

**CHAPTER 21:05 - BOTSWANA DEFENCE FORCE: SUBSIDIARY LEGISLATION  
INDEX TO SUBSIDIARY LEGISLATION**

Botswana Defence Force (Execution of Death Sentences) Regulations  
Botswana Defence Force (Imprisonment and Detention) Regulations  
Defence Force (Boards of Enquiry) Rules  
Defence Force (Procedure) Rules  
Defence Force (Regular Force) (Cadet Officers) Regulations  
Defence Force (Regular Force) (Discharge) Regulations  
Defence Force (Regular Force) (Officers) Regulations  
Defence Force (Regular Force) (Other Ranks) Regulations  
Defence Force (Summary Jurisdiction) Regulations  
Prescription of Order of Precedence of Certain Officers of the Botswana Defence Force Order

**DEFENCE FORCE (REGULAR FORCE) (OFFICERS) REGULATIONS**

*(section 15)*

*(15th April, 1977)*

ARRANGEMENT OF REGULATIONS

PART I

*Preliminary*

REGULATION

1. Citation
2. Interpretation
3. Application of Regulations

PART II

*Engagement, Period of Service and Termination thereof*

4. Engagement of officers
5. Resignation
6. Compulsory resignation
7. Dismissal of officers
8. Reduction in rank of officers
9. Transfer to and from other employment in the service of a Commonwealth country

PART III

*Promotion, Seniority, Pay and General Allowances*

10. Appointment to commissioned rank and subsequent promotion in case of direct entries
11. Appointment to commissioned rank and subsequent promotion in the case of officers who have served in the ranks
12. Acting appointment
13. Acting rank
14. Local rank
15. Seniority
16. Pay
17. Acting allowance
18. Entertainment allowance
19. General allowances
20. Free furnished quarters
21. No pay or allowance in certain circumstances
22. Family allowances when serving outside Botswana
23. Course allowance outside Botswana
24. Disturbance allowance
25. Travelling and baggage allowance
26. Deductions from pay and allowances

PART IV  
*Leave and Benefits*

- 27. Classification of leave
- 28. Power to grant leave
- 29. Pay and allowances during leave
- 30. Qualifying service
- 31. Grant of annual leave
- 32. Sick leave
- 32A. Maternity leave
- 33. Compassionate leave
- 34. Leave without pay
- 35. Embarkation and disembarkation leave
- 36. Travelling facilities on leave
- 37. Grant of free travel fares or equivalent on retirement

PART V  
*Medical Benefits*

- 38. Medical examination
- 39. Medical and hospital treatment
- 40. Additional medical service
- 41. Dental treatment
- 42. Treatment by oculists, etc.

PART VI  
*Transfers and Travelling on Duty*

- 43. Subsistence allowance
- 44. Subsistence allowance outside Botswana
- 45. Allowance for special duty
- 46. Expenses on transfer at own request
- 47. Expenses on transfer other than on own request
- 48. Travel by private motor vehicle
- 49. Advances of allowances, etc., payable under this Part

PART VII  
*Dress and Equipment*

- 50. Clothing and equipment

PART VIII  
*Disablement Benefits*

- 51. Award of pensions, and appeal
- 52. Review of awards
- 53. Administration of awards
- 54. Benefits on discharge for ill-health in certain circumstances
- 55. Pension in respect of ill-health occasioned by the discharge of duty
- 56. Free medical attention for Force pensioners
- 57. Medical examination or treatment of pensioners
- 58. Resumption of duty by disabled officer
- 59. Benefits to widow and children in respect of death in the course of duty

PART IX  
*General Provisions relating to Pensions, Gratuities and other Benefits*

- 60. Calculation of pensions and gratuities
- 61. Pensionable service
- 62. Benefits on resignation or compulsory retirement for ill-health

- 63. Benefits on retirement or resignation
- 64. Benefits on discharge or dismissal on prescribed grounds
- 65. Benefits to dependants on death of an officer pensioner
- 66. Commutation of pensions
- 67. Benefits not to be pledged or ceded
- 68. Conviction of pensioner
- 69. Forfeiture of pension
- 70. Deductions from pension, gratuity or other benefits
- 71. Proof of age, etc.

#### PART X

##### *Miscellaneous Provisions*

- 72. Marriage
- 73. Occupation of official quarters
- 74. Engagement for profit in trade or business
- 75. Active participation in politics
- 76. Sale of effects of deserter
- 77. Funeral expenses
- 78. Messes and other institutions

First Schedule - Benefits to Widow and Children

Second Schedule - Form

Third Schedule - Commutation Factor for Commutation of Pensions

Fourth Schedule - Gratuity Enhancement

S.I. 71, 1977,  
S.I. 30, 1978,  
S.I. 70, 1978,  
S.I. 132, 1978,  
S.I. 55, 1980,  
S.I. 143, 1980,  
S.I. 16, 1983,  
S.I. 29, 1985,  
S.I. 134, 1987,  
S.I. 40, 1993,  
S.I. 102, 1994,  
S.I. 76, 1996,  
S.I. 30, 2000,  
S.I. 74, 2002,  
S.I. 69, 2004,  
S.I. 52, 2006,  
S.I. 62, 2007.

#### PART I

##### ***Preliminary (regs 1-3)***

#### **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 holding the rank or appointment of chaplain;

**"child"**, in relation to an officer, means an unmarried son or daughter under the age of 18 years of that officer by his wife;

**"commissioned service"** means service as an officer in the Force;

**"dependant"**, in relation to a living or deceased officer or other person, means any person who, in the opinion of the Commander, is or was financially dependent on that officer or person;

**"the Force"** means the Regular Force of the Defence Force;

**"gratuity"** means a lump sum payment;

**"leave"**, in relation to an officer, means leave of absence from his duties;

**"legal officer"** means an officer appointed as a legal officer to the Force;

**"medical officer"** means an officer appointed as a medical officer to the Force;

**"medical practitioner"** means a person registered as a medical practitioner in Botswana under any written law;

**"officer"** means a person appointed an officer 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 Commonwealth country"** means pensionable employment otherwise than as an officer of the Defence Force under the Government or under the Government of a Commonwealth country;

**"pension"** means an annual pension payable during the lifetime of the recipient unless, in terms of these Regulations, it is payable for a shorter period;

**"pensionable emoluments"**, in relation to an officer, means the pay due to that officer under these Regulations;

**"pensionable service"** means pensionable service in accordance with regulation 61;

**"resignation"**, in relation to an officer, means his resignation from the Force under regulations 5 and 6, and "resign" shall be construed accordingly;

**"retirement"**, in relation to an officer, means his retirement from the Force under regulation 4 and regulation 8, and "retire" shall be construed accordingly;

**"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;

**"unit"**, in relation to an officer, means the unit in which that officer is serving;

**"widow"** includes widower.

### **3. Application of Regulations**

(1) These Regulations shall not apply to-

(a) an officer who is attached or seconded to any other military force outside Botswana by virtue of section 7 of the Act, unless the terms and conditions of his attachment or secondment as fixed or approved by the President provide that these Regulations shall apply;

(b) an officer of any military force of any country other than Botswana 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 Botswana and the Government of the other country concerned, unless the Agreement provides that these Regulations shall apply; or

(c) an officer serving with the Force by virtue of a contract of service entered into between that officer and the Government for service with the Force, unless the contract provides that these Regulations shall apply.

(2) Notwithstanding anything in these Regulations, the President may order any or all of these Regulations to be waived in any specific case.

## **PART II**

### ***Engagement, Period of Service and Termination thereof (regs 4-9)***

#### **4. Engagement of officers**

(1) A person shall only be appointed to be an officer in the Force if he is over 18 years and not more than 30 years of age on the date he is appointed or accepted for enlistment as a cadet officer, whichever is applicable.

(2) There shall be one class of engagement of officers in the Force which shall be in accordance with these Regulations.

(3) Subject to these Regulations, an officer shall retire from the Force on attaining the age of 55 years:

Provided that an officer may, at his own request, be permitted by the Commander, or at the request of the Commander, and with the officer's consent, continue in the Force until such age, not exceeding the age of 60 years, as the Commander considers necessary or desirable, bearing in mind the exigencies of the Force, the officer's efficiency and experience and the difficulty of replacing him within a reasonable time.

(4) An officer who has attained the age of 45 years may, at the discretion of the President in the case of an officer of or above the rank of Lieutenant-Colonel, or of the Commander in the case of any other officer, be required to retire from the Force.

(5) An officer shall be required to retire from the Force-

- (a) if he is found by a medical board to be mentally or physically unfit for further service;
- (b) on being given three months' notice in writing by the Commander, if-
  - (i) there is no establishment for him in his present rank; or
  - (ii) there is no reasonable future prospects of promotion for him in his present rank.

(6) An officer shall have the right to retire at any time on or after completing 20 years pensionable service, or on or after attaining the age of 45 years, on giving three 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-

- (i) if such notice is given whilst the officer is on active service, or whilst he is under the orders of a superior officer to hold himself in readiness for such active service, his retirement 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; and
- (ii) the provisions of subregulations (5) and (6) of regulation 5 shall apply, *mutatis mutandis*, to an officer who has attended a course of instruction at Government expense in or outside Botswana, and such officer shall not be entitled to retire from the Force unless and until such provisions are complied with.

#### **5. Resignation**

(1) An officer who is not entitled or required to retire from his employment in the Force in terms of this Part may resign from his employment in the Force during his engagement if-

- (a) he gives three 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 a course of training for officers 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 seven years in the Force since being appointed;

- (b) an officer who has attended a course of training for officers 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 appointed.

(3) An officer who resigns from the force during the first ten years of his period of engagement as an officer, shall be liable to repay to the Government such sum, calculated in accordance with the number of years served by the officer, as may be determined by the Defence Council.

(4) Any period in respect of which no pay or allowances are paid to an officer by virtue of regulation 21 shall, for the purposes of subregulation (3), be deemed not to form part of that officer's period of engagement.

(5) An officer who has attended a course of instruction outside or in Botswana at Government expenses for a period not exceeding one year shall, if he resigns within three years of the date of termination of such course, repay to the Government, in addition to any sums which he is liable to repay under subregulation (3), if his resignation takes effect-

- (a) before the expiry of one year after the date of termination of such course, one year's salary calculated at the rate at which he was paid a salary during his training, the full cost of his training and the allowances, if any, received by him during his training;
- (b) after one year but before the expiry of the two years from the date of termination of such course, two-thirds of one year's salary calculated at the rate at which he was paid salary during his training, two-thirds of the cost of his training and two-thirds of the allowances, if any, received by him during his training;
- (c) after two years but before the expiry of three years from the date of termination of such course, one-third of one year's salary calculated at the rate at which he was paid a salary during his training, one-third of the cost of his training and one-third of the allowances, if any, received by him during his training.

(6) An officer who has attended a course of instruction outside or in Botswana at Government expense for a period exceeding one year shall if he resigns within six years of the date of termination of such course repay to the Government in addition to any sums which he is liable to repay under subregulation (3), if his resignation takes effect-

- (a) before the expiry of one year from the date of termination of such course, one year's salary calculated at the rate at which he was paid a salary during his training, the full cost of his training and the allowances, if any, received by him during his training;
- (b) after the expiry of one year but before the expiry of two years from the date of termination of such course, five-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, five-sixths of the cost of his training and five-sixths of the allowances, if any, received by him during his training;
- (c) after the expiry of two years but before the expiry of three years from the date of termination of such course, four-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, four-sixths of the cost of his training, and four-sixths of the allowances, if any, received by him during his training;
- (d) after the expiry of three years but before the expiry of four years from the date of termination of such course, three-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, three-sixths of the cost of his training and three-sixths of the allowances, if any, received by him during his training;
- (e) after the expiry of four years but before the expiry of five years from the date of termination of such course, two-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, two-sixths of the cost of his training and two-sixths of the allowances, if any, received by him during his training;
- (f) after the expiry of five years but before the expiry of six years from the date of termination of such course, one-sixth of one year's salary calculated at the rate at

which he was paid a salary during his training, one-sixth of the cost of his training and one-sixth of the allowances, if any, received by him during his training.

#### **6. Compulsory resignation**

An officer may be required by the Commander to resign from the Force in any of the following circumstances-

- (a) if he is found guilty of misconduct 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 take 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;
- (c) if, after due enquiry being made, he is, in the opinion of the Commander, so inefficient as an officer as to be unfit to remain in the Force:

Provided that an officer who is required to resign from the Force under this regulation shall have a right of appeal to the President under section 143 of the Act.

**7. Dismissal of officers** (1) Subject to the provisions of this regulation, an officer may be dismissed from the Force at any time-

- (a) by the President; or
- (b) in the case where the Commander is the appointing authority, by the Commander, if the President or the Commander, as the case may be, is satisfied that-
  - (i) the officer, by his conduct and actions, has shown that he is not fit to hold his commission; or
  - (ii) the conviction of the officer of an offence by a court-martial adversely reflected on the integrity or reputation of the officer, and the penalty imposed for the conviction did not include reduction in rank.

(2) Where the President or the Commander, as the case may be, intends to dismiss an officer from the Force, he shall, in writing, inform the officer concerned of his intention to do so, giving the reasons therefor, and requiring the officer within 14 days of the receipt of the letter to give reasons why he should not be dismissed from the Force.

(3) An officer dismissed from the Force may-

- (a) in the case of dismissal by the President, petition the President for reconsideration of his decision; and
- (b) in the case of dismissal by the Commander, appeal against his dismissal to the Defence Council.

**8. Reduction in rank of officers** (1). Subject to the provisions of these Regulations, the President or the Commander, in the case where the Commander is the appointing authority, may order the reduction in rank of an officer if he is satisfied that-

- (a) the officer has demonstrated characteristics which are indicative of inability to perform the duties and responsibilities commensurate with his rank and appointment; or
- (b) the officer has conducted himself in manner unbecoming his rank and appointment.

(2) Where the President or the Commander, as the case may be, intends to order the reduction in rank of an officer, he shall, in writing, inform the officer of his intention to make such an order and giving reasons therefor, and to require the officer within 14 days of the receipt of the letter to reply in explanation why such order should not be made against him.

(3) An officer, in respect of whom an order for the reduction in rank has been made, may-

- (a) in the case of an order made by the President, petition the President for reconsideration of his decision; and
- (b) in the case of an order made by the Commander, appeal against the order to the Defence Council.

**9. Transfer to and from other employment in the service of a Commonwealth country**

(1) Subject to this regulation the President may, with the consent of the officer

concerned, transfer such officer from his employment in the Force to other employment in the service of a Commonwealth country upon such terms and conditions as may be fixed by the President in each case.

(2) Subject to this regulation, the President may consent to the transfer of a commissioned officer in the service of a Commonwealth country to serve as an officer in the Force upon such terms and conditions as may be fixed by the President in each case.

(3) Where the other employment in the service of a Commonwealth country is pensionable employment under the Government of that country, the President shall not fix any terms or conditions in relation to that employment under this regulation, except with the prior consent of the Government of that country.

(4) If any terms and conditions fixed in relation to an officer or person or his widow or children under this regulation are inconsistent with these Regulations, the terms and conditions so fixed shall prevail and, in relation to that officer or person or his widow or children, these Regulations shall, to the extent of the inconsistency, be void.

(5) Where an officer was, before the commencement of these Regulations, transferred to the Force under the laws then in force, the terms and conditions fixed in relation to that officer or his widow or children under those laws shall, *mutatis mutandis*, continue to have effect insofar as they are still applicable.

### **PART III**

#### ***Promotion, Seniority, Pay and General Allowances (regs 10-26)***

#### **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 appointed, be appointed to the rank of second-lieutenant.

(3) Promotion to the rank of lieutenant shall be made two years after the date of enlistment as a cadet officer.

(4) Promotion to the rank of captain may be made-

- (a) after not less than two years' satisfactory service in the substantive rank of lieutenant;
- (b) after the officer has passed the examination provided for promotion from lieutenant to captain;
- (c) after the officer has received an up-to-date recommendation for promotion to captain; and
- (d) provided there is a vacancy in the establishment for a captain.

(5) Promotion to the rank of major may be made-

- (a) after not less than three years' satisfactory service in the substantive rank of captain;
- (b) after the officer has passed the examination provided for promotion from captain to major;
- (c) after the officer has received an up-to-date recommendation for promotion to major; and
- (d) provided there is a vacancy in the establishment for a major.

(6) Promotion to any rank higher than that of major shall be by selection.

(7) The Commander may, if he considers it in the interests of the Force to do so, vary the provisions of this regulation.

#### **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 appointed.

(2) For the purposes 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 two years in that rank, and half of any other 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 appointed after less than two years' reckonable service shall be appointed to the rank of second-lieutenant, and a member of the Force appointed after two or more years' reckonable service shall be appointed to the rank of lieutenant.

(4) Promotion from second-lieutenant to lieutenant shall be made when the total of the officer's reckonable service and commissioned service amounts to two years or more.

(5) Promotion from lieutenant to captain may be made-

- (a) after the total of the officer's reckonable service and commissioned service amounts to three or more years, of which one year shall have been service as a lieutenant;
- (b) after passing the examination provided for promotion from lieutenant to captain, unless exempted therefrom under this regulation;
- (c) after receiving an up-to-date recommendation for promotion to captain; and
- (d) provided there is a vacancy in the establishment for a captain.

(6) Promotion to the rank of major may be made-

- (a) after the total of the officer's reckonable service and commissioned service amounts to three or more years, of which one year shall have been service as a captain;
- (b) after passing the examination provided for promotion from captain to major, unless exempted therefrom under this regulation;
- (c) after receiving an up-to-date recommendation for promotion to major; 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 Commander at his 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 Commander at his discretion from the necessity of taking or passing the examination provided for promotion from captain to major.

(9) The Commander may, if he considers it in the interests of the Force to do so, vary the provisions of this regulation.

**12. Acting appointment** (1) The Commander may, in his discretion, appoint an officer temporarily to act in an appointment for which a higher rank is required, and during any such appointment the officer concerned shall be paid an acting allowance equal to the difference between his substantive salary and the minimum of the scale of that higher rank:

Provided that no acting allowance shall be paid in terms of this subregulation to an officer whose acting appointment subsists for a period of less than 28 days.

(3) Notwithstanding the provisions of the proviso to subregulation (1), if the acting appointment is for 28 or more continuous days, and after reverting to his substantive appointment the officer is again, within 14 days thereafter, appointed to act in the same appointment, he shall be entitled to the acting allowance during such further appointment whether or not it subsists for 28 days.

**13. Acting rank** (1) Any officer may be appointed to act in the rank next higher than his substantive rank, if there is a vacancy in the establishment of officers of that higher rank.

(2) An officer who does not otherwise qualify for promotion to the rank next higher than his substantive rank, may be appointed to act in that higher rank on probation pending confirmation of his substantive appointment to that rank.

(3) The appointment to an acting rank shall, subject to the provisions of subregulation (5), subsist for not less than 12 months, or more than 18 months, after which the officer shall, if he has not by then been confirmed in the appointment, revert to his substantive rank.

(4) Any period of time spent by an officer in an acting rank shall not affect the annual rate of pay applicable to his substantive rank, but he will be entitled to receive the acting allowance appropriate to the acting rank, as prescribed by these Regulations.

(5) An officer appointed to an acting rank may, at the discretion of the appointing authority, be required to revert to his substantive rank-

- (a) if he is found to be deficient in the performance of his duties;
- (b) if he is charged with and convicted by a court martial or by a civil court for any offence under the Botswana Defence Force Act, or any offence under the laws of Botswana;
- (c) if, after due investigation, he is in the opinion of the appointing authority guilty of any act prejudicial to military discipline or which is likely to bring disrepute to the Defence Force.

(6) For the purposes of disciplinary action an officer shall be dealt with in the manner appropriate to the rank in which he is acting.

(7) For the purposes of this regulation "appointing officer" in relation to officers of or above the rank of Lieutenant-Colonel means the President of Botswana, and in relation to officers of the rank of Major and below means the Commander.

**14. Local rank** (1) The appointing officer as defined in regulation 13 may appoint any officer to a local rank higher than his substantive or his acting rank.

(2) An officer appointed to a local rank shall not be entitled to any increase in salary or any other financial benefit, and any such appointment will be made in the following circumstances and subject to the following conditions-

- (a) when it is necessary to raise the status of an officer who by virtue of his appointment will be performing the duties of that local rank, and there is no vacancy in the establishment for officers of such rank;
- (b) an officer appointed to a local rank shall relinquish such rank when he ceases to perform the duties of that rank, or may be required to relinquish it in the same circumstances and in the same manner as are referred to in regulation 13(5).

(3) For disciplinary purposes, officers holding a local rank shall be dealt with in the manner appropriate to such rank.

