under s. 17

PART I
PRELIMINARY

1. Citation

These Regulations may be cited as the Defence Force (Regular Force) (Officers) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"chaplain" means an officer appointed as chaplain in the Defence Force;

"child", in relation to an officer, means an unmarried son or daughter under the age of eighteen years of that officer by a recognized spouse;

"commissioned service" means service as an officer in the Force;

"commandant" means the Commander or the commanding officer of a military training institution or other military establishment as determined by the Commander;

"dependant", in relation to a living or deceased officer or other person, means any person, who, in the opinion of the Minister is or was financially dependent on that officer or person;

"disabled officer" means an officer, or a person who was an officer, who is suffering from disablement which is attributable to, or which has been aggravated by, military service without any misconduct or serious negligence on the part of the disabled officer;

"dental officer" means a person appointed as a dental officer in the Force;

"gratuity" in relation to a disabled officer means a lump sum payment calculated in accordance with regulation 76;

"medical board" means a medical board constituted under regulation 3 of the Defence Force (Medical and Pensions Board) Regulations;

"medical officer" means an officer appointed as a medical officer in the Force;

"the Force" means the Regular of the Defence Force;

"leave", in relation to an officer, means leave of absence from his duties;

"legal officer" means an officer appointed as a legal officer in the Force;

"officer" means a person granted a commission in the Force, but does not include any person who is—

(a) appointed to honorary commissioned rank; or

(b) the holder of an honorary appointment;

"official quarters" means quarters provided by the Government;

"other employment in the service of the Government or a cooperating force" means pensionable employment, otherwise than as a member of the Force under the Government or the government of such cooperating force;

"pensionable emoluments", in relation to an officer, means the pay due to that officer under these Regulations;

"private medical practitioner" means any medical practitioner other than a medical officer;

"recognized spouse" means a person who is recognized by the Commander as a spouse of the officer;

"resignation", in relation to an officer, means resignation from the Force under regulation 6 and "resign" shall be construed accordingly;

"retirement", in relation to an officer, means retirement from the Force under regulation 7 and "retire" shall be construed accordingly;

"Selection Board" means the Selection Board appointed under regulation 12;

"service" means service in the Defence Force and "serve" shall be construed accordingly;

"service property" means any property of the Defence Force or of any mess or other institution, organization or association whatsoever of members of the Defence Force;

"surviving spouse", in relation to a deceased officer means a recognized spouse of the officer, but does not include a person who was separated, whether by order of court or otherwise, from the officer at the date of his death.

"training" means a course of (raining within or outside Malawi approved by the Defence Force.

"unit", in relation to an officer, means the unit of the Force in which that officer is serving.

3. Non-application of regulations

(1) These regulations shall not apply to—

(a) an officer who is attached or seconded lo any other military force outside Malawi by virtue of section 9 of the Act, unless the terms and conditions of his attachment or secondment as fixed or approved by the Commander provided that these Regulations or any of them shall apply;

(b) any officer of any military force of any country other than Malawi who has been loaned for service with the Force by virtue of the provisions of an agreement for that purpose entered into between the Government of Malawi and the Government of the other country concerned unless the agreement provides that these Regulations or any of them shall apply; or

(c) an officer serving with the Force by virtue of a contract of service entered into between that member and the Government for service with the Force, unless the contract provides that these Regulations or any of them shall apply.

(2) Notwithstanding anything in these Regulations, the Minister may on the advice of the Defence Council, order any or all of these Regulations to be waived in any specific case.

4. Application of Malawi Public Service Regulations

Where no provision is contained in these Regulations in Malawi Public Service Regulations in respect of any matter for which provision is made and in force in the Malawi Public Service Regulations, shall, in respect of such matter apply mutatis mutandis to such persons as are subject to these Regulations and shall so apply in like manner and extent as if it were a provision of these Regulations.

PART II

ENGAGEMENT, PERIOD OF SERVICE AND TERMINATION

5. Engagement of officers

(1) A person shall only be granted a commission in the Force if he is over eighteen years and not more than twenty-four years of age on the date he is commissioned or accepted for enlistment as a cadet officer whichever is applicable:

Provided that no person shall be eligible to be granted a commission if he has served as a member of the militia.

(2) Every person who is granted a commission shall before taking office take an oath of allegiance in the form set out in the First Schedule to these Regulations. First Schedule

(3) There shall be one class of engagement of officers in the Force which shall be in accordance with these Regulations.

(4) Subject to these Regulations, the period of engagement of an officer in the Force shall be twenty years from the date of his attestation in the Force; and upon completion of such period

of engagement, the Minister may, on the recommendation of the Commander, extend an officer's period of engagement from year to year until the officer attains the age of fifty-five years.

(5) When the officer has completed his period of engagement the following reserve obligations shall apply to him—

(a) if he completed less than twenty years of service he shall have reserve obligations for seven years;

(b) if he completed twenty or more years of service, he shall have reserve obligations for five years.

(6) The reserve obligations of an officer under sub-regulation (5) shall cease upon the officer attaining the age of—

(a) fifty-five years, in the case of an officer of the rank of colonel or corresponding rank or above;

(b) fifty years, in the case of an officer of the rank of lieutenant colonel or corresponding rank and below.

6. Term of commission

A commission may be either—

(a) a regular commission; or

(b) a short service commission, that is to say, a commission for a term of years not exceeding five years in the first instance, but which may be extended by a period or periods not exceeding five years.

7. Oath of allegiance

Every person who is granted a commission shall, before taking the office, take an oath of allegiance in the form set out in the First Schedule to these Regulations.

8. Resignation

(1) An officer who is not entitled or required to retire from his employment in the Force under regulation 7 may resign from his employment in the Force during his engagement if—

(a) he gives six months notice in writing to the Commander of his intention to do so; and

(b) he pays to the Government any amount which he is liable to pay to the Government under these Regulations:

Provided that if such notice is given while the officer is on active service or while he is under the orders of a superior officer to hold himself in readiness for such service, his resignation shall not take effect until a period of one month has elapsed from the date on which such active service is completed or on which such orders are rescinded, as the case may be.

(2) Notwithstanding subregulation (1)—

(a) an officer who has attended an approved course of training lasting more than one year shall not, without the special permission of the Defence Council, be entitled to resign from the Force unless he has served for a period of not less than five years in the Force since being granted his commission;

(b) an officer who has attended an approved course of training lasting less than one year shall not, without the special permission of the Defence Council, be entitled to resign from the Force unless he has served for a period of not less than four years in the Force since being granted his commission.

(3) An officer who resigns from the Force during the first seven years of his period of engagement as an officer shall be liable to repay to the Government a sum calculated as follows—

(a) if his resignation takes effect before the expiry of one year from the date of his commission, his clothing grant and, in addition, twelve months pay;

(b) if his resignation takes effect after the expiry of one year but before the expiry of two years from the date of his commission, two-thirds of his clothing grant and, in addition, ten months pay;

(c) if his resignation takes effect after the expiry of two years but before the expiry of three years from the date of his commission, one-third of his clothing grant, and in addition, eight months pay;

(d) if his resignation takes effect after the expiry of three years but before the expiry of four years from the date of his commission, six months pay;

(e) if his resignation takes effect after the expiry of five years but before the expiry of seven years from the date of his commission, four months pay;

(f) if his resignation takes effect after the expiry of five years but before the expiry of six years from the date of his commission, three months pay; and

(g) if his resignation takes effect after the expiry of six years but before the expiry of seven years from the date of his commission, two month's pay.

(4) In addition to the foregoing provisions of this regulation, an officer who is given special permission by the Defence Council to resign from the Force and who has attended training for more than one year and who resigns from the Force shall repay the following additional amounts—

(a) if he comes within subregulation (3) (a), four months pay;

(b) if he comes within subregulation (3) (b), three months pay;

(c) if he comes within subregulation (3) (c), two months pay;

(d) if he comes within subregulation (3) (d) to (g), one month's pay.

(5) Any period in respect of which no pay or allowances are paid to an officer by virtue of regulation 26 shall, for the purposes of subregulations (3) and (4), be deemed not to form part of that officer's period of engagement.

(6) An officer who has attended training and who, within three years of the date of termination of such course, resigns from the Force under subregulation (2) shall be liable to repay to the Government in addition to any sums which he is liable to repay under subregulations (3) and (4)—

(a) if his resignation takes effect before the expiry of one year from the date of termination of such courses, one year salary calculated as at the date of his resignation;

(b) if his resignation takes effect after the expiry of two years from the date of termination of such course, two-thirds of one year salary calculated as at the date of his resignation;

(c) if his resignation takes effect after the expiry of two years but before the expiry of three years from the date of termination of such course, one-third of one year salary calculated as at the date of his resignation.

9. Retirement

(1) An officer whose pensionable service amounts to ten or more years may retire from his employment in the Force on giving six months notice in writing to the Commander of his intention to do so and on repaying to the Government any amount which he is liable to repay to the Government under these Regulations:

Provided that if such notice is given while the officer is on active service or while he is under orders of a superior officer to hold himself in readiness for such service his resignation shall not take effect until a period of one month has elapsed from the date on which such active service is completed or on which such orders are rescinded, as the case may be.

(2) Notwithstanding the provisions of subregulation (1), an officer who has attended a course of training outside Malawi shall not be entitled to retire from the Force within three years of the date of termination of such training unless he repays to the Government an amount at the rate prescribed in regulation 6 (6).

PART III

PROMOTION, SENIORITY, PAY AND GENERAL ALLOWANCES

10. Appointment to commissioned rank and subsequent promotion in case of direct entries

(1) This regulation shall apply to officers who are enlisted directly into the Force as cadet officers.

(2) An officer to whom this regulation applies shall, on first being granted a commission, be appointed to the rank of second lieutenant:

Provided that an officer may be commissioned to a higher rank upon being recommended for such rank by the Commander, based on a special condition, or circumstances, pertaining to such an officer.

(3) In the case of an officer appointed to the rank of second lieutenant, promotion to the rank of lieutenant shall be made not less than three years after the date of enlistment as a cadet officer.

(4) Promotion to the rank of captain shall be made after not less than four years satisfactory service in the substantive rank of lieutenant and—

(a) after the officer has passed the examination provided for promotion from lieutenant to captain;

(b) after the officer has received an up-to-date recommendation for promotion to captain;

(c) after selection by a Selection Board; and

(d) provided there is a vacancy in the establishment for a captain.

(5) Promotion to the rank of major shall be made after not less than seven years satisfactory service in the substantive rank of captain and—

(a) after the officer has passed the examination provided for promotion from captain to major;

(b) after the officer has received an up-to-date recommendation for promotion to major;

(c) after selection by a Selection Board; and

(d) provided there is a vacancy in the establishment for a major.

(6) Promotion to the rank of lieutenant colonel or colonel shall be made—

(a) after the officer has successfully completed a Grade II staff course;

(b) after the officer has commanded a company size, unit or staff appointment at Grade II level;

(c) after the officer has received an up-to-date recommendation for promotion to lieutenant colonel or colonel;

(d) after selection by a Selection Board;

(e) provided that there is a vacancy in the establishment for lieutenant colonel or colonel; and

(f) provided that the officer is physically fit.

(7) Promotion to the rank of brigadier general and major general shall be made—

(a) after the officer has successfully completed an approved strategic military training;

(b) after the officer has received an up-to-date recommendation for promotion to generalship; and

(c) upon approval by the Defence Council after recommendation by the Commander.

(8) Promotion to any higher rank than that of major general shall be by the President.

(9) For the avoidance of doubt, nothing in the foregoing subregulations of this regulation shall be construed as affecting the validity of the promotion of any person to the relevant ranks before the commencement of those subregulations.

11. Appointment to commissioned rank and subsequent promotion in the case of officers who have served in the ranks

(1) This regulation shall apply to officers who have served in the ranks and are subsequently commissioned.

(2) For the purpose of this regulation “reckonable service” shall be service in the Force other than as an officer computed in accordance with the following—

(a) in the case of a warrant officer, the whole of any service spent on full pay as a warrant officer after a minimum period of service spent on full pay;

(b) in the case of any other rank (other than a warrant officer), half of any period of service spent on full pay;

(c) the whole of any period of service spent on full pay as a cadet officer.

(3) A member of the Force granted a commission after less than two years reckonable service shall be appointed to the rank of second lieutenant, and a member of the Force granted a commission after two or more years' reckonable service shall be appointed to the rank of lieutenant.

(4) Promotion from second lieutenant shall be made when the total of the officer's reckonable service and commissioned service amounts to two or more years.

(5) Promotion from lieutenant to captain shall be made after the total of the officer's reckonable service and commissioned service amounts to seven or more years, of which one year shall have been service as a lieutenant; and—

(a) after the officer has passed the examination provided for promotion from lieutenant to captain, unless exempted therefrom under this regulation;

(b) after receiving an up-to-date recommendation for promotion to captain;

(c) after selection by a Selection Board; and

(d) provided there is a vacancy in the establishment for a captain.

(6) Promotion to the rank of major shall be made after the total of the officer's reckonable service and commissioned service amounts to thirteen or more years, of which one year shall have been service as a captain and—

(a) after the officer has passed the examination provided for promotion from captain to major, unless exempted therefrom under this regulation;

(b) after the officer has received an up-to-date recommendation for promotion to major;

(c) after selection by a Selection Board; and

(d) provided there is a vacancy in the establishment for a major.

(7) Promotion to any rank higher than that of major shall be by selection.

(8) An officer otherwise eligible for promotion—

(a) from lieutenant to captain, may be exempted by the Defence Council at its discretion from the necessity of taking or passing the examination provided for promotion from lieutenant to captain; or

(b) from captain to major and whose commissioned service amounts to less than four years, may be exempted by the Defence Council at its discretion from the necessity of taking or passing the examination provided for promotion from captain to major.

12. Selection Board

(1) There shall be a board to be known as the Selection Board which shall have the function of selecting suitable officers for promotion and which shall consist of—

(a) the Deputy Commander who shall be the chairperson;

(b) the Chief of Staff who shall be the secretary;

(c) the Director of Personnel;

(d) the Director of Training; and

(e) the Director of Medical Services.

(2) For the purposes of subregulation (1), the Selection Board shall submit its recommendation to the Commander.

(3) The Selection Board may co-opt any person as its member if necessary for the proper performance of its functions.

13. Temporary rank

(1) The Commander may, in his discretion, appoint an officer to a temporary rank next higher to the substantive rank held by that officer if there is a vacancy in the establishment of officers of the higher rank.

(2) An officer appointed to temporary rank under this regulation shall relinquish that rank when an officer of a higher substantive rank becomes available for the appointment.

(3) An officer appointed to a temporary rank shall be entitled to the pay and allowances appropriate to that rank.

(4) Any period of time spent by an officer in a temporary rank shall not be taken into account as qualifying that officer for increments of service pay in such temporary rank.

14. Acting rank

(1) The Commander may, in his discretion, appoint an officer to act in a rank next higher to the substantive or temporary rank held by that officer if there is a vacancy in the establishment of officers of that higher rank.

(2) An officer appointed to act in a higher rank under this regulation shall cease to act in that rank when an officer of substantive or temporary rank equivalent to the acting rank becomes available for the appointment.

(3) An officer appointed to act in a higher rank shall be entitled to receive the acting allowances prescribed by these Regulations.

(4) Any period of time spent by an officer in an acting rank shall not be taken into account as qualifying that officer for increments of service pay in the rank in which he is acting.

(5) The appointment of an officer to act in a higher rank shall not affect the annual rate of pay applicable to that officer in his substantive or temporary rank under these Regulations.

15. Local rank

(1) The Commander may, in his discretion, appoint an officer to a local rank higher than the substantive rank held by that officer, if there is a vacancy in any employment for officers of that higher rank.

(2) An officer appointed to a local rank shall cease to hold that rank on the date that he ceases to fulfil the functions for which the local rank was granted.

(3) An officer appointed to a local rank shall not receive the pay or allowances for that rank.

16. Seniority

(1) Officers of the same rank shall take seniority from the date of their appointment or promotion to that rank, or in the case of officers appointed or promoted to that rank on the same date, from the date of their enlistment in the Force or their personal number.

(2) Seniority among officers by rank, shall be in the following order with the rank of the General being the most senior—

General;

Lieutenant General;

Major General;

Brigadier General;

Colonel;

Lieutenant Colonel;

Major;

Captain;

Lieutenant;

Second Lieutenant.

17. Pay

Subject to these Regulations, an officer shall be paid at such basic rate of pay as may be prescribed by the Minister for an officer holding the rank and appointment applicable to him.

18. Acting allowance

(1) Subject to this regulation, an officer who is appointed to act for the Commander shall, during the subsistence of his acting appointment, be paid an acting allowance at the rate of five per cent of the officer's basic pay per month.

(2) Subject to this regulation, an officer who is appointed to act in a rank which is higher than his temporary or substantive rank shall, during the subsistence of his acting appointment, be paid acting allowance at the rate of five per cent of the officer's basic pay per month.

(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 this subregulation shall not apply to an officer appointed to act for an officer holding the rank of—

(a) Brigadier General, Colonel or Lieutenant Colonel or any higher rank; or

(b) major and 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 under this regulation shall be reduced by the amount of the excess.

(5) No acting allowance shall be paid under this regulation to an officer whose acting appointment subsists for a period of less than thirty consecutive days.

19. Entertainment allowance

(1) The Commander, appropriate superior authority, commandant, commanding officers and principal staff officers who regularly receive distinguished guests shall, in respect of the

period during which they perform entertainment functions, be allowed a refund of expenses arising from official entertainment which directly results from such functions and duties.

(2) An officer who performs the functions and, as the case may be, duties of a detachment commander shall be entitled to a refund of expenses arising from entertainment which directly results from such functions and duties.

(3) 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 regulation shall be paid every entertainment allowance for which he so qualifies, so, however, that the aggregate of such allowance paid to any one officer shall be determined by the Minister from time to time.

20. Professional allowance

(1) Subject to these Regulations—

(a) a medical officer, a dental officer and a legal officer;

(b) any other officer classified by the Commander as being professionally qualified, shall be paid a professional allowance at the rates specified in subregulation (2).

(2) The rate of professional allowance payable to an officer under subregulation (1) shall be—

(a) if he holds the appointment of Director, twenty per cent of his basic pay;

(b) if he holds the appointment of Deputy Director, eighteen per cent of his basic pay;

(c) if he does not hold the appointment specified in sub-paragraphs (a) and (b) seventeen per cent of his basic pay:

Provided that in no case shall the amount of any of such allowance be less than the amount of professional allowance, if any, payable to an officer of equivalent grade in the Public Service.

21. Technical allowance

(1) An officer who is classified by the Commander as being technically qualified, shall be paid a technician allowance at the rates specified in subregulation (2); and, for the purposes of this regulation, officers of the following classes shall be considered to be technically qualified—

(a) pilots;

(b) flight engineers;

(c) inspectors;

(d) technicians;

(e) naval officers;

(f) air traffic controllers;

(g) clinical officers; and

(h) any other officers classified by the Commander as being technically qualified.

(2) The rate of technician allowance for officers specified in subregulation (1) shall be seventeen per cent of basic pay.

22. Clothing grant

Upon first being granted a commission, an officer shall be entitled to a clothing grant equivalent to his one month pay.

23. Uniform upkeep allowance

Every officer shall be entitled to receive in every year on the anniversary of the date of his first being granted a commission, a uniform upkeep allowance equivalent to one thirtieth (1/30th) of his basic pay per annum or as may be determined by the Minister from time to time.

24. Sanitary Services

An officer who is married and who resides with his family in official quarters shall be provided free of charge with sanitary services.

25. Batman allowance

An officer who is not provided with a batman shall be paid monthly a servant allowance as the Minister may, from time to time, determine:

Provided that no such allowance shall be paid in respect of any period during which the officer is on leave.

26. Other allowances

The Minister may from time to time on the recommendation of the Defence Council establish any other allowances payable to officers and may determine the rates of such allowances.

27. Married quarters

(1) An officer who is married and who resides with his family shall be provided with furnished married quarters provided there are such quarters available.

(2) An officer provided with furnished married quarters, or who is eligible, to be provided with furnished married quarters but for the fact that there are none available is accommodated otherwise than in such quarters, shall be entitled to be paid monthly a barracks allowance equivalent to twenty-four per cent of the annual basic pay.

28. No pay or allowance in certain circumstance

Notwithstanding any other provision 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 by a court-martial or by a 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, a commanding officer or an appropriate superior authority of an offence under the Act or by a civil court; and

(ii) a medical officer certifies that his illness or injury has been occasioned by or arises out of such offence; or

(c) he is absent in circumstances constituting the offence of deserting or absenting himself without leave.

29. Family allowances when serving outside Malawi

When serving on duty or when attending a course outside Malawi for a consecutive period longer than one month, an officer who is married shall be entitled to receive a family

allowance in respect of a recognized spouse and children at the rates as may be determined by the Minister from time to time.

30. Special training allowance

When attending an approved course of instruction within or outside Malawian officer shall be entitled to a special training allowance determined by the Minister on the recommendation of the Defence Council.

31. Free rations

An officer may be issued with free rations, at the approved officers' scale, when on active service or when engaged upon exercises whose duration exceeds twenty-four hours, or for such periods and in such circumstances as the Minister may from time to time determine.

32. Disturbance allowance

(1) A married officer who is posted on transfer not at his own request shall be entitled, where he is a householder and is obliged to transfer his household effects, to an allowance not exceeding one thirtieth (1/30th) of annual basic pay per annum.

(2) In the case of a local transfer, a married officer shall be entitled to an allowance equivalent to one sixtieth (1/60th) of his basic pay per annum.

33. Travelling and baggage allowance

(1) An officer travelling on duty or for the purposes of attending a course of instruction outside Malawi shall be entitled—

(a) if he is an officer of the rank of Colonel and below, to economy class air passage to and from Malawi;

(b) if he is an officer of the rank of Brigadier General, and above, to business class passage to and from Malawi;

(c) in the case of the Commander and Deputy Commander, to first class air passage to and from Malawi.

(2) In addition to the accompanied baggage allowance to which his air ticket entitles him, namely 20 kilos (44 lb.) in weight, an officer shall be entitled to an allowance of a further 20 kilos (44 lb.) of baggage at air freight rates; and if an officer should decide to forward all or any of his baggage by sea, he shall be entitled to an allowance equivalent to the value of transporting 20 Kilos of baggage at air freight rates.

34. Subsistence allowance

Subject to regulation 56, an officer who is required to travel on duty within Malawi shall be paid subsistence allowance at the rate applicable to an officer of equivalent grade in the Civil Service.

35. Warm clothing allowance

(1) An officer proceeding on a course of instruction or on duty to a cold climate country shall be entitled to be paid a warm clothing allowance as may be determined by the Minister from time to time:

Provided that a period of three years shall elapse before the officer qualifies for another entitlement to such allowance.

(2) For the purposes of this Regulation, a cold climate country is one which lies wholly or principally outside the latitude of 30 degrees north or south of the Equator.

36. Field allowance

An officer shall, in respect of any period during which he serves on active duty and any such other period as the Minister may determine, be paid a field allowance at the rate as determined by the Minister from time to time.

37. Risk allowance

Paratroopers and divers shall, during the period of active duty and such other period as the Minister may determine, be paid risk allowance at the rate determined by the Minister from time to time.

38. Deductions from pay and allowances

(1) The commanding officer or appropriate superior authority may authorize the deduction from the pay and allowances due to an officer under these regulations of—

(a) any liquidated amount which that officer is liable to pay to Government or to any mess, institution, organization or association whatsoever of members of the Defence Force; and

(b) any amount which that officer has previously been paid in pay or allowances in excess of the amount which is due to him under these or any other Regulations.

(2) If, after perusing the proceedings of any board of enquiry, the commanding officer or appropriate superior authority is satisfied—

(a) that loss or destruction of or damage to 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 court-martial, a commanding officer, an appropriate superior authority or civil court with an offence arising out of such loss, destruction or damage,

he may authorize the deduction from the pay and allowances due to such officer under these or any other Regulations of such amount not exceeding the value of the loss, destruction or damage or not withstanding a maximum of twenty per cent of the officer's one month pay, whichever is the less, as in the circumstances he may deem to be equitable compensation for the loss, destruction or damage.

(3) Any officer from whose pay and allowances a deduction has been made under subregulation (2) may, within the period of fourteen days immediately following the date when the deduction was made, appeal in writing to the next higher authority against such deductions and such authority may confirm, modify or set aside the deductions; and the officer shall have the right to make further appeals against the decision of the higher authority within fourteen days of the date of the decision.

PART IV

LEAVE AND BENEFITS

39. Classification of leave

For the purposes of this Part, leave shall be divided into the following classes—

(a) annual leave;

(b) sick leave;

(c) compassionate leave;

(d) embarkation leave;

(e) disembarkation leave;

(f) study leave; and

(g) maternity leave.