#### **15. Seniority**

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.

**16. Pay** Subject to these Regulations all officers shall be paid at such annual rates of pay as may be determined in respect thereof by the Defence Council.

**17. Acting allowance** An officer who is appointed to act in a rank which is higher than his substantive rank shall, during the subsistence of such acting rank, be paid an acting allowance equal to the difference, if any, between the salary for his substantive rank and the minimum salary for the rank in which he is acting.

#### **18. Entertainment allowance**

(1) The Commander and any Lieutenant-Colonel or other officer who performs the functions and duties of a commanding officer of a battalion shall, in respect of the period during which they perform such functions and duties, 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 allowances paid to any one officer shall in no case exceed such rate as may be determined by the Defence Council.

**19. General allowances** An officer may, in addition to his pay, be paid such allowances as may be determined by the Defence Council.

**20. Free furnished quarters**

(1) Where such quarters are available, every officer shall be provided free of charge with furnished quarters (hereinafter referred to as "free furnished quarters").

(2) An officer living in free furnished quarters shall, on production of evidence of payment, be reimbursed with the costs of energy and water up to such maximum as may be determined by the Defence Council.

**21. No pay or allowance in certain circumstances**

Notwithstanding 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;
- (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 or a prescribed officer 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.

**22. Family allowances when serving outside Botswana**

When serving on duty or when attending a course outside Botswana for a consecutive period longer than one month an officer who is married shall be entitled to receive a family allowance at such rates as may be determined by the Defence Council.

**23. Course allowance outside Botswana**

When attending a course of instruction outside Botswana an officer shall be entitled to such additional allowances as the Defence Council may allow.

**24. Disturbance allowance**

(1) An 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 such allowance as may be determined by the Defence Council to cover the reasonable expenses incurred thereby.

(2) An officer who is posted on transfer at his own request shall be entitled, where he is a householder and is obliged to transfer his household effects, to half of the allowance determined under subregulation (1).

**25. Travelling and baggage allowance**

(1) An officer travelling on duty or for the purpose of attending a course of instruction outside Botswana shall be entitled to an air passage to and from Botswana of such class as may be determined by the Defence Council.

(2) In addition to the accompanied baggage allowance to which his air ticket entitles him, namely, 20 kg, an officer shall be entitled to an allowance of a further 20 kg of baggage at air freight rates. 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 kg of baggage at air freight rates.

**26. Deductions from pay and allowances**

(1) The Commander may authorize the deduction from the pay and allowances due to an officer in terms of these Regulations of-

- (a) any liquidated amount which that officer is liable to pay to the Government or to any

mess, institution, organization or association whatsoever of members of the Defence Force;

- (b) any amount which that officer has previously been paid in pay and allowances in excess of the amount which is due to him under these Regulations.

(2) If, after perusing the proceedings of any board of enquiry, the Commander 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 a court-martial, a prescribed officer or a 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 Regulations of such amount, not exceeding the value of the loss, destruction or damage, as in the circumstances he may deem equitable in view of the value of 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 14 days immediately following the date when the deduction was made, appeal in writing to the Defence Council against such deduction, and the Defence Council may confirm, modify or set aside the deduction.

#### **PART IV**

#### **Leave and Benefits (regs 27-37)**

**27. Classification of leave** For the purposes of this Part leave shall be divided into the following classes-

- (a) annual leave;  
(b) sick leave;  
(c) maternity leave;  
(d) compassionate leave;  
(e) embarkation leave;  
(f) disembarkation leave;  
(g) leave without pay.

**28. Power to grant leave**

The Commander may, in accordance with this Part, grant an officer under his command leave of any class.

**29. Pay and allowances during leave**

(1) The Commander may authorize the payment in advance of the pay and allowances due to an officer in respect of a period of leave granted to him in accordance with the following provisions-

- (a) if the officer has been granted a period of 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 allowances 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.

**30. 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 which 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 which has elapsed since the date of commencement of these Regulations or the date on which he was appointed, whichever is the 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 any officer at the following rates-

- (a) for every period of qualifying service amounting to 365 days, 30 working days;
- (b) for every period of qualifying service amounting to less than 365 working days, two and half working days per month.

(3) Where a member of the Force is appointed on or after the commencement of these Regulations any annual leave which, immediately before the date of his appointment, had accrued, or was deemed to have accrued to him under the provisions of the law applicable to him, and had not been taken by him, shall be deemed to have accrued in terms of this regulation.

(4) Where a member of the Force is appointed, 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 25 working days.

(5) Time spent in travelling within Botswana to or from a place of leave shall not be counted against a period of leave due.

### **31. 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 in terms of regulation 30, but not exceeding 30 working days in respect of any one calendar year.

(2) No annual leave shall, unless the Defence Council otherwise directs, be granted to an officer who has been discharged or dismissed from the Force in terms of regulations 6 and 7.

(3) Any period of annual leave which has accumulated shall not accrue to a member under this regulation in excess of 90 working days.

### **32. Sick leave**

(1) An officer may at any time be granted sick leave 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) the first 180 days of any period of sick leave shall be with full pay, and any subsequent period shall be with half-pay.

(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 Commander, such absence or detention is rendered necessary by the misconduct of the officer, the Commander may direct that the period of such absence or detention be taken as annual leave, or, if the officer is not eligible for the grant of any annual leave or is eligible for the grant of a period of 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.

**32A. Maternity leave** (1) Subject to subregulation (2), an officer may be granted maternity leave with pay for a period not exceeding 84 days on the following conditions:

- (a) maternity leave shall be granted for a maximum of three confinements during the officer's service;

- (b) a minimum period of 42 days shall pass following delivery before an officer resumes duty;
- (c) an officer must have been in continuous service for one year, which period excludes basic military training as an officer cadet, to qualify for maternity leave;
- (d) there shall be service of a continuous period of at least two years between confinements;
- (e) a stillbirth shall terminate the period of maternity leave;
- (f) infant mortality within seven days of delivery shall be deemed to be a stillbirth.

(2) Where an officer requests maternity leave:

- (a) before a continuous period of one year is served; or
- (b) before a continuous period of two years is served between confinements, the Commander shall grant it as leave under any other class of leave:

Provided that if a part of a period of such other leave falls after the expiration of two years between the allowed confinements, such period shall qualify as maternity leave with full pay.

(3) Where a stillbirth occurs when a part of maternity leave has already commenced, that period shall be taken as sick leave.

(4) Where an officer falls ill before maternity leave commences, the normal rules under regulation 32 shall apply:

Provided that sick leave shall cease and maternity leave commence 42 days before delivery.

(5) An officer due to proceed on maternity leave shall not be permitted to go for training or any other course of instruction scheduled to end 42 days within the expected date of delivery.

(6) An officer shall produce a medical certificate of fitness to resume duty after maternity leave, and where a miscarriage or stillbirth occurs, a medical certificate showing the period when the officer would be fit for duty.

(7) An officer shall be granted at least one hour or two half hour intervals each working day for a period of one year for the purpose of nursing her child.

### **33. Compassionate leave**

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 Commander may determine.

**34. Leave without pay** (1) Leave without pay may be granted to an officer who has no leave due to him, or insufficient leave to cover the period of leave requested, for study purposes, or for any other purpose which the Commander may, at his discretion, approve.

(2) No leave shall be earned during such unpaid leave, and it shall not count as qualifying service for purposes of calculating pensions or gratuities.

(3) Notwithstanding the provisions of subregulation (1), the Commander may grant study leave with full pay or part thereof, depending on the circumstances and at his discretion, in any case where he determines that the course or courses of study undertaken may be of value to the Force.

### **35. Embarkation and disembarkation leave**

(1) An officer may be granted 10 working days' embarkation leave with pay immediately prior to proceeding on active service or other duty outside Botswana, provided in the case of such other duty he is due to be out of Botswana for a minimum period of six months.

(2) An officer may be granted 10 working days' disembarkation leave with pay immediately after his return from active service or other duty outside Botswana, provided that in the case of such other duty he has been out of Botswana for a minimum period of six months.

### **36. Travelling facilities on leave**

(1) In respect of any leave accruing to an officer in accordance with regulation 30, he shall, once in every two years from the date of his appointment, be granted free travelling facilities to his leave destination, as the Defence Council may determine, for himself, his wife and any dependants:

Provided that if his leave destination is outside Botswana, such facilities shall only be granted to and from the point on the borders of Botswana nearest to his leave destination.

(2) Any officer who has been granted-

- (a) embarkation leave;
- (b) disembarkation leave; or
- (c) compassionate leave,

may be granted free travelling facilities to and from his leave destination on one occasion per year, or the equivalent in money, at the discretion of the Commander:

Provided that if his leave destination is outside Botswana, such facilities shall only be granted to and from the point on the borders of Botswana nearest to his leave destination.

### **37. 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 Botswana.

(2) The benefits referred to in subregulation (1) shall be an amount equal to the cost of a single first-class rail or road fare from his last place of duty to his destination.

(3) The wife of a deceased officer and his children dependent upon her 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 12 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 36, 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 benefit conferred by this regulation shall be granted unless it is supported by a certificate that it will be used for the journey in respect of which the claim was made, and, in the case of a claim made in respect of a person's dependants, particulars are given.

(7) For the purposes of this regulation "dependant", in relation to an officer referred to in subregulation (1), means-

- (a) the wife of that officer;
- (b) any child of that officer who was, at the date on which he retired, under the age of 18 years and wholly dependent on him,

who precedes him, accompanies him or follows him on any journey in respect of which a benefit may be granted under this regulation.

(8) An officer who is discharged from the Force due to ill-health, arising from his physical or mental condition, shall be granted free travelling facilities to his place of residence in Botswana, or if he resides outside Botswana, to the place on the borders of Botswana nearest to his place of residence.

## **PART V**

### ***Medical Benefits (regs 38-42)***

#### **38. 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 medical practitioner; or
- (c) a medical board.

### **39. Medical and hospital treatment**

(1) An officer shall, while stationed or on leave within Botswana and while outside Botswana 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 Botswana or is outside Botswana 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 Commander 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 Botswana requires medical or hospital treatment for himself or a dependant, and where satisfactory free medical treatment is not available in local government hospitals, the Commander may authorize him or his dependant to be provided, free of charge to him, with such medical or hospital treatment (including transport to a hospital) as the Commander considers necessary in the circumstances.

(5) If, while an officer is stationed or on leave within Botswana or is outside Botswana 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 Commander 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 patient to the hospital or other institution paid by the Government.

(6) If, while an officer is stationed or on leave within Botswana or is outside Botswana 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, not exceeding the amount of a first-class return rail fare from the appropriate point of departure by rail nearest to the place where the officer is stationed to the railway station nearest to the place where the medical treatment is available, 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, not exceeding the amount of a first-class return rail fare from the appropriate point of departure by rail nearest to the place where the officer is stationed to the railway station nearest to the place where the medical treatment is available;
  - (ii) paid a subsistence allowance at the rates authorized under regulation 43; or

- (b) if the Commander certifies in the case of a dependant who is a child that it is necessary on medical grounds for the officer and his wife to accompany such dependant to the place where the medical treatment is available, the officer and his wife shall each be-
- (i) granted a refund of the transport expenses referred to in paragraph (a)(i); and
  - (ii) paid the subsistence allowance referred to in paragraph (a)(ii).

**40. Additional medical service** (1) Without derogation from the provisions of regulation 39 the Commander may, on the advice of a medical officer, authorize the payment-

- (a) to an officer of the cost of any medical treatment incurred in Botswana by such officer or any of his dependants;
- (b) of the cost of any specialist advice or medical treatment not available in Botswana, incurred by such officer or any of his dependants.

(2) An officer or any of his dependants receiving medical treatment or advice outside Botswana in accordance with subregulation (1) shall be entitled to be paid reasonable transport expenses and the daily subsistence allowance referred to in regulation 44.

(3) For the avoidance of doubt, "medical advice" and "medical treatment" include surgical advice and surgical treatment respectively.

**41. Dental treatment**

If the examination and treatment of an officer's teeth by a dentist is authorized by a medical officer, any costs incurred thereby shall be paid by the Government.

**42. Treatment by oculists, etc.**

If the examination and treatment of an officer's eyes by an oculist is authorized by a medical officer, any costs incurred thereby shall be paid by the Government, including the provision of free spectacles.

**PART VI**

***Transfers and Travelling on Duty (regs 43-49)***

**43. Subsistence allowance** An officer who is required to travel on duty within Botswana shall be paid a subsistence allowance at such rate as may be determined by the Defence Council for each night that he is necessarily absent from his home station, and a refund of any other expenses necessarily incurred by him:

Provided that-

- (a) where an officer is provided with overnight accommodation without expense to himself, he shall be entitled to only half the subsistence allowance otherwise payable under this regulation; and
- (b) where an officer is provided with overnight accommodation and meals without expense to himself, no subsistence allowance shall be payable.

**44. Subsistence allowance outside Botswana**

An officer who is required to travel on duty outside Botswana shall be paid a daily subsistence allowance at the rates authorized to be paid to public officers.

**45. Allowance for special duty**

The Defence Council may authorize the payment to an officer who is required to undertake relieving or special duty of an allowance sufficient to cover reasonable expenses incurred thereby by the officer.

**46. Expenses on transfer at own request** (1) An officer who is posted on transfer at his own request shall be entitled to free travel facilities to his new station for himself, his wife and his dependants, and to subsistence allowances at half of the rate payable under regulation 47.

(2) For the purposes of this regulation "free travel facilities" means a first class rail or road warrant or by military transport.

(3) Where the officer uses his own vehicle for the purposes of this regulation he shall be entitled to motor vehicle mileage allowance at half of the rate payable under regulation 48(1).

**47. Expenses on transfer other than on own request**

- (1) An officer who is posted on transfer other than at his own request shall be entitled to-
- (a) be paid, in respect of himself, whilst travelling to his new station, subsistence allowance at the rates authorized in regulation 43;
  - (b) be paid, in respect of his wife and all his dependants under the age of 18 years, whilst travelling to the officer's new station, subsistence allowance at the rates authorized to be paid to public officers:

Provided that the proviso to regulation 43 shall apply to any such wife or dependant so travelling as it applies to officers travelling under that regulation;

- (c) have transported, at Government expense, to his new station a maximum weight of 2000 kg of personal baggage;
- (d) be paid a disturbance allowance at the rate authorized in regulation 24;
- (e) free travel facilities to his new station in respect of himself, his wife and all his dependants under the age of 18 years.

(2) For the purposes of this regulation "free travel facilities" means a first-class rail or road warrant or by military transport.

#### **48. 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 authorized to be paid to public officers. 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 47, 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 47, allowance shall be paid only in respect of those nights necessarily spent in transit by the most direct route.

(3) For the purposes of this regulation "nights necessarily spent in transit" means nights which would have been spent if the officer had travelled not less than 320 km.

#### **49. Advances of allowances, etc., payable under this Part**

An officer may be paid in advance the full amount of any allowances which it is estimated would 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 (reg 50)***

**50. Clothing and equipment** (1) An officer shall be provided free of charge with such items of clothing and personal equipment as are required for service in the Force, which shall be exchanged or replaced from time to time, at Government expense, if new or altered order of dress is adopted, or when they become unserviceable due to fair wear and tear.

(2) An officer shall not wear any article forming part of the uniform of the Force which he is not authorized to wear.

### **PART VIII**

#### ***Disablement Benefits (regs 51-59)***

**51. Award of pensions, and appeal** (1) The right of any person to an award under this Part and the Award of pensions, and amount of such award shall be determined by the Commander in accordance with this Part.

(2) Within six months after the date on which any decision of the Commander has been communicated to the claimant under this Part such claimant may, if aggrieved by such decision, by notice in writing to the Commander, appeal to the Defence Council.

(3) On any such appeal the Defence Council may confirm the decision of the

Commander or may, subject to the provisions of these Regulations, vary such decision.

(4) A claimant may appeal the decision of the Defence Council to the President, who may, on such appeal, confirm or vary the decision of the Defence Council.

(5) The President's decision shall be given effect to by the Defence Council.

## **52. Review of awards**

The Defence Council may at any time review, amend or withdraw any award under this Part which-

- (a) has been incorrectly made by error in interpretation of fact; or
- (b) it has reason to believe has been obtained by improper means.

**53. Administration of awards** Any award payable to or in respect of any person under this Part may, in the discretion of the Commander and for reasons deemed by him to be sufficient, be administered under such conditions as the Commander may determine instead of being paid to the grantee.

## **54. 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 10 years, a gratuity at the rate prescribed in regulation 60;
- (b) if his pensionable service amounts to 10 or more years, a pension at the rate prescribed in regulation 60.

## **55. Pension 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 officer is due to 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,

he shall be awarded a pension according to the degree of the disablement which is attributable to the discharge of such duties or to such aggravation, as the case may be, and in accordance with the following provisions-

- (i) where the degree of such disablement is 100 per cent, he shall be awarded a pension equal to 50 per cent of his retiring pensionable emoluments;
- (ii) where the degree of such disablement is less than 100 per cent, he shall be awarded a pension bearing the same proportion to the pension calculated in accordance with paragraph (i) as the degree of such disablement bears to 100 per cent.

(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, at 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 unfitness, physical or mental incapacity or personal injury he shall be awarded a pension calculated in accordance with subregulation (1)(b)(ii) 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 an officer 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 Commander as the date of disablement.

(4) If an officer resumes duty in the Force in terms of regulation 58 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 Force, he is still suffering from the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was previously awarded a pension under this regulation, he shall be awarded a pension calculated in accordance with subregulation (2).

(5) Any pension payable 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 regulation, to be discharging his duties while he is so participating.

(7) Where, in consequence of personal injury suffered by a disabled officer, compensation is payable under any law for the time being in force providing for the payment of workmen's compensation, the Commander may reduce or withhold any pension payable in accordance with this regulation in such manner and to such extent as he considers reasonable.

(8) Where the Commander is satisfied that damages have been or will be recovered in respect of personal injury for which a pension is payable in accordance with this regulation, the Commander may take those damages into account against such pension in such manner and to such extent as he thinks fit and may reduce or withhold the pension accordingly.

(9) For the purposes of subregulation (8) damages shall be deemed to be recovered whether they are paid in pursuance of a judgment or order of a court or by way of settlement or compromise of the relevant claim and whether proceedings are or are not instituted to enforce that claim.

**56. Free medical attention for Force pensioners** (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 Commander, attention and treatment by a person recommended by the Commander, and accommodation at a hospital or institution other than a Government hospital or institution.

(2) A disabled officer who has been awarded a pension under regulation 55 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 officer is required by the Commander 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 Commander may determine; and
- (b) to be paid such subsistence allowance as the Commander 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 Commander 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.

**57. Medical examination or treatment of pensioners** (1) Any officer who has been awarded a pension under this Part may at any time be required by the Commander 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 Commander 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 Commander such pension shall be revived with effect from the date on which he submits himself to that examination or undergoes that treatment.

(3) For the purposes of this regulation a certificate given by the majority of the members of a special medical board shall be conclusive on the question whether or not the medical or surgical treatment required by the Commander involves appreciable risk to the life of the person concerned.

**58. Resumption of duty by disabled officer**

(1) If a disabled officer who has been awarded a pension under this Part 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 he has not completed his period of engagement in terms of regulation 4(3), he may, subject to subregulation (3), be required by the Commander to resume duty in the Force.

(2) If an officer required to resume duty in the Force in terms of subregulation (1) refuses without reasonable cause to do so, his right to any pension 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 to resume duty in the 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 his discharge;
- (c) his right to any pension 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 pension under this Part.

(4) For the purposes of this regulation, a certificate given by the majority of the members of a special medical board shall be conclusive on the question of the fitness of the person concerned for duty in the Force.

**59. Benefits to widow 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; or
- (b) an officer who has been awarded a pension under regulation 55 dies owing to ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was awarded that pension,

there shall be awarded to his widow and in respect of his children, if any, a pension and gratuity, or, if he leaves no widow, may be awarded to persons dependent on him, a pension and gratuity

calculated in accordance with this regulation.

(2) The pension awarded to the widow shall be 40 per cent of the pension to which her husband would have been entitled under regulation 55(1)(i) at the date of his death had he not died.

(3) The pension awarded in respect of the children shall be determined in accordance with the First Schedule.

(4) The right of any widow to a pension awarded to her under subregulation (2) shall cease as from the date on which she remarries.

(5) If the deceased officer does not leave a widow and if his mother was wholly or mainly dependent on him for her support, a pension may, in the discretion of the Commander, be awarded to the mother of an amount not exceeding the pension which would have been awarded to the widow.

(6) If the deceased officer does not leave a widow or mother, or if no pension is granted to his mother, and if his father was wholly or mainly dependent on him for his support, a pension may, in the discretion of the Commander, be awarded to the father of an amount not exceeding the pension which would have been awarded to the widow.

(7) If the deceased officer does not leave a child or children who is or are eligible for a pension under this regulation, and if any brother or sister was wholly or mainly dependent on him for support, a pension may, in the discretion of the Commander, be awarded to such brother or sister until he or she attains the age of 21 years of the same amount and subject to the same conditions as the pension which would have been awarded under subregulation (3).

(8) Any pension 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 Commander and shall, in accordance with the determination of such Commander, be paid in respect of one child or apportioned between any two or more of the children.

(9) If a child dies or ceases to be a child, the pension awarded under this regulation in respect of the child shall cease or, if there are other children, shall be adjusted accordingly.

(10) Any pension awarded under this regulation shall be in addition to any other pension or benefit payable under these Regulations.

(11) The gratuity payable under this regulation shall be of an amount equal to the greater of-

- (a) four years' salary of the deceased officer; and
- (b) the sum produced by commuting one third of such officer's annual pension entitlement at the date of death determined in accordance with regulation 66(5).

(12) The gratuity calculated under subregulation (11) shall be paid-

- (a) if the deceased officer leaves a widow, to the widow;
- (b) if the deceased officer does not leave a widow, but leaves a child or children in respect of whom a pension is awarded, to the person or persons determined by the Commander for the purposes of subregulation (8);
- (c) if the deceased officer does not leave a widow or a child or children, and a pension is awarded to his mother under subregulation (5), to his mother;
- (d) if the deceased officer does not leave a widow or a child or children, and a pension is awarded to his father under subregulation (6), to his father;
- (e) if the deceased officer does not leave a widow or a child or children, and a pension is not awarded to his mother or father, but a pension is awarded under subregulation (7) in respect of his brother or sister, to such person or persons as may be determined by the Commander.

(13) Not more than one gratuity shall be payable under this regulation in respect of the death of an officer.

(14) 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 regulation, to be discharging his duties while he is so participating.

(15) Where, in respect of the death of an officer, compensation is payable under any law for the time being in force providing for the payment of workmen's compensation, the Commander may reduce or withhold any pension payable in accordance with this regulation in such manner and to such extent as he considers reasonable.

(16) Where the Commander is satisfied that damages have been or will be recovered in respect of death for which a pension is payable in accordance with this regulation, the Commander may take those damages into account against such pension in such manner and to such extent as he thinks fit and may reduce or withhold the pension accordingly.

(17) For the purposes of subregulation (16) damages shall be deemed to be recovered whether they are paid in pursuance of a judgment or order of a court or by way of settlement of the relevant claim and whether proceedings are or are not instituted to enforce that claim.

## **PART IX**

### ***General Provisions relating to Pensions, Gratuities and other Benefits (regs 60-71)***

#### **60. Calculation of pensions and gratuities**

Subject to these Regulations-

- (a) a pension payable to an officer under this Part or regulation 54 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;
- (b) a gratuity payable to an officer under this Part or regulation 54 shall be calculated at the rate of one-twelfth of his retiring pensionable emoluments for each completed year of his pensionable service.
- (c) a gratuity payable to a member shall be enhanced in accordance with the Fourth Schedule hereto.

#### **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.

(2) Pensionable service shall include-

- (a) time spent on duty;
- (b) time spent on leave;
- (c) time spent on attachment or secondment to the military forces of any other Government under section 7 of 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 Defence Force is later engaged for service in the Force under section 14 of the Act then, if-

- (a) such person is not a disabled member who is required to resume duty in the Force under regulation 58(1);
- (b) the previous service terminated not more than two years prior to the date of such later engagement for service in the 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 under the age of 18 years; or
- (b) in respect of which, by virtue of regulation 21, 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 this subregulation.

(5) The period of pensionable service shall be calculated by the month, and fractions of

a month shall be disregarded.

(6) Any person who is engaged in the force on or after 1st April, 2001 shall automatically become a member of the Botswana Public Officers Pension Fund.

**62. Benefits on resignation or compulsory retirement for ill-health**

(1) An officer who resigns under regulation 5, if his pensionable service amounts to five or more years but less than 10 years, or who is compulsorily retired for reasons of ill-health under regulation 4(5)(a), 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 at such rate as may be determined by the Council;
- (b) a sum equivalent to his pensionable emoluments for a period of 28 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 30 days' service spent on active service outside Botswana.

(2) In the calculation of complete periods of 30 days' service for the purposes of subregulation (1)(c), all periods of service spent on active service outside Botswana shall be aggregated.

**63. Benefits on retirement or resignation**

(1) An officer who retires from the Force after 20 years or more pensionable service shall be entitled to a pension at the rate prescribed in regulation 60(a).

(2) An officer who is compulsorily retired from the Force in terms of regulation 4(5)(a) shall be entitled-

- (a) if his pensionable service amounts to 7 years or more but less than 14 years, to a gratuity at the rate prescribed in regulation 60(b); or
- (b) if his pensionable service amounts to 14 years or more, to a pension at the rate prescribed in regulation 60(a).

(3) An officer who resigns from the Force whose pensionable service amounts to 10 years or more, but less than 20 years, shall be entitled to a gratuity at the rate prescribed in regulation 60(b).

**64. Benefits on discharge or dismissal on prescribed grounds**

(1). An officer who is, under regulation 6 or 7, or under section 67 or section 75(5)(a) of the Act required to resign, or is cashiered or dismissed from the Force may be paid-

- (a) if his pensionable service amounts to 10 or more years but less than 20 years, such gratuity as the Commander may determine;
- (b) if his pensionable service amounts to 20 or more years, such pension or gratuity as the Commander may determine.

(2) Where the Commander intends to order forfeiture of the pension or gratuity referred to in subsection (1), or both the pension and gratuity, he shall-

- (a) inform the officer of such intention in writing; and
- (b) give the officer reasons for such forfeiture.

(3) Where the Commander gives notice in accordance with subsection (2), the officer may, within 14 days of receipt of such notice, give reasons why such order should not be against him.

**65. Benefits to dependants on death of an officer pensioner**

(1) If an officer whose pensionable service amounts to two or more years dies in circumstances other than those specified in regulation 59(1), there shall be paid to his dependants an amount equal to the greater of-

- (a) one year's salary of the deceased officer; and
- (b) the sum produced by commuting one third of such officer's annual pension entitled at the date of death determined in accordance with regulation 66(5).

(2) If an officer who is receiving a pension under regulation 63 dies within five years after

the date of his retirement, there shall be paid to his dependants a gratuity equal to the aggregate of the pension which would have been payable to such officer had he not died, for the period from the day following the date of his death to the expiry of five years from the date of his retirement.

#### **66. Commutation of pensions**

(1) In this regulation, unless the context otherwise requires-

**"applicant"** means an officer about to become entitled to a pension in terms of regulation 54, 55, 63 or 64 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;

**"form"** means the form set out in the Second Schedule.

(2) Subject to this regulation, an officer about to become entitled to a pension in terms of regulation 54, 55, 63 or 64 may apply to the Defence Council for the commutation of up to one-third of the pension to which he is about to become entitled.

(3) The Defence Council may, where the pension to which an applicant is about to become entitled, commute up to one-third of his total annual pension by a 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 on Form No. 1 in the Second Schedule and shall be submitted to the Commander.

(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 Third 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:

Provided that where the age of the applicant at the date of his application for commutation is under 29 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 may be fixed by the Defence Council.

(6) The commutation of a pension shall be effected on the date he becomes entitled to his pension.

(7) For the purposes of this Part the form and the table set out in the Second and Third Schedules respectively shall, with such adaptations or modifications as the circumstances may require, be used and applied.

#### **67. Benefits not to be pledged or ceded**

No pension, gratuity or other benefit payable under these Regulations or right to such a pension, gratuity or other 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 Regulations 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 Defence Council so determines:

Provided that the Defence Council 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 it may determine.

#### **68 Conviction of pensioner**

If an officer 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 directions, if any, of the Defence Council, be discontinued during the whole or part of the period of imprisonment:

Provided that the Defence Council 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 Defence Council may determine.

## **69. 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;
- (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 Defence Council, accepts directly or indirectly any testimonial or gift of a pecuniary value in connection 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 Defence Council, be suspended, reduced or forfeited, as the case may be.

## **70. Deductions from pension, gratuity or other benefits**

(1) The Defence Council 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 of 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 Commander has, under regulation 26, authorized to be deducted from the pay and allowances due to an officer.

## **71. Proof of age, etc.**

(1) An officer shall, if required to do so, submit proof of the date of his birth.

(2) No payment of any pension to a widow 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 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 Defence Council.

## **PART X**

### ***Miscellaneous Provisions (regs 72-78)***

## **72. Marriage**

No officer shall marry without first obtaining the consent of the Commander.

## **73. Occupation of official quarters**

An officer shall, if required by the Commander to do so, reside in official quarters.

## **74. Engagement for profit in trade or business**

(1) Except with the written consent of the Commander and in accordance with such directions, if any, as the Commander may from time to time give him, an officer shall not-

- (a) engage for profit in any business or occupation other than his official duties;
- (b) be or become a director or engage directly or indirectly in the management or directions of any public company or syndicate.

(2) For the purposes of this regulation the traditional practice of cattle farming shall not be regarded as a business or occupation provided it is undertaken outside duty hours and so long as it does not affect the performance of the officer's duties in any way.

## **75. 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 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 questions from the floor at a political meeting held with the permission of the Defence Council at which the audience consists only of persons in the employment of the Government;
- (b) explaining Government policy in the course of his duties as an officer;
- (c) performing the duties of a returning officer, polling officer or like officer at a Parliamentary or local authority election;
- (d) voting at a Parliamentary or local authority election.

(4) A trade union or employers' organization shall, for the purposes of subregulation (2)(a) and (b), be deemed to be a movement or organization of a political character.

#### **76. 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 thereafter to the liquidation of any sums due by that officer to a mess or other institution, organization or association of members of the Force.

#### **77. Funeral expenses**

The amount of any reasonable expenses incurred in burying an officer shall be paid by the Government.

#### **78. 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 that 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 BENEFITS TO WIDOW AND CHILDREN**

*(reg. 59)*

1. If the officer receiving a pension leaves a widow, the pension in respect of his children shall be at the following rates:

For one child .....	A pension equal to 25 per cent of his widow's pension
For two children .....	A pension equal to 40 per cent of his widow's pension
For three children .....	A pension equal to 50 per cent of his widow's pension
For four children .....	A pension equal to 60 per cent of his widow's pension
For five or more children .....	A pension equal to 66 <sup>2</sup> / <sub>3</sub> per cent of his widow's pension:

Provided that if owing to the death or remarriage of the widow her pension ceases the

pension in respect of the children shall be at the rates prescribed in paragraph 2.

2. If the officer receiving a pension leaves no widow, the pension in respect of his children shall be at the following rates-

For one child .....	A pension equal to 50 per cent of the pension which would have been payable to his widow had he left one
For two children .....	A pension equal to 80 per cent of the pension which would have been payable to his widow had he left one
For three children .....	A pension equal to 100 per cent of the pension which would have been payable to his widow had he left one
For four children .....	A pension equal to 120 per cent of the pension which would have been payable to his widow had he left one
For five or more children ....	A pension equal to 133 <sup>1</sup> / <sub>3</sub> per cent of the pension which would have been payable to his widow had he left one.

## SECOND SCHEDULE

(reg. 66)

### Form 1

#### APPLICATION FOR COMMUTATION OF PENSION

The Commander,  
Headquarters,  
Botswana Defence Force,  
GABORONE.

1. Full names 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 P .....

4. Date 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*

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, pledged or hypothecated.

Date .....

*Signature of Applicant*

Declared before me this ..... day of ....., 20 .....

*Notary Public*

*Commissioner of Oaths*

*Magistrate*

*District Commissioner*

*or District Officer*

## THIRD SCHEDULE

### COMMUTATION FACTOR FOR COMMUTATION OF PENSIONS

(reg. 66)

*Nearest*

*Commutation*

*Nearest*

*Commutation*

<i>half-age</i>	<i>factor</i>	<i>half-age</i>	<i>factor</i>
30 .....	16,38	43 .....	14,36
30 1/2 .....	16,31	43 1/2 .....	14,26
31 .....	16,25	44 .....	14,17
31 1/2 .....	16,18	44 1/2 .....	14,07
32 .....	16,12	45 .....	13,97
32 1/2 .....	16,05	45 1/2 .....	13,86
33 .....	15,98	46 .....	13,76
33 1/2 .....	15,91	46 1/2 .....	13,65
34 .....	15,84	47 .....	13,54
34 1/2 .....	15,77	47 1/2 .....	13,43
35 .....	15,70	48 .....	13,32
35 1/2 .....	15,62	48 1/2 .....	13,20
36 .....	15,55	49 .....	13,08
36 1/2 .....	15,47	49 1/2 .....	12,96
37 .....	15,40	50 .....	12,84
37 1/2 .....	15,32	50 1/2 .....	12,72
38 .....	15,24	51 .....	12,59
38 1/2 .....	15,16	51 1/2 .....	12,47
39 .....	15,07	52 .....	12,34
39 1/2 .....	14,99	52 1/2 .....	12,21
40 .....	14,91	53 .....	12,09
40 1/2 .....	14,82	53 1/2 .....	11,96
41 .....	14,73	54 .....	11,83
41 1/2 .....	14,64	54 1/2 .....	11,70
42 .....	14,55	55 .....	11,57
42 1/2 .....	14,46		

**FOURTH SCHEDULE**  
**GRATUITY ENHANCEMENT** (*reg. 60*)  
 PERCENTAGE

AGE	PERCENTAGE
38-39	25
40-44	23
45-46	20
47-48	17
49-50	14
51-52	11
53-54	8
55	5

**DEFENCE FORCE (REGULAR FORCE) (CADET OFFICERS) REGULATIONS**

(*under section 15*)

(*15th April, 1977*)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Engagement
4. Application of Other Ranks Regulations
5. Selection of cadet officers
6. Qualifications for selection
7. Grant of travel warrants and subsistence allowance while travelling
8. Subsistence allowance whilst attending Selection Board
9. Pay

10. Classification of leave
11. Person empowered to grant leave
12. Pay and allowances during leave
13. Annual leave
14. Sick leave
15. Compassionate leave

S.I. 73, 1977,  
 S.I. 87, 1977,  
 S.I. 71, 1978,  
 S.I. 56, 1980,  
 S.I. 133, 1987,  
 S.I. 4, 1988,  
 S.I. 43, 1993.

### **1. Citation**

These Regulations may be cited as the Defence Force (Regular Force) (Cadet Officers) Regulations.

### **2. Interpretation**

In these Regulations, unless the context otherwise requires-

**"cadet officer"** means a person engaged for service as a cadet officer in the Regular Force;

**"candidate"** means a person seeking appointment as a cadet officer;

**"Other Ranks Regulations"** means the Defence Force (Regular Force) (Other Ranks) Regulations;

**"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 engagements.

### **4. Application of Other Ranks 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 of cadet officers**

Cadet officers shall be selected by a Selection Board, to be appointed by the Commander.

### **6. Qualifications for selection**

(1) Where a candidate is seeking appointment as a cadet officer direct from civil life he must be not less than 18 years and not more than 24 years of age:

Provided that the Commander may, in the case of a candidate of special merit, waive the limit of 24 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 an exceptional case, be 30 years.

(3) The minimum educational requirements for a candidate shall be Cambridge School Certificate or an equivalent certificate.

### **7. Grant of travel warrants and subsistence allowance while travelling**

Where a candidate is called to attend for interview by the Selection Board he shall-

- (a) be issued with a free travel warrant to transport him from his place of residence to the

- (b) place appointed for interview and for the return journey to such residence; and for the period while travelling to the place appointed for the interview, and while returning to his place of residence, be paid subsistence allowance at such rate as the Defence Council may determine.

**8. Subsistence allowance whilst attending Selection Board** Whilst a candidate is attending an interview by the Selection Board at the place appointed, he shall be paid a subsistence allowance at such rate as may be determined by the Defence Council.

**9. Pay**

(1) Upon appointment as a cadet officer, the cadet officer shall be paid at such rate as may be determined by the Defence Council:

Provided that where the cadet officer is a graduate of a recognized university the rate determined by the Defence Council may be increased accordingly.

(2) Where, immediately prior to his appointment as a cadet officer, the cadet officer 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. Classification of leave**

For the purposes of these Regulations leave shall be divided into the following classes-

- (a) annual leave;
- (b) sick leave;
- (c) compassionate leave.

**11. Person empowered to grant leave**

The Commander or an officer so authorized by the Commander may, in accordance with these Regulations, grant annual leave, sick leave or compassionate leave to a cadet officer.

**12. Pay and allowances 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 paid the amount of his pensionable emoluments and of 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, be paid half the amount of his pay and the full amount of any allowances for which he is eligible.

**13. Annual leave**

(1) A cadet officer enrolling in the Force after the 18th of December, 1987, may, during any year of his period of service as a cadet officer, be granted annual leave with pay at a rate of 20 working days for each year of service.

(2) Any period of annual leave which is not taken during the year of service in which it may be granted shall not be taken in any other year of service.

**14. Sick leave**

(1) A cadet officer may at any time be granted sick leave for a period not exceeding 180 days, provided that when the period exceeds 90 days the cadet officer shall furnish a medical certificate as to the state of his health to the Commander at the end of every month.

(2) If a cadet officer is absent from duty or detained in hospital on the orders of a medical officer and, in the opinion of the Commander, such absence or detention is rendered necessary by the misconduct of such cadet officer, the Commander may direct that the period of such absence or detention shall be taken as annual leave, or, if the cadet officer is not eligible for the grant of such leave or is eligible for the grant of a period of such leave which is insufficient for the purpose, that such period be deducted from any period of such leave which he may subsequently become eligible to be granted.

**15. Compassionate leave**

(1) A cadet officer wishing to absent himself from duty for compassionate reasons, who

is not eligible for the grant of any period of annual leave or is eligible for the grant of a period of annual leave which is insufficient for the purpose, may be granted compassionate leave with full pay for a period or periods not exceeding in the aggregate 21 days during his period of service as a cadet officer.

(2) A cadet officer shall be granted compassionate leave if any period of annual leave for which he is eligible is taken in conjunction therewith.

(3) Any period of compassionate leave granted to a cadet officer under this regulation shall be deducted from any period of annual leave which he may subsequently become eligible to be granted in the proportion of two days' compassionate leave to one day's annual leave.