40. Persons empowered to grant leave

The commanding officer or appropriate superior authority may, in accordance with this Part, grant an officer under his command leave of any class.

41. Pay and allowances during leave

(1) The commanding officer or appropriate superior authority 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 annual leave which immediately precedes the date on which his retirement or resignation 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 annual leave which does not immediately precede the date on which his retirement or resignation takes effect, the pay and allowances due in respect of—

(i) a period of 30 days or the period of the leave, whichever is the less; and

(ii) the month in which his leave commences.

(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 allowance for which he is eligible under these Regulations.

(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.

42. Qualifying service

(1) In this regulation, "qualifying service" means—

(a) in the case of an officer who has previously taken annual leave under these Regulations, the period that has elapsed since the date on which he returned from his last annual leave;

(b) in the case of an officer who has not previously taken annual leave under these Regulations, the period that has elapsed since the date of commencement of these Regulations or the date on which he was granted a commission, whichever is later,

less in either case, the period of any sick leave occasioned by his own misconduct or compassionate leave taken during such period and any period after that date in respect of which, by virtue of these Regulations, no pay or allowances were paid to him.

(2) Subject to this regulation, annual leave shall accrue to an officer at the following rates—

(a) for every period of qualifying service amounting to 365 days, 30 days;

(b) for every period of qualifying service amounting to less than 365 days, 2½ days per month.

(3) Where a member of the Force is granted a commission on or after the commencement of these Regulations, any annual leave which, immediately before the date of his commission, 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 under the provisions of this Regulation.

(4) Where a member of the Force is granted a commission, any leave then accrued due to him as an other rank, shall be deemed to have accrued to him under these Regulations up to a maximum leave period of 30 days.

(5) Time spent in travelling within Malawi to, or from a place of leave, shall not be counted against a period of leave due.

43. Grant of annual leave

(1) An officer may be granted annual leave with pay for any period or part thereof which has accrued to him under regulation 40, but not exceeding 30 days in respect of any one calendar year.

(2) No annual leave shall, unless the Minister otherwise directs, be granted to an officer who has been discharged or dismissed from the Force under section 14 of the Act.

(3) Any Sunday or Saturday or any public holiday during the period of the officer's annual leave shall count as part of the officer's annual leave days.

44. Sick leave

(1) An officer may at any time be granted sick leave with full pay for a period not exceeding 365 days on the following 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) after 180 days a medical board shall be convened for the purpose of assessing his suitability to continue in the service.

(2) If an officer is absent from duty or is detained in hospital on the orders of a medical officer and, in the opinion of the commanding officer or appropriate superior authority, such absence or detention is rendered necessary by the misconduct of the officer, the commanding officer or appropriate superior authority may direct that the period of such absence or detention be taken as annual leave or, if the officer is not eligible for the grant of any annual leave which is insufficient for the purpose, that such period be deducted from any period of annual leave which may subsequently accrue to the officer.

45. Compassionate leave

(1) An officer wishing to absent himself from duty on compassionate grounds who—

(a) is not eligible for the grant of any period of annual leave; or

(b) is eligible for the grant of a period of annual leave which is insufficient for the purpose,

may be granted compassionate leave on full pay for such period as the commanding officer or appropriate superior authority may determine.

46. Embarkation and disembarkation leave

(1) An officer may be granted fourteen days' embarkation leave with pay immediately prior to proceedings on active service, or other duty outside Malawi, provided in the case of such other duty, he is due to be out of Malawi for a minimum period of six months.

(2) An officer may be granted fourteen days disembarkation leave with pay immediately after his return from active service, or other duty outside Malawi, provided that in the case of such other duty, he has been out of Malawi for a minimum period of six months.

47. Study leave

An officer may be granted study leave with full pay for a period not exceeding two years for the purpose of pursuing further studies at a recognized institution within or outside Malawi:

Provided that in the case of a course outside Malawi, regulation 30 shall apply with respect to the officer's pay during the period of the course.

48. Maternity leave

(1) A female officer may be granted maternity leave with full pay for ninety consecutive days from the expected date of confinement, except that an officer may return to work at any time before the expiry of the period of confinement.

(2) In this regulation, "date of confinement" means the date of birth of a child, whether living or not, after thirty-four weeks of pregnancy but in the event of still birth occurring during the first thirty-four weeks of pregnancy maternity leave, in accordance with subregulation (1) shall apply.

49. Travelling facilities on leave

(1) An officer who has been granted—

(a) annual leave;

(b) embarkation leave;

(c) disembarkation leave;

(d) compassionate leave;

(e) study leave;

(f) maternity leave,

shall be granted free travelling facilities, or the equivalent in money, to and from his leave destination on one occasion per year except in relation to embarkation, disembarkation, compassionate leave and maternity leave when travelling facilities may be granted at the discretion of the commanding officer:

Provided that if his leave destination is outside Malawi, such facilities shall only be granted to and from the point on the borders of Malawi which is nearest to his leave destination.

(2) Free travelling facilities shall be—

(a) a first class rail, road or lake steamer warrant; and

(b) an economy class air travel warrant; or

(c) warrants under both paragraph (a) and (b).

50. Grant of free travel fares or equivalent on retirement

(1) Subject to this regulation, an officer who proceeds on annual leave pending retirement on pension, shall be granted in respect of himself and each of his dependants, the benefits specified in subregulation (2) for a journey within the borders of Malawi.

(2) The benefits referred to in subregulation (1), shall be an amount equal to the cost of a single first class rail, road or lake steamer fare, or an economy class air fare from his last place of duty to his destination.

(3) The recognized spouse of a deceased officer and his children dependent upon the spouse, may be granted the benefits conferred by this regulation if such officer—

(a) died before retirement on pension; or

(b) having retired on pension, died within twelve months of so retiring without having availed himself of the benefits to which he was entitled under this regulation.

(4) A person who receives the benefits conferred by regulation 47, when proceeding on annual leave pending retirement, shall not be entitled to the benefits conferred by this regulation.

(5) Nothing in this regulation shall entitle a person or his dependants to be granted the benefits conferred by this regulation on more than one occasion.

(6) No claim for the benefits conferred by this regulation shall be granted, unless it is supported by a certificate that the benefits 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 dependents, particulars are given.

(7) For the purpose of this regulation, "dependant", in relation to an officer referred to in subregulation (1), means—

(a) the recognized spouse of that officer;

(b) any child of that officer who was, at the date on which he retired, under the age of eighteen years and wholly dependent on him,

who precedes him, accompanies him or follows him on any journey with respect to which a benefit may be granted under this regulation.

PART V

MEDICAL BENEFITS

51. Medical examination

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 Government by—

(a) a medical officer;

(b) a private medical practitioner;

(c) a medical board.

52. Medical and hospital treatment

(1) An officer shall, while stationed or on leave within Malawi or while outside Malawi on active service or other duty, be entitled to receive the following benefits free of charge in respect of himself and his dependants—

(a) attendance and treatment by a medical officer;

(b) such medical treatment by persons other than 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 Malawi or is outside Malawi on active service or other duty, a medical officer authorizes the admission to a 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.

(3) If the Secretary for Health is satisfied that no medical officer was available to authorize—

(a) the medical treatment of an officer or his dependant referred to in subregulation (1) (b); or

(b) the admission to a Government hospital of an officer or his dependant referred to in subregulation (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 subregulation (1) or (2) as if the treatment or admission had been authorized by a medical officer.

(4) If an officer on leave outside Malawi requires medical or hospital treatment for himself in respect of an illness, injury or disability which is attributable to his service within Malawi, the Secretary for Health shall authorize him to be provided, free of charge, with such medical or hospital treatment (including transport to a hospital) as the Secretary for Health considers necessary in the circumstances.

(5) If while an officer is stationed or on leave within Malawi or is outside on active service or other duty, it is necessary for him or any of his dependants to be admitted to a hospital and no Government hospital is available for the purpose, the Secretary for Health 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 amount of any hospital fees and the cost of transporting the patients to the hospital or other institution paid by the Government.

(6) If, while an officer is stationed or on leave within Malawi or is outside Malawi on active service or other duty, it is necessary for any dependant of such officer to receive medical treatment which a medical officer certifies is not available at the place where such officer is stationed, the officer shall be granted a refund of the transport expenses incurred by him in respect of his dependant and—

(a) if a medical officer certifies that the dependant is unfit to travel alone to the place where the medical treatment is available and such dependant is accompanied by the officer or by an escort, the officer or the escort, as the case may be, shall be—

(i) granted a refund of the transport expenses incurred by him; and

(ii) paid a subsistence allowance at the rates authorized under regulation 34;

or

(b) if the Secretary for Health certifies in the case of a dependant who is a child that it is necessary on medical grounds for the officer and the spouse to accompany such dependant to the place where the medical treatment is available, the officer and the spouse shall each be—

(i) granted a refund of the transport expenses referred to in subregulation (6) (a) (i); and

(ii) paid the subsistence allowance at the rates authorized under regulation 34.

(7) An officer admitted to hospital abroad for medical treatment shall be entitled to receive an allowance equivalent to US$50 for each day actually spent in the hospital subject to a maximum of thirty days.

53. Additional medical services

Without derogation from the provisions of regulation 52—

(a) the Secretary for Defence may authorize the payment to an officer of any medical or surgical expenses incurred by the officer within Malawi in respect of himself or any of his dependants;

(b) if the Secretary for Health certifies that specialist medical or surgical advice or treatment is required by an officer and that such advice or treatment is not available within Malawi, the Minister may authorize the payment of any or all of the expenses incurred by the officer in obtaining such advice or treatment outside Malawi.

54. Dental treatment

An officer and any of his dependants shall, while stationed or on leave within Malawi or while outside Malawi on active service or other duty, be entitled to free dental treatment by a dental officer in respect of himself or such dependant.

55. Treatment by oculists, etc.

If the examination and treatment of the eyes of an officer or of any of his dependants by an oculist is authorized by a medical officer, any costs thereby incurred shall be paid by the Government, including the provision of free spectacles.

PART VI

TRANSFERS AND TRAVELLING ON DUTY

56. Allowance for subsistence and travelling expenses in Malawi

An officer who is required to travel on duty within Malawi shall be paid a daily subsistence allowance at the rates authorized under regulation 34:

Provided that—

(a) where an officer is provided with overnight accommodation without expense to himself he will only be eligible for payment of half the allowance authorized under regulation 34 (b);

(b) where an officer is provided with meals and overnight accommodation without expense to himself no subsistence allowance is payable.

57. Allowances for subsistence and travelling expenses outside Malawi

An officer who is required to travel on duty outside Malawi shall be paid a daily subsistence allowance at the rates prescribed for an officer of equivalent grade in the Civil Service.

58. Allowance for relieving or special duty

The Minister may authorize the payment to an officer, who is required to undertake relieving or special duty, of an allowance sufficient to cover reasonable expenses thereby incurred by the officer.

59. Expenses on transfer at the request of an officer

An officer who is posted on transfer at his own request shall not be entitled to a refund of any expenses incurred thereby.

60. Expenses on transfer other than at the request of an officer

(1) An officer who is posted on transfer other than at his own request shall be entitled—

(a) to be paid, in respect of himself, whilst travelling to his new station subsistence allowance at the rates authorized in regulation 34 (b):

Provided that the proviso to regulation 56 shall apply to officers so travelling as it applies to officers travelling under that regulation;

(b) to be paid, in respect of his spouse and all his children under the age of eighteen years, whilst travelling to the officer's new station subsistence allowance at the rates authorized in respect of the spouse or children of an officer of equivalent grade in the Civil Service:

Provided that the proviso to regulation 56 shall apply to any such spouse or child so travelling as it applies to officers travelling under that regulation;

(c) to have his personal baggage transported at Government expense to his new station;

(d) to be paid a disturbance allowance at the rate authorized in regulation 32;

(e) to free travel facilities to the officer's new station in respect of the officer, the spouse and all officer's children under the age of eighteen years.

(2) In this regulation "free travel facilities" shall mean—

(a) a first class rail, road or lake steamer warrant;

(b) an economy class air travel warrant;

(c) by military transport; or

(d) facilities and any or all of paragraphs (a), (b), and (c).

61. Travel by private motor vehicle

(1) A commanding officer may authorize an officer, who is posted on transfer other than at his own request, to use his own motor vehicle in which case the officer shall be entitled to full motor vehicle mileage allowance at the rates prescribed under the Malawi Public Service Regulations; and if due to the nature of the motor vehicle concerned, it is not possible for the officer to take with him all the members of his family eligible under regulation 60, those eligible members who cannot travel with the officer may travel by military transport or such other means as may be decided by a commanding officer at Government expense.

(2) In cases where an officer is permitted to use his own motor vehicle and he qualifies for any subsistence allowance under regulation 60, allowance shall be paid only in respect of those nights necessarily spent in transit by the most direct route; and for the purpose of this regulation "Nights necessarily spent in transit" means nights that would have been spent if the officer had travelled not less than 320 kilometres per day.

62. Advances of allowances and other benefits payable under this Part

An officer may be paid in advance the full amount of any allowances 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 which are payable to him.

PART VII

DRESS AND EQUIPMENT

63. Clothing and equipment

(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.

(2) On first appointment to commissioned rank of officer, an officer shall be paid a grant at the rate authorized under regulation 22 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 be 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 an allowance at the rate authorized under regulation 23 for the purposes of maintaining his clothing and personal equipment in a serviceable condition.

(5) An officer shall be provided free of charge with such items of uniform and equipment as are required for service in the field; and after the initial issue of such items of uniform and equipment, they shall be exchanged or replaced, from time to time, when they become unserviceable due to fair wear and tear at Government expense.

64. Wearing of uniform

(1) An officer shall not wear any article forming part of the uniform of the Regular Force which he is not authorized to wear.

(2) Any officer who contravenes this regulation shall be guilty of an offence punishable under section 210 of the Act.

PART VIII

DISABLEMENT BENEFITS

65. Functions of Pensions Board and Pensions Appeal Board

(1) The right of any person to an award under this Part and the amount of such award shall be determined by the Pensions Board in accordance with this Part.

(2) Within six months after the date on which any decision of the Pensions Board has been communicated to a claimant under this Part such claimant may, by notice in writing to the Pensions Board, appeal to the Pensions Appeal Board.

(3) On any such appeal under subregulation (2), the Pensions Appeal Board may confirm the decision of the Pensions Board or may, subject to the provisions of these Regulations, vary such decision and the decision of the Pensions Appeal Board shall be given effect to by the Pensions Board.

66. Review of awards

The Pensions Board may at any time review, amend or withdraw any award made under this Part which—

(a) has been incorrectly made by error in interpretation or fact; or

(b) it has reasons to believe has been obtained by improper means.

67. Administration of awards

Any award payable to or in respect of any person under this Part may, in the discretion of the Pensions Board and for reasons deemed by it to be sufficient, be administered under such conditions as the Pensions Board may determine instead of being paid to the grantee.

68. Benefits on discharge for ill-health in certain circumstances

If the unfitness for further service of a disabled officer is due to ill-health, physical or mental incapacity or personal injury occasioned without any misconduct or serious negligence on his part, he shall be awarded—

(a) if his pensionable service amounts to less than ten years, a gratuity at the rate prescribed in regulation 78;

(b) if his pensionable service amounts to ten or more years, a pension at the rate prescribed in regulation 78.

69. Compensation in respect of ill-health occasioned by the discharge of duty

(1) Subject to this section, if the unfitness for further service of a disabled officer is due to ill-health, physical or mental unfitness physical or mental incapacity, or personal incapacity, or personal injury—

(a) which was occasioned in and by the discharge of his duties but which was without any misconduct or serious negligence on his part;

(b) aggravated to a material extent in and by the discharge of his duties,

he shall be awarded a compensation payable and calculated in accordance with the Defence Force (Compensation for Injuries) Regulations.

(2) If an officer who is suffering from ill-health, physical or mental unfitness, physical or mental incapacity, or personal injury—

(a) which was occasioned in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(b) which was not occasioned initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties,

is not discharged and if, the date on which he resigns or retires or is, under the provisions of the Act, discharged or dismissed from the Defence Force, he is still suffering from such ill-health, physical or mental incapacity or personal injury, he shall be awarded a compensation calculated in accordance with the Defence Force (Compensation for Injuries) Regulations and based upon the annual rate of his pensionable emoluments at the date of his disablement.

(3) For the purposes of subregulation (2), the date of disablement of a member means the date on which the ill-health, physical or mental unfitness, or physical or mental incapacity commenced or on which the personal injury was received or on which the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury was first aggravated to a material extent, as the case may be, or if such date cannot be ascertained, the date fixed by the Pensions Board as the date of disablement.

(4) If an officer resumes duty in the Defence Force as provided by regulation 72 and if, at the date on which he resigns or retires or is, under the provisions of the Act, finally discharged or dismissed from the Defence Force, he is still suffering from the ill-health, physical or mental unfitness, physical incapacity or personal injury in respect of which he was previously awarded a compensation under this section, he shall be awarded a compensation calculated in accordance with subregulation (2).

(5) Any compensation payable under this regulation shall be in addition to any pension or other benefit payable under these regulations.

(6) An officer who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purpose of this section, to be discharging his duties while he is so participating.

70. Free medical attention for disabled officers

(1) In this regulation—

"free medical attention" means—

(a) attention by a medical officer;

(b) treatment in a department of a Government hospital or institution; and

(c) accommodation in a ward of a Government hospital or institution,

and includes drugs, dressings, proprietary preparations and surgical appliances and, in special cases authorized by the Pensions Board, attention and treatment by a person recommended by the Board and accommodation at a hospital or institution other than a Government hospital or institution.

(2) A disabled officer who has been awarded a compensation under regulation 69 shall be entitled to free medical attention in respect of ill-health, physical or mental unfitness, physical or mental incapacity or personal injury which occasioned the award.

(3) Subject to sub-regulations (4) and (5), when a disabled officer is required by the Pensions Board to make a journey in order to be medically examined or to undergo medical treatment or for any other purpose, he shall be entitled—

(a) to travel at the expense of the Government in such class of travel as the Minister may determine; and

(b) to be paid such subsistence allowance as the Minister may determine.

(4) A disabled officer shall not be entitled to an allowance under subregulation (3) (b)—

(a) for any period during which he is being maintained at a hospital or institution; or

(b) if the period of his absence from home is less than four hours.

(5) If a disabled officer is, owing to his own misconduct, unfit to undergo a medical examination at the appointed time and place and in consequence thereof is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any allowance under subregulation (3) (b) for any period during which he is necessarily absent from his home for the purpose of undergoing such further medical examination.

71. Medical examination or treatment of disabled officers

(1) Any officer who has been awarded a compensation under this Part may at any time be required by the Pensions Board to submit to a medical examination or to undergo medical or surgical treatment involving no appreciable risk to his life.

(2) If any officer referred to in subregulation (1) fails to submit himself to the examination or to undergo the treatment required by the Pensions Board, his right to any compensation awarded to him under this Part shall cease as from the date on which he fails to do so:

Provided that if at any time thereafter such person submits to the examination or undergoes the treatment required by the Pensions Board, such compensation shall be revived with effect from the date on which he submits himself to that examination or undergoes that treatment.

72. Resumption of duty by disabled officer

(1) If a disabled officer who has been awarded a compensation under this Part is, within two years of the date of his discharge, certified by the medical board to be fit for duty in the Force and has not completed his period of engagement as provided by regulation 5 (4), he may, subject to subregulation (3), be required by the Minister to resume duty in the Defence Force.

(2) If an officer who is required under subregulation (1) to resume duty in the Defence Force refuses without reasonable cause to do so, his right to any compensation awarded to him under this Part shall cease as from the date on which he is required to resume such duty.

(3) The following provisions shall apply in relation to any officer required under subregulation (1) to resume duty in the Defence Force—

(a) the pensionable emoluments which he is paid shall not, without his consent, be less than the pensionable emoluments received by him immediately before the date of his discharge;

(b) the rank in which he is required to resume duty shall not be lower than the rank held by him immediately before the date of his discharge;

(c) his right to any compensation awarded to him under this Part shall cease as 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 a compensation under this Part.

73. Benefits to surviving spouse and children in respect of death in the course of duty

(1) if—

(a) an officer dies owing to—

(i) an injury received or from an illness contracted in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(ii) illness, which was not contracted initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties;

(b) an officer who has been awarded a compensation under regulation 69 dies owing to ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was awarded that compensation,

there shall be awarded to the surviving spouse, children and dependants, if any, a compensation calculated in accordance with the Second Schedule. Second Schedule

(2) The right of any spouse to a compensation awarded under subregulation (1) shall cease as from the date on which he or she remarries.

(3) Any compensation awarded under this regulation in respect of a child shall be paid to such person or persons as shall from time to time be determined by the Pensions Board and shall, in accordance with the determination of that Board, be paid in respect of one child or apportioned between any two or more of the children.

(4) If a child dies or ceases to be a child, the compensation awarded under this regulation in respect of the child shall cease or, if there are other children, shall be adjusted accordingly.

(5) Any compensation awarded under this regulation shall be in addition to any other pension or benefit payable under these Regulations.

(6) An officer who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purposes of this section, to be discharging his duties while he is so participating.

(7) Upon certification by the Board of Inquiry, an officer whose service is less than twenty years and who dies on active duty in or outside Malawi—

(a) during a state of national defence;

(b) in a peace-support operation under the international or regional body sanctioned by the Government;

(c) in any military operation in support of civil authorities; or

(d) in any military operation in respect of a state of disaster or emergency,

shall be entitled to full benefits as if he had served for a period of twenty years at the rank that he held at the time of his death regardless of the length of service actually completed.

74. Vocational training

(1) The Pensions Board may in its discretion refer the case of any disabled officer to a vocational board to consider the needs of the officer for vocational training.

(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.

(3) If the Pensions Board, after considering the report of a vocational board, considers that the disabled officer should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.

(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and such deductions in respect of the earnings of the disabled officer while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled officer may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this regulation, the Pensions Board may award the disabled officer a sum determined by the vocational board for the purchase of tools required by him in the vocation in which he has been trained.

(7) If a disabled officer refuses to undergo any vocational training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

75. Travelling and subsistence allowance payable to a disabled officer

(1) When a disabled officer is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo medical treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to sub-regulations (3) and (4), when a disabled officer is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled, during the period of necessary absence from home, to a subsistence allowance at the rate determined by the Minister from time to time.

(3) A disabled officer shall not be entitled to any subsistence allowance under subregulation (2)—

(a) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(b) if the period of absence from home is less than four hours.

(4) If a disabled officer is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof is required by the Pensions Board to

undergo a further medical examination, he shall not be entitled to any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

76. Further disablement of a disabled officer

If a disabled officer who has been awarded a disablement compensation continues to undergo military service and suffers a further disablement attributable to, or aggravated by, military service without any misconduct or serious negligence on his part, the Pensions Board shall award him a supplementary compensation, based on his rank and class, appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone.

77. Allowance in respect of nursing attendants

Where a disabled officer has been awarded a disablement compensation for one hundred per centum disablement and the Pensions Board is satisfied that his disablement necessitates the constant and continuous attendance of a nurse or other attendant, it may award such officer, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.

PART IX

GENERAL PROVISIONS RELATING TO PENSIONS, GRATUITIES AND OTHER BENEFITS

78. Calculations of pensions and gratuities

Subject to these Regulations—

(a) a pension payable to an officer under this Part or regulation 66 shall be calculated at the rate of one three-hundred sixtieth of his retiring pensionable emoluments in respect of each completed month of his pensionable service;

(b) a gratuity payable to an officer under this Part or regulation 66 shall be calculated at the rate of one-twelfth of his retiring pensionable emoluments for each completed year of his pensionable service.

79. Pensionable service

(1) Subject to these Regulations, the pensionable service with reference to which any pension, gratuity or other benefit is to be calculated shall be continuous from the date of enlistment.

(2) Pensionable service shall include—

(a) time spent on duty;

(b) time spent on leave;

(c) time spent on attachment or secondment to any other forces or any organization in accordance with this Act; and

(d) in the case of a person who, immediately before the date of commencement of these Regulations, was a member, the period of employment which, immediately before that

date, could, under the law-then applicable to him, have been taken into account in computing his pension.

(3) Where any person who has had previous service in the Regular Force is later engaged for service in the Regular Force under section 16 of the Act then, if—

(a) such person is not a disabled officer who is required to resume duty in the Regular Force under regulation 72 (1);

(b) the previous service terminated not more than two years prior to the date of such later engagement for service in the Regular Force; and

(c) no gratuity or pension or any terminal benefits were paid to such person in respect of the previous service,

the period of the previous service shall be reckoned as pensionable service.