## **DEFENCE FORCE (PROCEDURE) RULES**

*(under section 125)*

*(15th April, 1977)*

### ARRANGEMENT OF RULES

#### RULE

#### PART I

##### *Preliminary*

1. Citation
2. Interpretation

#### PART II

##### *Arrest and Avoidance of Delay*

3. Avoidance of delay by commanding officers in investigating charges
4. Fourteen-day delay reports
5. Arrest not to exceed 72 days without permission from a higher authority

#### PART III

##### *Investigation of Charges by Commanding Officer*

6. Methods of investigating charges
7. Hearing of evidence by commanding officer
8. Summary of evidence
9. Abstract of evidence
10. Investigation before summary dealing by commanding officer
11. Dismissal of charge by commanding officer
12. Reference of charges to higher authority

#### PART IV

##### *Preparation of Charge Sheet and Framing of Charges*

13. Charge sheet
14. Charges
15. Joint charges
16. Construction of charge sheets and charges
17. Action by higher authority on receipt of a charge

#### PART V

##### *Investigation of, and Summary dealing with, Charges by an Appropriate Superior Authority*

18. Documents to be given to accused dealt with summarily
19. Investigation of, and summary dealing with, charges against officers and warrant officers
20. Alternative courses open to appropriate superior authority

#### PART VI

##### *Convening of Courts-martial*

21. Duties of convening officer when convening courts-martial
22. Appointment of president and members
23. Officers under instruction
24. Preparation of defence

#### PART VII

##### *Assembly and Swearing of Court*

25. Preliminary matters to be considered by court and beginning of trial
26. Objections to the court
27. Swearing of court
28. Swearing of judge advocate
29. Swearing of officer under instruction
30. Appointment and swearing of, and objections to, interpreters and shorthand writers
31. No right of objection
32. Order of trials
33. Oaths and solemn affirmations

#### PART VIII

##### *Arraignment of Accused*

34. Arraignment of accused
35. Plea to the jurisdiction of the court
36. Objection to charge
37. Plea in bar of trial
38. Application by an accused at a joint trial to be tried separately
39. Application by an accused at a trial to have a charge tried separately
40. Pleas to the charge
41. Acceptance of pleas of guilty
42. Pleas on alternative charges

#### PART IX

##### *Procedure after Recording a Finding of Guilty*

43. Order of trial where pleas of guilty and not guilty
44. Procedure on finding of guilty after plea of guilty

#### PART X

##### *Changes of Plea*

45. Changes of plea

#### PART XI

##### *Procedure on Pleas of Not Guilty*

46. Application for adjournment of trial after plea of not guilty
47. Case for prosecution
48. Calling of witnesses whose evidence is not contained in the summary or abstract of evidence
49. Notice to an accused that a witness will not be called by prosecutor

#### PART XII

##### *Calling and Examination of Witnesses*

50. Swearing of witnesses
51. Exclusion of witnesses from court
52. Examination of witnesses
53. Examination of witnesses by court
54. Reading back of evidence to witnesses
55. Calling of witnesses by court and recalling of witnesses
56. Statutory declarations

PART XIII

*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

PART XIV

*Case for the Defence and Summing up by President or Judge Advocate*

58. Explanation to accused of his rights when making his defence  
59. Evidence for the defence  
60. Evidence in rebuttal  
61. Closing addresses  
62. Statutory declaration by accused  
63. Summing up

PART XV

*Deliberation on, and Announcement of, Finding on the Charge*

64. Deliberation on finding on the charge  
65. Expression of opinions on, and form of, finding  
66. Announcement of finding

PART XVI

*Procedure after Announcement of Finding*

67. Procedure after plea of guilty  
68. Trial of charges in other charge sheets  
69. Release of accused  
70. Accused's record and plea in mitigation  
71. Request by accused for other offences to be taken into consideration

PART XVII

*Deliberation and Announcement of Sentence*

72. Presence during deliberation on sentence  
73. Sentence and recommendation to mercy  
74. Postponement of deliberation on sentence  
75. Announcement of sentence and conclusion of trial

PART XVIII

*General Duties of the President, Prosecutor and Defending Officer or Counsel*

76. General duties of president  
77. General duties of prosecutor and defending officer or counsel  
78. Counsel

PART XIX

*Powers and Duties of Judge Advocate*

79. General duties of judge advocate  
80. Judge advocate sitting alone

PART XX

*Withdrawal and Amendment of Charge Sheets and Charges*

81. Withdrawal of charge sheet and charges  
82. Amendment of charge sheets and charges by court  
83. Amendment of charges by convening officer

PART XXI

*Sittings and Adjournment of the Court*

- 84. Sitings
- 85. Adjournment
- 86. View by court
- 87. Absence of president, members or judge advocate

PART XXII  
*Insanity*

- 88. Insanity

PART XXIII  
*Interviewing and Attendance of Witnesses*

- 89. Interviewing witnesses
- 90. Procuring attendance of witnesses

PART XXIV  
*Record of Proceedings*

- 91. Record of proceedings
- 92. Exhibits
- 93. Custody and inspection of record of proceedings during trial

PART XXV  
*Confirmation, Revision and Promulgation*

- 94. Confirmation and promulgation
- 95. Revision

PART XXVI  
*Loss of Record of Proceedings*

- 96. Loss of original record of proceedings before confirmation
- 97. Loss of original record of proceedings after confirmation

PART XXVII  
*Custody of Record of Proceedings after Confirmation, and Cost of Copies Thereof*

- 98. Custody of record of proceedings
- 99. Cost of copies of record of proceedings

PART XXVIII  
*Petitions*

- 100. Petitions

PART XXIX  
*Miscellaneous Provisions*

- 101. Oral evidence in lieu of statutory declaration
- 102. Exceptions from Rules on account of exigencies of service
- 103. Exceptions from Rules in interests of security
- 104. Deviations from forms in Schedules
- 105. Cases not covered by Rules

First Schedule - Forms for Commanding Officers  
Second Schedule  
Third Schedule  
Fourth Schedule - Court-Martial Forms  
Fifth Schedule - Sentences  
Sixth Schedule - Oaths and Affirmation

**PART I**

***Preliminary (rules 1-2)***

**1. Citation**

These Rules may be cited as the Defence Force (Procedure) Rules.

**2. Interpretation**

In these Rules, unless 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 president;

**"special finding"** means, when used in relation to-

- (a) section 90 of the Act, any finding which a court-martial may make in accordance with that section;
- (b) section 103 of the Act, a finding in accordance with that section;
- (c) rule 65(3), a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

**PART II**

***Arrest and Avoidance of Delay (rules 3-5)***

**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 such period of 48 hours without such investigation having begun shall be reported by his commanding officer to a higher authority.

**4. Fourteen-day delay reports**

The report required by section 71(2) of the Act with regard to the necessity for further delay in bringing an accused to trial shall be on Form No. 1 set out in the First Schedule and shall be signed by his commanding officer. The report shall be sent to the officer who would be responsible for convening a court-martial for the trial of the accused.

**5. Arrest not to exceed 72 days without permission from a 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 doing so.

**PART III**

***Investigation of Charges by Commanding Officer (rules 6-12)***

**6. Methods of investigating charges**

(1) Subject to subrules (3) and (4), when a commanding officer investigates a charge he shall first read and, if necessary, explain the charge to the accused and shall then-

- (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):

Provided that-

- (i) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing,
- (ii) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7, and

- (iii) before he submits to higher authority a charge against an officer or warrant officer or remands a non-commissioned officer, a private soldier or a civilian for trial by court-martial, he shall cause the evidence to be reduced to writing.

(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9:

Provided that a summary of evidence must be taken if-

- (i) the maximum punishment for the offence with which the accused is charged is death;
- (ii) the accused, at any time before the charge against him is referred to higher authority in accordance with rule 12, requires in writing that a summary of evidence be taken; or
- (iii) the commanding officer is of the 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 their evidence orally and in his presence;
- (e) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;
- (f) if the evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 33.

#### **8. Summary of evidence**

A summary of evidence shall be taken in the following manner and shall be in accordance with Form No. 2 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 as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

- (c) after all the evidence against the accused has been given, the accused shall be asked "Do you wish to say anything? You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be

given in evidence". Any evidence given or statement made by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence or statement shall be read over to him and corrected where necessary, and he shall sign it unless he declines to do so;

- (d) the accused may call witnesses in his defence, who shall give their evidence orally;
- (e) neither the accused nor the witnesses for the defence shall be subject to cross-examination;
- (f) the evidence of each witness (other than the accused) who gives evidence orally shall be recorded in writing and, immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary, and signed by him;
- (g) the record of the evidence may be in narrative form, except that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;
- (h) the oath shall be administered to each witness before he gives his evidence in accordance with rule 33 by the officer taking the summary of evidence, and to any interpreter:
  - Provided that-
  - (i) where any child of tender years called as a witness does not, in the opinion of the officer taking the summary, understand the nature of an oath, his evidence may be received though not given upon oath, if, in the opinion of the officer taking the summary, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and
  - (ii) at the conclusion of the taking of the summary of evidence the officer taking it shall certify thereon that he has complied with the provisions of this rule.

## **9. Abstract of evidence**

(1) An abstract of evidence shall be made in the following way and shall be in accordance with Form No. 3 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 shall not be present whilst the abstract is being made;
- (c) it shall consist of signed statements by such witnesses as are necessary to prove the charge:

Provided that if, in the case of any witness, a signed statement is not readily procurable, a precis of the evidence to be given by that witness may be included instead of a signed statement; and

- (d) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with subrule (1), a copy of it shall be handed to the accused and he shall then be cautioned in the following terms-

"This is a copy of the abstract of evidence in your case; you are not obliged to say anything with regard to it unless you wish to do so, but you should read it, and, when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence."

(3) Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it. This statement, and a certificate signed by the person who recorded the statement stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall be in Form No. 4 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.

(2) After a commanding officer has referred a charge to a higher authority in accordance with rule 12 he shall not dismiss it unless it has been referred back to him.

#### **12. Reference of charges to higher authority**

When a commanding officer submits to a higher authority a charge against an officer or warrant officer or has remanded a non-commissioned officer, a private soldier or a civilian for trial by court-martial he shall send to such higher authority-

- (a) a copy of the charge on which the accused is held;
- (b) a draft charge sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial;
- (c) the summary or abstract of evidence;
- (d) a statement of the character and service record of the accused; and
- (e) a recommendation as to how the charge should be proceeded with.

### **PART IV**

#### ***Preparation of Charge Sheet and Framing of Charges (rules 13-17)***

#### **13. Charge sheet**

(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 40(1)(a), 41, 49(a) and (c) or 54 of the Act may be included in any charge sheet, notwithstanding that other charges in that charge are not founded on the same facts and do not form part of a series of offences of the same or similar character.

(2) Every charge sheet shall be in Form No. 1 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 the Act or otherwise liable to trial by court-martial.

#### **14. Charges**

(1) Each charge sheet 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.

(3) When charges are laid in the alternative they shall be set out in order of gravity, commencing with the most serious.

(4) Each charge shall consist of two parts-

- (a) the statement of the offence; and
- (b) the particulars of the act, neglect or omission constituting the offence,

and shall be set out in Form No. 1 of the Second Schedule; if it is a civil offence, then in such words as sufficiently describe that offence.

(5) The particulars shall state-

- (a) such circumstances regarding the alleged offences as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;
- (b) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a less degree of

punishment, the 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.

**17. Action by higher authority on receipt of a charge**

When a higher authority receives a charge against an accused he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or himself convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that that authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send to the appropriate superior authority or other officer concerned the documents mentioned in rule 12 together with his own recommendation as to how the case should be proceeded with.

**PART V**

***Investigation of, and Summary Dealing with,  
Charges by an Appropriate Superior Authority (rules 18-20)***

**18. Documents to be given to accused dealt with summarily**

An appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is, not less than 24 hours before the charge is so investigated and dealt with, given 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 an appropriate superior authority investigates and deals summarily with a charge-

- (a) he shall first read the charge to the accused;
- (b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing, but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them. If the witnesses against the accused do not give their evidence orally, the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;
- (c) the accused in his defence may produce evidence as to the facts of the case and, in mitigation of punishment, as to his character;
- (d) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;
- (e) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 33;
- (f) when an appropriate superior authority awards the punishment of forfeiture of seniority

- of rank the award shall be on Form No. 1 set out in the Fifth Schedule;
- (g) a record shall be made of the proceedings in accordance with Form No. 1 set out in the Third Schedule.

**20. Alternative courses open to appropriate superior authority**

An appropriate superior authority shall, if an accused elects to be tried by court-martial or the appropriate superior authority in the course of investigating a charge determines that it is desirable that the charge should be tried by court-martial, either himself convene the court-martial or refer the charge to a higher authority in accordance with rule 17.

**PART VI**

***Convening of Courts-martial (rules 21-24)***

**21. Duties of convening officer when convening courts-martial**

When an officer convenes a court-martial he shall-

- (a) issue a convening order in accordance with Form No. 1 set out in the Fourth Schedule;
- (b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them;
- (c) if he is of the opinion that charges should be put in separate charge sheets so direct and direct the order in which they are to be tried;
- (d) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;
- (e) appoint the president and members of the court and any waiting members in accordance with rule 22;
- (f) if convening a court-martial for the trial of an officer or any court-martial at which he considers there should be a judge advocate, take the necessary steps to procure the appointment of a judge advocate;
- (g) appoint an officer subject to the Act or counsel assisted by such an officer to prosecute or detail a commanding officer to appoint an officer subject to the Act to prosecute:  
Provided that the convening officer may appoint two such officers to prosecute if he thinks fit to do so;
- (h) appoint the date, time and place for the trial;
- (i) send to the president the charge sheet, the convening order and a copy of the summary or abstract of evidence from which any evidence which, in his opinion, would be inadmissible under the Act at the court-martial, has been expurgated;
- (j) send to each member of the court and to each waiting member a copy of the charge sheet;
- (k) send to the prosecutor copies of the charge sheet and convening order and the original summary or abstract of evidence, together with any unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copies sent to the president;
- (l) send to the judge advocate (if any) copies of the charge sheet, and convening order and an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the president;
- (m) ensure that the accused is given a proper opportunity to prepare his defence in accordance with rule 24; and
- (n) take steps in accordance with rule 90 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24:

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be, such costs, the convening officer shall not be obliged to take any further steps

to procure the attendance of that witness.

## **22. Appointment of president and members**

The convening officer shall-

- (a) appoint the president of a court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint an officer of a specified rank; and
- (b) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of a specified rank.

## **23. Officers under instruction**

(1) Subject to rule 80, any officer subject to the Act may, by direction of the president, remain with a court-martial throughout the proceedings as an officer under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

## **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 and with his witnesses;
- (b) a defending officer or counsel shall be appointed to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an appointment to be made;
- (c) if the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him;
- (d) as soon as practicable after an accused has been remanded for trial by court-martial, and in any case not less than 24 hours before his trial, he shall be given-
  - (i) a copy of the charge sheet,
  - (ii) an unexpurgated copy of the summary or abstract of evidence showing the passages (if any) which have been expurgated in the copies sent to the president,
  - (iii) notice of any additional evidence which the prosecution intends to adduce, and
  - (iv) if the accused so requires, a list of the ranks, names and units of the president and members who are to form the court and of any waiting members;
- (e) when an accused is given a copy of the charge sheet and of the summary or abstract of evidence in accordance with this rule he shall-
  - (i) if necessary, have the charge explained to him; and
  - (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 shall 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 91(2) of the Act and rule 56, he shall be informed of his right under the said section to require that oral evidence shall be given in lieu of such statutory declaration;
- (g) when it is intended to try two or more accused jointly notice of this fact shall be given to each such accused when he is given a copy of the charge sheet. Any such accused may, before trial, by written notice to the convening officer, claim to be tried separately on the grounds that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall, if he is of the 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 the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

## **PART VII**

### ***Assembly and Swearing of Court (rules 25-33)***

#### **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 itself in closed court that-

- (a) the court has been convened in accordance with the Act and these Rules;
- (b) the court consists of not less than the legal minimum of officers;
- (c) the president and members are of the required rank;
- (d) the president and members have been duly appointed and are not disqualified under the Act;
- (e) if there is a judge advocate, he has been duly appointed;
- (f) the accused appears from the charge sheet to be subject to the Act or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and
- (g) each charge is on its face correct in law and framed in accordance with these Rules.

(2) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may appoint a duly qualified waiting member to fill that vacancy.

(3) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(4) 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 thereupon.

(5) When the court has complied with this rule and is ready to proceed with the trial the president shall open the court and the trial shall begin.

#### **26. Objections to the court**

(1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section 84 of the Act.

(2) When a court is convened to try more than one accused, whether separately or jointly, each accused shall be given an opportunity to object to any officer of the court in accordance with subrule (1) and shall be asked separately whether or not he has any such objection.

(3) An accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected to may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers of the court including any officer who has been appointed by the president in accordance with

subrule (9) in place of any officer who has retired.

(8) When an objection to an officer is allowed that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to (other than the president) retires and there is a duly qualified waiting member in attendance the president shall immediately appoint him to take the place of the officer 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 president is allowed the court shall report to the convening officer without proceeding further with the trial.

(12) If, as a result of the allowance of an objection to a member, there are insufficient officers available to form a court in compliance with the Act, the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

### **27. Swearing of court**

(1) Immediately after rule 26 has been complied with, an oath shall be administered to the president and each member of the court in accordance with rule 33 and in the presence of the accused.

(2) If there is a judge advocate, the oath shall be administered by him to the president first and afterwards to each member of the court.

(3) If there is no judge advocate, the oath shall be administered by the president to the members of the court and then to the president by any member of the court already sworn.

(4) A court may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(5) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if it thinks 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 officer 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 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 objection**

The accused shall have no right to object to a judge advocate, prosecutor or any officer under instruction.

### **32. Order of trials**

(1) When a court has convened to try two or more accused separately and has been

sworn in accordance with rule 27(4) the court shall try them in the order indicated by the convening officer or, where he has given no such indication, in such order as it thinks 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 it thinks fit.

### **33. Oaths and solemn affirmations**

(1) An oath which is required to be administered under these Rules shall be administered in the appropriate manner set out in Form No. 2 in the Sixth Schedule:

Provided that 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) and (3), every oath shall be administered at a court-martial by the president, a member of the court or the judge advocate (if any).

(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath the affirmation shall be in Form No. 3 B set out in the Sixth Schedule.

(4) The provisions of section 94 of the Act shall apply to proceedings before a commanding officer, the taking of such summaries of evidence and proceedings before an appropriate superior authority as they apply to the proceedings before a court-martial.

## **PART VIII**

### ***Arraignment of Accused (rules 34-42)***

#### **34. Arraignment of accused**

(1) When the court and judge advocate (if any) have been sworn the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there is more than one charge sheet against the accused before the court the court shall arraign and try the accused upon the charge in the first of such charge sheets and shall announce its finding thereon and, if the accused has pleaded guilty, comply with rule 44(1) and (2) before it arraigns him upon the charge in any subsequent charge sheets.

#### **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 it 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 it 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 upholds the objection it shall either amend the charge, if permissible under rule 82, or adjourn the report to the convening officer:

Provided that if there is another charge or another charge sheet before the court the

court may, before adjourning under this rule, proceed with the trial of such other charge or other charge sheet.

(3) When a court reports to the convening officer under this rule the convening officer shall-

- (a) if he approves the decision of the court to allow the objection-
  - (i) dissolve the court;
  - (ii) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or
  - (iii) amend the charge to which the objection relates, if permissible under rule 83, and direct the court to try it as amended;
- (b) if he disapproves the decision of the court to allow the objection-
  - (i) direct the court to try the accused;
  - (ii) where there is another charge or charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or
  - (iii) convene a fresh court to try the accused.

### **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 113 or 115 of the Act and 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 it 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 of the decision of the court to allow the plea-
  - (i) dissolve the court; or
  - (ii) where there is another charge or charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charges or charge sheet only;
- (b) if he disapproves of the decision of the court to allow the plea-
  - (i) direct the court to try the charge;
  - (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 a 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 court is of opinion that the interests of justice so require it 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 court is of opinion that the interests of justice so require it 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 rules 35 and 37, any objection under rule 36, and any applications under rules 38 and 39 have been dealt with, the accused shall be required, subject to 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 90 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 it 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 rule 40(1) or (2) the president or judge advocate (if any) shall, before the court decides 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 rule 40(1) or (2) if-

- (a) the court is not satisfied that the accused understands the nature of the charge or the effect of his plea;
- (b) the president, having regard to all the circumstances, considers that the accused should plead not guilty; or
- (c) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under rule 40(2) a court shall also not accept the plea unless the convening officer concurs and it is satisfied of the justice of such course.

(4) The concurrence of the convening officer may be signified by the prosecutor.

(5) When a plea of guilty under 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.

(6) When a court is satisfied that it can properly accept a plea of guilty under rule 40(1) or (2) it 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 court, if it accepts the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges the court may-

- (a) proceed as if the accused had pleaded not guilty to all the charges; or
- (b) with the concurrence of the convening officer (which may be signified by the prosecutor), record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge sheet.

(3) Where the court records the findings mentioned in subrule (2) the prosecutor shall, before the accused is arraigned on it, withdraw any charge which is alternative to the charge of which the court has found the accused guilty and which is placed after it in the charge sheet.

## **PART IX**

### ***Procedure after Recording a Finding of Guilty (rules 43-44)***

#### **43. Order of trial where pleas of guilty and not guilty**

After the court has recorded a finding of guilty, if there is no other charge in the same charge sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge sheet, it shall proceed with the trial as directed by rule 44. If there is another charge in the charge sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge sheet, the court shall not comply with rule 44 until after it has dealt with such other charge or tried such other accused and has announced and recorded its finding in respect thereof.

#### **44. Procedure on finding of guilty after plea of guilty**

(1) After the court has recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to rule 43, read the summary or abstract of evidence to the court or inform the court of the facts contained therein:

Provided that if an expurgated copy of the summary or abstract was sent to the president, the prosecutor shall not read to the court those parts of the summary or abstract which have been expurgated or inform the court of the facts contained in those parts, and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules sufficient evidence to enable it to determine the sentence.

(3) After subrules (1) and (2) have been complied with the accused may-

- (a) adduce evidence of character in mitigation of punishment; and
- (b) address the court in mitigation of punishment.

(4) After subrule (3) has been complied with the court shall proceed as directed in rule 70(1), (2), (3) and (4).

## **PART X**

### ***Changes of Plea (rule 45)***

#### **45. Changes of plea**

(1) An accused who has pleaded not guilty may, at the time before the court closes to deliberate on its finding, withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 40(2)) and in such case the court shall, if it is satisfied that it can accept the accused's changed plea under these Rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 44.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enters a plea of not guilty in respect of any charge under subrule (2) it shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 42, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

## **PART XI**

### ***Procedure on Pleas of Not Guilty (rules 46-49)***

#### **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 or not he wishes to apply for an adjournment on the ground that any of these Rules relating to procedure before trial have not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence;
- (b) if the accused applies for an adjournment-
  - (i) the accused may adduce evidence in support of his application and the prosecutor

- may adduce evidence in answer thereto; and
- (ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;
  - (c) the court may grant an adjournment if it thinks the interests of justice so require.