(4) Pensionable service shall not include any period of service by an officer—

(a) while he is or was under the age of eighteen years, in the case of an officer enlisted—

(i) before the commencement of this Act; or

(ii) after the commencement of this Act and who is subsequently discovered to been enlisted while he was under that age contrary to section 19 (2); or

(b) in respect of which, by virtue of regulation 26, no pay was paid to him:

Provided that the pensionable service of an officer shall not be deemed to have been interrupted by the exclusion therefrom of any period of service referred to in paragraph (b).

(5) The period of pensionable service shall be calculated by the month, but fractions of a month shall be taken to the nearest whole month.

80. Benefits on resignation or compulsory retirement for ill-health

(1) An officer who resigns under regulation 6, if his pensionable service amounts to five or more years but less than ten years, or who is compulsorily retired for reasons of ill-health under section 15 of the Act if his pensionable service amounts to five or more years but less than seven years, shall be entitled to be paid the following benefits—

(a) a clothing grant of 1/30th of his basic pay per annum;

(b) a gratuity equivalent to three times his annual pay; and

(c) a sum equivalent to one day's pay at the rate applicable to him immediately before the date of his resignation or discharge for every complete period of thirty days' service spent on active service outside Malawi.

(2) In the calculation of complete periods of thirty days' service for the purposes of paragraph (c) of subregulation (1), all periods of service spent on active service outside Malawi shall be aggregated.

81. Benefits on retirement

An officer who retires shall be entitled to—

(a) if his pensionable service amounts to twenty or more years, or if he is compulsorily retired under section 15 of the Act having completed seven or more years' service but less than fourteen years, a gratuity at the rate prescribed in this Part;

(b) if his pensionable service amounts to twenty or more years or if he is compulsorily retired under section 15 of the Act having completed fourteen years' service or more, a pension at the rate prescribed in this Part.

82. Free medical attention in special cases

(1) In this regulation, "free medical attention" means—

(a) attention by a medical officer;

(b) treatment in a department of a Government hospital or institution; and

(c) accommodation in a ward of a Government hospital or institution,

and includes drugs and dressings but not surgical appliances other than splints.

(2) An officer who is in receipt of military pension shall be entitled to free medical attention.

(3) If any travelling by a medical officer or by a member who has retired is entailed in respect of such free medical attention, the cost of travelling shall not be borne by Government.

(4) This regulation shall not apply to the dependants of an officer who has retired.

83. Benefits on discharge or dismissal on prescribed grounds

An officer who is discharged or dismissed from the Force under section 14 or section 81 of the Act, and whose pensionable service amounts to ten or more years may be paid such gratuity and pension as the Defence Council may determine.

84. Benefits to dependants on death of a member or pensioner

(1) If an officer whose pensionable service amounts to fifteen or more years dies, there shall be paid to his dependants the amount of the gratuity which such officer would have been entitled to had he retired on the day immediately before the date of his death.

(2) If an officer whose pensionable service amounts to less than fifteen years dies, there shall be paid to his dependants a gratuity equivalent to three times his annual basic pay at the time of his death.

(3) If an officer who is receiving a pension under regulation 69 dies after the date of his retirement, the pension shall be paid to his dependants.

85. Commutation of pensions

(1) In this regulation, unless the context otherwise require—

"applicant" means an officer about to become entitled to a pension under regulation 66, 67, 79 or 81 who has applied under this regulation for the commutation of the whole or a portion of the pension to which he is about to become entitled;

(2) Subject to this regulation, an officer about to become entitled to a pension under of regulation 66, 67, 79 or 81 may apply to the Minister for the commutation of up to two-thirds of the pension to which he is about to become entitled.

(3) The Minister may, where an applicant is about to become entitled to a pension commute up to two-thirds of his total annual pension by single cash payment determined in accordance with subregulation (5).

(4) An application for the commutation of any portion of a pension up to one-third shall be made in Form No. 1 in the Third Schedule and shall be submitted to the Commander. Third Schedule

(5) The amount of the single cash payment to be made on the commutation of a pension shall be computed by multiplying the annual rate of pension to be commuted by the commutation factor shown in the Fourth Schedule in relation to the age of the applicant, calculated to the nearest half-year, or, where his age is midway between the half-years, to the half-year nearest above his age, at the date of his application for commutation: Fourth Schedule

Provided that where the age of the applicant at the date of his application for commutation is under 29 years and 6 months, the cash payment to be made shall be computed by multiplying the annual rate of pension to be commuted by such commutation factor as applicable to those whose nearest half age is 30 years.

(6) The commutation of a pension shall be effected on the date the applicant becomes entitled to his pension.

(7) For the purposes of this Part, Form 1 set out in Third Schedule and the Table set out in the Fourth Schedule shall, with such adaptations or modifications as the circumstances may require, be used and applied. Third Schedule, Fourth Schedule

86. Benefits not to be pledged or ceded

No pension, gratuity or other benefit payable under these Regulations or right to such pension, gratuity or benefit shall be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, and, in the event of the recipient attempting to assign, transfer or otherwise cede or pledge or hypothecate any pension, gratuity or other benefit payable under these Regulations or right to such pension, gratuity or other benefit, payment of the pension, gratuity or other benefit, may be withheld, suspended or entirely discontinued if the Minister so determines:

Provided that the Minister may direct the payment of the pension, gratuity or other benefit or part thereof to any one or more of the dependants of the recipient during such period as he may determine.

87. Conviction of pensioner

If an officer in receipt of a pension under those Regulations is convicted of any offence and is required to undergo a period of imprisonment exceeding three months, payment of his pension shall, in accordance with the directions, if any, of the Minister, be discontinued during the whole or part of the period of imprisonment:

Provided that the Minister may authorize 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 any dependant of the pensioner as the Minister may determine.

88. Forfeiture of pension

If any officer becoming entitled to or actually in receipt of a pension under these Regulations—

(a) is found guilty by a civil court—

(i) of misappropriating public moneys or property of the Government;

(ii) of making a false statement for the purpose of obtaining a pension,

knowing the statement to be false or not believing it to be true; or

(b) makes use of or discloses in an improper manner any information which he may have obtained in the course of his duties; or

(c) solicits or, without the consent of the Minister, accepts directly or indirectly any testimonial or gift of a pecuniary value in connexion with his service,

his right to his pension, shall, in accordance with the directions, if any, of the Minister be suspended, reduced or forfeited, as the case may be.

89. Deductions from pension, gratuity or other benefits

(1) The Minister may authorize the deduction from any pension, gratuity or other benefit to which an officer in receipt of a pension under these Regulations or his estate is entitled under this Part or Part VIII, any liquidated amount which that officer is liable to pay to the Government.

(2) No deduction shall be authorized under this regulation of a liquidated amount which the appropriate superior authority has, under regulation 36, authorized to be deducted from the pay and allowances due to an officer.

90. Proof of age, etc.

(1) An officer shall, if required, submit proof of the date of his birth.

(2) No payment of any gratuity to a widow shall be made until proof of marriage to and date of the death of the husband have been furnished.

(3) No gratuity in respect of a dependant shall be paid until proof has been furnished of the eligibility of that dependant for a pension under these Regulations.

(4) The proof required under this regulation shall be to the satisfaction of the Minister.

PART X

MISCELLANEOUS PROVISIONS

91. Marriage

No officer shall marry without obtaining the consent of the Commander.

92. Occupation of official quarters

An officer shall, if required by the Commander to do so, reside in official quarters.

93. Engagement for profit in trade or business

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, an officer shall not—

(a) engage for profit in any business or occupation other than official duties; and

(b) be or become a director or engage directly or indirectly in the management or directions of any public company or syndicate.

94. Active participation in politics

(1) No officer shall commit any act which is prescribed by this regulation as being an act constituting active participation in politics.

(2) Subject to subregulation (3), the following acts in relation to an officer are prescribed as being acts constituting active participation in politics—

(a) joining or being associated with an organization or movement of a political character;

(b) canvassing any person in support of or otherwise actively assisting an organization or a movement of a political character;

(c) displaying or wearing rosettes, favours, symbols, posters, placards or like articles having a political significance;

(d) attending a political meeting or assembly when wearing Defence Force uniform or any part thereof, likely to identify him with the Defence Force;

(e) asking questions from the floor at a political meeting;

(f) publishing views of a political character or causing them to be published in speeches, broadcasts, letters to the press, articles, leaflets, posters, placards, books or otherwise; and

(g) any other act or conduct whatever of an officer whereby the public might reasonably be induced to associate or identify him with an organization or movement of a political character.

(3) Nothing in subregulation (2) shall be construed as precluding an officer from—

(a) asking question from, the floor at a political meeting held with the permission of the Minister at which the audience consists only of persons in the employment of the Government;

(b) explaining Government policy relating to the Defence Force in the course of his duties;

(c) performing the duties of a returning officer, polling officer or like officer in a parliamentary, presidential or local authority election or a referendum;

(d) voting in parliamentary, presidential or local authority elections or participating in a referendum; and

(e) performing duties of his office at a political meeting or assembly.

(4) A trade union or employers' organization shall, for the purposes of subregulation (2) (a) and (b) be deemed to be an organization or movement of a political character.

95. Sale of effects of deserter

(1) If an officer deserts and there is no likelihood of his immediate arrest, the Commander may, on the expiration of one month after the date of promulgation of desertion, authorize the sale by auction of any private effects or personal property left by the officer.

(2) The proceeds of any sale of private effects or personal property of an officer who has deserted, together with the amount of any pay and allowances due to him at the date of desertion, shall be applied firstly to the liquidation of any sums due by that officer to the Government and the balance to be paid to the surviving spouse, children or dependants as the Commander may direct and, if none surviving, to the Government.

96. Funeral expenses

The amount of any reasonable expenses incurred in burying an officer including a pensioner shall be paid by the Government.

97. Messes and other institutions

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 the station to be members of that mess, institution, organization or association and to pay such subscriptions as are due by the members thereof.

FIRST SCHEDULE reg. 5

OATH OF ALLEGIANCE

I, ... having been granted a commission in the Regular Force of the Malawi Defence Force, do swear that I will be faithful and bear true allegiance to the Republic of Malawi. So help me God.

SECOND SCHEDULE reg. 73

RATES OF PENSION OR OTHER BENEFITS PAYABLE IN RESPECT OF SURVIVING SPOUSES, CHILDREN AND DEPENDANTS

1. If the officer entitled to a pension or other benefits dies intestate and unmarried such pension or other benefits should be distributed equally between his parents, and if he was an orphan, be paid to the next of kin.

2. If the officer entitled to a pension or other benefits dies intestate and there is a surviving spouse without children, such pension or other benefits should be distributed as follows—

(a) one half should be paid to the surviving spouse;

(b) one half should be distributed equally to the parents; or paid to the next of kin if he was an orphan at the time of his death.

3. If the officer entitled to a pension or other benefits dies intestate and there is a surviving spouse and children, such pension or other benefits should be distributed as follows—

(a) six eighths should be distributed equally to the children;

(b) one eighth should be distributed to the surviving spouse or equally to the surviving spouses;

(c) one eighth should be distributed equally between the parents or if there is no parent, be paid to the next of kin.

4. If the officer entitled to a pension or other benefits dies intestate and leaves children and no spouse such pension or other benefits should be distributed as follows—

(a) seven eighths should be distributed equally to the children;

(b) one eighth should be distributed equally to the parents or if there is no parent be paid to the next of kin; and

(c) one eighth should be paid to any person who, being a relation, undertakes to be guardian of the said children.

5. Any share of pension or other benefits that remains undistributed shall be distributed equally to the children or, where there are no children, to the other beneficiaries.

THIRD SCHEDULE reg. 85 (4) and (7)
PRESCRIBED FORMS
Form No. 1
APPLICATION FOR COMMUTATION OF PENSION
The Commander
Headquarters, Malawi Defence Force
LILONGWE

1. Full name of applicant (in block letters):
   Surname: .....
   Forenames: .....
2. Date of Birth .....
   (if not already produced, proof of this date is required)
3. Gross rate of pension per annum, K .....
4. Date of pension to commence: .....
5. Portion of pension up to one-third it is desired to commute: .....
   .....
.....
.....
6. Reasons for desiring to commute: .....
   .....
.....
.....
.....
.....
7. Give particulars of any income or earnings other than pension:
   .....
.....
.....

Solemn Declaration

8. I do solemnly and sincerely declare that I am not insolvent, and that no part of my pension has been assigned, ceded or otherwise transferred or pledged or hypothecated.

Date of application: .....
Signature of application: .....
Declared before me this ..... day of....., 20.....
.....
Commanding Officer/Appropriate Superior Authority

FOURTH SCHEDULE reg. 83 (5) and (7)
COMMUTATION FACTOR FOR COMMUTATION OF PENSION

Nearest half age			Commutation factor	Nearest half age	Commutation factor
30	23-38	53	19-09		
30½	23-31	53½	18-96		
31	23-25	54	18-83		
31½	23-18	54½	18-70		
32	23-12	55	18-57		
32½	23-05	55½	18-43		
33	22-98	56	18-30		
33½	22-91	56½	18-16		
34	22-84	57	18-03		
34½	22-77	57½	17-89		
35	22-70	58	17-76		
35½	22-62	58½	17-62		
36	22-55	59	17-48		
36½	22-47	59½	17-34		
37	22-40	60	17-20		
37½	22-32	60½	17-06		
38	22-24	61	16-92		
38½	22-16	61½	16-72		
39	22-07	62	16-64		
39½	21-99	62½	16-49		
40	21-91	63	16-35		
40½	21-82	63½	16-21		
41	21-73	64	16-06		
41½	21-64	64½	15-92		
42	21-55	65	15-78		
42½	21-46	65½	15-63		
43	21-36	66	15-48		
43½	21-26	66½	15-34		
44	21-17	67	15-19		
44½	21-07	67½	15-05		
45	20-97	68	14-90		
45½	20-86	68½	14-75		
46	20-76	69	14-60		
46½	20-65	69½	14-46		
47	20-54	70	14-31		
47½	20-43	70½	14-16		
48	20-32	71	14-01		
48½	20-20	71½	13-86		

49	20-08	72	13-71
49½	19-96	72½	13-56
50	19-84	73	13-41
50½	19-72	73½	13-27
51	19-59	74	13-12
51½	19-47	74½	12-98
52	19-34	75	12-84
52½	19-21		

DEFENCE FORCE (REGULAR FORCE) (CADET OFFICERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Engagement
4. Application of other Regulations
5. Selection Board
6. Qualification for selection
7. Grant of travel warrant and subsistence allowance while travelling
8. Subsistence allowance while attending Selection Board
9. Pay
10. Special training allowance
11. Classification of leave
12. Person empowered to grant leave
13. Pay and allowance during leave
14. Mid-course leave
15. Sick leave
16. Compassionate leave
17. Discharge of a cadet officer

G.N. 49/2004

DEFENCE FORCE (REGULAR FORCE) (CADET OFFICERS) REGULATIONS

under s. 17

1. Citation

These Regulations may be cited as the Defence Force (Regular Force) (Cadet Officers) Regulations.

2. Interpretation

In these Regulations, unless where the context otherwise requires—

"cadet officer" means a person engaged for training as a cadet officer in the Regular Force;

"candidate" means a person seeking appointment as a cadet officer;

"commandant" means the commanding officer of a military training institution;

"mid-course leave" means leave granted to a cadet officer during training as a cadet officer other than sick leave or compassionate leave;

"Other Ranks Regulations" means the Defence Force (Regular Force) (Other Ranks) Regulations;

"Selection Board" means the Board appointed under regulation 5;

"service" means service in the Regular Force and "serve" shall be construed accordingly;

"temporary engagement" means an engagement of no fixed period of time.

3. Engagement

The Commander may, in accordance with these Regulations, engage persons for service as cadet officers in the Regular Force on temporary engagement.

4. Application of other Regulations

To the extent that they are not inconsistent with these Regulations, the Other Ranks Regulations shall apply with any necessary modifications to a cadet officer as they apply in relation to a member, as defined in the Other Ranks Regulations, who has been engaged for service on an initial engagement.

5. Selection Board

(1) There shall be a board to be known as the Selection Board which shall have the function of selecting suitable persons for appointment as cadet officers and which shall consist of—

(a) the Director of Personnel who shall be the Chairperson;

(b) the Director of Training;

(c) the Commandant;

(d) Chief of Staff;

(e) Director of Medical Services;

(f) Head of Chaplaincy;

(g) Director of Legal Services; and

(h) Head of Education Services.

(2) The Selection Board shall have power to regulate its own procedure and to co-opt any person which it considers suitably qualified to assist it with its deliberations and other business.

6. Qualification for selection

(1) Where a candidate is seeking appointment as a cadet officer direct from the civil life he must be eighteen years or over, but under twenty-five years of age.

(2) Where a candidate is already a member of the Regular Force, the upper age limit for engagement as a cadet officer shall, except in exceptional case, be thirty years.

(3) The minimum education requirements for a candidate shall be a Malawi School Certificate of Education, or its equivalent, with credit passes in six subjects, one of which shall be the English language.

7. Grant of travel warrant and subsistence allowance while travelling

Where a candidate is called to attend an interview by the Selection Board, he shall—

(a) be issued with transport refund in respect of the journey for the cheapest and most direct mode of transport;

(b) for the period while travelling to the place appointed for the interview, and while returning to his place of residence, be paid a subsistence allowance at the rate as may be determined by the Minister from time to time.

8. Subsistence allowance while attending Selection Board

While a candidate is attending for an interview by the Selection Board at the place appointed, he shall be paid a subsistence allowance at the rate to be determined by the Minister from time to time.

9. Pay

(1) Upon appointment as a cadet officer, the cadet officer shall be paid at the annual rate of pay as may be determined by the Minister from time to time.

(2) Where, immediately prior to his appointment as a cadet officer the cadet was a member of the Regular Force in receipt of an annual rate of pay higher than that prescribed for a cadet officer, the initial annual rate of pay applicable to him on such appointment shall, until such time as he becomes entitled under these Regulations to be paid at a higher rate, be his former rate of pay.

10. Special training allowance

(1) When attending an approved course of instruction within or outside Malawi a cadet officer shall be entitled to special training allowance determined by the Minister on the recommendation of the Defence Council.

(2) In the case of training outside Malawi, the training allowance shall be so determined as to cover expenses of the cadet while on holiday during the training period.

11. Classification of leave

For the purpose of these Regulations, leave shall be divided into the following classes—

(a) mid-course leave;

(b) sick leave; and

(c) compassionate leave.

12. Person empowered to grant leave

The commandant may, in accordance with these Regulations, grant mid-course leave, sick leave or compassionate leave to a cadet officer.

13. Pay and allowance during leave

(1) Where a period of leave with pay is granted to a cadet officer under these Regulations, the cadet officer shall, in respect of such period be entitled to his pay and any other allowances for which he is eligible.

(2) Where a period of leave with half pay is granted to a cadet officer under these Regulations, the cadet officer shall, in respect of such period, entitled to be paid half the amount of his pay and the full amount of any allowances for which he is eligible.

14. Mid-course lease

A cadet officer may, during any year of his period of training as a cadet officer, be granted mid-course leave with pay for a period or periods not exceeding in the aggregate fourteen days.

15. Sick leave

A cadet officer may at any time be granted sick leave for a period not exceeding thirty days provided that when the period exceeds fourteen days, the cadet officer shall furnish a medical certificate as to the state of his health to the commandant at the end of every month.

16. Compassionate leave

A cadet officer may be granted compassionate leave with full pay for a period or periods not exceeding in the aggregate ten days during his period of training as a cadet officer.

17. Discharge of a cadet officer

A cadet officer may be discharged by an appropriate superior authority at any time during the course of training—

(a) on the ground of any act of indiscipline;

(b) for unsatisfactory performance; or

(c) if for any reason given to him in writing, he is considered to be unfit to be a member of the Defence Force.

DEFENCE FORCE (IMPRISONMENT AND DETENTION) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Control of detention barracks
4. Appointment of commandants
5. General duties
6. Offences against detention barracks discipline
7. Power to try offences against detention barracks discipline
8. Punishment of offences against detention barracks discipline
9. Punishment book
10. Review
11. Smoking
12. Cleanliness
13. Clothing
14. Diet

15. Accommodation
16. Visitors
17. Illness and medical attention
18. Award of marks for good conduct and attention to military instruction
19. Forfeiture of marks on conviction by court-martial, prescribed officer or civil court
20. Remission of sentence
21. Temporary release from detention
22. Release from detention
23. Declaration of detention barracks
24. Issue of warrant for imprisonment

G.N. 50/2004

DEFENCE FORCE (IMPRISONMENT AND DETENTION) REGULATIONS

under s. 137

1. Citation

These Regulations may be cited as the Defence Force (Imprisonment and Detention) Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context—

"commandant" means the officer appointed as the commandant of a detention barracks in terms of regulation 4 (1);

"detention barracks" means the detention cells for the detention of members under sentence, declared to be detention barracks in accordance with regulation 23;

"member under sentence" means a member of the Defence Force undergoing a sentence of detention in any detention barracks.

3. Control of detention barracks

Subject to these Regulations, the control of all detention barracks is hereby vested in the Commander.

4. Appointment of commandants

(1) The Commander shall appoint an officer of the Regular Force to be the commandant of a detention barracks.

(2) The commandant shall be the officer in charge of that barracks and shall be responsible for the management, in accordance with these Regulations, of the barracks.

5. General duties

(1) The commandant shall—

(a) subject to these Regulations, enforce such daily routine for members under sentence in the detention barracks as may be specified by the Commander;

(b) be responsible for the efficiency of all members of the staff of the detention barracks; and

(c) keep a journal and record therein any occurrence of importance relating to the management of the detention barracks, not being a matter entered in the punishment book referred to in regulation 9.

(2) The commandant or an officer, warrant officer of non-commissioned officer authorized by him in that behalf shall visit every member under sentence each day at intervals of not less than three hours.

6. Offences against detention barracks discipline

The acts specified in the First Schedule shall be offences against detention barracks discipline when committed by a member under sentence. First Schedule

7. Power to try offences against detention barracks discipline

(1) Subject to this regulation, the commandant may, within the detention barracks, hear and determine a charge against a member under sentence in respect of any offence against barracks discipline.

(2) No member under sentence shall be found guilty of an offence against detention barracks discipline unless he has had an opportunity of hearing the charge and evidence against him and of making his defence.

(3) Any evidence given against a member under sentence charged with an offence against detention barracks discipline shall be given on oath:

Provided that—

(a) any person objects to taking an oath, and states as the grounds 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.

8. Punishment of offences against detention barracks discipline

(1) The commandant may impose any one or more of the following punishments on a member under sentence who has been found guilty of an offence against detention barracks discipline—

(a) solitary confinement for a period not exceeding three days;

(b) spare diet for a period not exceeding three days;

(c) forfeiture of any or all of the marks awarded under regulation 18; and

(d) extra military instruction.

(2) Spare diet shall consist of such food and drink as the commandant, in consultation with a medical officer, may in each case determine.

(3) A member under sentence on whom the punishment of spare diet has been imposed shall, during the period that he is undergoing such punishment, be visited daily by a medical officer.

(4) Subject to this regulation, the commandant shall report his decision, and any action in respect of the decision, to the appropriate superior authority.

9. Punishment book

The commandant shall keep a punishment book in which shall be entered—

(a) the name, number and rank of any member under sentence who has been found guilty of an offence against detention barracks discipline;

(b) the date on which such offence was committed and the nature of the offence;

(c) the punishment imposed for such offence.

10. Review

(1) Where the commandant has found a member under sentence guilty of an offence against barracks discipline and has imposed any punishment on him, the finding and punishment may be reviewed by the appropriate superior authority.

(2) Where on review under this regulation it appears to the Commander expedient so to do by reason of any mistake of law or of anything occurring in the proceedings which, in the opinion of the appropriate superior authority, involved substantial injustice to the member under sentence, the appropriate superior authority may quash the finding and punishment.

(3) Where, on review under this regulation, it appears to the appropriate superior authority that a punishment imposed was invalid or too severe or, if two or more punishments were imposed, that those punishments taken together were too severe, the appropriate superior authority may quash the punishment or punishments imposed by the commandant and may substitute in place thereof such punishment or punishments as he may think proper, being a punishment or punishments which could have been imposed under regulation 8 and not being more severe than the punishment or punishments imposed by the commandant.

11. Smoking

A member under sentence shall be permitted to smoke at such times and in such places as may be specified by the commandant.

12. Cleanliness

A member under sentence shall keep himself clean and decent in his person and shall carry out such orders as the commandant may give regarding washing, hair-cutting and shaving.

13. Clothing

A member under sentence shall be issued with a sufficient supply of clothing, bed-clothes, and towels and during severe weather and in any special case recommended by a medical officer, shall be issued with additional clothing and bed-clothes.

14. Diet

Except in the case of a member under sentence on whom the punishment of spare diet has been imposed under regulation 8, the diet for members under sentence shall be on the same scale as for other members of the Regular Force of equivalent rank.

15. Accommodation

(1) No room in a detention barracks shall be used for confining members under sentence unless it is—

(a) furnished with a means of enabling such members to communicate at any time with a member of the detention barracks staff; and

(b) certified by a medical officer to be of such size and to be lighted, warmed, ventilated and fitted in such a manner as may be requisite for the health of members under sentence.

(2) Members under sentence shall be confined either in separate rooms or with at least three such members in one room.

16. Visitors

Persons wishing to visit a member under sentence shall be permitted to do so at such times, for such periods and at such places as the commandant may arrange, but the commandant may for sufficient cause refuse to permit a person to visit a member under sentence.

17. Illness and medical attention

The commandant shall without delay call the attention of a medical officer to any member under sentence who appears to require medical attention and shall carry into effect any written directions which a medical officer may give him respecting alterations to the treatment of a member under sentence.

18. Award of marks for good conduct and attention to military instruction

(1) The commandant or an officer authorized by him in that behalf may award marks to a member under sentence proportionate to his good conduct and attention to military instruction in accordance with the following provisions—

(a) in respect of each day on which such member undergoes military instruction, one mark may be awarded for good conduct and one mark for attention to military instruction;

(b) in respect of each day on which such member does not undergo military instruction for a reason other than a reason mentioned in paragraph (c) or (d), one mark may be awarded for good conduct;

(c) in respect of each day on which such member does not undergo military instruction by reason of a punishment having been imposed upon him under regulation 8, no marks shall be awarded; and

(d) in respect of each day on which such member does not undergo military instruction by reason of illness, and a medical officer certifies that such illness has not been brought about by the misconduct of such member, marks may be awarded according to his previous good conduct and attention to military instruction.

(2) In awarding marks under subregulation (1), the capability of the member under sentence shall be taken into account.

(3) All marks awarded to a member under sentence shall be recorded in a book kept for that purpose.

(4) Nothing contained in these Regulations shall be construed as prohibiting the award of marks under subregulation (1) to a member under sentence—

(a) on whom the punishment of forfeiture of marks has been imposed under regulation 8; or

(b) who has been convicted of an offence under the Act and has thereby forfeited the marks awarded to him under subregulation (1) which were standing to his credit on the date of his conviction.

19. Forfeiture of marks on conviction by court martial, prescribed officer or civil court

If, after the date on which he commences to undergo his sentence of detention, a member under sentence commits an offence under the Act and is convicted thereof by a court-martial, prescribed officer or civil court, any marks awarded to him under regulation 18 which are standing to his credit on the date of his conviction shall be forfeited.

20. Remission of sentence

(1) A member under sentence who has been awarded the maximum number of marks for which he is eligible under regulation 18 shall be entitled—

(a) if the period of his sentence is twenty-eight days or more, to a remission of one-quarter of the whole sentence;

(b) if the period of his sentence is less than twenty-eight days, to a remission of the number of days specified in the second column of the Second Schedule which are set out opposite the total number of days specified in the second column of the Second Schedule which are set out opposite the total number of days of his sentence specified in the first column of the said Schedule. Second Schedule

(2) A member under sentence who has been awarded less than the maximum number of marks for which he is eligible under regulation 18 shall be entitled to a remission of his sentence proportionate to the number of marks which he has been awarded.

(3) In the calculation of the period of remission to which a member under sentence is entitled under this regulation, periods of less than one day shall be disregarded.

21. Temporary release from detention

(1) If the appropriate superior authority is satisfied that special circumstances exist which justify the temporary release of a member under sentence, he may, by warrant under his hand in the form prescribed in the Third Schedule, authorize the release of such member from the detention barracks in which he is undergoing detention for such period as is specified in the warrant. Third Schedule

(2) Subject to these Regulations, a member under sentence shall, on the expiry of the period specified in the warrant authorizing his temporary release, undergo that portion of the sentence of detention imposed on him which, at the date of his temporary release, he was liable to undergo.

22. Release from detention

The commandant shall release a member under sentence from detention—

(a) in accordance with the terms of any warrant issued by the appropriate superior authority under regulation 21; and

(b) on the expiration of the period of detention to which he has been sentenced, less any remission of sentence to which he is entitled under regulation 20.

23. Declaration of detention barracks

The detention cells erected at each of the places mentioned in the Fourth Schedule are declared to be detention barracks for the purpose of these Regulations. Fourth Schedule

24. Issue of warrant for imprisonment

(1) The appropriate superior authority will issue a warrant for the imprisonment in civil prison of a member sentenced to imprisonment by a court-martial under the Act provided that such sentence has been confirmed and promulgated.

(2) A warrant issued in terms of subregulation (1) shall be in the form prescribed in the Fifth Schedule. Fifth Schedule

FIRST SCHEDULE reg. 6

OFFENCES AGAINST DETENTION BARRACKS DISCIPLINE

1. Treating with disrespect the commandant or any other member of the detention barracks staff.
2. Failing to return to the detention barracks on the termination of a period of temporary release.
3. Without the permission of the commandant or of any other member of the detention barracks staff—
   (a) absenting himself from any parade;
   (b) leaving his room or place of work;
   (c) giving to or receiving from any other member under sentence any article whatsoever;
   (d) conversing with any other member under sentence.
4. Swearing, cursing or using abusive, insolent, threatening or indecent language.
5. Committing an indecent act or gesture.
6. Signing, whistling or creating any unnecessary noise or disturbance.
7. Committing any nuisance.
8. Failing to be attentive during instruction.
9. Having in his possession any article which he is not authorized to be in possession of in the detention barracks.
10. Smoking at a time or in a place not specified by the commandant in terms of regulation 11.

SECOND SCHEDULE reg. 20

MAXIMUM REMISSION OF SENTENCE FOR MEMBER UNDER SENTENCE UNDERGOING LESS THAN TWENTY-EIGHT DAYS DETENTION

Total sentence reckoned in days	Maximum number of days remission
27	6
26	6
25	6
24	6
23	5

22	.....	5
21	.....	4
20	.....	4
19	.....	3
18	.....	3
17	.....	2
16	.....	0
15	.....	1
14 and under	.....	Nil

THIRD SCHEDULE reg. 21
DEFENCE FORCE ACT
(CAP. 12:01)
WARRANT ISSUED IN TERMS OF REGULATION 21 OF THE DEFENCE FORCE (IMPRISONMENT AND DETENTION) REGULATIONS

To the commandant of the detention barracks at

WHEREAS (No.) ..... (rank) ..... (name) ..... (unit) ..... a member of the Regular Force, is at present undergoing a sentence of detention in the detention barracks at .....

AND WHEREAS I am satisfied that special circumstances exist which justify the temporary release of the said member:

NOW, THEREFORE, under and by virtue of the powers vested in me by regulation 21 of the Defence Force (Imprisonment and Detention) Regulations, I do hereby require and authorize you to release the said member from the said detention barracks for a period of ..... commencing on the ..... day of ....., 20 .....

FOR WHICH THIS SHALL BE YOUR WARRANT

Given under my hand at ..... on the ..... day of ....., 20 .....

.....
Appropriate Superior Authority

FOURTH SCHEDULE reg. 23
DETENTION BARRACKS

1. Cobbe Barracks, Zomba
2. Moyale Barracks, Mzuzu
3. Kamuzu Barracks, Lilongwe
4. Marine Unit, Monkey Bay
5. Support Battalion, Mvera
6. Chilumba Garrison
7. Malawi Defence Force College, Salima
8. Zomba Air Base
9. Lilongwe Air Base
10. Parachute Battalion, Senga Bay, Salima
11. Bakili Muluzi 9th Battalion

FIFTH SCHEDULE reg. 24
DEFENCE FORCE ACT
(CAP. 12:01)
WARRANT ISSUED IN TERMS OF REGULATION 24 OF THE DEFENCE FORCE (IMPRISONMENT AND DETENTION) REGULATIONS

To: The officer in charge, civil prison at

WHEREAS (No.) ..... (rank) ..... (name) ..... (unit) ..... a member of the Regular Force, was by court-martial under the Defence Force Act convicted of the offence of ..... and by a sentence promulgated on the ..... day of ..... , 20 ....., sentenced to be imprisoned for ..... commencing on the aforesaid day, and such sentence has been confirmed.

NOW THEREFORE, I do hereby, in pursuance of regulation 24 of the Defence Force (Imprisonment and Detention) Regulations require you to receive the said member into your custody and to detain him to undergo his sentence according to the law relating in civil prisons.

Given under my hand at ..... on the ..... day of ....., 20 .....
.....
Appropriate Superior Authority

DEFENCE FORCE (BOARDS OF INQUIRY) RULES
ARRANGEMENT OF RULES

RULE

1. Citation
2. Interpretation
3. Duties of boards
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5. Deferring and staying of proceedings
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G.N. 51/2004

DEFENCE FORCE (BOARDS OF INQUIRY) RULES

under s. 138

1. Citation

These Rules may be cited as the Defence Force (Boards of Inquiry) Rules.

2. Interpretation

In these Rules, except where the context otherwise requires—

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

"board" means board of inquiry appointed under rule 7;

"chairperson" means chairperson of a board appointed under rule 7;

"civilian witness" means a person, not subject to service law, who gives evidence before 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 (any person entitled under the law for the time being in force to practice as a legal practitioner in Malawi) 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 the term representative shall be construed accordingly.

3. Duties of boards

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, make such declaration or recommendation or to express their opinion on any question out of any such matter.

4. Matters for reference to boards

(1) Subject to 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 21 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;

(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;

(ii) that, having been made a prisoner of war, he failed to take any reasonable steps available to him to rejoin the Defence Force;

(iii) that, having been made a prisoner of war, he served with or aided the enemy in the prosecution of active hostilities or in the execution or furtherance of measures calculated to influence morale or in any other manner whatsoever not authorized by international conventions or usage; or

(c) the circumstances causing or attending the death of any person, where an injury into the cause of death, or the circumstances attending it, is not required to be held by any civil authority.

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

5. Deferring and staying of proceedings

(1) Subject to subrule (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 outside Malawi), and if—

(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, inquiry or proceedings as aforesaid, and, upon completion thereof, the authority shall not be required to convene a board, if satisfied that a board is not necessary in relation to that matter; or

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

(2) Subrule (1) shall not apply to the convening of a board with reference to such absence or 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 other legally constituted military forces, and the authority is satisfied that an inquiry into the absence is being or will be held under service law, then—

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

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

6. Convening of board

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

(a) the Defence Council;

(b) any officer not below the rank of lieutenant colonel;

(c) any officer who is acting for the time being in place of such an officer; or

(d) any officer commanding a unit or detachment of the Defence Force, with reference to such absence or such deficiency (if any) as are mentioned in rule 4 (1) (a); or if so

authorized by the Defence Council or by any such officer as is mentioned in paragraph (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 of convening a board—

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

(b) the order 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) the order shall be published in military orders;

(c) the order may direct the board to make a declaration or recommendation or express their opinion on any question arising out of any matter referred to the board; and

(d) the authority may at any time revoke, vary or suspend the order.

7. Constitution of board

(1) Subject to subrule (2), a board shall consist of a chairperson who shall be an officer subject to service law not below the rank of lieutenant. In addition such other officers or warrant officers subject to service law may be appointed as members of the board as the authority convening the board may determine and appoint in the order convening the board.

(2) Where a board is convened with reference to such absence or deficiency (if any) as are mentioned in rule 4 (1) (a), the board shall consist of a chairperson 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 chairperson by name and the other members of the board (if any), either by name, or by detailing a commanding officer to appoint from persons under his command an officer or warrant officer of a specified rank.

8. Assembly and procedure

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

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

9. Adjournment and reassembly

(1) The chairperson 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 subrule (1), the authority may at any time, if it appears necessary or desirable, direct that the board shall reassemble for such purpose or purposes (in relation to the matter that is the subject of the inquiry) as may be specified by the authority.

10. Witnesses

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

(2) While a civilian witness is giving evidence before a board he may be represented, but, subject to rule 11, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

11. Persons who may be affected by the findings

(1) Where it appears to the authority or, if a board has been convened, either to the authority or to the chairperson, 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 chairperson shall take such steps as are in his view reasonable and necessary to secure that such witness or such 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 of the proceedings thereof as the authority or, as the case may be, the chairperson may specify.

(2) Any such witness or other person as is referred to in subrule (1) may give evidence, cross-examine witnesses, or produce any witness to give evidence on the matters which may affect him and, if he is represented, his representative may cross-examine witnesses, but a representative shall not address the board except with the permission of the chairperson.

(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 who may be affected in his character or professional reputation by the findings of the board.

(4) If any such witnesses, or other person as is referred to in subrule (1) and subrule (3), does not avail himself of his right to be present, or to be represented at the sittings of the board, the chairperson may, and shall if requested by such a person as aforesaid, take all necessary measures to 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 chairperson shall request such person as aforesaid to furnish in writing his comments thereon within a reasonable time to be fixed by the chairperson. Such comments shall then be attached to the record of the proceedings.

12. Evidence

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 proceedings in a court of law in Malawi.

13. Oaths and affirmations

(1) Subject to subrule (4) every witness before a board convened under rule 4 (1) shall be examined on oath in accordance with rule 33 of the Defence Force (Rules of Procedure).

(2) Subject to subrule (4) every witness before a board shall be examined on oath where the convening authority so directs:

Provided that where a 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.

(3) Subject to subrule (4), an oath shall be administered to a person in attendance on a board as interpreter where a witness is examined on oath.

(4) If—

(a) any 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;

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

(5) An oath shall he administered, or an affirmation shall be made, before a board in the form and manner prescribed by the Defence Force (Rules of Procedure).

14. Exhibits

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

(2) Where 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 chairperson 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 distinguishing reference number or letter and be signed by the chairperson, or have a label affixed to it bearing a distinguishing reference number or letter and the signature of the chairperson; and

(b) be attached 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 subrule (3) (b), the chairperson shall ensure that proper steps are taken for its safe custody.

15. Record of proceedings

(1) The chairperson shall record in writing, or cause to be so recorded, the proceedings of the board and in sufficient detail as to constitute a true, full and correct record as will follow the course, tenor and effect 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.

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

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

16. Entries of reports in service books

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 section 130 (1) of the Act, be entered in accordance with Defence Council instructions in the service books.

17. Free copy of proceedings

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.

DEFENCE FORCE (MEDICAL AND PENSIONS BOARDS) REGULATIONS

under s. 241

G.N. 52/2004

1. Citation

These Regulations may be cited as the Defence Force (Medical and Pensions Boards) Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context—

"medical practitioner" means a person registered as a medical practitioner under any law having effect in Malawi;

"Pensions Appeal Board" means the Defence Force Pensions Appeal Board established by regulation 5 (1);

"Pensions Board" means the Defence Force Pensions Board established by regulation 4 (1);

"private medical practitioner" means any medical practitioner other than a medical officer in the Regular Force or Militia or a medical officer of the Ministry of Health;

"Secretary for Defence" means the person who is for the time being the Principal Secretary of the Ministry of Defence;

3. Medical boards

(1) The Secretary for Defence may from time to time, at the request of the Commander, constitute a medical board for the purpose of examining and reporting upon the state of health of one or more members of the Defence Force.

(2) A medical board constituted under subregulation (1) shall consist of the Director of Medical Services and two other medical practitioners appointed by the Secretary for Defence in consultation with the Secretary for Health.

(3) A medical board for the purpose of making a finding on the question whether a member of the Defence Force is mentally or physically unfit for further service shall be constituted in the manner prescribed in subregulations (1) and (2).

(4) The Commander may at any time order a member of the Defence Force to present himself for and to submit to a medical examination by a medical board.

4. Defence Force pensions

(1) There shall be established the Defence Force Pensions Board.

(2) The Pensions Board shall consist of not less than three members who shall be appointed by the Secretary for Defence and representing—

(a) the Ministry of Defence who shall be the chairperson;

(b) the Defence Force;

(c) the department of Human Resource Management and Development; and

(d) the Accountant General's department.

(3) In the absence of the chairperson at any meeting of the Board, the members present shall elect one of their number to be the chairperson for that meeting.

(4) A majority of the members shall form a quorum at any meeting of the Pensions Board.

(5) On any question before the Pensions Board the chairperson shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(6) The Pensions Board may co-opt any person to be a member of the Board with regard to certain matters but such person shall have no power to vote.

(7) The Pensions Board shall have power to determine its own procedure for the conduct of its business.

5. Defence Force Pensions Appeal Board

(1) There shall be established the Defence Force Pensions Appeal Board.

(2) The Pensions Appeals Board shall consist of not less than three members who shall be appointed by the Defence Council and may include persons who are not members of the Defence Force or who are not members of the Ministry of Defence.

(3) The Defence Council shall appoint one of the members of the Pensions Appeals Board to be the chairperson of the Board.

(4) In the absence of the chairperson at any meeting of the Pensions Appeal Board, the members present shall elect one of their number to be the chairperson for that meeting.

(5) A majority of the members shall form a quorum at any meeting of the Pensions Appeal Board.

(6) On any question before the Pensions Appeal Board the chairperson shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) If a member of the Pensions Appeal Board is prevented by illness, absence from Malawi or any other reason whatsoever from exercising his functions on that Board, the Defence Council may appoint another person to act for such member during his absence.

(8) The Pensions Appeal Board shall have power to determine its own procedure for the conduct of its business.

6. Vocational Boards

(1) The Secretary for Defence may from time to time, at the request of the Commander, constitute a vocational board for the purposes of considering a case referred to it by the Pensions Board in respect of a disabled member of the Defence Force.

(2) A vocational board shall consist of—

(a) a representative of the Ministry of Defence who shall be the chairperson;

(b) a medical practitioner appointed by the Secretary for Health;

(c) the Director of Personnel in the Defence Force; and

(d) a vocational training specialist appointed by the Secretary for Labour.

(3) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board for the purposes of determining whether a disabled member should undergo vocational training and receive additional pension or allowance.

(4) A majority of the members shall form a quorum at any meeting of the vocational board.

(5) A vocational board shall have power to determine its own procedure and to co-opt any person to assist it in its deliberations.

7. Functions of the Boards

A board established or constituted by or under these Regulations shall have such powers as are conferred and shall perform such duties as are imposed upon it by the Act or by regulation.

DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS

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6. Charges with which a commanding officer may deal summarily
7. Restriction on power of punishment of commanding officer
8. Limitation of punishment of acting ranks, etc.
9. Charges with which the Commander or appropriate superior authority may deal summarily
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11. Limitation of powers of commanding officer below field rank
12. Limitation of powers of subordinate commanders
13. Limitation of powers of detachment commanders
14. Punishment of stoppages

15. Powers of appropriate superior authority to reduce in rank

G.N. 53/2004

DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Summary Jurisdiction) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"pay" means basic rate of pay plus allowances other than marriage allowance, housing allowance and ration allowance;

"subordinate commander" means, except where otherwise expressly provided, the officer commanding a company or equivalent sub-unit.

3. Commanding officer when more than one unit is placed under the command of one officer

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.

4. Delegation of his powers by commanding officer

(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 relation to disciplinary matters, the power to investigate and deal summarily with charges with which he himself may so deal:

Provided that such delegation shall not include—

(a) the power to remand the accused for trial by court-martial; or

(b) the power to order the taking of a summary of evidence or the making of an abstract of evidence.

(2) When a commanding officer delegates the power to investigate and deal summarily with charges in accordance with subregulation (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.

5. Status of officers to whom the commanding officer has delegated powers

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.

6. Charges with which a commanding officer may deal summarily

A commanding officer may deal summarily with a charge under any of the following sections of the Act: 38; 39 (c); 42; 43 (2); 44; 45; 47; 48; 49; 50; 51 (1) (a); 52; 53 (1) (a), (c), (d), (2); 54 (a), (c); 55; 63; 64 (2); 65; 66; 69; 70; 71; 73; 76 (where the principal offence can be dealt with summarily by virtue of this regulation); 77 and 80 (where the civil offence is one which is specified in the Schedule to these Regulations).

7. Restriction on power of punishment of commanding officer

A commanding officer shall not award—

(a) punishment of detention where the charge is laid under section 80 of the Act and the civil offence is one of those referred to in items (3), (4) or (5) of the Schedule; or

(b) the punishment of stoppages exceeding one-half of a month's pay in case of a warrant officer or any lower rank than a warrant officer without written permission from the appropriate superior authority.

8. Limitation of punishment of acting ranks, etc.

(1) After a corporal or lance-corporal has been reduced to a lower rank in accordance with section 88 (5) of the Act, his commanding officer shall not, without the written permission of the appropriate superior authority, award him any punishment in respect of an offence which he had committed before he was so reduced.

(2) After an acting warrant officer or acting non-commissioned officer has been converted 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 section 88 (4) of the Act, his commanding officer shall not, without the written permission of the appropriate superior authority, award him any punishment in respect of an offence which he had committed before he was so reverted, or, as the case may be, ordered to assume a lower acting rank.

9. Charges with which the Commander or appropriate superior authority may deal summarily

The Commander may deal summarily with a charge against an officer of the rank of colonel and above, and an appropriate superior authority may deal summarily with a charge against an officer below the rank of colonel or against a warrant officer under any of the following sections of the Act—

38; 39 (c); 42; 43 (2); 44; 45; 47; 48; 49; 50; 51 (1) (a); 52; 53 (1) (a) (where the subject matter does not exceed in value two thousand Kwacha); 55; 63; 64 (2); 65; 66; 69; 70; 71; 73; 76 (where the principal offence can be dealt with summarily by virtue of this regulation); 77 and 80 (where the civil offence is one which is specified in the Schedule).

10. Limitation of powers of commanding officer of field rank

A commanding officer of field rank may award any of the following punishments—

(a) to a second lieutenant or lieutenant—

(i) a fine of a sum not exceeding the equivalent of one month pay;

(ii) severe reprimand;

(iii) reprimand; and

(iv) stoppages (of pay) not exceeding seven days pay.

(b) to a soldier—

(i) imprisonment for a period not exceeding forty-two days;

(ii) a fine not exceeding a quarter of month pay;

(iii) admonition;

(iv) stoppages (of pay) not exceeding seven days pay; and

(v) any other minor field punishment.

11. Limitation of powers of commanding officer below field rank

A commanding officer of the rank of captain or of corresponding rank may only award the following punishments to a private soldier—

(a) imprisonment for a period of not exceeding twenty-eight days;

(b) a fine not exceeding a quarter of one month pay;

(c) admonition;

(d) stoppages (of pay) up to four days pay;

(e) any other minor field punishment.

12. Limitation of powers of subordinate commanders

(1) A subordinate commander of the rank of major or of a corresponding rank to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 may only award the following punishments—

(a) to a non-commissioned officer—

(i) a fine not exceeding the equivalent of one month pay;

(ii) severe reprimand;

(iii) reprimand; and

(iv) admonition;

(b) to a private soldier—

(i) imprisonment for a period not exceeding twenty-one days;

(ii) a fine not exceeding the equivalent of one-half of one month pay;

(iii) admonition; and

(iv) other minor field punishment.

(2) A subordinate commander of the rank of captain or corresponding rank to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 may only award the following punishments—

(a) to a staff sergeant or sergeant—

(i) reprimand; and

(ii) admonition;

(b) to a corporal or lance-corporal—

(i) a fine not exceeding the equivalent of a quarter of one month pay;

(ii) severe reprimand;

(iii) reprimand; and

(iv) admonition;

(c) to a private soldier—

(i) imprisonment for a period not exceeding fourteen days;
(ii) a fine not exceeding the equivalent of a quarter of one month pay;
(iii) admonition; and
(iv) any other minor field punishment.

13. Limitation of powers of detachment commanders

(1) The officer commanding a detachment may be restricted from exercising all or any of his powers as commanding officer under these Regulations by the Commander if it appears necessary to do so, having regard to the rank and experience of the officer commanding the detachment.

(2) Where an officer commanding a detachment has had his powers restricted in accordance with subregulation (1), he may, notwithstanding such restricted powers, exercise his full and unrestricted 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 such full and unrestricted powers, he shall immediately report his action to the Commander or appropriate superior authority.

14. Punishment of stoppages

The appropriate superior authority shall not award the punishment of stoppages (of pay)—

(a) exceeding one-half of a month's pay in the case of an officer below the rank of colonel; and

(b) exceeding one-third of a month's pay in the case of a warrant officer, non-commissioned officer or private soldier.

15. Powers of appropriate superior authority to reduce in rank

For the purposes of section 28 of the Act, the appropriate superior authority is authorized to order a reduction in rank in respect of any warrant officer or any no-commissioned officer.