#### **47. Case for prosecution**

(1) The prosecutor may, if he desires, and shall, if required by the court to do so, 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, notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused a reasonable time before the evidence is adduced. If such evidence is adduced without such notice or particulars having been given, the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

#### **49. Notice to an accused that a witness will not be called by 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 XII**

#### ***Calling and Examination of Witnesses (rules 50-56)***

#### **50. Swearing of witnesses**

Except as is otherwise provided by the Act, an oath shall be administered to each witness in accordance with rule 33 before he gives evidence and in the presence of the accused.

#### **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 (if any), prosecutor or by the accused, the witness shall reply forthwith.

(3) If such an objection is made the witness shall not reply until the objection has been disposed of.

(4) The court may allow the cross-examination or re-examination of a witness to be postponed.

#### **53. Examination of witnesses by court**

(1) The president, the judge advocate (if any) and, with the permission of the president,

any member of the court may put questions 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 questions to the witness regarding 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 court may, at any time before it closes to deliberate on its finding or, if there is a judge advocate, before he begins to sum up, call a witness or recall a witness if in the opinion of the court it is in the interests of justice to do so. If the court calls a witness or recalls 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 court closes to deliberate on its 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 the provisions of section 91 of the Act shall be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

### **PART XIII**

#### ***Submission of No Case to Answer and Stopping of Cases (rule 57)***

#### **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 it is satisfied that-

- (a) the prosecution has not established a *prima facie* case on the charge as laid; and
- (b) it is not open to it on the evidence adduced to make a special finding under either section 90 of the Act or rule 65(3).

(3) If the court allows the submission it shall find the accused not guilty of the charge to which it relates and shall announce this finding in open court forthwith; if the court disallows the submission it shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if it does so it shall also announce such finding in open court forthwith.

### **PART XIV**

#### ***Case for the Defence and Summing up by President or Judge Advocate (rules 58-63)***

#### **58. Explanation to accused of his rights when making his defence**

(1) After the close of the case for the prosecution the president or the judge advocate

shall explain to the accused that-

- (a) if he wishes, he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;
- (b) if he gives evidence on oath, he shall be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate, but that if he makes a statement without being sworn no one shall be entitled to ask him any questions; and
- (c) whether he gives evidence or makes a statement or remains silent he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the president or judge advocate has complied with subrule (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 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 addresses**

(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.

(4) Where one or more accused is represented by the same defending officer or counsel he may make one closing address only. If any one of the accused for whom he appears has called no witness to fact other than himself such defending officer or counsel shall be entitled to make his closing address after the closing address by the prosecutor.

#### **62. Statutory declaration by 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.

#### **63. Summing up**

After the closing addresses the judge advocate or the president shall sum up the evidence and advise the court on the law relating to the case in open court.

### **PART XV**

#### ***Deliberation on, and Announcement of, Finding on the Charge (rules 64-66)***

#### **64. Deliberation on finding on the charge**

(1) After the closing addresses or, if there is a judge advocate, after his summing up, the

court shall close to deliberate on its finding on the charge.

(2) While the court is deliberating on its finding on the charge no person shall be present except the president and members of the court and any officer under instruction.

(3) If there is a judge advocate and the court, while deliberating on its finding on the charge, requires further advice from him, the court shall suspend its 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 president and each member as to the finding shall be given in closed court, orally, and on each charge separately, and their opinions shall be given in order of seniority commencing with the junior in rank.

(2) Except 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 90 or 103(2) of the Act or subrule (3); or

(b) a finding of not guilty or of not guilty and honourable acquittal of the charge.

(3) Where the court is of opinion as regards any charge that the facts which it finds 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 of variation which it shall specify in the finding.

(4) Where the court has recorded a finding of guilty on a charge which is laid in the alternative it 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 Form No. 7G set out in the Fourth Schedule.

### **PART XVI**

#### ***Procedure after Announcement of Finding (rules 67-71)***

#### **67. Procedure after plea of guilty**

After the court has announced its finding on any charge on which the court has entered a plea of not guilty, if there is another charge in the same charge sheet on which the court has 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 of charges in other charge sheets**

Where there is another charge sheet against the accused before the court, the court shall not comply with rules 69, 70 and 71 until it has arraigned and tried the accused and has 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 accused**

If the findings on all charges against the accused are not guilty the court shall order the accused to be released and the president and judge advocate, if any, shall date and sign the record of the proceedings. The president or the judge advocate (if any) 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 90 of the Act or rule 65(3), the court before deliberating on its sentence shall whenever possible take evidence of his age, rank and service record. (2) Such

service record shall include-

- (a) any recognized acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled; and
- (b) particulars of any offence of which the accused has been found guilty during his service and which is recorded in the service books relating to the accused, and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(3) Evidence of the matters referred to in subrules (1) and (2) may be given by a witness producing to the court a written statement containing a summary of the entries in the service books relating to the accused after the witness has in court verified such statement and identified the accused as the person to whom it relates. Such statement shall be in Form No. 9 set out in the Fourth Schedule.

(4) 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 Defence Force; and
- (c) particulars of offences which do not appear in the statement referred to above of which 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 provided in accordance with section 160, 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.

(5) The accused may cross-examine any witness who gives evidence in accordance with subrules (3) and (4) and, if the accused so requires, the service books, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service books or such certified copy the court shall cause the form to be corrected accordingly.

(6) After subrules (1), (2), (3), (4) and (5) 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 consideration**

(1) Before the court closes to deliberate on its 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 agrees to take into consideration shall be read to the accused by the president or the judge advocate (if any), 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. The list shall be signed by the president and be attached to the record of the proceedings as an exhibit.

### **PART XVII**

#### ***Deliberation and Announcement of Sentence (rules 72-75)***

#### **72. Presence during deliberation on sentence**

While the court is deliberating on its sentence no person shall be present except the president, members, judge advocate (if any) and any officer under instruction.

#### **73. Sentence and recommendation to mercy**

(1) The court shall award one sentence in respect of all the offences of which the accused is found guilty. The sentence shall be in the appropriate form set out in the Fifth Schedule.

(2) The opinions of the president and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

(3) When the court has agreed to take into consideration an offence which is not included in the charge sheet the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which it is 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, except that it may include in its sentence a direction that such deductions shall be made from the pay of the accused as it would have had the power to direct to be made if the accused has been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

(4) The court may make a recommendation to mercy and if it does so shall record in the proceedings its reasons for making it.

#### **74. Postponement of deliberation on sentence**

Where two or more accused are tried separately by the same court upon charges arising out of the same transaction the court may, if it thinks that the interests of justice so require, postpone its deliberation upon the sentence to be awarded to any one or more of such accused until it has recorded and announced its findings in respect of all of such accused.

#### **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 president shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the president and judge advocate (if any) shall date and sign the record of the proceedings.

(4) The president or the judge advocate (if any) shall then forward it as directed in the convening order.

### **PART XVIII**

#### ***General Duties of the President, Prosecutor and Defending Officer or Counsel (rules 76-78)***

#### **76. General duties of president**

It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular-

- (a) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these Rules;
- (b) to ensure that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;
- (c) to ensure that an officer under instruction does not express any opinion to the court on any matter relating to the trial before the court has come to its finding, nor on sentence before the court has 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 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 (if any) 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 Botswana relating to the examination, cross-examination and re-examination of witnesses;
- (b) not to refer to any matter not relevant to the charge before the court; and
- (c) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of 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, the following persons shall be allowed to appear as counsel at a court-martial-

- (a) any legal practitioner as defined in section 2 of the Legal Practitioners Act; and
- (b) the Director of Public Prosecutions, any member of his chambers or any person delegated by him to appear on his behalf.

(2) Any right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by rules 24(e), (g) and (h), 26, 30, 35, 36, 37, 38, 39, 46, 57, 71, 79(2) and 93(2) may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than 24 hours before his trial.

### **PART XIX**

#### ***Powers and Duties of Judge Advocate (rules 79-80)***

#### **79. General duties of judge advocate**

(1) The judge advocate shall be responsible for the proper discharge of his functions to the Chief Justice.

(2) The prosecutor and the accused respectively are at all times after the judge advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial whether he is in or out of court, subject when he is in court to the permission of the court.

(3) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise. The court shall accept his advice on all such matters unless it has weighty reasons for not so doing, and if the court does not accept it its reasons for not so doing shall be recorded in the proceedings.

(4) After the closing addresses the judge advocate shall sum up evidence and advise the court upon the law relating to the case before the court closes to deliberate on its finding. If in the course of deliberating on its finding the court requires further advice from the judge advocate it shall suspend its deliberation and ask and be given such advice in open court.

(5) If, when the court announces a finding of guilty or a special finding under either section 90 of the Act or rule 65(3), the judge advocate is of 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 advise the court what findings are, in his opinion, open to it. The court shall then reconsider its finding in closed court. The record of the proceedings relating to such reconsideration shall be in Form No. 8 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 president the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.

(8) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 91 and responsible for the safe custody of the record of the proceedings under rule 93.

#### **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;
- (b) during a joint trial an application is made by any of the accused for a separate trial; or
- (c) an application is made by an accused that a charge should be tried separately,

the president may direct that the point at issue shall be determined by the judge advocate in the absence of the president and the members of the court and of any officer under instruction. Where the president so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The judge advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with subrule (1), hear the arguments and evidence relative to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary. After the judge advocate has given his ruling the president and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this rule the proceedings before him shall form part of the proceedings of the court, and sections 55(1), 56(1), 85(1), 86(1) and (2), 87, 91, 92, 93 and 94 of the Act and rules 33, 50, 51, 52, 53, 54, 55, 56, 77, 78, 84, 85, 86, 90, 91, 92, 93, 96, 97 and 105 shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorized by those sections and those rules to be done by the court or by the president may be done by the judge advocate 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 55(1) of the Act, the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(5) The judge advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

### **PART XX**

#### ***Withdrawal and Amendments of Charge Sheets and Charges (rules 81-83)***

#### **81. Withdrawal of charge sheet 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 on any charge thereon or a charge sheet before the accused is arraigned on any charge therein.

#### **82. Amendment of charge sheets and charges by 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 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 it closes to deliberate on its 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) it 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 it closes to deliberate on its 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), it may adjourn and report its opinion to the convening officer, who may-

- (a) amend the charge if permissible under rule 83 and direct the court to try it as amended after due notice of the amendment has been given to the accused;
- (b) direct the court to proceed with the trial of the charge without amending it; or
- (c) convene a fresh court to try the accused.

### **83. Amendment of charges by convening officer**

When a court reports to the convening officer under either rule 36(2) or 82(3) he may amend the charge in respect of which it has 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 XXI**

### ***Sittings and Adjournment of the Court (rules 84-87)***

#### **84. Sittings**

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 Sunday, Christmas Day or Good Friday unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

#### **85. 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 the convening officer on a point of law.

(3) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case the court shall adjourn and report thereon to the convening officer.

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

#### **86. View by court**

If at any time during a trial before the court closes to deliberate on its finding it appears to the court that it should, in the interests of justice, view any place or thing, it may adjourn for this purpose. When the court views any place or thing the president, members of the court, judge advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

#### **87. Absence of president, members or judge advocate**

(1) If after the commencement of a trial the president dies or is otherwise unable to attend the court shall adjourn and the senior member shall report to the convening officer.

(2) If after the commencement of a trial any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum the court shall adjourn and the president shall report to the convening officer.

(3) If a judge advocate who has been appointed to act at a trial dies or is otherwise unable to attend the court shall adjourn and report to the convening officer.

(4) If the president or a member of the court is absent during any part of a trial he shall take no further part in it and the like steps shall be taken as if the president or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

#### **PART XXII**

#### ***Insanity (rule 88)***

#### **88. Insanity**

(1) If at any time during a trial it appears to the court that the accused may be unfit to stand his trial by reason of insanity it shall take evidence as to his mental condition. If the court after considering the evidence is of opinion that the accused is fit to stand his trial it shall proceed with the trial; but if it is of opinion that the accused is unfit to stand his trial by reason of insanity it shall so find and its finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of its deliberation on its finding on a charge, finds, pursuant to section 103(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, its 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 (2) the president shall announce in open court that the proceedings are terminated and thereupon the president and the judge advocate (if any) shall date and sign the record of the proceedings. The president or judge advocate (if any) shall then forward it as directed in the convening order.

#### **PART XXIII**

#### ***Interviewing and Attendance of Witnesses (rules 89-90)***

#### **89. Interviewing witnesses**

(1) The prosecution shall not, without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the defence at the taking of the summary of evidence or whose attendance at the trial the accused has requested in accordance with rule 24(e), or who has made a statutory declaration, a copy of which the accused has served on the prosecution in accordance with section 91 of the Act.

(2) Except as provided in rule 49 neither the accused nor any person on his behalf shall, without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the prosecution at the taking of the summary of evidence or whose evidence is included in the abstract of evidence, or in respect of whom the prosecution has given the accused notice under rule 48 that it intends to call him as a witness at the trial, or who has made a statutory declaration, a copy of which the prosecution has served on the accused in accordance with section 91 of the Act.

#### **90. Procuring attendance of witnesses**

(1) A witness who is subject to the Act may be ordered by the proper military authority to attend at the taking of a summary of evidence or a trial by court-martial.

(2) A witness who is not subject to the Act 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 president.

(3) The summons referred to in subrule (2) shall, when it relates to the taking of a summary of evidence, be in Form No. 5 set out in the First Schedule, and, when it relates to a trial by court-martial, be in Form No. 4 set out in the Fourth Schedule, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of residence.

(4) At the time of service of the summons referred to in subrule (2) there shall be paid or tendered any expenses which, by regulations made under the Act, are payable to a witness in respect of his journey to, attendance at and return from the taking of the summary of evidence or the trial, as the case may be:

Provided that, for the purposes of this subrule, the tender of-

- (i) 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
- (ii) a written undertaking on behalf of the Government to defray at the taking of the summary of evidence or the trial, as the case may be, any other expenses payable under such regulation in respect of the witness's attendance shall be deemed to constitute tender of these expenses.

(5) The provisions of section 93 of the Act shall apply in relation to proceedings at the taking of a summary of evidence as they apply in relation to proceedings at a court-martial and when so applied they shall be construed as though the words "officer taking the summary of evidence" were substituted for the words "president of the court-martial".

#### **PART XXIV**

#### ***Record of Proceedings (rules 91-93)***

#### **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 Form No. 7A set out in the Fourth Schedule and in sufficient detail to enable a confirming officer to follow the course of the proceedings and to judge the merits of the case;
- (b) when there is no shorthand writer present the evidence shall be taken down in narrative form as nearly as possible in the words used:

Provided that if the court, judge advocate (if any), prosecutor or accused considers 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 (if any) 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 (if any) 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 (if any) thinks proper:

Provided that if the prosecutor or the accused so requests a note shall be made of any particular point in such address or summing-up;

- (e) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but if any comment or report seems to the court to be necessary the president may forward it to the proper military authority in a separate document.

#### **92. Exhibits**

(1) Subject to subrule (2), any document 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 it has satisfied itself that such copy or extract is correct and the president or the judge advocate (if any) 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 be-

- (a) marked with a number or letter and be signed by the president or have a label bearing a number or letter and the signature of the president affixed to it;
- (b) 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 president shall ensure that proper steps are taken for its safe custody.

### **93. Custody and inspection of record of proceedings 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 in the custody of the president. During a trial at which there is a judge advocate the record and the exhibits shall be deemed to be in the custody of the judge advocate, except when he is not present in closed court when they shall be deemed to be in the custody of the president.

(2) With the permission of the court the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him and, if proper precautions are taken for its safety, inspect any exhibit.

## **PART XXV**

### ***Confirmation, Revision and Promulgation (rules 94-95)***

#### **94. Confirmation and promulgation**

(1) When a confirming officer receives the record of the proceedings of a court-martial and the finding of the court requires confirmation he shall record his decision thereon and on any sentence and any order which the court may have made under section 120 of the Act on the record of the proceedings in the appropriate manner set out in Form No. 11 in the Fourth Schedule, and such record of his decision shall form part of the record of the proceedings.

(2) When a court has accepted a plea of guilty made under rule 40(2) the confirming officer may confirm its finding notwithstanding that the court has accepted the plea without the concurrence of the convening officer if, in the opinion of the confirming officer, it is in the interests of justice to do so.

(3) When a court has rejected a plea to the jurisdiction of the court or a plea in bar of trial or has overruled an objection to a charge it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates.

(4) A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court has rejected a plea to the jurisdiction or a plea in bar of trial or has overruled an objection to the charge because he disapproves of the decision of the court he shall, when recording his decision under subrule (1), state that he has withheld confirmation for this reason.

(5) If the sentence of a court-martial is informally expressed the confirming officer may, in confirming the sentence, vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears that there is sufficient evidence or a plea of guilty under rule 40(1) and (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 a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be. The fact of promulgation shall be recorded on the record of the proceedings in Form No. 7L set out in the Fourth Schedule. If

confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge the accused shall be so informed.

#### **95. Revision**

(1) The proceedings and decision of a court on revision shall be recorded on the record of the proceedings in Form No. 10 set out in the Fourth Schedule, and the president shall date and sign such record and decision and return it to the confirming officer after it has been signed by the judge advocate (if any).

(2) When an accused is acquitted on revision the revised finding shall be communicated to the accused in such manner as may be specified by the confirming officer.

### **PART XXVI**

#### ***Loss of Record of Proceedings (rules 96-97)***

#### **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 president or the judge advocate (if any) 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 confirming officer to follow the course of the proceedings and to judge the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used in lieu of the original:

Provided that where part only of the original record of the proceedings of a court-martial has been lost and the part which remains is sufficient to enable the confirming officer to follow the course of the proceedings and judge 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 (2) the confirming officer shall withhold confirmation and shall record his decision in the appropriate form set out in Form No. 11 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 president or the judge advocate (if any) to be correct, or a sufficient record of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

### **PART XXVII**

#### ***Custody of Record of Proceedings after Confirmation, and Cost of Copies thereof (rules 98-99)***

#### **98. Custody of record of proceedings**

For the purposes of section 123(1) of the Act the prescribed period during which the record of the proceedings of a court-martial shall be kept in the custody of the Commander 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 123(2) and (3) of the Act shall be the estimated cost of the copy required not exceeding five thebe for every folio of 72 words.

### **PART XXVIII**

#### ***Petitions (rule 100)***

## **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 confirming officer in Form No. 1 set out in the Seventh Schedule.

(2) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the finding he shall present a petition to a reviewing authority at any time within six months of promulgation in Form No. 2 set out in the Seventh Schedule.

(3) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence he shall present a petition to a reviewing authority or an officer authorized to reconsider a sentence of a court-martial under section 101 of the Act at any time within six months of promulgation in Form No. 2 set out in the Seventh Schedule.

### **PART XXIX**

#### ***Miscellaneous Provisions (rules 101-105)***

## **101. Oral evidence in lieu of statutory declaration**

A notice under proviso (iii) to section 91(2) of the Act requiring that oral evidence shall be given in lieu of a statutory declaration shall be in Form Nos. 5 and 6 set out in the Fourth Schedule.

## **102. Exceptions from Rules on account of exigencies of service**

(1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try an accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in subrule (4) impracticable, the officer who is or would be responsible for convening a court-martial to try an accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in Form No. 2 set out in the Fourth Schedule.

(2) Any declaration made under subrule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under 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.

(4) The provisions of these Rules in respect of which a declaration may be made under subrule (1) are-

- (a) provisos (i) and (ii) 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(b), (c) and (d) insofar as it provides that the documents specified therein shall be given to the accused not less than 24 hours before his trial.

(5) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under 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 interests of security**

(1) When, in the opinion of the officer who is or would be responsible for convening a court-martial to try an accused, or, if he is not available, of the senior officer on the spot, a charge sheet, summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosures of which would or might be directly or indirectly useful to an enemy, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as

the case may be, may make a declaration to that effect in Form No. 3 set out in the Fourth Schedule specifying the document concerned.

(2) Any declaration made under subrule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under subrule (1) it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy thereof, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court-martial or is 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.

**104. Deviations from forms in Schedules**

A deviation or omission from a form or forms of words set out in a Schedule to these Rules shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

**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**

*(rule 4)*

**Form 1**

**DELAY REPORT**

*Unit address:*

.....