SCHEDULE (regs. 6 and 12)

CIVIL OFFENCES WHICH MAY BE DEALT WITH SUMMARILY BY THE COMMANDING OFFICER AND THE APPROPRIATE SUPERIOR AUTHORITY

1. Theft where the subject matter does not exceed five thousand Kwacha in value.
2. Common assault contrary to section 253 of the Penal Code. Cap. 7:01
3. Insulting the modesty of a woman contrary to section 137 (3) of the Penal Code.
4. Reckless or negligent driving of a vehicle contrary to section 126 of the Road Traffic Act. Cap. 69:01
5. Unauthorized acts in relation to a vehicle without the consent of the owner, operator or person in lawful charge of a vehicle contrary to section 129 of the Road Traffic Act.

DEFENCE FORCE (REGULAR FORCE) (OTHER RANKS) REGULATIONS

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G.N. 54/2004
DEFENCE FORCE (REGULAR FORCE) (OTHER RANKS) REGULATIONS
under s. 241
PART I
PRELIMINARY

1. Citation

These Regulations may be cued as the Defence Force (Regular Force) (Other Ranks) Regulations.

2. Interpretation

In these Regulations except where the context requires—

“catechist” means a member appointed as a catechist in the Defence Force.

“child”, in relation to a member, means an unmarried son or daughter, under the age of eighteen years, of that member with a recognized spouse;

"colour service" means service in the Regular Force;

"dental officer" means—

(a) an officer appointed as a dental officer in the Regular Force;

(b) a dental surgeon of the Ministry of Health; or

(c) any other person registered in Malawi as a dentist and authorized by the Minister to carry out the functions of a dental officer under these Regulations.

"dependant", in relation to a living or deceased member or other person, means such persons as, in the opinion of the Minister, are or were financially dependent on that member or person;

"disabled member" means a member or person who was a member, who is suffering from disablement which is attributable to, or which has been aggravated by military service without any misconduct or serious negligence on the part of the member;

"the Force" means the Regular Force of the Defence Force;

"the Government" means the Government of Malawi;

"gratuity" means a lump sum payment calculated in accordance with regulation 60;

"leave", in relation to a member, means leave of absence from the duties of that matter;

"medical board" means a medical board constituted under regulation 3 of the Defence Force (Regular Force) (Other Ranks) Regulations;

"medical officer" means—

(a) an officer appointed as a medical officer in the Force;

(b) a medical officer of the Ministry of Health;

(c) any other person registered in Malawi as a medical practitioner and 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 in Malawi under any law;

"member" means a warrant officer, a non-commissioned officer or soldier attested in the Force;

"officer" means an officer commissioned or attested in or attached or seconded or loaned to or serving with the Force, but does not include any person who is—

(a) appointed to honorary commissioned rank; or

(b) the holder of an honorary appointment;

"official quarters" means quarters provided by the Government;

"other employment in the service of the Government or a cooperating force" means pensionable employment, otherwise than as a member of the Defence Force, under the Government of a cooperating force;

"pay" means the basic rate of pay plus service and rank increments;

"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 a member, means the pay due to that member under these Regulations, together with any cash allowance paid to him in lieu of rations or the value of such rations;

"pensionable service" means pensionable service in accordance with regulation 61;

"Pensions Appeal Board" means the Defence Force Pensions Appeal Board established by regulation 5 of the Defence Force (Medical and Pensions Boards) Regulations;

"Pensions Board" means the Defence Force Pensions Board established by regulation 4 of the Defence Force (Regular Force) (Other Ranks) Regulations;

"private medical practitioner" means any medical practitioner other than a medical officer;

"recognized spouse", in relation to a member, means a spouse of that member recognized for the purposes of these Regulations by the commanding officer of his unit;

"resignation", in relation to a member, means resignation from his employment in the Defence Force under regulation 8 and "resign" shall be construed accordingly;

"retirement", in relation to a member, means retirement from his employment in the Defence Force under regulation 9 and "retire" shall be construed accordingly;

"retiring pensionable emoluments", in relation to a member who retires, is discharged or dies, means the annual rate of pensionable emoluments receivable by him at the date on which his retirement or discharge takes effect or on which he dies, as the case may be;

"service" means service in the Defence Force, and "serve" shall be construed accordingly;

"service property" means any property of the Defence Force or of any mess or other institution, organization or association whatsoever of officers or members of the Defence Force;

"surviving spouse", in relation to a deceased member, means a recognized spouse of the member, but does not include a person who was separated, whether by order of court or otherwise, from the member at the date of his death;

"training" means a course of training within or outside Malawi approved by the Defence Force.

"unit", in relation to a member, means the unit in which that member is serving.

3. Non-application of these Regulations

These Regulations shall not apply to—

(a) a member who is attached or seconded to any other military forces outside Malawi by virtue of section 9 of the Act, unless the terms and conditions of his attachment or secondment as fixed or approved by the Minister provide that these Regulations, or any of them, shall apply;

(b) any member of any other military force who has been loaned or seconded for service with the Force by virtue of an agreement for that purpose entered into between the Government and the Government of the other country concerned, or between the Government and any international organization, unless the agreement provides that these Regulations, or any of them, shall apply: or

(c) a member serving with the Force by virtue of a contract of service entered into between that member and the Government for service with the force, unless the contract provides that these Regulations, or any of them, shall apply.

4. Application of M.P.S.R.

Where no provision is contained in these Regulations in respect of any matter for which provision is made and in force in the Malawi Public Service Regulations, the said provision of the Malawi Public Service Regulations shall, in respect of such matter, apply mutatis mutandis to such persons as are subject to these Regulations, and shall so apply in like manner and extent as if the said provision of the Malawi Public Service Regulations were a provision of these Regulations.

PART II

ENGAGEMENT, PROMOTION AND DISCHARGE

5. Classes of engagement

For the purposes of these Regulations, there shall be the following classes of engagement of members in the Force—

(a) initial engagement;

(b) permanent engagement; and

(c) short service engagement.

6. Engagement of members

(1) The Commander may, on the terms and conditions prescribed by these Regulations, engage persons for service as members on initial engagements.

(2) On the application of a person engaged for service as a member on an initial engagement who has completed the period of his engagement the Commander may, on the terms and conditions prescribed by these Regulations, engage such person for service as a member on a permanent engagement.

(3) A person engaged for service as a member under this regulation may be appointed by the Commander to such rank, other than commissioned rank, as he determines.

(4) Every member who, immediately prior to the date of commencement of these Regulations was serving—

(a) on an unexpired engagement of seven years or five years shall be deemed to have been engaged under subregulation (1) for service on an initial engagement;

(b) on an unexpired continuous engagement shall be deemed to have been engaged under subregulation (2) for service on a permanent engagement.

(5) Members of the same rank shall take seniority from the date of their enlistment. Seniority among them by rank shall be in the following order—

(a) Sergeant Major (WO Class I)

(b) Sergeant Major (WO Class II)

(c) Staff Sergeant

(d) Sergeant;

(e) Corporal;

(f) Lance corporal

(g) Private

(6) Notwithstanding other provisions of this regulation, no person shall be eligible to be engaged as a member under these Regulations if he has served as a member of the Militia.

7. Period of engagement

Subject to these Regulations, the period of engagement of a member who is engaged for service—

(a) on an initial engagement shall be seven years colour service and five years with the Reserve Force;

(b) on a short service engagement shall be a period of up to five years;

(c) on a permanent engagement, shall be continuous until the member attains the age of fifty-five years.

8. Restriction of right to resign or retire from Regular Force

No member shall be at liberty to resign or retire from his employment in the Force during his period of engagement except as provided by regulation 9 or 10.

9. Resignation and right of soldier to purchase discharge

(1) A member engaged for service on an initial engagement may, with the consent of the Commander, resign or purchase his discharge from his employment in the Force during his period of engagement—

(a) at any time within three months after the date of his first attestation upon payment of a seven days pay for each uncompleted year of service with the Force;

(b) at any time during his initial engagement after the first three months with the consent of the Commander upon payment of fifteen days pay for each uncompleted year of service with the Regular Force.

(2) The Commander shall not consent to the resignation of a member in terms of subregulation (1) where section 22 of the Act applies.

(3) A member engaged for service on a permanent engagement who is not entitled or required to retire from his employment in the Force in terms of regulation 10 may resign from his employment in the Force during his period of engagement if—

(a) he gives three months' notice in writing to the Commander of his intention to do so, or any shorter period of such notice which the Commander, having due regard to the best interests of the Force, may deem proper to accept; and

(b) he pays to the Government any amount which he is liable to pay thereto under these Regulations—

Provided that no such notice shall be valid if it is given while the member is—

(a) on leave;

(b) on active service; or

(c) where section 22 of the Act applies.

10. Retirement

(1) A member whose pensionable service amounts to fifteen years may retire; from his employment in the Force on giving three months' notice in writing to the Commander of his intention to do so and on paying to the Government any amount which he is liable to pay to the Government in terms of these Regulations:

Provided that no such notice shall be valid if it is given while the member is—

(a) on leave;

(b) on active service; or

(c) where section 22 of the Act applies.

(2) The Minister may, on notice of twelve months, require a member whose pensionable service amounts to fifteen years to retire from his employment in the Force.

(3) A member shall, whatever the length of his pensionable service, retire from his employment in the Force on attaining the age of fifty-five years.

11. Re-engagement gratuity

(1) A member who, after completing the period of his initial engagement, is engaged for service on a permanent engagement and agrees, at the date on which he is engaged for service on a permanent engagement or within three years thereof, to serve for a period of three years calculated from the date on which he so agrees shall be paid a gratuity equal to—

(a) ninety days' pay at the daily rate of pay which was applicable to him on the last day of his initial engagement; and

(b) if he was, on the last day of his initial engagement, in receipt of a marriage allowance, ninety days' marriage allowance.

(2) A member who has been paid a gratuity under subregulation (1) and who resigns or retires from his employment in the Force before the expiry of the period for which he has agreed to serve shall be liable to pay to the Government a sum calculated in accordance with the following provisions—

(a) if his resignation or retirement takes effect before the expiry of one year of the period for which he has agreed to serve, the whole amount of the gratuity;

(b) if his resignation or retirement takes effect after the expiry of one year but before the expiry of two years of the period for which he has agreed to serve, two-thirds of the amount of the gratuity; and

(c) if his resignation or retirement takes effect after the expiry of two years but before the expiry of the whole period for which he has agreed to serve, one-third of the amount of the gratuity.

12. Gratuity on non-re-engagement

A member who, after completing the period of his initial engagement, is not re-engaged for service, shall be entitled to a gratuity calculated at one month's basic pay at the time of discharge for each year completed.

13. Promotions and making of appointments

The Commander may—

(a) promote or temporarily appoint a member to any rank other than Commissioned rank; and

(b) appoint a member to act in any higher rank other than commissioned rank.

14. Discharge certificate

(1) If—

(a) the period of engagement of a member has expired and he is not re-engaged for further service; or

(b) a member resigns under these Regulations or is, under section 26 or 82 of the Act, discharged or dismissed from the Force,

he shall be issued with a discharge certificate signed by the Commander setting forth the following particulars—

(i) his name;

(ii) the length of his service in the Force;

(iii) his rank and character at the date of resignation, discharge or dismissal as the case may be: Provided that no character assessment shall be made for members discharged for disciplinary reasons under section 22 or 71 of the Act.

(2) In no circumstances shall a duplicate of a discharge certificate be issued, but a certified copy of a discharge certificate alleged to have been lost or destroyed may be supplied to the person to whom it relates on production of adequate proof of its loss or destruction, as the case may be.

15. Discharge of recruits

A person undergoing basic military training as a recruit may be discharged by the appropriate superior authority at any time during the course of training—

(a) on the ground of any act of indiscipline;

(b) for unsatisfactory performance; or

(c) if for any reason given to him in writing, he is considered to be unfit to be a member of the Defence Force.

PART III

PAY AND ALLOWANCES

16. Pay

Subject to these Regulations, a member shall be entitled to receive pay at such rates as may be determined by the Minister.

17. Pay on promotion

(1) When a member is temporarily appointed to higher rank, the rate of pay applicable to him shall, during the subsistence of his temporary appointment, be the rate prescribed for that higher rank.

(2) When a member is appointed to act in a higher rank, the rate of pay applicable to him shall be that which was applicable to him immediately before he was appointed.

(3) For the purpose of this regulation an appointment to higher rank includes an appointment to a higher class within the same rank.

18. Trade pay allowances

(1) The Commander may institute such tests as he may consider necessary for the purpose of classifying members in trade groups according to their standards of efficiency in a trade.

(2) A member who is successful in passing a test instituted in terms of subregulation (1) shall be classified accordingly and shall, if he is thereafter employed as a tradesman, be paid a trade pay allowance at the rate prescribed in the First Schedule for a member classified in the trade group which is applicable to him. First Schedule

19. Marriage allowance

(1) A married member who is maintaining a recognized spouse shall be paid a marriage allowance at the rate of twenty-four per cent of one month basic pay.

(2) If the recognized spouse of a member dies and that member is maintaining a child, the member shall be paid a marriage allowance at the rate of twenty-four per cent of one month basic pay.

(3) The Commander may direct that an allowance payable under subregulation (1) shall instead of being paid to the member, be paid to his recognized spouse.

20. Special marriage allowance when serving on duty outside Malawi

(1) A married member who has unrecognized spouse shall be paid a special marriage allowance in respect, of the spouse and each child when serving on duty outside Malawi or when outside Malawi for the purpose of attending an approved course of study, training or instruction, or for any other approved purposes connected with the duties of his employment.

(2) The special marriage allowance under subregulation (1) shall be paid at such rates as the Minister shall determine in respect of the spouse and each child.

(3) A special marriage allowance shall not be paid—

(a) in addition to marriage allowance;

(b) in respect of either spouse who is a member and is on such duty or course at the same time as the other spouse;

21. Warm clothing allowance

(1) A member proceeding on training or a course of instruction or on duty to a cold climate country shall be entitled to be paid a warm clothing allowance as may be determined by the Minister from time to time:

Provided that a period of three years shall elapse before the member qualifies for another entitlement to such allowance.

(2) For the purposes of this regulation, cold climate country is one which lies wholly or principally outside the latitude of 30 degrees north or south of the Equator.

22. Field allowance

A member shall, in respect of any period during which he serves on active duty and any such other period as the Minister may determine, be paid field allowance as the Minister may determine from time to time.

23. Disturbance allowance

A member who is posted on transfer not at his own request shall be entitled, where he is a house-holder and he is obliged to transfer his household effects, to an allowance equivalent to—

(a) 1/30th of his monthly pay if the transfer is from one station to another; and

(b) 1/60th of his monthly pay if the transfer is local.

24. Rations

A member shall be issued with free rations or be paid a cash allowance in lieu thereof as determined by the Minister.

25. Regimental sergeant-major's allowance

A Member who holds—

(a) the appointment of Defence Force sergeant-major shall be paid an allowance at the rate of twenty per cent of one month basic pay;

(b) the appointment of brigade sergeant-major shall be paid an allowance at the rate of eighteen per cent of one month basic pay;

(c) the appointment of—

(i) regimental sergeant-major;

(ii) garrison sergeant-major,

shall be paid an allowance at the rate of fifteen per cent of one month basic pay; and

(d) the appointment of company sergeant-major or equivalent appointment, shall be paid an allowance at the rate of twelve per cent of one month basic pay.

26. No pay or allowances in certain circumstances

Notwithstanding these Regulations, a member shall not be paid any pay or allowances in respect of any period which—

(a) he is undergoing a sentence of imprisonment, detention or field punishment imposed under the Act by a court-martial, prescribed officer 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:

Provided that a marriage allowance payable under regulation 19 or 20 shall be paid in respect of—

(i) the first twenty-eight days of any period during which the member is undergoing any such sentence of imprisonment, detention or field punishment;

(ii) the first twenty-eight days of any period during which the member is being so treated as an in-patient at a hospital;

(iii) the first seven days of any period during which the member is so absent.

27. Deductions from pay and allowances

(1) The commanding officer or appropriate superior authority may authorize the deduction from the pay and allowances due to a member in terms of these Regulations of—

(a) any liquidated amount which that member is liable to pay to the Government or to any mess, institution, organization or association whatsoever of members of the Defence Force;

(b) any amount which that member 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.

(2) If, after examining the proceedings of any board of inquiry, the commanding officer or appropriate superior authority is satisfied—

(a) that loss or destruction of or damage to Government property or service property has been occasioned by the deliberate or negligent act of a member; and

(b) that such member will not be charged before a court-martial, appropriate superior authority 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 member in terms of these or any other Regulations of such amount, not exceeding—

(i) the value of the loss, destruction or damage; or

(ii) 10 per cent of his monthly pay,

whichever is the less, as in the circumstances he may deem equitable compensation for the loss, destruction or damage.

(3) Any member from whose pay and allowance a deduction has been made in terms of subregulation (2) may, within the period of fourteen days immediately following the date when the deduction was made, appeal in writing to the Minister through his commanding officer or appropriate superior authority, against such deduction and the Minister may confirm, modify or set aside the deduction.

PART IV

LEAVE

28. Classification of leave

For the purposes of this Part, leave shall be divided into the following classes—

(a) study leave;

(b) vacation leave;

(c) sick leave;

(d) compassionate leave;

(e) embarkation leave;

(f) disembarkation leave;

(g) travel leave; and

(h) maternity leave.

29. Persons empowered to grant leave, pay and allowances during leave

(1) The commanding officer or appropriate superior authority, may in accordance with this Part, grant that member leave of any class other than compassionate leave.

(2) Where the commanding officer or appropriate superior authority of a member's unit has granted leave to the member under subregulation (1), he may authorize the payment in advance of the whole or any part of the pay and allowances due to the member in respect of a period of leave granted to him.

(3) Where a period of leave with pay is granted to a member under this Part, the member 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.

(4) Where a period of leave with half pay is granted to a member under this Part, the member 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.

30. Study leave and special training allowance

(1) A member may be granted a study leave with full pay for a period not exceeding two years for the purpose of pursuing further studies at a recognized institution within or outside Malawi.

(2) When attending an approved course of instruction within or outside Malawi a member shall be entitled to a special training allowance as determined by the Minister on the recommendation of the Defence Council.

31. Accrual of vacation leave

(1) The vacation leave year shall be the same as the financial year of the Government.

(2) Vacation leave shall accrue to a member at the rate of twenty-eight days for each leave year. If a member attests during a leave year, he shall, at the discretion of the commanding officer, be granted a proportion of the vacation leave for that year.

(3) Vacation leave shall not accrue to a member under this regulation in excess of fifty-six days.

32. Grant of vacation leave

(1) A member may be granted vacation leave with pay for any period or part thereof which has accrued to him under regulation 28.

(2) If a member 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 up to a maximum of fifty-six days.

33. Sick leave

(1) A member may at any time be granted sick leave with full pay on the following conditions—

(a) when the period exceeds ninety days, the member shall furnish a medical certificate as to the state of his health to his commanding officer or appropriate superior authority at the end of every month; and

(b) after one hundred and eighty days a medical board shall be convened for the purpose of assessing his suitability to continue in the service.

(2) If a member is absent from duty or detained in hospital on the orders of a medical officer, and, in the opinion of the commanding officer or appropriate superior authority, such absence or detention is rendered necessary by the misconduct of the member, the commanding officer or appropriate superior authority may direct that the period of such absence or detention be taken as vacation leave, or, if the member is not eligible for the grant of any vacation leave or is eligible for the grant of a period of vacation leave which is insufficient for the purpose, that such period be deducted from any period of vacation leave which may subsequently accrue to the member.

34. Compassionate leave

(1) A member wishing to absent himself from duty on compassionate grounds who—

(a) is not eligible for the grant of any period of vacation leave; or

(b) is eligible for the grant of a period of vacation leave which is insufficient for the purpose,

may be granted compassionate leave with pay for such period as the commanding officer or appropriate superior authority may determine.

(2) A member shall only be granted compassionate leave if all periods of vacation leave which he is eligible to be granted are taken in conjunction therewith.

35. Embarkation and disembarkation leave

(1) A member may be granted fourteen days embarkation leave with pay immediately prior to proceeding on active service or other duty outside Malawi provided in the case of other duty he is out of Malawi for a minimum of six months.

(2) A member may be granted fourteen days disembarkation leave with pay immediately after his return from active service or other duty outside Malawi provided that in the case of other duty he is out of Malawi for a minimum of six months.

36. Travel leave

A member who has been granted vacation leave for a period of not less than twenty-eight days may be granted travel leave with pay for the period during which he is travelling to and from his leave destination.

37. Maternity leave

(1) A female member may be granted maternity leave with full pay for ninety days from the expected date of confinement; but the member granted maternity leave may return to work at any time before the expiry of the period of confinement.

(2) In this regulation, "date of confinement" means the date of birth of a child, whether living or not, after thirty-four weeks of pregnancy, but in the event of still birth occurring during the first thirty-four weeks of pregnancy the maternity leave in accordance with subregulation (1) shall apply.

PART V

FREE TRAVELING FACILITIES

38. Traveling facilities on engagement or discharge

(1) A person engaged for service on an initial engagement shall be granted free traveling facilities from his place of residence to the place where he is required to report:

Provided that if his place of residence is outside Malawi, such facilities shall only be granted from the place on the borders of Malawi which is nearest to his place of residence.

(2) A member who—

(a) is discharged or dismissed from the Defence Force under the Act; or

(b) completes the period of his initial engagement and is not engaged for service on a permanent engagement; or

(c) resigns or retires during the period of his engagement,

shall be granted free traveling facilities to his place of residence in Malawi or, if he resides outside Malawi, to the place on the borders of Malawi nearest to his place of residence.

39. Traveling facilities on leave

A member who has been granted—

(a) vacation leave for a period of not less than twenty-eight days; or

(b) embarkation leave; or

(c) disembarkation leave; or

(d) compassionate leave; or

(e) study leave; or

(f) maternity leave,

shall be granted free traveling facilities to and from his leave destination on one occasion per year except in relation to embarkation, disembarkation and compassionate leave when free travelling facilities may be granted at the discretion of the commanding officer:

Provided that if his leave destination is outside Malawi such facilities shall only be granted to and from the point on the borders of Malawi which is nearest to his leave destination.

40. Traveling facilities for dependants

(1) If the commanding officer of a member's unit is satisfied that the recognized spouse and children of that member are suitable for accommodation in official quarters, he may grant such spouse and children free traveling facilities from their place of residence to the place where the member is stationed and back to their place of residence:

Provided that if their place of residence is outside Malawi, such facilities shall only be granted to and from the place on the borders of Malawi which is nearest to their place of residence.

(2) The free travelling facilities mentioned in subregulation (1) shall be granted only once during the period of engagement of a member:

Provided that—

(a) if the member is separated from the recognized spouse and children owing to the exigencies of service and the spouse and children are ordered to leave official quarters, such facilities may at the discretion of the commanding officer of the member's unit be granted more than once;

(b) if a member is transferred to another station within Malawi and the commanding officer of the member's unit approves of his recognized spouse and children being transferred with him they may be granted free travelling facilities to the station to which he is transferred.

(3) If a member dies while the recognized spouse and children are occupying official quarters, they shall be granted free traveling facilities to their home:

Provided that if their home is outside Malawi such facilities shall only be granted to the place on the borders of Malawi which is nearest to their home.

PART VI

MEDICAL BENEFITS

41. Medical examination

The commanding officer or appropriate superior authority may at anytime order a member to present himself for and to submit to a medical examination at the expense of the Government by—

(a) a medical officer;

(b) a private medical practitioner; or

(c) a medical board.

42. Medical treatment

(1) A member shall, while stationed or on leave within Malawi, and while outside Malawi on active service or other duty, be entitled to receive medical treatment by a medical officer free of charge.

(2) If the recognized spouse and any child of a member resides with him in official quarters, they shall be entitled to receive medical treatment by a medical officer free of charge.

43. Dental treatment

A member shall, while stationed or on leave within Malawi and while outside Malawi on active service or other duty, be entitled to free dental treatment by a dental officer in respect of himself.

44. Treatment by oculists, etc.

If in the examination and treatment of a member's eyes by an oculist is authorized by a medical officer, any costs thereby incurred shall be paid by the Government.

PART VII

DRESS AND EQUIPMENT

45. Clothing and personal equipment

(1) An issue of clothing and personal equipment shall be made to a member from time to time.

(2) Any clothing and personal equipment issued to a member shall remain the property of the Government and the member may at any time be ordered by the commanding officer of his unit to return all or any items thereof.

(3) A member who fails when ordered to do so, to return any item of clothing or personal equipment issued to him 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.

(4) Any item of clothing or personal equipment issued to a member which is rendered unserviceable through fair wear and tear shall be replaced or repaired, as necessary, at the expenses of the Government.

(5) A member shall be entitled to receive a clothing and upkeep allowance as may be determined by the Minister from time to time.

46. Wearing of uniform

(1) A member shall not wear any article of uniform which he is not authorized.

(2) Any member who contravenes subregulation (1) shall be guilty of an offence punishable under the Act.

PART VIII

DISABLEMENT BENEFITS

47. Functions of Pensions Board and Pensions Appeal Board

(1) The right of any person to an award under this Part and the amount of such award shall be determined by the Pensions Board in accordance with this Part.