.....

Tel. No. ....

To: .....

(Convening Officer)

<sup>i\*</sup> ..... 14-day Delay Report<sup>ii</sup>

(pursuant to section 71 of the Botswana Defence Force Act)

Number, rank and name of accused .....

Date placed in arrest ....., 20 .....

Alleged Offence(s) ..... Date of Alleged Offence(s)

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

The accused is in close arrest.

open

<sup>iii</sup>†

The reasons for his retention in arrest are

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

The abstract of evidence } was taken on ....., 20.....  
summary <sup>iv</sup>† } has not yet been taken because .....

Application for trial ..... } <sup>v</sup>† was made on ....., 20 .....  
} has not yet been made because .....

Attorney-General ..... } <sup>vi</sup>† was consulted on ....., 20 .....  
} has not yet been consulted because .....

Attorney-General's advice } was received on ....., 20 .....  
} has not yet been received.

on Attorney-General's advice as follows-

.....  
Action } <sup>vii</sup>† (is } .....  
} (has }  
} been }  
} taken) }  
Date of trial ..... } <sup>viii</sup>† has not yet been fixed.  
} has been fixed for ....., 20 .....

Reasons for delay since last report .....  
.....  
.....  
.....  
.....

.....  
*Officer commanding accused's*  
*unit*  
(to be signed personally by the  
C.O.)

Date .....

**Form 2**  
**SUMMARY OF EVIDENCE**  
*(rule 8)*

Summary of evidence in the case of ..... (number, rank, name,  
unit or other description)

.....  
taken by (rank, name, unit) .....  
the commanding officer of the accused/on the direction of the commanding officer of the  
accused. <sup>ix</sup>†

.....  
(number, rank, name, unit, or other description)

.....  
*Witness for the prosecution*

having been duly sworn states-

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

(cross-examined by the accused)-

Question .....  
Answer .....

OR

.....  
*Witness for the prosecution*

.....  
(number, rank, name, unit, or other description)  
The accused declines to cross-examine this witness.

.....  
*(Signature and rank  
(if any) of witness)*

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page .....

Having regard to (insert grounds for non-attendance of witness) .....  
the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination./The accused demands the attendance of this witness for cross-examination, but attendance is not compellable and the witness has refused to attend. x†

.....  
*(Signature of officer taking the  
summary of evidence)*

The accused having been duly cautioned in accordance with rule 8 reserves his defence.  
or

The accused having been duly cautioned in accordance with rule 8 elects to give evidence on oath/to make a statement without being sworn, and to call a witness(es).

The accused, .....  
(number, rank, name, unit, or other description)  
having been duly sworn states-

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

.....  
*(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)*

I certify 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 of ....., 20 .....

.....  
*(Signature and rank of officer taking the summary of evidence)*

**Form 3**  
**ABSTRACT OF EVIDENCE**  
(rule 9)

Abstract of evidence in the case of-

.....  
.....  
(number, rank, name, unit, or other description)  
consisting of (insert the number of statements) .....  
attached statements and (insert the number of précis) .....  
précis of evidence of witnesses for the prosecution and compiled by me .....

<sup>xi\*</sup> the commanding officer of the accused/on the direction of the commanding officer of the accused.

.....  
(Signature, rank and unit)

Date .....

**Form 4**  
**CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN  
HANDED TO THE ACCUSED**  
(rule 9)

I, .....,  
certify that I have today handed to the accused, .....  
.....  
the abstract of evidence dated .....  
relating to him and duly cautioned him in accordance with rule 9 of the Defence Force  
(Procedure) Rules and that he elected to make and sign the statement dated .....  
which is marked and attached to this certificate/did not make a statement. <sup>xii\*</sup>

.....  
(Signature of Certifying Officer)

Date .....

**Form 5**  
**SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE**  
(rule 90)

To: .....

WHEREAS a charge has been preferred against

.....  
AND WHEREAS I have directed a summary of the evidence to be taken at .....  
on ..... you are, pursuant to rule 90 of the Defence Force  
(Procedure) Rules,

HEREBY SUMMONED and required to attend as a witness to the taking of the said  
summary of evidence at ..... on ..... at .....  
o'clock in the ..... noon, and to bring with you documents as follows-

.....  
.....  
DATED at ..... this ..... day of  
..... 20 .....

.....  
Commanding Officer of the accused  
(Signature, rank and unit)

**SECOND SCHEDULE**

(rules 13 and 14)

**Form 1**

**CHARGE SHEET**

The accused, .....

(number, rank, name and unit)

of the Regular Force/Reserve Force is charged with-

*Statement of Offences*

.....  
.....

contrary to section ..... of the Botswana Defence Force Act.

*Particulars of Offence*

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

(if there is not sufficient space, attach sheet 2).

Subject to the Act/Liable to be tried by court-martial. <sup>xiii\*</sup>

.....  
*Commanding Officer of the*

*accused*

*(Signature, rank and unit)*

Date .....

**THIRD SCHEDULE**

(rule 19)

**Form 1**

**RECORD OF PROCEEDINGS BEFORE AN APPROPRIATE SUPERIOR AUTHORITY**

*Accused:* .....

(number, rank, name and unit)

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

Q. Did you receive a copy of the charge sheet and summary/abstract of evidence not less than 24 hours ago?

A. ....

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

A. ....

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

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

A. ....

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

4. After the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall ask the accused-

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

A. ....

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

A. ....

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

(a) consider all the evidence and determine whether or not the accused is guilty of the offence charged; and

(b) if he determines that the accused is guilty as charged, 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 .....

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

Date .....

**FOURTH SCHEDULE  
COURT-MARTIAL FORMS**

(rule 21)

**Form 1**

**CONVENING ORDER FOR COURT-MARTIAL**

ORDER by (name and rank) .....  
commanding ..... (unit)

The detail of officers listed below will assemble at .....  
at ..... hours on the ..... day of ....., 20 .....,  
for the purpose of trying by court-martial the accused person(s) as follows-

.....  
.....

President .....  
Members .....

Waiting Members: .....

Judge Advocate: .....

(appointed by the Commander) is hereby appointed judge advocate.

<sup>xiv\*</sup> A field officer having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.  
The record of the proceedings will be forwarded to .....  
SIGNED this ..... day of ....., 20 .....

.....  
(Signature, rank and appointment of the  
convening officer)

.....  
(Signature, rank and appointment of  
appropriate staff officer authorized to sign for  
convening officer)

**Form 2**  
**DECLARATION**  
(rule 102)

IN THE CASE OF .....

I, .....  
(the officer who is responsible for convening a court-martial to try the accused/the senior officer on the spot) hereby declare that in my opinion the following exigencies of the service-

.....  
render compliance with the following provisions of the Defence Force (Procedure) Rules-

.....  
impracticable.

SIGNED at ..... this ..... day of ....., 20.....

.....  
(Signature)

**Form 3**  
**DECLARATION**  
(rule 103)

IN THE CASE OF .....

I, .....  
(the officer who is responsible for convening a court-martial to try the accused/the senior officer on the spot) <sup>xv\*</sup> hereby declare that in my opinion the-

.....  
contains 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)

To: .....

WHEREAS a court-martial has been ordered to assemble at .....  
..... on the ..... day of ....., 20 .....

for the trial of .....  
you are, pursuant to section 125 of the Botswana Defence Force Act and rule 90 of the Defence Force (Procedure) Rules,  
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 to bring with you the documents hereinafter  
mentioned-

and so attend from day to day until you shall be duly discharged.

SIGNED at ..... this ..... day of ....., 20 .....

.....  
(Signature, rank and appointment)

<sup>xvi\*</sup> An officer authorized to convene a  
court-martial

<sup>xvii\*</sup> President of the court

<sup>xviii\*</sup> An officer authorized to sign for an officer  
authorized to convene a court-martial

### Form 5

## NOTICE BY AN ACCUSED REQUIRING THAT ORAL EVIDENCE BE GIVEN IN LIEU OF A STATUTORY DECLARATION

(rule 101)

(Notice by a Commanding Officer)

To: .....  
commanding ..... unit

I, .....  
hereby give notice that I require .....  
to give oral evidence in lieu of his statutory declaration dated .....  
at my forthcoming trial by court-martial.

DATED this ..... day of ....., 20 .....

.....  
(Signature)

### Form 6

## NOTICE REQUIRING THAT ORAL EVIDENCE BE GIVEN IN LIEU OF A STATUTORY DECLARATION

(rule 101)

(Notice by a commanding Officers)

To: .....  
I, .....  
commanding ..... unit,

hereby given notice that I require that .....  
.....  
shall give oral evidence in lieu of his statutory declaration dated .....

DATED this ..... day of ....., 20 .....

.....  
(Signature and rank)

Commanding Officer and the  
accused

### Form 7

## A. RECORD OF PROCEEDINGS OF A COURT-MARTIAL

(rule 91)

TRIAL of

.....

Proceedings of a court-martial held at

.....

.....  
on the ..... day of

.....

....., 20 .....,

by order of

.....

commanding

.....

..... unit.

*Date* .....

*Time* .....

*President:* .....

.....

.....

*Members* .....

.....

.....

.....

.....

.....

.....

.....

.....

*Waiting Members:*

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

*Judge Advocate:*

.....

.....

.....

.....

(If a member is not available, the reason shall be given and the president shall appoint a qualified waiting member to take his place).  
Accused brought before the court.

The convening order is read in the hearing of the accused, marked ....., signed by the president and attached to the record.

The names of the president and members of the court are read in the hearing of the accused

and they severally answer to their names.  
The accused is questioned as follows-  
Q. Do you object to being tried by me as president, or by any of the officers whose names you have heard read?

A.  
.....  
.....

(The proceedings relating to any objection are to be recorded.)

### **B. SWEARING**

*(rules 27, 28, 29 and 30)*

The president, members of the court and judge advocate are duly sworn.

The officers under instruction (listed on page .....)  
are duly sworn.

The following questions are put to the accused-

Q. Do you object to  
.....  
.....  
.....  
as shorthand writer?

A.  
.....  
.....  
.....  
.....  
is duly sworn as shorthand writer.

Q. Do you object to  
.....  
.....  
.....  
as interpreter?

A.  
.....  
.....  
.....  
.....  
is duly sworn as interpreter.

### **C. SPECIAL PLEAS AND OBJECTIONS**

*(rules 35, 36, 37, 38 and 39)*

<sup>xix\*</sup> The accused offers a plea to the jurisdiction under rule 35 of the Defence Force (Procedure) Rules. 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 in bar of trial under rule 37 in respect of the

.....  
charge(s). The proceedings relating to his plea are recorded on page .....

The accused

.....  
.....  
..... applies under rule 38 to be tried separately. The proceedings relating to his plea are recorded on page .....  
The accused applies under rule 39 to have charge(s)

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

tried separately. The proceedings relating to his application are recorded on page .....

#### **D. ARRAIGNMENT**

*(rule 34)*

The charge sheet is read to the accused and he is arraigned on each charge.

The charge sheet is signed by the president and inserted in the record as page .....

Q. Are you guilty or not guilty of the first charge against you?

A.

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

Q. Are you guilty or not guilty of the second charge against you?

A.

.....  
.....

.....  
.....  
Q. Are you guilty or not guilty of  
the third charge against  
you?

A.  
.....  
.....  
.....

.....  
Q. Are you guilty or not guilty of  
the fourth charge against  
you?

A.  
.....  
.....  
.....

.....  
Q. Are you guilty or not guilty of  
the fifth charge against you?

A.  
.....  
.....  
.....

.....  
Q. Are you guilty or not guilty of  
the sixth charge against  
you?

A.  
.....  
.....  
.....

.....  
The accused having pleaded  
guilty to the charge(s), rule 41  
should be duly complied with in  
respect of this/these charge(s).

**E. PROCEEDINGS ON PLEA 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.

The witnesses for the prosecution are called.

First witness .....  
for the prosecution .....



.....  
Q. Is he a witness as to fact or to the character  
only?

A.  
.....

.....  
Q. Do you wish to make an opening address?

A.  
.....

.....  
The accused makes an opening address which  
is summarized as follows-

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

.....  
(or hands in a written address which is read,  
signed by the president, marked

.....  
and attached to the record).

The witnesses for the defence are called.

First witness .....  
for the .....  
defence .....  
(DW1) .....

being duly  
sworn states-

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

Second witness .....  
for the .....  
defence .....  
(DW2) .....

being duly  
sworn states-

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

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

The defence closes its case.

**G. FINDING AND ANNOUNCEMENT THEREOF**  
*(rule 66(3))*

The court closes to deliberate on its finding.  
The court being reopened the accused is again brought before it.  
The finding is read and (with the exception of "not guilty") is announced as being subject to confirmation.

**H. PROCEEDINGS ON ACQUITTAL ON ALL CHARGES**

The accused is released.  
SIGNED at

.....  
..... this ..... day of  
....., 20 .....

**I. PROCEEDINGS ON FINDING OF GUILTY**

The accused,  
.....  
.....  
.....,  
is found guilty of  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

The finding is read in open court and is announced as being subject to confirmation.

**J. PROCEEDINGS ON CONVICTION**

The president asks the accused the following questions-



SIGNED at ..... this ..... day of  
 ....., 20 .....

.....  
*Judge Advocate*

.....  
*President*

**L. CONFIRMATION**  
*(rule 94(7))*

Confirmation and promulgation shall be in accordance with rule 94 of the Defence Force (Procedure) Rules.

**Form 8**  
**RECORD OF RECONSIDERATION OF FINDING**  
*(rule 79)*

The judge advocate advises the court that the finding on the ..... charge is contrary to the law relating to the case, and that in his opinion the following finding is open to it-

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

The court is closed for reconsideration of finding.

The court on reconsideration finds that the accused is .....

The finding on reconsideration is read in open court and (with the exception of the finding of "not guilty") is announced as being subject to confirmation.

**Form 9**  
**SERVICE RECORD OF ACCUSED**  
*(rule 70)*

- | .....   | .....  | .....  | .....      |
|---|--------|--------|------------|
| (number)  | (rank) | (name) | (regiment) |
| 1. He was enlisted on ....., 20 .....   |        |        |            |
| and commissioned on ....., 20 .....   |        |        |            |
| 2. He is serving on a .....   |        |        |            |
| 3. His age is .....   |        |        |            |
| 4. He is single/married/divorced/ widowed <sup>xx*</sup> and has .....                          |        |        |            |
| children under the age of 16 years.   |        |        |            |
| 5. His gross rate of pay is ..... per day,  |        |        |            |
| and he .....  |        |        |            |
| 6. His reckonable service towards discharge or transfer to the Reserve is ..... years.          |        |        |            |
| 7. His reckonable service towards pension, gratuity, etc. is .....years.                        |        |        |            |
| 8. (a) He is entitled to the following decorations and awards-                                  |        |        |            |
| .....   |        |        |            |
| .....   |        |        |            |
| (b) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet- |        |        |            |
| .....   |        |        |            |
| .....   |        |        |            |
| .....   |        |        |            |
| 9. He holds the substantive rank of .....   |        |        |            |
| with seniority from ....., 20 ....., and has  |        |        |            |
| held the acting rank of .....   |        |        |            |

continuously since ....., 20 .....

10. In connection with the matters for which he is before the court, he has been awaiting trial since ....., 20 ....., of which ..... days were spent in civil custody/ ..... days were spent in close arrest, and ..... days were spent in open arrest. <sup>xxd\*</sup>

11. He is not now under sentence/He is now under sentence of <sup>xxii\*</sup>  
 .....  
 .....

beginning on ....., 20 ....., but suspended on ....., 20 ....., and not yet put into operation/put into operation on ....., 20 .....

12. According to his conduct sheets he has been found guilty by his officer/commandant of a military establishment of the following offence(s)-

<i>Offence</i>	<i>In the last 12 months</i>	<i>During his service</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

13. Details, according to his conduct sheets, of offences of which he has been convicted by court-martial or of which he has been found guilty during his service by a civil court, offences taken into consideration by such courts, and offences of which he has been found guilty by an appropriate superior authority, are set out in the Schedule.

SCHEDULE

<i>(rank)</i>	<i>(name)</i>	<i>(number)</i>	<i>(unit)</i>	
<i>Description of court or appropriate superior authority</i>	<i>Date and place of trial or summary dealing</i>	<i>Charges on which convicted or found guilty and offences taken into consideration</i>	<i>Sentence or order of court as confirmed or award of appropriate superior authority</i>	<i>Punishment remitted on review or reconsideration</i>

I HEREBY CERTIFY that this Schedule contains a summary of entries in the service books relating to the accused.

SIGNED this ..... day of ....., 20 .....

.....  
(Name, rank and appointment of officer signing)

**Form 10**  
**RECORD OF PROCEEDINGS ON REVISION**

(pursuant to section 97 of the Botswana Defence Force Act)  
(rule 95)

Accused .....  
at ..... on the ..... day of .....  
20 ....., at ..... hours the court reassembled by order of .....  
the confirming officer, for the purpose of reconsidering its finding(s) on the charge(s).

Present: .....  
.....  
.....

The order directing the reassembly of the court is read, marked .....,  
signed by the president and attached to the record.

<sup>xxiii\*</sup> The court, having considered the observations of the confirming officer and the whole of the  
record of the proceedings, adheres to its findings and to its sentence.

or

<sup>xxiv\*</sup> The court having considered the observations of the confirming officer and the whole of the  
record of the proceedings does now revoke its finding(s) on the .....  
charges and finds that the accused is .....  
and sentences the accused to .....  
in substitution for the original finding(s) and sentence.

or

<sup>xxv\*</sup> The court having considered the observations of the confirming officer and the whole of the  
record of the proceedings respectfully adheres to its finding(s) on the .....  
charge(s), but sentences the accused to .....  
in substitution for the original sentence.

or

<sup>xxvi\*</sup> The court, having considered the observations of the confirming officer and the whole of the  
record of the proceedings, does now revoke its finding(s) on the .....  
charge(s) and finds the accused not guilty of that/those charge(s).

SIGNED at ..... this ..... day of ....., 20 .....

.....  
*Judge Advocate*

.....  
*President*

**Form 11**  
**CONFIRMATION**

(rules 94 and 96)

(These examples 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)

xxvii\* I confirm the court's finding(s) and sentence.  
 xxviii\* I confirm the court's finding(s), sentence and order pursuant to section 120 of the Botswana Defence Force Act, but remit/commute  
 .....  
 xxix\* I confirm the finding(s) and sentence and order pursuant to section 120 of the Botswana Defence Force Act, but mitigate the sentence so that it shall be as follows .....  
 xxx\* I confirm the finding(s) and sentence but postpone/suspend the carrying out of the sentence of .....  
 until .....  
 xxxi\* I confirm the finding(s) but substitute the sentence of .....  
 for the sentence of the court.  
 xxxii\* I vary the sentence so that it shall be as follows .....  
 and confirm the finding(s) and sentence as so varied.  
 xxxiii\* I confirm the finding(s) of the court on the .....  
 charge(s), but do not confirm its finding(s) on the .....  
 charge(s) on the grounds that .....  
 xxxiv\* I confirm the sentence but remit/commute .....  
 xxxv\* I confirm the finding(s) of the court on the .....  
 charge(s), and refer the finding(s) on the .....  
 charge(s) and the sentence to .....  
 for confirmation.  
 xxxvi\* I refer the finding(s) and sentence to .....  
 for confirmation.  
 xxxvii\* I substitute a finding of .....  
 for the finding of the court and confirm the sentence, but remit/commute .....  
 xxxviii\* I substitute a finding of .....  
 for the finding of the court on the .....  
 charge, and confirm the finding(s) of the court on the .....  
 charge(s), and the sentences.  
 xxxix\* Not confirmed on the grounds that .....  
 xl\* The record/part of the record of the proceedings of the court-martial which tried .....  
 at ..... on the ..... day of ....., 20 .....  
 having been lost, I do not confirm the finding(s) of the court.  
 SIGNED at ..... this ..... day of ..... 20 .....

.....  
 (Signature, rank and appointment of confirming officer)

**Form 12**  
**DETERMINATION BY A CONFIRMING OFFICER OR REVIEWING AUTHORITY OF A**  
**SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN**  
**CONCURRENTLY OR CONSECUTIVELY**

I, .....  
 the confirming officer/reviewing authority hereby order the accused to be committed to imprisonment/detention under the sentence passed on him by the court-martial held at .....  
 ..... on the .....  
 day of ....., 20 ....., and direct that  
 that sentence and the sentence passed on the accused by this court-martial/the court-martial held at ..... on the ..... day of .....  
 20 .....,  
 shall run concurrently/ consecutively.

.....  
 (Signature)

Date .....

**Form 13  
DIRECTION**

(pursuant to section 110 of the Botswana Defence Force Act)

I, ....., the confirming officer/reviewing authority hereby direct that the accused ..... shall not be required to be returned to Botswana until he has served ..... months/years of the sentence of imprisonment/detention passed on him.

.....  
(Signature)

Date .....

**Form 14  
RESTITUTION ORDER**

IN ACCORDANCE with section 119 of the Botswana Defence Force Act, I,

.....  
hereby order that .....  
be delivered/paid to .....

.....  
(Signature)  
Confirming Officer/  
Reviewing Authority

**Form 15  
PROMULGATION**

Promulgated and extracts taken at .....  
this ..... day of ....., 20 .....

.....  
(Signature, rank and  
appointment of officer  
making the  
promulgation)

**FIFTH SCHEDULE  
SENTENCES  
(rules 19, 73)**

(N.B. The words in the margin should be entered in the left-hand margin of the record of the proceedings of a court-martial in relation to the record of the sentence.)

**Form 1  
OFFICERS**

Death  
Imprisonment  
and cashiering

To suffer death.  
To be imprisoned for  
.....

Cashiering  
Dismissal

and to be cashiered.  
To be cashiered.  
To be dismissed from the  
Defence Force.

Forfeiture of seniority of rank (by appropriate superior authority)	To take seniority in the rank of ..... and in his unit as if his appointment to that rank bore the date the ..... day of ..... 20 .....
Fine	To be fined.
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 .....

**Form 2**  
**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 the ranks.
Discharge with ignominy	To be discharged with ignominy from the Defence Force.
Dismissal	To be dismissed from the Defence Force (warrant officers only).
Detention and reduction to the ranks	To undergo detention for ..... ... and to be reduced to the ranks.
Field punishment and reduction to the ranks	To undergo field punishment for ..... days and to be reduced to the ranks.
Reduction to the ranks/reduction to .....	To be reduced to the ranks/to the ranks of ..... .....
Forfeiture of seniority of rank	To forfeit ..... .....
Forfeiture of service	To forfeit ..... ..... service.
Fine	To be fined ..... .....
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  
 .....

**Form 3  
 PRIVATE SOLDIERS**

Death To suffer death.  
 Imprisonment To be imprisoned for  
 .....  
 .....

Discharge with ignominy To be discharged with ignominy from the Defence Force.

Detention To undergo detention for..  
 .....  
 .....

Field punishment To undergo field punishment for  
 ..... days.  
 Forfeiture of service To forfeit  
 .....  
 ..... service.

Fine To be fined  
 .....  
 .....

Stoppages To be put under stoppages of pay until he has made good the sum of  
 .....  
 ..... in respect of  
 .....  
 .....

**Form 4  
 DETERMINATION OF SUSPENDED SENTENCE AND DIRECTION  
 THAT SENTENCES RUN CONCURRENTLY OR CONSECUTIVELY**

The court hereby orders 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 directs that that sentence and the sentence on the accused by this court-martial shall run concurrently/consecutively.

**Form 5  
 RECOMMENDATION**

*(pursuant to section 110 of the Botswana Defence Force Act)*

The court recommends that the accused .....  
 shall not be required to be returned to Botswana until he has served .....  
 .....  
 of his sentence.

**Form 6**  
**RESTITUTION ORDER**

IN ACCORDANCE with section 119 of the Botswana Defence Force Act the court hereby orders that .....  
be delivered/paid to .....

**SIXTH SCHEDULE**  
**OATHS AND AFFIRMATIONS**

**Form 1**

**OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE  
SUPERIOR AUTHORITY**

*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 in connection with 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.

**Form 2**

**OATHS AT COURT-MARTIAL**

*President and members*

I swear by Almighty God that I will well and truly try the accused person(s) before the court according to the evidence, and that I will duly administer justice according to the Botswana Defence Force Act and the Rules made thereunder without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required to do so in due process 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 Botswana Defence Force Act and the Rules made thereunder without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial, unless thereunto required to do so in due process of law.

*Officer under instruction*

I swear by Almighty God that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto required to do so in due process of law.

*Shorthand Writer*

I swear by Almighty God that I will truly take down to the best of my ability the evidence to be given before this court-martial and such other matters as may be required, and will, when required to do so, 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, nothing but the truth.

**Form 3**

**A.**

**MANNER OF ADMINISTERING OATHS**

Christians taking the oath shall, unless female, remove their headdress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath. Jews shall take the oath in the same manner except that they shall wear their headdress and hold the Old Testament in their right hand.

**B.**  
**SOLEMN AFFIRMATIONS**

The person making 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, ....., 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**  
**PETITIONS**  
*(rule 100)*  
**Form 1**

**Petition to Confirming Officer (before confirmation)**

To: Confirming Officer

I, .....,  
having been convicted by court-martial on .....  
at ..... and having been sentenced to .....  
hereby petition against the finding(s) on the .....  
charge(s) and the sentence on the following grounds:

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

(Signed) .....

Date .....

**Petition to Reviewing Authority (after promulgation)**

To: .....

I, .....,  
having been convicted by court-martial on .....  
at ..... and having been sentenced to .....  
and having had the finding(s) and sentence promulgated to me on .....  
..... hereby petition against the finding(s) on the .....  
charge(s) and sentence on the following grounds-

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

(Signed) .....

Date .....

**BOTSWANA DEFENCE FORCE (IMPRISONMENT AND DETENTION) REGULATIONS**

*(under section 126)*

*(31st March, 1988)*

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Appointment of places of Imprisonment
3. Authority to sign warrant of committal
4. Form of warrant of committal
5. Classification and treatment of prisoners

**1. Citation**

These Regulations may be cited as the Botswana Defence Force (Imprisonment and Detention) Regulations.

**2. Appointment of places of Imprisonment**

Those buildings, enclosures or places or any parts thereof as have been declared by the Minister under section 3 of the Prisons Act, to be prisons shall be places in which persons sentenced to a term of imprisonment under the Botswana Defence Force Act may be required to serve the whole or any part of that sentence.

**3. Authority to sign warrant of committal**

A warrant of committal signed by the President of a Court Martial shall be sufficient authority for the admission of the person so committed to a place appointed under regulation 2 as a prisoner.

**4. Form of warrant of committal**

A warrant of committal shall be in the form set out in the Schedule hereto.

**5. Classification and treatment of prisoners**

The provisions of the Prisons Act relating to the classification and treatment of prisoners shall *mutatis mutandis* apply to prisoners committed under these Regulations.

**SCHEDULE  
COURT MARTIAL**

**Warrant of Committal**

To the Officer-in-charge ..... Prison

WHEREAS the undermentioned Prisoner was this day duly convicted before this Court Martial of the offence or offences undermentioned and was for the said offence or offences sentenced by this Court Martial to undergo the punishment affixed to his name: This is therefore to require you, in the President's Name, to receive the said Prisoner into your custody, and there safely keep him until he shall have undergone the said Punishment, or shall be otherwise lawfully discharged therefrom.

Prisoner

Name

Race

Sex

Age

Of what offence convicted

Sentence

Given under my hand at ..... this ..... day of ..... 20

.....

.....  
*President of the Court  
Martial*

Date of Admission to Prison .....

Normal Remission of Sentence .....

Date Due for Release .....

Remarks .....

.....

.....

.....  
*Officer in Charge*

## DEFENCE FORCE (BOARDS OF ENQUIRY) RULES

(under section 127)

(21st April, 1995)

### ARRANGEMENT OF RULES

#### RULE

1. Citation
2. Interpretation
3. Convening of board
4. Assembly of board and procedure
5. Witnesses
6. Oaths and affirmations
7. Exhibits
8. Affected persons
9. Record of proceedings
10. Deferring and staying of proceedings
11. Entries of reports in service records

Schedule - Forms

S.I. 29, 1995.

#### 1. Citation

These Rules may be cited as the Defence Force (Boards of Enquiry) Rules.

#### 2. Interpretation

In these Rules, unless the context otherwise requires-

**"the authority"**, in relation to a board of enquiry, means any officer empowered by or under these Rules to convene that board;

**"board"** means a board of enquiry convened under section 118 of the Act to investigate and report on the facts relating to any matter referred to it under that section, and if so required, express its opinion on any question arising therefrom;

**"presiding officer"** in relation to a board of enquiry means the officer appointed to preside over that board.

#### 3. Convening of board

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

- (a) any officer not below the rank of colonel, or any corresponding rank, commanding any command or other area, garrison or place, or any formation or body of troops in the Defence Force;
- (b) any officer who is for the time being acting in place of such officer referred to in paragraph (a);
- (c) any officer, not below the rank of lieutenant, commanding a unit detachment of the Defence Force-
  - (i) with reference to the absence of any person subject to military law who has been continuously absent without leave for a period of not less than fourteen days;
  - (ii) with reference to any deficiency in the clothing, arms, ammunition, or other equipment, public or service property issued to any person subject to military law for his use; or
  - (iii) with reference to any particular matter, or to matters of any specified class or description, when so authorized by an officer referred to in paragraphs (a) and (b).

(2) The order convening a board shall be in Form 1 in the Schedule hereto, and shall specify its terms of reference, the composition of the board, its presiding officer and the place and time at which it shall first assemble, and may direct it to express its opinion on any matter

arising from the enquiry.

(3) The presiding officer of a board shall be an officer not below the rank of lieutenant, or equivalent rank, who shall be appointed by name.

(4) The other members of the board shall be not less than two in number, and shall be officers, unless the subject of the enquiry is not an officer, in which case one or more of the members may be warrant officers, who may be appointed by name in the order, or by a commanding officer so detailed in the order to appoint the members from officers or warrant officers, as the case may be, under his command.

(5) The authority may at any time revoke or suspend the order, or vary its terms.

#### **4. Assembly of board and procedure**

(1) A board shall assemble at the time and place specified in the order convening the board, and at its first meeting the presiding officer shall acquaint it with its terms of reference.

(2) The presiding officer may, from time to time, as he considers necessary or advisable for the purpose or purposes of a board, determine the procedure to be followed by the board, and may adjourn meetings of the board to such time and place as he shall direct.

(3) Without prejudice to the provisions of subrule (2), the authority may at any time, as it considers necessary or desirable, direct that a board shall reassemble for such purpose or purposes as it may specify.

#### **5. Witnesses**

(1) A board shall hear and record evidence from witnesses who have been made available to it by the authority, and may hear and record evidence from such other persons as it considers necessary or desirable.

(2) A board may receive and record any evidence, oral or written, which it considers relevant to the matter for which it was convened, whether or not it would be admissible in a civil court.

(3) A civilian witness appearing before a board may be represented by counsel whilst giving evidence, but such counsel shall not be entitled to be present at the proceedings of the board at any other time.

(4) A civilian witness shall be entitled to receive the reasonable expenses of attending before a board, and a reasonable allowance in respect of loss of time.

#### **6. Oaths and affirmations**

Evidence given before a board shall be required to be on oath as provided in the Sixth Schedule to the Defence Force (Procedure) Rules:

Provided that-

- (a) where a witness objects to taking the oath, on whatever grounds, or where it is not reasonably practicable, without inconvenience or undue delay to administer an oath to him in the manner appropriate to his religious beliefs, he may be permitted to make a solemn affirmation instead of taking the oath; and
- (b) where any child called as a witness is not, in the opinion of the board, capable of understanding the nature of the oath, but is possessed of sufficient intelligence to understand the importance of speaking the truth, he may be permitted to give his evidence not on oath.

#### **7. Exhibits**

(1) Any document or thing produced by a witness to a board in the course of its proceedings shall be made an exhibit:

Provided that when an original document or book is produced by a witness, the board may, at the request of the witness, compare a copy thereof, or of relevant parts thereof, with the original, and if satisfied that the said copy is accurate, may attach this to the record of proceedings as an exhibit, and return the original document or book to the witness.

(2) Every exhibit shall be marked by a number or letter, or shall have a label affixed to it bearing a number or letter, signed by the presiding officer, and shall be attached to or kept with

the record of the proceedings, unless, in the opinion of the board, it is not convenient or expedient to keep it with the record.

(3) The presiding officer shall take such steps as may be necessary to ensure safe custody of exhibits not attached to or kept with the record.

#### **8. Affected persons**

(1) Where any person subject to military law is or is likely to be affected by the findings of a board, he shall be entitled to be present and represented, either by an officer or by an advocate or an attorney entitled to practise as such under the Legal Practitioners Act, at the sittings of the board, or at such of the sittings as may be relevant, and the presiding officer shall take such steps as are necessary to ensure that such person has notice of the proceedings, and is given the opportunity of being present and represented at those sittings.

(2) Any such person as is referred to in subrule (1) shall be entitled to give evidence himself, and either himself or by his representative, to question witnesses and call witnesses on his behalf, in respect of matters which may affect him:

Provided that his representative shall not be entitled to address the board, except with the permission of the presiding officer.

#### **9. Record of proceedings**

(1) The presiding officer of a board of enquiry shall record, or cause to be recorded, the proceedings of the board in sufficient detail to enable the authority to follow the course of the proceedings.

(2) Where there is no shorthand writer present, or other device, to record the evidence verbatim, the evidence shall be taken down by the presiding officer, or by a member of the board detailed by him, in narrative form, as nearly as possible in the words used by the witness:

Provided that where the presiding officer considers it necessary or advisable, any particular question and answer shall be taken down verbatim.

(3) At the conclusion of each witness's evidence, what has been recorded shall be read over to him, and if necessary corrected, and shall be signed by him.

(4) The record of the proceedings, in Form 2 in the Schedule hereto, together with the Summary Sheet, in Form 3 in the Schedule, and all the recorded evidence and exhibits, shall be signed by the presiding officer and other members of the board, and forwarded to the authority, together with the board's opinion on any matter on which it was required to express an opinion.

#### **10. Deferring and staying of proceedings**

(1) Subject to subrule (2), where any matter is the subject matter of investigation by a civil authority or of proceedings in a civil or criminal court, or of proceedings under military law, either within or without the jurisdiction of Botswana, the authority shall defer the convening of a board, or if a board has already been convened shall defer the meetings thereof, pending the completion of such aforesaid investigation or proceedings.

(2) The provisions of subrule (1) shall not apply where the matter concerned is a matter referred to in rule 3(1)(c)(i) and (ii):

Provided that where the authority is satisfied that the absence has terminated, or, where the absentee belongs to or is attached to another unit of the Defence Force, and the authority is satisfied that an enquiry into the absence is being, or will be, held by the proper authority of that other unit-

- (a) where a board has not yet been convened with reference to the absence and deficiency, if any, the authority shall not be required to convene a board; or
- (b) where a board has already been convened with reference to the absence and deficiency, if any, the authority shall forthwith dissolve the board.

#### **11. Entries of reports in service records**

Where the findings of a board are to the effect that a person subject to military law has been absent without leave or other sufficient cause for a period, specified in the findings, not being less than fourteen days, and that there is a deficiency in any clothing, arms, ammunition

or other equipment or public or service property issued to that person for his use, a record of such deficiency shall be entered in his Defence Force record, in addition to a report of such absence as is required under section 119(1) of the Act.

**SCHEDULE**

(rules 3 and 9)

**Form 1**

**CONVENING ORDER**

(rule 3)

1. A board of inquiry composed as hereunder is to assemble at .....  
at ..... hours on ..... day of ..... 20 .... to investigate  
circumstances in which .....  
.....  
.....  
.....  
.....  
Presiding Officer ..... (Rank, Name and  
unit)

Members: .....  
Name and Unit)  
.....

2. The inquiry is to investigate all the circumstances and record all evidence relevant to the inquiry.
3. The officer convening the board of inquiry directs that evidence to be taken on oath.
4. The undermentioned is/are to be given the opportunity of being present and represented in accordance with the provisions of section 127(3) of the Botswana Defence Force Act  
.....  
.....

5. The inquiry is to report on the following matters:  
.....  
.....

6. The inquiry is to express an opinion on .....  
.....

7. <sup>xli\*</sup> The inquiry is to record what action has been or will be taken to prevent a recurrence and is to make any recommendations to this end.

8. The following military witnesses are to be ordered to attend:  
.....  
.....

9. Special instructions are being issued to the presiding officer directing his attention to  
.....  
.....  
.....(relative regulations, or procedure).

10. The presiding officer is to forward a copy of the record of the proceedings to  
.....  
.....

to provide a room suitably equipped for the inquiry, to supply the necessary stationery, manuals and regulations, and copies of the following fully amended:  
.....  
.....

and is to detail an orderly for duty during the inquiry.

Signed .....

Appointment .....

Date .....

**Form 2**

**RECORD OF PROCEEDINGS**

(rule 9)

1. Record of proceedings of a board of enquiry assembled at .....  
on the ..... day of ..... 20 ....., by order of .....  
..... for the purpose of .....
2. PRESIDING OFFICER: .....  
Members: .....
3. The following persons(s) was/were in attendance during the whole/part of the  
proceedings in accordance with rule 8 of the Defence Force (Board of Inquiry) Rules,  
1995-  
.....  
.....
4. He was/they were unrepresented/represented by-  
.....
5. The Board, having assembled pursuant to the convening order attached, has recorded  
evidence on oath. The findings [<sup>xliii\*</sup> and opinion] are attached at page .....  
Dated the ..... day of ....., 20 .....  
..... Presiding Officer  
(signature)  
..... Members  
(signature)  
.....  
(signature)

**Form 3**  
**SUMMARY SHEET**  
(rule 9)

Unit ..... C.O  
.....  
Board of Inquiry convened by  
.....  
.....  
(rank, name and appointment)  
Terms of reference of the inquiry  
.....  
.....  
.....  
.....  
Date of occurrence  
.....  
.....  
Date of assembly of inquiry  
.....  
.....  
Date inquiry completed  
.....  
.....  
Opinion of inquiry (if directed to express an opinion)  
.....  
.....  
.....

.....  
.....  
Statement of any disciplinary action taken  
.....  
.....

.....  
.....  
Proceedings were forwarded to the Convening  
Authority on the ..... day of  
..... 20 .....

Signed

.....  
.....  
.....  
(Rank, name appointment)

*Note: This Summary Sheet is to be placed  
immediately above the Record.*

## **DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS**

*(under section 128)*

*(15th April, 1977)*

### ARRANGEMENT OF REGULATIONS

#### REGULATION

1. Citation
2. Interpretation
3. Commanding officer when in charge of more than one unit
4. Delegation of powers by commanding officer
5. Extent of delegated powers
6. Charges with which commanding officer may deal summarily
7. Restriction on powers of punishment of commanding officers
8. Limitation of punishment of acting ranks, etc.
9. Limitation of powers of commanding officers below field rank
10. Limitation of powers of detachment commanders below field rank
11. Powers of subordinate commanders
12. Charges with which appropriate superior authority may deal summarily
13. Power of punishment
14. Reduction in rank of non-commissioned officers by order following conviction in summary proceedings

Schedule

S.I. 109, 1977,  
S.I. 44, 1993,  
S.I. 78, 1996.

#### **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 the basic rate of pay plus allowances other than marriage allowance and ration allowance;

**"subordinate commander"** means the officer commanding a squadron, a battery, a company or an equivalent sub-unit, or an officer appointed by a commanding officer to be a subordinate commander:

Provided that any such appointment may-

- (i) be made subject to such restrictions, reservations, exceptions or conditions as the commanding officer considers necessary or desirable;
- (ii) designate the officer appointed, by name, or by office held or by reference to a class of officers, in which case such reference shall include any officer for the time being acting in or performing the functions of such office or acting in the place of such class;
- (iii) be made in relation to a particular person, or any class or group of persons, or for a particular case or class of cases; or
- (iv) be revoked, either wholly or in part by the commanding officer who made it, or by his successor.

### **3. Commanding officer when in charge of more than one unit**

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 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 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-

- (i) the power to remand the accused for trial by court-martial; and
- (ii) the power to order the taking of a summary of evidence or the making of an abstract of evidence.

(2) When a commanding officer delegates the power to investigate and deal summarily with charges in accordance with subregulation (1) he may, in addition to the restrictions imposed by 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. Extent of 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 commanding officer may deal summarily**

A commanding officer may deal summarily with a charge under sections 32, 33(c), 36, 37(2), 38, 39, 41, 42, 43, 44, 45(1)(a), 46, 47(1)(a), (c), (d) and (2), 48(a) and (c), 49, 51, 52(2), 53, 54, 57, 58, 59(a) and (b), 61(b), 63, 64 (where the principal offence can be dealt with summarily by virtue of this regulation), 65 and 66 (where the civil offence is one which is specified in the Schedule) of the Act.

### **7. Restriction on powers of punishment of commanding officers**

A commanding officer shall not award-

- (a) punishment of detention where the charge is laid under section 66 of the Act and the civil offence is one of the offences referred to in item 2 or 3 of the Schedule;
- (b) the punishment of stoppages exceeding the equivalent of seven days of the offender's pay without the written permission from a higher authority.