(2) Within six months after the date on which any decision of the Pensions Board has been communicated to a claimant under this Part such claimant may, by notice in writing to the Pensions Board, appeal to the Pensions Appeal Board.

(3) On any such appeal, the Pensions Appeal Board may confirm the decision of the Pensions Board or may, subject to these Regulations, vary such decision and the decision of the Pensions Appeal Board shall be given effect to by the Pensions Board.

48. Review of awards

The Pensions Board may at any time review, amend or withdraw any award made under this Part which—

(a) has been incorrectly made by error in interpretation or fact; or

(b) it has reason to believe has been obtained by improper means.

49. Administration of awards

Any award payable to or in respect of any person under this Part may, in the discretion of the Pensions Board and for reasons deemed by it to be sufficient, be administered under such conditions as the Pensions Board may determine instead of being paid to the grantee.

50. Benefits on discharge for ill-health in certain circumstances

If the unfitness for further service of a disabled member is due for ill-health, physical or mental incapacity or personal injury occasioned without any misconduct or serious negligence on his part, he shall be awarded—

(a) if his pensionable service amounts to less than ten years, a gratuity at the rate prescribed in regulation 60; and

(b) if his pensionable service amounts to ten or more years, a pension at the rate prescribed in regulation 60.

51. Compensation in respect of ill-health occasioned by the discharge of duty

(1) Subject to this regulation, if the unfitness for further service of a disabled member is due to ill-health, physical or mental unfitness, physical or mental incapacity, or personal incapacity or personal injury—

(a) which was occasioned in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(b) which was not occasioned initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties,

he shall be awarded a compensation payable and calculated in accordance with the Defence Force (Compensation for Injuries Regulations).

(2) If a member who is suffering from ill-health, physical or mental unfitness, physical or mental incapacity, or personal injury—

(a) which was occasioned in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(b) which was not occasioned initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties,

is not discharged and if, at the date on which he resigns or retires or is under the Act, discharged or dismissed from the Defence Force, he is still suffering from such ill-health, physical or mental unfitness, physical or mental incapacity or personal injury, he shall be awarded a compensation calculated in accordance with subregulation (1) (ii), and based upon the annual rate of his pensionable emoluments at the date of his disablement.

(3) For the purposes of subregulation (1), the date of disablement of a member means the date on which the ill-health, physical or mental unfitness, or physical or mental incapacity commenced or on which the personal injury was received or on which the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury was first aggravated to a material extent, as the case may be, or if such date cannot be ascertained, the date fixed by the Pensions Board as the date of disablement.

(4) If a person resumes duty in the Defence Force in terms of regulation 54 and if, at the date on which he resigns or retires or is, under the Act, finally discharged or dismissed from the Defence Force he is still suffering from ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was previously awarded a compensation under this section, he shall be awarded a compensation calculated in accordance with subregulation (2).

(5) Any compensation payable under this regulation shall be in addition to any compensation or other benefit payable under these Regulations.

(6) A member who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purpose of this regulation, to be discharging his duties while he is so participating.

52. Free medical attention and other benefits

(1) In this regulation—

"free medical attention" means—

(a) attention by a medical officer;

(b) treatment in a department of a Government hospital or institution; and

(c) accommodation in a ward of a Government hospital or institution,

and include drugs, dressings, proprietary preparations and surgical appliances and, in special cases authorized by the Pensions Board, attention and treatment by a person recommended by the Board and accommodation at a hospital or institution other than a Government hospital or institution.

(2) A disabled member who has been awarded a compensation under regulation 51 shall be entitled to free medical attention in respect of ill-health, physical or mental unfitness, physical or mental incapacity or personal injury which occasioned the award.

(3) Subject to subregulations (4) and (5), when a disabled member is required by the Pensions Board to make a journey in order to be medically examined or to undergo medical treatment or for any other purpose, he shall be entitled—

(a) to travel at the expense of the Government in such class of travel as the Minister may determine; and

(b) to be paid such subsistence allowance as the Minister may determine.

(4) A disabled member shall not be entitled to an allowance under subregulation (3) (b)—

(a) for any period during which he is being maintained at a hospital or institution; or

(b) if the period of his absence from home is less than four hours.

(5) If a disabled member is, owing to his own misconduct, unfit to undergo a medical examination at the appointed time and place and in consequence thereof is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any allowance under regulation, (3) (b) for any period during which he is necessarily absent from his home for the purpose of undergoing such further medical examination.

53. Medical examination or treatment of disabled member

(1) Any person who has been awarded a compensation under this Part may at any time be required by the Pension Board to submit a medical examination or undergo medical or surgical treatment involving no appreciable risk to his life.

(2) If any person referred to in subregulation (1) fails to submit himself to the examination or to undergo treatment required by the Pensions Board his right to any pension awarded to him under this Part shall cease as from the date on which he fails to do so:

Provided that if at any time thereafter such person submits to the examination or undergoes the treatment required by the Pensions Board such pension shall be revived with effect from the date on which he submits himself to that examination or undergoes that treatment.

54. Resumption of duly by disabled member

(1) If a disabled member who has been awarded a compensation is within two years of the date of his discharge, certified by a special medical board to be fit for duty in the Force and has not attained the age of fifty years, he may, subject to subregulation (3), be required by the Minister to resume duty in the Defence Force.

(2) If a person required to resume duty in the Defence Force in terms of subregulation (1) refuses without reasonable cause to do so, his right to any compensation awarded to him under these Regulations shall cease as from the date on which he is required to resume such duty.

(3) The following provisions shall apply in relation to any person required to resume duty in the Defence Force under subregulation (1)—

(a) the pensionable emoluments which he is paid shall not, without his consent, be less than the pensionable emoluments received by him immediately before the date of his discharge;

(b) the rank in which he is required to resume duty shall not be lower than the rank held by him immediately before the date of discharge;

(c) his right to any compensation awarded to him under this Part shall cease as from the date of his resumption of duty; and

(d) his pensionable service shall not be deemed to have been interrupted by the period during which he was receiving a compensation under this Part, but that period shall not form part of his pensionable service.

55. Benefits to surviving spouse and children in respect of death in the course of duty

(1) If—

(a) a member dies owing to—

(i) an injury received or from an illness contracted in and by the discharge of his duties without any misconduct or serious negligence on his part; or

(ii) illness, which was not contracted initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties;

(b) a member who has been awarded a compensation under regulation 51, dies owing to the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was awarded that compensation,

there shall be awarded to the surviving spouse, children and dependants, if any, a compensation calculated in accordance with the Second Schedule. Second Schedule

(2) The right of any spouse to a compensation awarded to that spouse under subregulation (1) shall cease as from the date on which he or she remarries.

(3) Any compensation awarded under this regulation in respect of a child shall be paid to such person or persons as shall from time to time be determined by the Pensions Board and shall, in accordance with the determination of such Board, be paid in respect of one child or apportioned between any two or more of the children.

(4) If a child dies or ceases to be a child, the compensation awarded under this regulation in respect of the child shall cease or, if there are other children, shall be adjusted accordingly.

(5) Any compensation awarded under this regulation shall be in addition to any other compensation or benefit payable under these Regulations.

(6) A member who is participating in any regimental sport, recreational training, display or competition authorized by the commanding officer of his unit shall be deemed, for the purposes of this Part, to be discharging his duties while he is so participating.

(7) Upon certification by the Board of Inquiry, any officer who dies—

(a) during a state of national defence;

(b) in a peace-support operation under an international or a regional body sanctioned by the Government;

(c) in any military operation in support of civil authorities; or

(d) in any military operation in respect of a disaster,

shall be entitled to full benefits as if he had served for a period of twenty years at the rank that he held at the time of his death regardless of the length of service actually completed.

56. Vocational training for disabled member

(1) The Pensions Board may in its discretion refer the case of training for any disabled member to a vocational board for the member's vocational training.

(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.

(3) If the Pensions Board, after considering the report of a vocational board, considers that the disabled member should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.

(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and such deductions in respect of the earnings of the disabled member while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled member may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this regulation, the Pensions Board may award the disabled member an amount determined by the vocational board for the purchase of tools required by him in the vocation in which he has been trained.

(7) If a disabled member refuses to undergo any vocational training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

57. Traveling and subsistence allowance payable to a disabled member

(1) When a disabled member is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo medical treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to sub-regulations (3) and (4), when a disabled member is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled, during the period of necessary absence from home, to a subsistence allowance at the rate determined by the Minister from time to time.

(3) Except as otherwise provided under the Act, a disabled member shall not be entitled to any subsistence allowance under subregulation (2)—

(a) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(b) if the period of absence from home is less than four hours.

(4) If a disabled member is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof he is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

58. Further disablement of a disabled member

If a disabled member who has been awarded a disablement compensation continues to undergo military service and suffers a further disablement attributable to, or aggravated by, military service without any misconduct or serious negligence on his part, the Pensions Board shall award him a supplementary compensation, based on his rank and class, appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone.

59. Allowance in respect of nursing attendants

Where a disabled member has been awarded a disablement compensation for one hundred per centum disablement and the Pensions Board is satisfied that his disablement necessitates the constant and continuous attendance of a nurse or other attendant, it may award such member, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.

PART IX

GENERAL PROVISIONS RELATING TO PENSIONS, GRATUITIES AND OTHER BENEFITS

60. Calculation of pensions and gratuities

(1) Subject to these Regulations—

(a) a pension payable to a member under this Part or regulation 50 shall be calculated at the rate of one six hundredth of his retiring pensionable emoluments in respect of each completed month of his pensionable service; and

(b) a gratuity payable to a member under this Part or regulation 50 shall be calculated at the rate of one-twelfth of his retiring pensionable emoluments for each completed year of his pensionable service.

(2) The minimum entitlement of any member in respect of any pension or the aggregate of any pensions to which he is entitled under any one or more of regulations 50, 51, 63 and 66 shall be five per cent of his annual basic pay at the time of his retirement.

61. Pensionable service

(1) Subject to these Regulations, the pensionable service with reference to which any pension, gratuity or other benefit is to be calculated shall be continuous from the date of enlistment.

(2) Pensionable service shall include—

(a) time spent on duty;

(b) time spent on leave;

(c) time spent on attachment or secondment to any other force or organization in accordance with the Act; and

(d) in the case of a person who, immediately before the date of commencement of these Regulations, was a member, the period of employment which, immediately before that date, could, in terms of the law then applicable to him, have been taken into account in computing his pension.

(3) Where any person who has had previous service in the Regular Force is later engaged for service in the Regular Force under section 5 of the Act, then, if—

(a) such person is not a disabled member who is required to resume duty in the Regular Force under regulation 54 (1);

(b) the previous service terminated not more than two years prior to the date of such later engagement for service in the Regular Force; and

(c) no gratuity or pension or any terminal benefits were paid to such person in respect of the previous service,

the period of the previous service shall be reckoned as pensionable service.

(4) Pensionable service shall not include any period of service by a member in respect of which, by virtue of regulation 26, no pay was paid to him:

Provided that the pensionable service of a member shall not be deemed to have been interrupted by the exclusion therefrom of any period of service referred to in this paragraph.

(5) The period of pensionable service shall be calculated by the month, but fractions of a month shall be taken to the nearest whole month.

62. Benefits on resignation or discharge for ill-health

(1) A member who resigns or who is discharged under section 26 of the Act for reasons of ill-health shall, if his pensionable service amounts to five or more years but less than ten years, be entitled to be paid the following benefits—

(a) an upkeep allowance;

(b) a sum equivalent to his pensionable emoluments for a period of twenty-eight days at the rate applicable to him immediately before the date of his resignation or discharge; and

(c) a sum equivalent to one day's pay at the rate applicable to him immediately before the date of his resignation or discharge for every complete period of thirty days' service spent on active service outside Malawi.

(2) In the calculation of complete periods of thirty days' service for the purposes of subregulation (1) (c), all periods of service spent on active service outside Malawi shall be aggregated.

63. Benefits on retirement

A member who retires shall be entitled to—

(a) if his pensionable service amounts to ten or more years but less than twenty years, a gratuity at the rate prescribed in this Part less any benefits paid to him in terms of regulation 62;

(b) if his pensionable service amounts to twenty or more years, or if, whatever the length of his service, he is compulsorily retired in terms of regulation 10 (2) or (3), a pension at the rate prescribed in this Part.

64. Free medical attention on retirement

(1) In this regulation—

"free medical attention" means—

(a) attention by a medical officer;

(b) treatment in a department of a Government hospital; and

(c) accommodation in a ward of a Government hospital, and includes drugs, dressings, surgical appliances, and splints.

(2) A member who has retired in terms of regulation 10 (2) or (3) shall be entitled to free medical attention.

(3) If any travelling by a medical officer or by a member who has retired is entailed in respect of such free medical attention the cost of such travelling will not be borne by the Government.

(4) This regulation shall not apply to the dependants of a member who has retired.

65. Free medical attention in special cases

(1) In this regulation—

"free medical attention" means—

(a) attention by a medical officer;

(b) treatment in a department of a Government hospital; and

(c) accommodation in a ward of a government hospital, and includes drugs and dressings but not surgical appliances other than splints.

(2) A member who—

(a) had served for 20 or more years; and

(b) has retired in terms of regulation 10 (2) or (3),

shall be entitled to free medical attention.

(3) If any travelling by a medical officer or by a member who has retired is entailed in respect of such free medical attention, the cost of travelling shall not be borne by the Government.

(4) This regulation shall not apply to the dependants of a member who has retired.

66. Benefits on discharge or dismissal on prescribed grounds

A member who, under section 26 of the Act (other than on the grounds of medical or physical unfitness occasioned without any misconduct or serious negligence on his part) or under section 82 of the Act, is discharged or dismissed from the Regular Force may be—

(a) if his pensionable service amounts to ten or more years but less than twenty years, such gratuity as the Defence Council may determine;

(b) if his pensionable service amounts to twenty or more years, such pension subject to regulation 60 (2) or gratuity as the Defence Council may determine.

67. Benefits to dependants on death of a member or a pensioner

(1) If a member whose pensionable service amounts to fifteen or more years dies, there shall be paid to his dependants the amount of the pension which such member would have been entitled to had he retired on the day immediately before the date of his death.

(2) If a member whose pensionable service amounts to five or more years but less than fifteen years dies, there shall be paid to his dependants the benefits which he would have been entitled to under regulation 62 had he resigned on the day immediately before the date of his death.

(3) If a member who is receiving a pension under regulation 63 dies, there shall be paid to his dependants a gratuity equal to the aggregate of the pension which would have been payable to such person had he not died, for the period from the day following the date of his death to the expiry of ten years from the date of his retirement.

68. Commutation of pensions

(1) In this regulation, unless inconsistent with the context—

"applicant" means a member entitled or about to become entitled to a pension in terms of regulation 50, 51, 63 or 66 who has applied under this regulation for the commutation of the whole or a portion of the pension to which he is or is about to become entitled;

"Form" means the appropriate form set out in the Third Schedule; Third Schedule

"Medical Board" means a board of two or more medical practitioners appointed by the Minister for the purposes of this section.

(2) Subject to this regulation and regulation 61 (2), a member entitled or about to become entitled to a pension or pensions under any one or more of regulations 50, 51, 63 or 66 may apply to the Minister for the commutation of up to two-thirds of the pension or of the aggregate of the pensions to which he is or about to become entitled.

(3) The Minister may, on application by a member under subregulation (2) commute up to two-thirds of such member's annual pension or of the aggregate of such member's annual pensions for a cash payment determined in accordance with subregulation (10).

(4) An application for the commutation of any portion of a pension up to one-third shall be made in Form No. 1 and shall be submitted to the Commander.

(5) The Minister may—

(a) in the case of an applicant who is about to retire in terms of regulation 10 (2) or (3) and applies for commutation before the date of his retirement, grant, subject to subregulation (3) the commutation applied for; and

(b) in the case of an applicant not referred to in paragraph (a) grant provisional approval of the application for commutation.

(6) Where provisional approval of an application for commutation has been granted in terms of subregulation (5) (b) the applicant shall have completed a declaration of health in Form No. 2 and shall hand the completed declaration to, and submit to examination by, a medical board.

(7) The medical board shall, after examining the applicant under subregulation (6), forward to the Minister a report on that applicant in Form No. 3.

(8) If the medical board certifies in the report forwarded under subregulation (7), that the applicant is not suffering from, nor in their opinion is specially liable to suffer from, any disease or physical disability likely to affect adversely his normal expectation of life, which they consider to be fully up to the average for persons of the applicant's age, the Minister may grant, subject to subregulation (3), the commutation applied for.

(9) If the medical board certifies in the report forwarded under subregulation (7), that they consider that the application of the applicant should be rejected on health grounds, the Minister shall refuse to grant the commutation applied for.

(10) The amount of the single cash payment to be made on the commutation of a pension shall be computed by multiplying the annual rate of pension to be commuted by the commutation factor shown in the Fourth Schedule in relation to the age of the applicant, calculated to the nearest half-year, or, where his age is midway between the half-years, to the half-year nearest above his age, at the date of his application for commutation: Fourth Schedule

Provided that where the age of the applicant at the date of his application for commutation is under twenty-nine years and six months or over seventy-five years and six months, the cash payment to be made shall be computed by multiplying the annual rate of pension to be commuted by such commutation factor as applicable to those whose nearest half age is thirty years.

(11) The commutation of a pension shall be effected—

(a) in the case of an applicant referred to in subregulation (5) (a), on the date he becomes entitled to his pension under regulation 63; and

(b) in the case of an applicant not referred to in subregulation (5) (a), on the first day of the month following that in which the commutation is granted by the Minister.

(12) For the purposes of this Part, the forms and table respectively set out in the Fourth and Fifth Schedules shall, with such adaptations or modifications as the circumstances may require, be used and applied.

69. Benefits not to be pledged or ceded

(1) Save as is otherwise provided in subregulation (2), no pension, gratuity or other benefit payable under these Regulations or right to such a pension, gratuity or benefit shall be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, and, in the event of the recipient attempting to assign, transfer or otherwise cede or pledge or hypothecate a pension, gratuity or other benefit payable under these Regulation or right to such a pension, gratuity or other benefit, payment of the pension, gratuity or other benefit may be withheld, suspended or entirely discontinued if the Minister so determines:

Provided that the Minister may direct the payment of the pension, gratuity or other benefit or part thereof to any one or more of the dependants of the recipient during such period as he may determine.

(2) If no portion of a pension has been commuted under regulation 68, the Minister may permit the recipient of such pension to cede a portion thereof, not exceeding the portion thereof which may be commuted in terms of that regulation, and in the event of the cession being made, the provisions of that regulation shall not apply in relation to the balance of the pension.

(3) Nothing contained in this regulation shall authorize the cession of any pension or part of a pension payable under these Regulations to a surviving spouse or in respect of a child.

70. Conviction of pensioner

If a member in receipt of a pension 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, in accordance with the direction, if any, of the Minister, be discontinued during the whole or part of the period of imprisonment:

Provided that the Minister may authorize 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 any dependant of the pensioner as the Minister may determine.

71. Forfeiture of pension

If any member becoming entitled to or actually in receipt of a pension under these Regulations—

(a) is found guilty by a civil court—

(i) of misappropriating public moneys or property of the Government;

(ii) of making a false statement for the purpose of obtaining a pension, knowing the statement to be false or not believing it to be true; or

(b) makes use of or discloses in an improper manner any information which he may have obtained in the course of his duties; or

(c) solicits or, without the consent of the Minister, accepts directly or indirectly any testimonial or gift of a pecuniary value in connexion with his service,

his right to any pension or his pension, as the case may be, shall, in accordance with the directions, if any, of the Minister be suspended, reduced or forfeited, as the case may be.

72. Deductions from pension, gratuity or other benefits

(1) The Minister may authorize the deduction from any pension, gratuity or other benefit to which a member or person in receipt of a pension under these Regulations or his estate is entitled under this Part or Part VII of any liquidated amount which that member or person is liable to pay to the Government.

(2) No deduction shall be authorized under this regulation of a liquidated amount which the commanding officer or appropriate superior authority has, under regulation 27, authorized to be deducted from the pay and allowances due to a member.

73. Proof of age, etc.

(1) A member shall, if required, submit proof of the date of his birth.

(2) No payment of any pension to a spouse shall be made until proof of marriage to and date of the death of the husband have been furnished.

(3) No pension in respect of a child shall be paid until proof has been furnished of the eligibility of that child for a pension under these Regulations.

(4) The proof required under this regulation shall be to the satisfaction of the Minister.

PART X

MISCELLANEOUS PROVISIONS

74. Occupation of official quarters

(1) A member shall, if required by the commanding officer of his unit to do so, reside in official quarters.

(2) Where a member is required to reside in official quarters, his recognized spouse and children may, at the discretion of the commanding officer of his unit, be provided with free accommodation in official quarters.

75. Engagement for profit on trade or business

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, a member other than a member who proceeds on leave pending retirement, shall not—

(a) engage for profit in any business or occupation other than his official duties; or

(b) be or become a director or engage directly or indirectly in the management or direction of any public company or syndicate.

76. Active participation in politics

(1) No member shall commit any act which is prescribed by this regulation as being an act constituting active participation in politics.

(2) Subject to subregulation (3), the following acts in relation to a member are prescribed as being acts constituting active participation in politics—

(a) joining or being associated with an organization or movement of a political character;

(b) canvassing any person in support of or otherwise actively assisting an organization or movement of a political character;

(c) displaying or wearing rosettes, favours, symbols, posters, placards or like articles having a political significance;

(d) attending a political meeting or assembly when wearing Defence Force uniform or any part thereof, likely to identify him with the Defence Force;

(e) asking questions from the floor at a political meeting;

(f) publishing views of a political character or causing them to be published in speeches, broadcasts, letters to the press, articles, leaflets, posters, placards, books or otherwise; and

(g) any other act or conduct whatever of a member whereby the public might reasonably be induced to associate or identify him with an organization or movement of a political character.

(3) Nothing in subregulation (2) shall be construed as precluding a member from—

(a) asking questions from the floor at a political meeting held with the permission of the Minister at which the audience consists only of persons in the employment of the Government;

(b) explaining Government policy relating to the Defence Force in the course of his duties;

(c) performing the duties of a returning officer, polling officer or like officer at a Parliamentary or local authority election; and

(d) voting in a parliamentary, presidential or local authority election or in a referendum.

(4) A trade union or employers' organization shall, for the purposes of subregulation (2) (a) and (b), be deemed to be an organization or movement of a political character.

77. Funeral expenses

The amount of any reasonable expenses incurred in burying—

(a) a member;

(b) a pensioner who held the rank of Warrant Officer Class I and above,

shall be paid by the Government.

FIRST SCHEDULE reg. 18

RATES OF TRADE PAY ALLOWANCES

	Rate per Day					
Trade Group	Class 1		Class 2		Class 3	
	K	T	K	t	K	t
GROUP A	0	90	0	80	0	70
GROUP B	0	70	0	65	0	60
GROUP C	0	60	0	55	0	50
GROUP X	2	15	1	85	1	55
GROUP XIA	2	35	—	—		
GROUP T	3	10	2	75	2	45
GROUP TIA	3	25	—	—		

SECOND SCHEDULE reg. 55

RATES OF PENSION OR OTHER BENEFITS PAYABLE IN RESPECT OF SURVIVING SPOUSES, CHILDREN AND DEPENDANTS

1. If a member entitled to a pension or other benefits dies intestate and unmarried such pension or other benefits should be distributed equally between his parents, and if he was an orphan, be paid to the next of kin.

2. If a member entitled to a pension or other benefits dies intestate and there is a surviving spouse without children, such pension or other benefits should be distributed as follows—

(a) one-half should be paid to the surviving spouse;

(b) one-half should be distributed equally to the parents; or paid to the next of kin if he was an orphan at the time of his death.

3. If a member entitled to a pension or other benefits dies intestate and there is a surviving spouse and children, such pension or other benefits should be distributed as follows—

(a) six-eighths should be distributed equally to the children;

(b) one-eighth should be distributed to the surviving spouse or equally to the surviving spouses;

(c) one-eighth should be distributed equally between the parents or if there is no parent, be paid to the next of kin.

4. If a member entitled to a pension or other benefits dies intestate and leaves children and no spouse such pension or other benefits should be distributed as follows—

(a) seven-eighths should be distributed equally to the children;

(b) one-eighth should be distributed equally to the parents or if there is no parent be paid to the next of kin; and

(c) one-eighth should be paid to any person who, being a relation, undertakes to be guardian of the said children.

5. Any share of pension or other benefits that remains undistributed shall be distributed equally to the children or, where there are no children, to the other beneficiaries.

THIRD SCHEDULE reg. 68

PRESCRIBED FORMS

Form No. 1

APPLICATION FOR COMMUTATION OF PENSION

The Commander
Headquarters, Defence Force
Lilongwe

A. Full name of applicant (in block letters)—
Surname: …….....
Forenames: .....

B. Date of Birth: .....
(If not already produced, proof of this date required)

C. Gross rate of pension per annum, K .....

D. Date pension commenced or to commence: …….....

E. Portion of pension up to one-third it is desired to commute: .....……

F. Reason for desiring to commute: .....

.....

.....

.....

.....

G. Give particulars of any income or earnings other than pension: …….....

.....

.....

Solemn Declaration

H. I do solemnly and sincerely declare that I am not insolvent, and that no part of my pension has been assigned, ceded or otherwise transferred or pledged or hypothecated.

Date of application: .....

Signature of applicant: .....

Declared before me this ..... day of ……., 20……...

…….....……

Commanding Officer or appropriate superior authority

Form No. 2

DECLARATION OF HEALTH BY AN APPLICANT FOR COMMUNICATION OF PENSION

Full names of applicant (in block letters)—

Surname: …….....

Forenames: …….....

Date of birth: …….....

Whether single, married or widowed: …….....

	Questions	Answers
1.	Are you now in good health and, if so, for how long have you been in good health?	
	.....……	
2.	What are your habits as regards activity or exercise?	
	.....……	
3.	(a) What kind and amount of intoxicating liquor do you ordinarily consume daily?	
	.....……	

(b) Have your habits as regards liquor always been temperate sober?
.....

4. What are your habits as regards tobacco? .....

5. Have you ever been in the habit of taking opium or other habit-forming drugs?
.....

6. Have you at any time suffered from or had symptoms of—
.....

(a) spitting of blood, asthma, persistent cough, pleurisy, pneumonia, or any affection of the lungs or throat? .....

(b) fits of any kind, mental or nervous disease?
.....

(c) palpitation, fainting or any affection of the heart?
.....

(d) becoming short of breath after any mild exertion?
.....

(e) getting pain in the chest after exertion?
.....

(f) appendicitis, fistula, or any other affection of the stomach, liver, gall bladder or bowels? .....

(g) any affection of the kidneys, bladder or other urinary organs?
.....

(h) malaria or blackwater fever? .....

(i) rheumatism, gout or rheumatic fever?
.....

(j) discharge from the ears. If so state date of last discharge
.....

(k) cancer or tumor, any tubercular affection or suppurating glands?
.....

(l) any venereal disease? .....

7. How frequently do you pass water—
(a) by day?
(b) by night?

8. Have you suffered from any disease or illness other than those mentioned

9. Have you—
(a) met with any accident or undergone any surgical operation?
(b) any ruptures, varicose veins or physical defects?

10. Have any of your relatives suffered from consumption or other form of tuberculosis, asthma, gout, diabetes, epilepsy or insanity?

11. Is there any other circumstance or information relative to yourself or your family history of a kind which may affect your future health or expectation of life?

12. Have you ever been the subject of a medical board, if so when and for what complaint?

I declare that the above answers are true and correct to the best of my knowledge and that in making them I have not concealed or withheld information regarding any a matter or circumstance having a bearing on my present or future health or expectation of life.

I further agree that if any statement made the Minister to have been false, recovery of any commutation paid as a result of this application may be made from any pension payable to me.

Date …… Signature .....

Witness ....……

Counter signature and status of
Person completing form

Form No. 3

REPORT OF MEDICAL BOARD ON AN APPLICATION FOR COMMUTATION OF PENSION

1. Name in full (block letters): .....
2. Date of birth: .....
3. Address: .....

Questions Answers

4. Cardio-Vascular System—
   - (i) Is there any evidence of—
     - (a) abnormality? .....
     - (b) arterio-sclerosis? .....
     - (c) valvular disease? .....
     - (d) other disease of the blood vessels? .....
   - (ii) Record—
     - (a) rate of heart .....
     - (b) rhythm of heart .....
     - (c) size of heart .....
     - (d) position of apex beat .....
     - (e) pulse .....
     - (f) systolic blood pressure .....
     - (g) diastolic blood pressure .....
5. Respiratory System—

   Is there any evidence of disease of—
   - (a) larynx?.....
   - (b) trachea? .....

(c) lungs? .....

6. Abdominal Organs—

(i) Is there any evidence of disease of—

(a) alimentary tract .....

(b) other abdominal organs— .....

(ii) Is a hernia present? .....

(iii) Is any hernia well controlled by a truss? .....

7. Genito-Urinaty System—

(i) Is there any evidence of—

(a) urinary bilharziasis? .....

(b) other renal disease? .....

(c) prostatic disease? .....

(d) other genito-urinary disease? .....

(ii) Record urine—

(a) frequency .....

(b) specific gravity .....

(c) albumen .....

(d) sugar .....

8. Nervous System—

Is there any evidence of disease? .....

9. Endocrine System—

Is there any evidence of disease? .....

10. Skeletal System—

Is there any evidence of disease of—

(a) bones? .....

(b) joints? .....

11. Eyes—

Is there any evidence of disease? .....

12. Ears—

Is there any evidence of disease? .....

13. Nose, mouth, gums and teeth

Is there any evidence of disease? .....

14. Remarks—

(a) Personal medical history .....

(b) Family medical history .....

.....

(c) General .....

.....

.....

A. CERTIFICATE OF FIRST-CLASS LIFE

We certify that we have examined the above-named person; that we consider his health to be good; that is constitution is sound; and that he is not suffering from nor in our opinion is he specially liable to suffer from, any disease of physical disability likely to affect adversely his normal expectation of life, which we consider is fully up to the average for persons of his age.

We are satisfied that the above-named person is the person examined by us.

(1) .....

(Signature of Chairman of the Board)

.....

(Name in block letters and post held)

(2) .....

(Signature of Member of the Board)

.....

(Name in block letters and post held)

Place .....

Date .....

B. CERTIFICATE OF IMPAIRED HEALTH

We certify that we have examined the above-named person and that we consider that his application should be rejected on health grounds for the following reasons:

(Summarize the reasons for the opinion arrived at)

.....

.....

.....

.....

(1) .....

(Signature of Chairman of the Board)

.....

(Name in block letters and post held)

FOURTH SCHEDULE reg. 68

COMMUTATION FACTOR FOR COMMUTATION OF PENSION

Nearest half age		Commutation factor	Nearest half age	Commutation factor
30	23-38	49	20-08	
30½	23-31	49½	19-96	
31	23-25	50	19-84	
31½	23-18	50½	19-72	

32	23-12	51	19-59
32½	23-05	51½	19-47
30	23-38	49	20-08
33	22-98	52	19-34
33½	22-91	52½	19-21
34	22-84	53	19-09
34½	22-77	53½	18-96
35	22-70	54	18-83
35½	22-62	54½	18-70
36	22-55	55	18-57
36½	22-47	55½	18-43
37	22-40	56	18-30
37½	22-32	56½	18-16
43	21-36	62	16-64
43½	21-26	62½	16-49
44	21-17	63	16-35
44½	21-07	63½	16-21
45	20-97	64	16-06
45½	20-86	64½	15-92
46	20-76	65	15-78
46½	20-65	65½	15-63
47	20-54	66	15-48
47½	20-43	66 ½	15-34
48	20-32	67	15-19
48½	20-20	67½	15-05

Nearest half age	Commutation factor	Nearest half age	Commutation factor
68	14-90	72	13-71
68½	14-75	72½	13-56
69	14-60	73	13-41
69½	14-46	73½	13-27
70	14-31	74	13-12
70½	14-16	74½	12-98
71	14-01	75	12-84
71½	13-86		

DEFENCE FORCE (RECRUITMENT) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Pay between date one offers to enlist and enlistment
3. Refund upon withdrawal of offer to enlist
4. Traveling facilities for one rejected
5. Privileges and duties prior to enlistment

G.N. 55/2004

DEFENCE FORCE (RECRUITMENT) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Recruitment) Regulations.

2. Pay between date one offers to enlist and enlistment

A person offering to enlist in the Regular Force under section 19 of the Act may, if he is accepted by the recruiting officer and during the period concerned occupies official quarters provided by the Defence Force, be given pay and rations or allowances in lieu thereof at the rates or on the scales set out in regulations 16 and 24 of the Defence Force (Regular Force) (Other Ranks) Regulations from the date of so offering to enlist until the date of his enlistment.

3. Refund upon withdrawal of offer to enlist

A person who offers to enlist in the Regular Force under section 19 of the Act, and is accepted by the recruiting officer, but who subsequently withdrawals his offer to enlist may be required to refund an amount equivalent to—

(a) any pay, rations or allowances in lieu thereto received by him under regulation 2;

(b) the cost of any public or service property lost or damaged by him; and

(c) the cost of any travelling allowances or facilities granted to him by the Defence Force.

4. Traveling facilities for one rejected

A person who offers to enlist in the Regular Force under section 19 of the Act, and is subsequently refused enlistment due to no fault or action on his part shall be granted free traveling facilities to return to his place of residence in Malawi. He may however be required to refund an amount equivalent to the cost of any public or service property lost or damaged by him.

5. Privileges and duties prior to enlistment

A person who offers to enlist in the Regular Force under section 19 of the Act and is accepted by the recruiting officer shall not, until he is enlisted, be—

(a) entitled to be clothed at Government expense; or

(b) required to undertake any military duties other than those necessary for the interior economy or cleanliness of the military quarters in which he is housed.

DEFENCE FORCE (MEDAL FOR LONG SERVICE AND GOOD CONDUCT) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Description of medal
3. Qualifying service for the medal
4. Recommendation and award of the medal or clasp
5. Loss or replacement of the medal
6. Grant
7. Forfeiture and restoration of the medal or clasp

G.N. 56/2004

DEFENCE FORCE (MEDAL FOR LONG SERVICE AND GOOD CONDUCT) REGULATIONS

under s. 227

1. Citation

These Regulations may be cited as the Defence Force (Medal for Long Service and Good Conduct) Regulations.

2. Description of medal

(1) The medal shall be designated the "Medal for Long Service and Good Conduct (Military)" and is hereinafter referred to as "the medal".

(2) The medal shall be of cupro-nickel and shall bear in relief on the obverse the Presidential Effigy and on the reverse the inscription "FOR LONG SERVICE AND GOOD CONDUCT" circumscribing the badge of the Defence Force.

(3) There shall be inscribed on the bar attached to the amount of the medal the words "REGULAR DEFENCE FORCE".

(4) The medal shall be worn suspended on the left breast by a crimson ribbon, edged white, one inch and a quarter in width.

(5) The clasp shall be of silver and shall bear in relief, in the centre, the badge of the Defence Force.

(6) The medal or the clasp shall be presented on parade and shall be worn by the recipient as an honourable testimonial of the President's approbation of his conduct.

3. Qualifying service for the medal

(1) Subject to subregulations (2) and (3) the medal shall be awarded to non-commissioned officers of the Regular Force who complete eighteen years service and whose character and conduct have been exemplary and who are recommended by their commanding officers. Non-commissioned officers who complete a further eighteen years of service, as defined in these Regulations, reckoned from the qualifying date of the award of the medal and whose

character and conduct have been exemplary and who are specially recommended by their commanding officers, shall be awarded a clasp to be attached to the ribbon by which the medal is suspended. Such additional award shall be without pecuniary benefit or gain.

(2) Service requisite to qualify for the medal may be spent wholly in the Regular Force and partly in that Force.

(3) Service in a Reserve, Militia or any other force or organization not involving whole time military service shall not be reckoned to qualify for the medal except when such force is mobilized in an emergency. Any period during which a member of such reserve militia or force is actually employed on full time service shall be reckoned as qualifying service, if such service has not been reckoned towards the award of any other long service or efficiency medal.

(4) Service requisite to qualify for the medal need not be continuous.

4. Recommendation and award of the medal or clasp

(1) Recommendations for the medal or clasp shall be made to the commanding officers and forwarded in writing to the Commander.

(2) The Commander shall recommend to the President only those officers and non-commissioned officers who are in every way worthy of the award of the medal or clasp.

(3) The medal or clasp shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(4) A register of the names of those to whom the medal or clasp has been awarded shall be kept by the Commander.

5. Loss or replacement of the medal or clasp

(1) When a medal or clasp has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred, and the rank, name and unit of the person to whom the medal belonged. This affidavit shall be forwarded to the Commander.

(2) When a medal or clasp has been lost through carelessness or neglect, replacement may be recommended at the holders expense, but, in the case where loss occurred through no fault or neglect of the holder, the Commander may authorize that the replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. Grant

An amount equivalent to ten per cent of annual basic pay shall be granted to every recipient of the medal.

7. Forfeiture and restoration of the medal or clasp

(1) When the conduct of a recipient of the medal or clasp ceases to be exemplary, the President may cancel and annul the award of the medal or clasp to that recipient, and thereupon his name shall be erased from the register.

(2) Notice of forfeiture shall in every case be published in the Gazette.

(3) The President may restore a medal or clasp forfeited under subregulation (1).

(4) Notice of restoration shall in every case be published in the Gazette.

DEFENCE FORCE (MERITORIOUS SERVICE MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description of medal
3. Eligibility for the award of the medal
4. Recommendation and award of the medal
5. Loss or replacement of the medal
6. Grant

G.N. 57/2004

DEFENCE FORCE (MERITORIOUS SERVICE MEDAL) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Meritorious Service Medal) Regulations.

2. Description of medal

(1) The medal shall be designated the "Meritorius Service Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of cupro-nickel and shall bear on the obverse the Presidential Effigy and on the reverse the words "FOR MERITORIOUS SERVICE" circumscribing the badge of the Malawi Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon one inch and a quarter in width, which shall in colour be crimson with white edges and a white stripe down the centre.

3. Eligibility for the award of the medal

(1) The medal shall be awarded only to those members of the Regular Force who have performed services of conspicuous merit.

(2) The medal shall be open to all ranks of the Regular Force.

(3) The qualifications for the medal shall be valuable service characterized by resource and devotion to duty, including prolonged service marked by exceptional ability, merit and exemplary conduct.

(4) Service requisite to qualify for the medal may be spent wholly in the Regular Force or partly in that Force and partly in a cooperating force up to an aggregate of twenty-three years.

4. Recommendation and award of the medal

(1) Recommendations for the award of the medal shall be submitted by commanding officers to the Commander when the conditions prescribed in regulation 3 have been fulfilled.

Such recommendations shall be in letter form setting forth the special circumstances that warrant the recommendation for the award.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

5. Loss or replacement of the medal

(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred, and the rank, name and unit of the person to whom the medal belonged. This affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at the holder's expense, but, in the case where loss occurred through no fault or neglect of the holder the Commander may authorize that the replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. Grant

An amount equivalent to one month basic pay shall be granted to every recipient of the medal.

DEFENCE FORCE (RE-ENGAGEMENT AND CONTINUOUS SERVICE MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Description
3. Eligibility for the award of the medal
4. Recommendation for the medal
5. Loss and replacement
6. Grant

G.N. 58/2004

DEFENCE FORCE (RE-ENGAGEMENT AND CONTINUOUS SERVICE MEDAL) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Re-engagement and Continuous Service Medal) Regulations.

2. Description

(1) The medal shall be designated the "Re-engagement and Continuous Service Medal" and is hereinafter referred to as "the Medal".

(2) The Medal shall be of silver, bearing Malawi Government Court of Arms and on the reverse the inscription "FOR RE-ENGAGEMENT AND CONTINUOUS SERVICE" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be black with red and green stripes marked diagonally on the main colour black.

3. Eligibility for the award of the medal

The medal shall be awarded to a warrant officer, non-commissioned officer and private soldier who has completed seven years initial engagement and has offered himself for continuous service.

4. Recommendation for the medal

(1) Recommendations for the medal shall be by the commanding officer or appropriate superior authority and forwarded in writing to the Commander.

(2) The Commander shall recommend to the President only those warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

5. Loss and replacement

(1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at the holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. Grant

There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (COMMAND MEDAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Description
3. Eligibility for the award of medal
4. Recommendation
5. Loss and replacement
6. Grant

G.N. 59/2004

DEFENCE FORCE (COMMAND MEDAL) REGULATIONS

under s. 241

1. Citation

These Regulations may be cited as the Defence Force (Command Medal) Regulations.

2. Description

(1) The medal shall be designated the "Command Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of silver star, bearing letters MDF and on the reverse the inscription "FOR COMMAND" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be gold marked with black stripes on either side.

3. Eligibility for the award of medal

(1) The medal shall be awarded to an officer who, during service with the Defence Force—

(a) has attained the rank of Brigadier General; or

(b) in the case of an officer who has not attained the rank of Brigadier General, has commanded a brigade and passed a staff course or its equivalent.

4. Recommendation

(1) The Commander shall recommend to the President only those officers who are in every way worthy of the award of the medal.

(2) The medal shall be awarded on the authority of the President and notice of each award shall be published in the Gazette.

(3) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

5. Loss and replacement

(1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

6. Grant

There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (COMPENSATION FOR INJURIES) REGULATIONS

under s. 241

G.N. 60/2004

1. Citation

These Regulations may be cited as the Defence Force (Compensation for Injuries) Regulations.

2. Right to compensation for injury

Unless otherwise provided under the Act or under any regulations made under the Act, a person subject to military law under this Act shall be entitled to be paid compensation for total or partial incapacity caused by personal injury sustained in the course of discharging military duties, and the compensation shall be payable and calculated on the basis of the percentage of incapacity specified in relation to such injury on the Workers' Compensation Act. Cap. 55:03

DEFENCE FORCE (IDENTITY CARDS) REGULATIONS

under s. 241

G.N. 61/2004

1. Citation

These Regulations may be cited as the Defence Force (Identity Cards) Regulations.

2. Members etc., to be identified by identity cards

(1) Every person subject to military law under the Act shall, for personal identity, be provided with an identity card in the form set out in the Schedule appropriate to the status of such person.

(2) Every identity card shall bear the insignia of the Defence Force and shall also bear—

(a) in the case of an identity card issued to a member, or to the spouse or child of a member, the signature of the Commander-in-Chief of the Malawi Defence Force;

(b) in the case of a relative or servant of a member, the signature of the commanding officer of the unit in which the member is serving with such general or special endorsements as the Commander-in-Chief or the commanding officer of the unit, as the case may be, considers appropriate in relation to the status enjoyed by the holder in terms of military law.

SCHEDULE reg. 2

IDENTITY CARDS

1. A member's identity card

No. .....

Name: .....

Rank: .....

Date issued: .....

Counter signature of Commanding Officer: .....

(Endorsements, if any)

President

Commander-in-Chief

Overleaf

(Photograph of member)

Name: .....

Village: .....

T.A.: .....

District: .....

Height: ..... m ..... cm

Weight: .....kg

Date of Birth: .....

Blood Group: .....

.....

Signature of member

2. Member's wife identity card

Member's No.: .....

Rank of member: .....

Name of member: ..... Wife's name: .....

Company: .....

(Endorsements, if any)

President

Commander-in-Chief

3. Member's child identity card

Member's No. .....

Rank of member: .....

Name of member: ..... Child's name: .....

Company: .....

(Endorsements, if any)

President

Commander-in-Chief

4. Member's relative or servant identity card

Member's name: ..... Holder's name: .....

Unit: ..... Relationship: .....

(Endorsements, if any)

.....

Signature of Unit Commanding Officer

DEFENCE FORCE (MILITIA) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation
2. Interpretation

PART II

GENERAL

3. Composition of the Militia
4. Functions of the Militia
5. Enlistment in the Militia
6. Allocations of numbers
7. Promotion
8. Discharge
9. Pay
10. Marriage allowance
11. Rations
12. No pay or allowances in certain circumstances
13. Deductions from pay
14. Leave
15. Travelling on duty
16. Travelling facilities on leave
17. Issues of arms, clothing and personal equipment to members
18. Wearing of uniforms
19. Medical Boards and medical examinations
20. Illness and injury in the course of duty
21. Death in the course of duty
22. Participation in political activities

PART III

ADMINISTRATION OF DISABLEMENT BENEFITS

23. Interpretation of terms in Parts III and IV
24. Functions of the Pensions Board and the Pensions Appeal Board
25. Review, suspension or cancellation of awards
26. Administration of awards

PART IV
BENEFITS PAYABLE TO DISABLED MEMBERS
27. Disablement compensation
28. Additional compensation
29. Degree of disablement
30. Allowance in respect of spouse and children of a disabled member
31. Payment of medical expenses
32. Temporary allowance in connexion with medical examination
33. Medical examination of disabled member
34. Medical treatment of a disabled member
35. Vocational training
36. Travelling and subsistence allowance payable to a disabled member
37. Further disablement of disabled member
38. Allowance in respect of nursing attendants

PART V
TRAINING AND EMBODIMENT
39. Initial and subsequent training
40. Call up for training
41. Certificate of service
42. Notification of change of address
43. Classification on training
44. Absent without leave and evasion of training
45. Medical examination
46. Exemption boards
47. Transfer to the Reserve Force
48. Embodiment
49. Reporting from time to time by members
50. Punishment for offences under these Regulations

G.N. 62/2004
DEFENCE FORCE (MILITIA) REGULATIONS
under s. 241
PART I
PRELIMINARY

1. Citation

These Regulations may be cited as the Defence Force (Militia) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"child", in relation to a member, means an unmarried son or daughter, under the age of eighteen years of that member with a recognized spouse;

"commanding officer" means an officer commanding a unit;

"Director of Medical Service" means the person appointed as Director of Medical Services for the Defence Force;

"exemption board" means a board appointed under regulation 46;

"leave", in relation to a member, means leave of absence from the duties of that member;

"Medical Board" means a medical board constituted under the (Regular Force) (Other Ranks) Regulations;

"medical officer" means—

(a) a medical officer in the Regular Force;

(b) an officer appointed as a medical officer in the Militia;

"medical practitioner" means a person registered as a medical practitioner under the provisions of any law, including military law;

"member" means a member of the Militia including a commissioned officer in the Militia;

"private medical practitioner" means a medical practitioner other than a medical officer or a medical officer serving as such in the public service;

"service" means service in the Militia, and "serve" shall be construed accordingly;

"unit", in relation to a member, means the unit in which that member is serving.

PART II

GENERAL

3. Composition of the Militia

(1) The Militia shall consist of citizens of Malawi between eighteen and sixty years of age who volunteer for service and are accepted by the commanding and discipline officer of the unit of the Defence Force in which they wish to serve:

Provided that no person who has served in the regular force shall be eligible to serve in the Militia.

(2) A member of the Militia shall be subject to the provisions of the Act for discipline administration during training and active service.

4. Functions of the Militia

(1) Units of the Militia or parts thereof shall train for and undertake military service either jointly with the Regular Force or independently.

(2) Members of the Militia shall at all times be liable to serve anywhere within or outside Malawi, save that members shall be liable to serve outside Malawi only with the approval of the President.

5. Enlistment in the Militia

(1) No person shall be enlisted in the Militia if he is less than eighteen years or more than forty years of age.

(2) The terms of enlistment of a member of the Militia shall be from the date of his attestation to the date he attains the age of sixty years.

(3) A person offering to enlist in the Militia shall be given notice in the prescribed form—

(a) setting out the questions to be answered by that person on attestation; and

(b) stating the general conditions of the engagement to be entered into by that person,

and a recruiting officer shall not enlist any person in the Militia unless such person satisfies the officer that he has been given such notice, understands it and wishes to be enlisted.

6. Allocation of numbers

The number of a member other than a commissioned officer shall be the number allocated to him on attestation.

7. Promotion

A member may be promoted or appointed to any higher rank as the appropriate superior authority may decide.

8. Discharge

A member of the Militia shall be discharged in accordance with section 223 of the Act.

9. Pay

(1) A member shall, in respect of the initial or any subsequent period of training or any period of active service, be paid at the daily rates of pay as follows—

(a) for the initial period of training, the equivalent of the basic pay of a recruit in the Regular Force;

(b) for any subsequent period of training or active service the equivalent of the basic pay of a soldier in the Regular Force,

where he is appointed to higher rank, the rate of pay applicable to him shall be that applicable to a member of similar rank in the Regular Force.

10. Marriage allowance

A marriage allowance at the rate determined by the Minister shall be paid to any member of the Militia who is maintaining or contributing towards the maintenance of his spouse or, being a surviving spouse or being divorced, is maintaining or contributing towards the maintenance of a child in any period during which he undergoes continuous training or he is on active service.

11. Rations

A member of the Militia who is undergoing initial or subsequent training or is transferred to the Reserve Force in time of war or emergency shall be provided with free rations or be paid cash allowance in lieu thereof.

12. No pay or allowances in certain circumstances

(1) Notwithstanding other provisions of these Regulations but subregulation (2), a member shall not receive any pay or allowances in respect of any period during which—

(a) he is undergoing a sentence of imprisonment, detention or field punishment imposed under the Act by a court-martial, a prescribed officer or a civil court;

(b) he is being treated as an in-patient at a hospital for an illness or injury which is certified by a medical officer as being attributable to an offence under the Act for which he has been convicted by a court-martial, a prescribed officer or a civil court; or

(c) he is absent in circumstances constituting the offence of deserting or absenting himself without leave.

(2) A marriage allowance payable under regulation 10 shall continue to be paid for—

(a) the first twenty-eight days of any period during which the member is undergoing any such sentence of imprisonment, detention or field punishment;

(b) the first twenty-eight days of any period during which the member is being so treated as an in-patient at a hospital;

(c) the first twenty-five days of any period during which the member is so absent.

13. Deductions from pay

The commanding officer or appropriate superior authority may authorize the deductions from any pay due to a member under these Regulations—

(a) any liquidated amount which that member is liable to pay to the Government or to any mess, institution, organization or association of members of the Defence Force; and

(b) any amount which that member has previously been paid in pay or allowances in excess of the amount which was due to him under these Regulations.

14. Leave

(1) A member who is a commanding officer of any unit may be granted leave by the Commander.

(2) An officer in the Militia, other than a commanding officer, may be granted leave—

(a) for a period not exceeding thirty days, by the Commanding officer of his unit; and

(b) for a period not exceeding thirty days, by the Commander.

(3) A member other than an officer may be granted leave not exceeding twenty-eight days by the commanding officer of his unit.

15. Travelling on duty

The Minister may authorize the payment to a member, in respect of any period during which the member is required to travel on duty, of—

(a) an allowance sufficient to cover the reasonable expenses incurred by the member on travelling and subsistence; and

(b) an amount sufficient to cover other reasonable out-of-pocket expenses incurred by the member.

16. Travelling facilities on leave

A member who has been granted leave under regulation 14 shall be granted free travelling facilities to and from his leave destination; but, if his leave destination is outside Malawi such facilities shall only be granted to and from the point on the borders of Malawi which is the nearest to his leave destination.

17. Issue of arms, clothing and personal equipment to members

(1) A member shall be entitled to be issued, from time to time, arms, clothing and personal equipment for his military service.

(2) Any arms, clothing and personal equipment issued to a member other than an officer shall remain the property of the Government and the member may, at any time, be ordered by the commanding officer or appropriate superior authority to return all or any of such items.

(3) A member other than an officer who, when ordered to do so, fails to return any item of arms, clothing or personal equipment issued to him, shall be liable to pay to the Government an amount equal to the cost thereof, 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.

(4) Any item of arms, clothing or personal equipment issued to a member other than an officer which is rendered unserviceable through normal wear and tear shall be replaced or repaired as necessary at the expense of the Government.

(5) When a member other than an officer is granted leave, he shall, before proceeding on leave, hand in to the commanding officer of his unit any arms which have been issued to him.

18. Wearing of uniforms

(1) Except with the permission of the commanding officer or appropriate superior authority, a member shall not wear any article of uniform at a time when he is not—

(a) on duty; or

(b) proceeding to or returning from a camp or place of assembly at which he is ordered to report for the purpose of training or employment.

(2) A member shall not wear any article of uniform which he is not authorized to wear.

19. Medical boards and medical examinations

The Commander may at any time order a member to present himself for, and to submit to, a medical examination at the expense of the Government by a medical officer or a private medical practitioner or a medical board.

20. Illness and the injury in the course of duty

(1) An illness contracted or injury sustained by a member in course of his duties shall be immediately reported to a medical officer.

(2) A member who, in the course of his duties, contracts an illness or sustains an injury which is not due to misconduct or serious negligence on his part shall—

(a) be entitled to receive such free medical attention and treatment as is authorized by a medical officer; and

(b) be paid the pay and allowances applicable to him in respect of any period that he is thereby incapacitated from carrying out his civil occupation.

(3) Any expenses incurred in the treatment of a member referred to in subregulation (2) by a private medical practitioner shall only be paid by the Government if the treatment has been authorized by the Director of Medical Services.

(4) Any injury sustained by a member while participating in any regimental sport, recreational training, display or competition authorized by the commanding officer or

appropriate superior authority shall be deemed, for the purposes of this regulation, to have been sustained by the member in the course of his duties.

21. Death in the course of duty

(1) If a member dies as a result of an illness contracted or injury sustained in the course of his duties, the amount of any reasonable expenses incurred in burying him shall be paid by the Government.

(2) An injury resulting in the death of a member sustained by the member while participating in any regimental sport, recreational training, display or competition authorized by the commanding officer or appropriate superior authority shall be deemed, for the purposes of this regulation, to have been sustained by the member while in the course of his duties.

22. Participation in political activities

No member shall—

(a) attend any political meeting or assembly when in military uniform;

(b) make any address on political matters to any meeting, assembly, parade or group of members in a training institution or area when that member or any of the members he is addressing is present in that area for the purposes of undergoing training.

PART III

ADMINISTRATION OF DISABLEMENT BENEFITS

23. Interpretation of terms in Parts III and IV

(1) In this Part III and in Part IV, unless the context otherwise requires—

“certified", in relation to a disabled member, means certified by a medical officer or a medical board or by any other medical practitioner appointed or recognized for the purpose by the Pensions Board;

“civil earnings", in relation to a disabled or deceased member, means such amount, as being not more than K2,400 as is fixed by the Pensions Board as the annual earnings of that member in his normal trade or occupation;

“compensation” means compensation payable under these Regulations.

“deceased member” means a person who was a member and who—

(a) is killed on military service;

(b) dies of wounds or injuries received on military service;

(c) dies of a disease attributable to or aggravated by military service;

“dependant", in relation to the deceased member, means any person (other than a child of that member as defined in these Regulations or a parent or widow of that member) who was wholly or partly maintained by that member up to the time of his death and for a reasonable period before the date on which he received the wound or injury which caused his death or he was first removed from duty on account of the disease which caused his death:

Provided that if, after the date on which the deceased member was first removed from duty, he underwent further military service and during, and as a result of, such service suffered a material aggravation of his disablement which persisted until his death, the date shall, for the

purposes of paragraph (b), be the date on which he was later removed from duty on account of the disablement;

"disabled member" means a member, or a person who was a member, who is suffering from a disablement which is attributable to, or which has been aggravated by, military service without any misconduct or serious negligence on the part of the disabled member;

"disablement compensation" means a compensation awarded to a disabled member under these Regulations whether it is awarded as a temporary or as a permanent disablement compensation;

"medical treatment" means medical, surgical or hospital treatment, skilled nursing services, the supply of medicines and the supply and repair of artificial limbs and apparatus or any device certified to be necessitated by reason of the disablement of a disabled member;

"military service" means—

(a) military, marine or air service in the Defence Force;

(b) participation in regimental sport, recreational training, display or competition authorized by the commanding officer or appropriate superior authority;

"pensionable disablement" means the disablement in respect of which a disabled member has been awarded a disablement pension;

"Pensions Appeal Board" and "Pensions Board" means, respectively, the Pensions Appeal Board and the Pensions Board established under the Defence Force (Regular Force) (Other Ranks) Regulations;

"surviving spouse", in relation to a deceased member, means a spouse of that member, but, save as specifically provided in these Regulations, does not include a person who was separated, whether by order of court or otherwise, from the member at the date of his or her death.

(2) For the purpose of any award under these Regulations—

(a) the rank of a disabled or deceased member shall be the rank held by that member at the date on which he sustained the wound or injury or was first removed from duty on account of the disease which caused his disablement or death:

Provided that—

(i) if after the date on which the member was first removed from duty, he underwent further military service and during, and as a result of, such service suffered a material aggravation of his disablement, his rank shall be the rank which he held at the date on which he was later removed from duty on account of the disablement;

(ii) if the member sustained two or more disablements to which different ranks would apply under the foregoing provisions, the award in respect of the combined disablements shall be at a composite rate, having regard to each disablement and the rank appropriate thereto;

(b) where the rank of a disabled or deceased member is not a military rank mentioned in these Regulations, his rank shall, for the purpose of these Regulations, be the rank mentioned in these Regulations which is the equivalent to his actual rank.

24. Functions of the Pensions Board and the Pensions Appeal Board

(1) The right of any person to an award under these Regulations and the amount of such award shall be determined by the Pensions Board in accordance with these Regulations.

(2) Within six months after the date on which any decision of the Pensions Board has been communicated to a claimant under these Regulations, such claimant may, by notice in writing to the Pensions Board, appeal to the Pensions Appeal Board.

(3) On any such appeal, the Pensions Appeal Board may confirm the decision of the Pensions Board or may, subject to these Regulations, vary such decision and the decision of the Pension Appeal Board shall be given effect by the Pensions Board.

25. Review, suspension or cancellation of awards

(1) The Pensions Board may at any time review, amend or withdraw any award made under these Regulations which—

(a) has been incorrectly made by error in interpretation or fact; or

(b) the Pensions Board has reason to believe has been obtained by improper means.

(2) The minister may suspend or cancel in whole or in part any award made under these Regulations if he considers that the recipient is an unworthy person.

(3) If a member in receipt of an award made under these Regulations is convicted of any offence and is required to undergo a period of imprisonment exceeding three months, payment of the award shall, during the term of imprisonment, be made to, or for the benefit of, a spouse, children or dependants of such member.

26. Administration of awards

Any award payable to or in respect of any person under these Regulations may, at the discretion of the Pensions Board and for reasons deemed by it to be sufficient, be administered under such conditions as the Pensions Board may determine instead of being paid to the grantee.

PART IV

BENEFITS PAYABLE TO DISABLED MEMBERS

27. Disablement compensation

(1) A disabled member shall be awarded a disablement compensation according to his rank and class based on the percentage of his disablement and related to the rates of disablement compensation for one hundred per centum disablement set out in the First Schedule: First Schedule

Provided that the Pensions Board may, where in its opinion the disablement of such member is of a minor degree, award such member tree medical treatment in lieu of a disablement compensation and, if it does so, the member shall be entitled to any other benefits conferred by these Regulations on a disabled member who has been awarded a disablement compensation.

(2) A disablement compensation shall, in the first instance, be awarded temporarily unless the disablement has, in the opinion of the Pensions Board, reached its final condition. A disablement compensation awarded temporarily shall be reviewed from time to time until a permanent award is made or the award ceases.

(3) When a permanent disablement compensation has been awarded to a disabled member, it shall not, save as is provided in Regulation 29, be altered unless the Pensions Board, on application by such member for an increase in the award, is of the opinion that there has been a substantial permanent increase in the degree of disablement of such member.

(4) It shall be accepted that there has been a substantial permanent increase in the degree of disablement of a disabled member—

(a) in a case where the original degree of disablement of the member was twenty per centum or less, if his condition has deteriorated permanently by five per centum of one hundred per centum disablement or by one-half of the original degree of disablement, whichever is the greater; and

(b) in any other case, if the member's condition has deteriorated permanently by at least ten per centum of one hundred per centum disablement.

(5) If the Pensions Board is of the opinion that there has been a substantial temporary increase in the degree of disablement of a disabled member to whom a permanent disablement compensation has been awarded, it shall award such member a further temporary disablement compensation in respect of such increase.

(6) A temporary disablement compensation awarded under the provisions of subregulation (5) shall be subject to review from time to time until a permanent award is made or until the award ceases.

28. Additional compensation

(1) If the Pensions Board is satisfied that the civil earnings of a disabled member who has been awarded a disablement compensation exceed the amount arrived at by adding together the annual rate of his disablement compensation and his average annual earnings, it may award him a compensation not exceeding the amount of such excess (in these Regulations referred to as "additional compensation").

(2) For the purposes of this regulation, the average annual earnings of a disabled member referred to in subregulation (1) shall be such amount as the Pensions Board, having regard to the reduced earning capacity of the disabled member owing to his disablement, considers to fairly represent the earning capacity of such member during a period of one year.

(3) An additional compensation may be reviewed and altered from time to time according to any change in the circumstances of the disabled member, but so, however, that no increase shall be made which would have the effect of nullifying any reduction or withdrawal ordered under regulation 33.

29. Degree of disablement

(1) The degree of disablement of a disabled member shall be the measure of disablement (expressed by way of a percentage, one hundred per centum representing total disablement) which is certified as being suffered by such member by a comparison of his condition as disabled with the condition of a normal healthy person of the same age and sex, without taking into account the earning capacity of such member in his disabled condition in his own or any other trade or occupation.

(2) In a case of disablement suffered by reason of two or more disablements attributable to, or aggravated by, military service without any misconduct or serious negligence on the part of the disabled member, his degree of disablement shall be assessed in relation to the combined disablements and shall in no case exceed one hundred per centum.

(3) If a disabled member is suffering from disablement which was aggravated by military service but is not attributable to military service and the aggravated condition is not due to any misconduct or serious negligence on his part, his degree of disablement for the purpose of these Regulations shall be the degree of disablement resulting from the aggravation only.

(4) Where a disabled member considers that his assessed degree of disablement is incorrect, he may request the Pensions Board to refer his case to a special medical board and the Pensions Board may in its discretion accede to that request or refuse it.

(5) A special medical board shall investigate and make a finding on any case referred to it under subregulation (4) and shall submit its findings to the Pensions Board.

(6) If the finding of a special medical board is that the disablement in question is of a degree higher or lower than the degree at which it was previously assessed, the Pensions Board shall alter the assessment to conform with such finding.

30. Allowance in respect of spouse and children of a disabled member

(1) Subject to the provisions of this regulation, a disabled member who has been awarded a disablement compensation may be awarded an allowance in respect of the spouse and each of the children payable during the continuance of the compensation at such of the annual rates specified in subregulation (2) as corresponds to the degree of disablement at which such member is assessed for compensation.

(2) The annual rates for the purposes of subregulation (1) shall be—

(a) in respect of the spouse of a disabled member—

(i) if the member is an officer, K3,600;

(ii) if the member is not an officer, K1,800;

(b) in respect of the first child of a disabled member—

(i) if the member is an officer, K3,600;

(ii) if the member is not an officer, K1,800; and

(c) in respect of each additional child of a disabled member—

(i) if the member is an officer, K2,160;

(ii) if the member is not an officer, K1,080.

(3) Where a disabled member marries after the date of the award to him of a disablement compensation, the allowance awarded to him in respect of the spouse shall be paid—

(a) if proof of the marriage is furnished to the Pensions Board within three months after the date thereof, as from the date on which such proof is furnished; and

(b) if proof of the marriage is not furnished to the Pensions Board within three months after the date thereof, as from the date on which such proof is furnished.

(4) Where a child of a disabled member is born after the date of award of a disablement compensation to the member, the allowance awarded to him in respect of such child shall be paid—

(a) if proof of the date of birth is furnished to the Pensions Board within three months after the date thereof, as from the date of birth of the child; and

(b) if proof of the date of birth is not furnished to the Pensions Board within three months after the date thereof, as from the date on which such proof is furnished.

(5) The award and continuance of an allowance in respect of a spouse who is living apart from the disabled member shall be at the discretion of the Pensions Board.

31. Payment of medical expenses

(1) A disabled member shall in respect of his disablement, be entitled, at the expense of the Government, to—

(a) medical treatment in a Government hospital by a medical officer or a medical officer in the Ministry of Health;

(b) such other medical treatment, if any, as may be authorized by the Pensions Board.

(2) Where a disabled member incurs medical expenses in respect of a disablement which has been aggravated by military service but is not attributable to military service, the sum payable under subregulation (1) in respect of such expenses shall not exceed an amount equal to the same proportion of such expenses as the actual degree of disablement of the disabled member due to the aggravated condition bears to the degree of disablement which would have been applicable to him had the whole of his disablement been attributable to military service.

32. Temporary allowance in connexion with medical examination

(1) If it is certified that it is necessary for a disabled member to submit to a medical examination or to undergo medical treatment in a hospital or elsewhere, the Pensions Board may, subject to the other provisions of this regulation, award a temporary allowance to such member, in addition to any other benefits to which he may be entitled under these Regulations, for the period during which he submits to such examination or undergo such treatment.

(2) A temporary allowance awarded under subregulation (1) shall be at the rate not exceeding the rate of additional compensation which could have been awarded to the disabled member if he had no annual compensation.

(3) No temporary allowance shall be awarded under subregulation (1), where the disabled member suffers no loss of income by reason of submitting to the medical examination or undergoing the medical treatment.

33. Medical examination of disabled member

(1) A disabled member who has been awarded a temporary disablement compensation may at any time be required by the Pensions Board, by letter sent by registered post to the registered address of such member, to submit to a medical examination at the expense of the Government at such date, time and place as may be specified in the letter.

(2) If within a period of six weeks after a letter has been sent to a disabled member under subregulation (1), he fails to acknowledge receipt of such letter or fails to submit himself to the required medical examination, his temporary disablement compensation shall be suspended.

(3) If a disabled member whose temporary disablement compensation has been suspended under subregulation (2) is subsequently medically examined and found to be still suffering from the disablement for which he was originally awarded a temporary disablement compensation, the Pensions Board shall restore his compensation from the date on which it was suspended and may, after obtaining an explanation for his default, order that—

(a) where there is a reduction in the degree of disablement, such reduction shall apply from the date on which the award was suspended; and

(b) where there is an increase in the degree of disablement, such increase shall apply from the date on which the award was suspended.

(4) For the purpose of this regulation, the registered address of a disabled member shall be the address notified in writing by him to the Pensions Board as being his permanent address or any change in his address likewise notified.

34. Medical treatment of disabled member

(1) A disabled member who has been awarded a disablement compensation, additional compensation or an allowance under these Regulations may at any time be required by the Pensions Board to undergo medical treatment of a reasonable nature.

(2) If a disabled member referred to in subregulation (1) refuses to undergo the treatment required by the Pensions Board, the Pensions Board may—

(a) reduce or withdraw any temporary disablement compensation, additional compensation or allowance awarded to him under these Regulations; and

(b) refuse to increase the amount of any permanent disablement compensation awarded to him, notwithstanding that there has been a substantial permanent increase in his degree of disablement.

(3) A disabled member referred to in subregulation (1) who is dissatisfied with any action taken by the Pensions Board under subregulation (2) may claim an independent medical examination to decide whether the medical treatment which he was required to undergo was of a reasonable nature.

(4) Where the independent medical examination establishes that the medical treatment which the disabled member was required to undergo was not of a reasonable nature—

(a) any temporary disablement compensation, additional compensation or allowance awarded to him which was reduced or withdrawn shall be restored in full as from the date on which it was so reduced or withdrawn;

(b) any increase in the amount of the permanent disablement compensation awarded to him which was refused shall be granted as from the date on which it was so refused.

(5) Where a disabled member referred to in subregulation (1) is, owing to his misconduct, discharged from an institution in which he was undergoing medical treatment in accordance with the requirements of the Pensions Board, the Pensions Board may reduce or withdraw any

temporary disablement compensation, additional compensation or allowance awarded to him under these Regulations.

35. Vocational training

(1) The Pensions Board may in its discretion refer the case of any disabled member to a vocational board for the member's vocational training.

(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.

(3) If the Pensions Board, after considering the report of a vocational board, considers that a disabled member should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.

(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and such deductions in respect of the earnings of the disabled member while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled member may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this Regulation, the Pensions Board shall determine the sum to be awarded to the disabled member for the purchase of tools required by him in the vocation in which he has been trained.

(7) If a disabled member refuses to undergo any vocational training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

36. Travelling and subsistence allowance payable to a disabled member

(1) When a disabled member is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to the subregulations (3) and (4), when a disabled member is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled, during the period of necessary absence from home, to a subsistence allowance at the rate applicable to a member of similar rank in the Regular Force.

(3) A disabled member shall not be entitled to any subsistence allowance under subregulation (2)—

(a) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(b) if the period of absence from home is less than four hours.

(4) If a disabled member is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof is required by the Pensions Board to

undergo a further medical examination, he shall not be entitled to any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

37. Further disablement of disabled member

If a disabled member who has been awarded a disablement compensation continues to undergo military service and suffers a further disablement attributable to, or aggravated by, military service without any misconduct or serious negligence on his part, he shall be awarded a supplementary compensation based on the scale set out in the First Schedule appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone. First Schedule

38. Allowance in respect of nursing attendants

Where a disabled member has been awarded a disablement compensation for one hundred per centum disablement and the Pensions Board is satisfied that his disablement necessitates the constant and continuous attendance of a nurse or other attendant, it may award such member, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.

PART V

TRAINING AND EMBODIMENT

39. Initial and subsequent training

A person who has volunteered for the Militia shall receive initial military training for a period not exceeding twelve weeks and, thereafter, subsequent training pursuant to a call-up under regulation 40.

40. Call-up for training

(1) Notice in writing of the date of call-up for training shall be delivered at the address of the volunteer—

(2) Any member of the Militia who has received a notice under subregulation (1) may appeal against his call-up for training to the appropriate exemption board, giving grounds for his appeal.

(3) Every person who before the fixed date had been called up for training and who immediately before the fixed date was liable to undergo training or had not completed training shall be deemed to have been called up for training under these regulations.

(4) Any member of the Militia who—

(a) has received a notice referred to in subsection (1);

(b) has not been exempted from training under this Part; and

(c) fails to present himself for training at the date specified in that notice,

shall be guilty of an offence.

41. Certificate of service

Every member of the Militia shall, on completion of the initial and any subsequent training, be entitled to be provided with a certificate in the form approved by the Minister giving particulars of his service in the Militia.

42. Notification of change of address

Every member of the Militia shall give notification in the form set out in the Second Schedule of any change of his address through the District Commissioner or the nearest military institution within a period of fourteen days after his address has been changed, and any member who fails to do so shall be guilty of an offence. Second Schedule

43. Classification on training

A member called up or deemed to have been called up for training under these Regulations shall be classified by the appropriate training authority as efficient or inefficient in accordance with such provisions as may be prescribed.

44. Absent without leave and evasion of training

A member who—

(a) without leave or permission, absents himself during any period of continuous training to which he is liable under these regulations; or

(b) evades or fails to perform duty and with proper zeal for the full course of—

(i) his initial period of training; or

(ii) training allotted to him in respect of any period succeeding his initial period of training,

shall be guilty of an offence.

45. Medical examination

(1) Every member who has been notified—

(a) before the fixed date that he has been called up for training and has not been medically examined; or

(b) on or after the fixed date that he has been called up for training,

shall present himself for, and submit to, medical examination when called upon to do so.

(2) Any member who has been medically examined under subregulation (1) and has been pronounced unfit for military service in any capacity whatever shall be released from the call-up in relation to which he was medically examined, and shall receive from the appropriate registering officer a certificate to that effect in the form approved by the Minister.

46. Exemption boards

(1) The Minister may appoint exemption boards at such places in Malawi as he may deem expedient.

(2) An exemption board shall consist of such persons, including officers or other authorities, as the Minister may appoint.

(3) Functions of an exemption board shall be to—

(a) consider applications for exemption from training under these regulations; and

(b) carry out such other duties as may be prescribed or assigned to it by the Minister.

(4) The exemption board shall have power to determine the procedure for the conduct of its business.

(5) The decision of an exemption board on any application for exemption shall be final and shall not be subject to any appeal.

47. Transfer to the Reserve Force

A member of the Militia shall not, except in time of war or under regulation 48, be transferred to the Reserve Force.

48. Embodiment

(1) Whenever it appears to the President necessary or desirable in the public interest, he may by notice published in the Gazette or otherwise—

(a) order the employment of the whole or any part of the Militia; and

(b) order the employment of any member of the Militia for service within or, with his consent, outside Malawi.

(2) Any member of the Militia employed under subregulation (1) by reason of an order issued by the President shall remain so employed until released by order of the President.

(3) Any member of the Militia employed under subregulation (1) may be posted or attached to any unit of the Regular Force or the Reserve Force.

49. Reporting from time to time by members

The President may, by notice in the Gazette, order the whole or any part of the Militia to report from time to time at such places as he may see fit.

50. Punishment for offences under these Regulations

Offences under these Regulations shall be punishable in accordance with the punishment provisions in the Act.

FIRST SCHEDULE regs. 27 and 37

RATES OF DISABLEMENT COMPENSATION

Rank and class	Rate Per annum
1. Disabled member holding rank—	
(a) Lieutenant Colonel, Wing Commander or higher rank	K18,900
(b) Major or Squadron Leader	K15,120
Captain or Flight Lieutenant	K15.120
(c) Lieutenant, Second Lieutenant, Flying Officer or Pilot officer	K13,092
2. Disabled member not holding commissioned rank	K13,092

SECOND SCHEDULE reg. 42

NOTIFICATION OF CHANGE OF ADDRESS

I, ...
(registered number, rank and name)
of ..... late of ..... (unit)
hereby give notice that my addresses now are—
Residential: .....
.....
.....
.....
Business: .....
.....
Occupation: .....
My place of residence is ..... kilometres from ..... Post Office
Place: .....
Date: .....
.....
Signature