### **8. Limitation of punishment of acting ranks, etc.**

(1) After a lance-corporal has been reduced to the ranks in accordance with section 74(4) of the Act his commanding officer shall not, without the written permission of a higher

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 reverted to his permanent rank or ordered to assume an acting rank lower than that held by him but higher than his permanent rank in accordance with section 74(5) of the Act, his commanding officer shall not, without the written permission of a higher 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. Limitation of powers of commanding officers below field rank**

A commanding officer who is below field rank shall not, without the written permission of a higher authority, award detention or field punishment for a period exceeding seven days or a fine exceeding the equivalent of seven days' pay.

#### **10. Limitation of powers of detachment commanders below field rank**

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

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

#### **11. Powers of subordinate commanders**

(1) A subordinate commander to whom power to investigate and deal summarily with charges has been delegated under regulation 4(1) shall not award a punishment against a non-commissioned officer above the rank of sergeant.

(2) Subject to any restriction which may be imposed by the commanding officer under regulation 4(2), a subordinate commander may award the following punishments-

- (a) detention for a period not exceeding 45 days;
- (b) a fine of a sum not exceeding the equivalent of seven days' pay;
- (c) where the offence has occasioned any expense, loss or damage, stoppages not exceeding the equivalent of 14 days' pay;
- (d) confinement to barracks for a period not exceeding seven days;
- (e) extra guards or pickets;
- (f) admonition.

#### **12. Charges with which appropriate superior authority may deal summarily**

An appropriate superior authority may deal summarily with a charge against an officer or warrant officer under sections 32, 33(c), 36, 37(2), 38, 39, 41, 42, 43, 44, 45(1)(a), 46, 47(1)(a), 48, 49, 51, 52(2), 53, 54, 57, 58, 59(a) and (b), 63, 64 (where the principal offence can be dealt with summarily by virtue of this regulation), 65 and 66 (where the civil offence is one which is specified in the Schedule) of the Act.

#### **13. Power of punishment**

An appropriate superior authority shall not award the punishment of stoppages exceeding the equivalent of ten days pay.

#### **14. Reduction in rank of non-commissioned officers by order following conviction in summary proceedings**

Notwithstanding any other provisions of these Regulations, where a charge against a non-commissioned officer of the Regular Force has been dealt with summarily by his commanding officer under the provisions of section 74 of the Act and such commanding officer

has recorded a finding of guilty in respect of such charge, an officer not below the rank of Colonel may, whether in addition to or in lieu of any punishment which may have been awarded by such commanding officer, order that such non-commissioned officer shall be reduced to the ranks or to any less reduction in rank.

**SCHEDULE**  
**TABLE OF CIVIL OFFENCES WHICH MAY BE DEALT WITH SUMMARILY BY**  
**COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES**(regs. 6, 7 and  
12)

1. Theft, where the subject matter does not exceed P2000 in value.
2. Common assault, contrary to section 246 of the Penal Code (Cap. 08:01).
3. Careless driving of a motor vehicle, contrary to section 51 of the Road Traffic Act (Cap 69:01).
4. Taking and driving away a motor vehicle without the owner's consent or other lawful authority, contrary to section 71 of the Road Traffic Act.

**BOTSWANA DEFENCE FORCE (EXECUTION OF DEATH SENTENCES) REGULATIONS**

*(under section 128)*

*(29th April, 1988)*

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Custody of person sentenced to death
3. Approval of death sentence by President
4. Execution to be by hanging
5. Execution in civil prison
6. Corpse may be delivered to next-of-kin

S.I. 53, 1988.

**1. Citation**

These Regulations may be cited as the Botswana Defence Force (Execution of Death Sentences) Regulations.

**2. Custody of person sentenced to death**

Any member of the Force, who is sentenced to death by a Court Martial, shall be kept in military custody pending any appeal or review of his conviction.

**3. Approval of death sentence by President**

No sentence of death shall be carried into effect unless it has been approved by the President.

**4. Execution to be by hanging**

The execution of a sentence of death shall when approved by the President, be carried out by hanging.

**5. Execution in civil prison**

The person sentenced to death shall be produced from military custody within the confines of a civil prison, appointed for the carrying into effect of death sentences, within 48 hours of the approval of the death sentence by the President and there executed according to law:

Providing that the period set under this regulation may be extended or the execution stayed at any time by the President for reasons which he may consider sufficient for so doing.

**6. Corpse may be delivered to next-of-kin**

Following the execution of the death sentence and upon certification by a qualified medical practitioner of the death of the person executed, the body of such person may be delivered to the next-of-kin of the deceased.

**DEFENCE FORCE (REGULAR FORCE) (DISCHARGE) REGULATIONS**

(under section 178)  
(15th April, 1977)  
ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Prescribed grounds for discharge

Schedule - Grounds for Discharge

S.I. 125, 1977,  
S.I. 42, 1993,  
S.I. 76, 2002.

**1. Citation**

These Regulations may be cited as the Defence Force (Regular Force) (Discharge) Regulations.

**2. Prescribed grounds for discharge**

A soldier may be discharged from the Regular Force at any time during his service in such Force upon any of the grounds set out in the first column of the Schedule, subject to the Special Instruction appearing in relation thereto in the second column of the said Schedule.

**SCHEDULE**  
**GROUND FOR DISCHARGE**(reg. 2)

*Cause of Discharge*

*Special Instruction*

- |  |   |
|--|---|
| (1) Having been attested, but not finally approved | Applies only to a recruit who has been attested pending reference to his employer, or to a recruit rejected after attestation by the medical officer, and to a recruit who has misstated his age on enlistment.                               |
| (2) Having been improperly attested                | Applies only to a case in which the provisions of the Defence Force (Regular Force) (Officers) Regulations or Defence Force (Regular Force) (Other Ranks) Regulations, as the case may be, have been improperly or incorrectly complied with. |
| (3) Having made a false answer on attestation      | Any soldier who can be shown to have made a false answer on attestation may be discharged under this paragraph, whether or not he has been convicted by a   |

- court-martial or dealt with summarily under section 58 of the Act, or convicted by a civil court under section 26 of the Act. The Commander shall, in the case of such a soldier, decide whether he is to be retained in the Defence Force or not.
- (4) Free, on compassionate grounds Discharge under this paragraph may be considered only in cases where domestic hardship or distress or other compelling reasons of a personal nature cannot be alleviated within the permitted periods of leave and where the continued absence of the soldier from duty is considered essential.
- (5) Having been convicted by a civil court during his service of an offence committed before enlistment
- (a) Full details of the case shall be recorded and the discharge, if authorized, shall be carried out as soon as possible after the case has been dealt with by a civil court;
- (b) the certificate of discharge shall be passed to the superintendent of the prison, if the soldier is confined, and the discharge confirmed from the date of despatch.
- (6) For misconduct
- (a) A soldier who has been sentenced-
- (i) by a civil court or by a court-martial to imprisonment;
- (ii) by a civil court to detention or corrective training; or
- (iii) by a court-martial to a

- period of detention which on confirmation is for 12 months or more, shall be discharged unless, in the opinion of the Commander, his retention is desirable in the interests of the Force;
- (b) a soldier who has been convicted, whether by a civil court, court-martial or summarily, of-
- (i) an offence involving a serious dishonesty or violence; or
  - (ii) disgraceful conduct of a kind specified in section 62 or 65 of the Act,
- may be discharged under this paragraph;
- (c) a soldier who has been convicted of a disciplinary offence under the Act or who displays an habitual inattention to orders or who fails to co-operate with other members of the Force or who manifests a quarrelsome disposition or want of courage, although he is not guilty of a specific offence, may be discharged under this paragraph.
- (7) Medically unfit      Only soldiers who are medically unfit shall be discharged under this paragraph. The cause of discharge shall be amplified to show whether or not the soldier is unfit under existing standards, or for any form of service in the Regular

- Force.
- (8) Medically unfit under existing standards A soldier may be discharged under this paragraph if his medical category falls below the retention standard appropriate to his trade and length of service.
- (9) Temporarily medically unfit for any form of service in the Regular Force A soldier shall be discharged under this paragraph if he is medically unfit for any form of service in the Regular Force and is ineligible for retention but may at a later date improve and become fit for some form of service in time of emergency.
- (10) Permanently medically unfit for military service A soldier shall be discharged under this paragraph if he is medically unfit for any form of service in the Regular Force and is likely to remain so permanently.
- (11) His services being no longer required (a) This paragraph shall be used only for the discharge of soldiers who cannot be discharged under the authority of any other paragraph; (b) the cause of discharge under this paragraph shall be amplified in cases where it will benefit the individual concerned.
- (12) Having reached the age of discharge Applies to any soldier whose discharge on reaching a certain age is compulsory.
- (13) Unlikely to make an efficient soldier or likely to bring discredit upon the Regular Force This paragraph shall only be used within two years of the soldier's enlistment. The Commander shall record in writing the reasons why he is of the opinion that the soldier should be

- (14) Failing to complete successfully an officer cadet course of instruction and training held in or outside Botswana.
- Discharge under this paragraph shall be at the discretion of the Commander who shall take into consideration the general conduct of the soldier while in attendance at the officer cadet course and the desirability or otherwise of retaining the soldier as a member of the Regular Force.

## **DEFENCE FORCE (REGULAR FORCE) (OTHER RANKS) REGULATIONS**

*(section 178)*

*(15th April, 1977)*

### ARRANGEMENT OF REGULATIONS

#### REGULATION

#### PART I *Preliminary*

1. Citation
2. Interpretation
3. Application of Regulations

#### PART II *Engagement, Promotion and Discharge*

4. Grounds for retirement
5. Resignation
6. Retirement
7. Transfer to and from other employment in the service of a Commonwealth country
8. Appointments and promotions
9. Discharge certificate
10. Reduction in rank of a member

#### PART III *Pay and Allowances*

11. Pay
12. Acting appointment
13. Trade pay allowances
14. General allowances
15. Free accommodation
16. Special marriage allowance when serving on duty outside Botswana
17. Allowance payable on transfer
18. No pay or allowances in certain circumstances
19. Deductions from pay and allowances

#### PART IV *Leave*

20. Classification of leave

21. Persons empowered to grant leave
22. Pay and allowances during leave
23. Leave without pay
24. Accrual of vacation leave
25. Grant of vacation leave
26. Sick leave
- 26A. Maternity leave
27. Compassionate leave
28. Embarkation and disembarkation leave
29. Travelling leave

#### PART V

##### *Free Travelling Facilities*

30. Travelling facilities on engagement or discharge
31. Travelling facilities on leave
32. Travelling facilities for dependants

#### PART VI

##### *Medical Benefits*

33. Medical examination
34. Medical treatment
35. Dental treatment
36. Treatment by oculists, etc.

#### PART VII

##### *Dress and Equipment*

37. Clothing and personal equipment
38. Wearing of uniform

#### PART VIII

##### *Disablement Benefits*

39. Award of pensions, and appeal
40. Review of awards
41. Administration of awards
42. Benefits on discharge for ill-health in certain circumstances
43. Pension in respect of ill-health occasioned by the discharge of duty
44. Free medical attention and other benefits
45. Medical examination or treatment of pensioners
46. Resumption of duty by disabled member
47. Benefits to widow and children in respect of death in the course of duty

#### PART IX

##### *General Provisions relating to Pensions, Gratuities and other Benefits*

48. Calculation of pensions and gratuities
49. Pensionable service
50. Benefits on resignation or discharge for ill-health
51. Benefits on retirement
52. Benefits on discharge or dismissal on prescribed grounds
53. Benefits to dependants on death of a member or pensioner
54. Commutation of pensions
55. Benefits not to be pledged or ceded
56. Conviction of pensioner
57. Forfeiture of pension
58. Deductions from pension, gratuity or other benefits
59. Proof of age, etc.

PART X  
*Miscellaneous Provisions*

- 60. Occupation of official quarters
- 61. Engagement for profit in trade or business
- 62. Active participation in politics
- 63. Funeral expenses

First Schedule - Benefits to Widow and Children  
Second Schedule - Forms  
Third Schedule - Commutation Factors for Commutation of Pensions  
Fourth Schedule - Gratuity Enhancement

S.I. 72, 1977,  
S.I. 121, 1977,  
S.I. 31, 1978,  
S.I. 72, 1978,  
S.I. 133, 1978,  
S.I. 72, 1979,  
S.I. 57, 1980,  
S.I. 144, 1980,  
S.I. 135, 1987,  
S.I. 41, 1993,  
S.I. 101, 1994,  
S.I. 77, 1996,  
S.I. 29, 2000,  
S.I. 75, 2002,  
S.I. 44, 2004,  
S.I. 63, 2007.

**PART I**  
***Preliminary (regs 1-3)***

**1. Citation**

These Regulations may be cited as the Defence Force (Regular Force) (Other Ranks) 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 18 years of that member by his wife;

**"dependant"**, in relation to a living or deceased member or other person, means any person who, in the opinion of the Commander, is or was financially dependent on that member or person;

**"disabled member"** means a member who is discharged by reason of disablement under section 23 of the Act;

**"the Force"** means the Regular Force of the Defence Force;

**"gratuity"** means a lump sum payment;

**"leave"**, in relation to a member, means leave of absence from his duties;

**"medical officer"** means an officer appointed as a medical officer to the Force;

**"medical practitioner"** means a person registered as a medical practitioner in Botswana under any written law;

**"member"** means a warrant officer, a non-commissioned officer or soldier attested in the Force;

**"official quarters"** means quarters provided by the Government;

**"other employment in the service of the Government or a Commonwealth country"** means pensionable employment otherwise than as a member of the Defence Force under the Government or under the Government of a Commonwealth country;

**"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 49;

**"resignation"**, in relation to a member, means resignation from the Force under regulation 5, and **"resign"** shall be construed accordingly;

**"retirement"**, in relation to a member, means his retirement from the Force under regulation 6, 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;

**"unit"**, in relation to a member, means the unit in which that member is serving;

**"widow"** includes widower.

### **3. Application of Regulations**

These Regulations shall not apply to-

- (a) a member who is attached or seconded to any other military force outside Botswana by virtue of section 7 of the Act, unless the terms and conditions of his attachment or secondment as fixed or approved by the President provide that these Regulations shall apply;
- (b) a member of any other military force of any country other than Botswana who has been loaned or seconded for service with the Force by virtue of an agreement for that purpose entered into between the Government of Botswana and the Government of the other country concerned, unless the agreement provides that these Regulations 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 shall apply.

## **PART II**

### **Engagement, Promotion and Discharge (regs 4-10)**

**4. Grounds for retirement** Subject to regulations 5 and 6, a member shall be required to retire from the Force on being given three months' notice in writing by the Commander, if there is no establishment for him in his present rank or there is no reasonable future prospects of promotion for him.

### **5. Resignation**

(1) Subject to the provisions of this regulation, a member who is not entitled or required to retire from his employment in the Force in terms of regulation 6 may resign from the Force if-

- (a) he gives three 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.

(2) A notice given under subregulation (1) shall be of no effect if it is given while the

member is either on leave or on active service.

(3) The Commander shall not consent to the resignation of a member in accordance with the provisions of this regulation in a case where the provisions of section 19 of the Act apply.

(4) A member who resigns from the Force during the first ten years of his period of engagement, shall be liable to repay to the Government such sum, calculated in accordance with the number of years served by such member, as may be determined by the Defence Council.

(5) A resignation under this regulation shall not take effect unless the amount, as the case may be, specified in subregulation (4) has been paid.

(6) A member who has attended a course of instruction outside or in Botswana at Government expense for a period not exceeding one year shall, if he resigns within three years of the date of termination of such course, repay to the Government, in addition to any sums which he is liable to repay under subregulation (4), if his resignation takes effect-

- (a) before the expiry of one year after the date of the termination of such course, one year's salary calculated at the rate at which he was paid a salary during his training, the full cost of his training and the allowances, if any, received by him during his training;
- (b) after one year but before the expiry of two years from the date of termination of such course, two-thirds of one year's salary calculated at the rate at which he was paid a salary during his training, two-thirds of the cost of his training and two-thirds of the allowances, if any, received by him during his training;
- (c) after two years but before the expiry of three years from the date of termination of such course, one-third of one year's salary calculated at the rate at which he was paid a salary during his training, one-third of the cost of his training and one-third of the allowances, if any, received by him during his training.

(7) A member who has attended a course of instruction outside or in Botswana, at Government expense for a period exceeding one year shall, if he resigns within six years of the date of termination of such course, repay to the Government, in addition to any sums which he is liable to repay under subregulation (3), if his resignation takes effect-

- (a) before the expiry of one year from the date of the termination of such course, one year's salary calculated at the rate at which he was paid a salary during his training, the full cost of his training and the allowances, if any, received by him during his training;
- (b) after the expiry of one year but before the expiry of two years from the date of termination of such course, five-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, five-sixths of the cost of his training and five-sixths of the allowances, if any, received by him during his training;
- (c) after the expiry of two years but before the expiry of three years from the date of termination of such course, four-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, four-sixths of the cost of his training, and four-sixths of the allowances if any, received by him during his training;
- (d) after the expiry of three years but before the expiry of four years from the date of termination of such course, three-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, three-sixths of the cost of his training and three-sixths of the allowances, if any, received by him during his training;
- (e) after the expiry of four years but before the expiry of five years from the date of termination of such course, two-sixths of one year's salary calculated at the rate at which he was paid a salary during his training, two-sixths of the cost of his training and two-sixths of the allowances, if any, received by him during his training;
- (f) after the expiry of five years but before the expiry of six years from the date of termination of such course, one-sixth of one year's salary calculated at the rate at which he was paid a salary during his training, one-sixth of the cost of his training and one-sixth of the allowances, if any, received by him during his training.

## **6. Retirement**

(1) A member whose pensionable service amounts to 10 or more years may retire from 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-

- (i) on leave;
- (ii) on active service; or
- (iii) where section 19 of the Act applies.

(2) The Commander may, on notice of 12 months, require a member whose pensionable service amounts to 16 or more years to retire from the Force.

(3) Subject to section 18 of the Act, a member shall, whatever the length of his pensionable service, retire from the Force on attaining the age of 45 years.

(4) Notwithstanding the provisions of subregulation (1), a member who has attended a course of training outside or within Botswana shall not be entitled to retire within three years or six years of the date of termination of such training, unless he repays to the Government an amount at the rate prescribed in regulation 5(6) or (7) respectively.

## **7. Transfer to and from other employment in the service of a Commonwealth country**

(1) Subject to this regulation the President may, with the consent of the member concerned, transfer such member from his employment in the Force to other employment in the service of a Commonwealth country upon such terms and conditions as may be fixed by the President in each case.

(2) Subject to this regulation, the President may consent to the transfer of a member in the service of a Commonwealth country to serve as a member in the Force upon such terms and conditions as may be fixed by the President in each case.

(3) Where the other employment in the service of a Commonwealth country is pensionable employment under the Government of that country, the President shall not fix any terms or conditions under this regulation, except with the prior consent of the Government of that country.

(4) If any terms and conditions fixed in relation to a member or person or his widow or children under this regulation are inconsistent with these Regulations, the terms and conditions so fixed shall prevail and, in relation to that member or person or his widow or children, these Regulations shall, to the extent of the inconsistency, be void.

(5) Where a member was, before the commencement of these Regulations, transferred to the Force under the laws then in force, the terms and conditions fixed in relation to that member or his widow or children shall, *mutatis mutandis*, continue to have effect insofar as they are still applicable.

## **8. Appointments and promotions**

(1) Subject to the provisions of the Act, the Commander may-

- (a) promote a member to, or appoint a member to act in, the rank in the Force next higher to his substantive rank, or to a higher class within the same rank, if there is a vacancy in the establishment of members of that rank or class;
- (b) appoint a member to a local rank in the Force higher than his substantive or his acting rank.

(2) A member who does not otherwise qualify for promotion to the rank next higher than his substantive rank, may be appointed to act in that higher rank on probation pending confirmation of his substantive appointment to that rank.

(3) The appointment to an acting rank shall, subject to the provisions of subregulation (5), subsist for not less than 12 months or more than 18 months, after which, if he has not been confirmed in the appointment, the member shall revert to his substantive rank.

(4) Any period of time spent by a member in an acting rank shall not affect the annual

rate of pay applicable to his substantive rank, but he will be entitled to receive an acting allowance, being the difference between the rate of pay applicable to his substantive rank and the minimum of the rate applicable to the rank or class in which he is acting.

(5) A member appointed to an acting rank or to a local rank may, at the discretion of the appointing authority, be required to revert to his substantive rank-

- (a) if he is found to be deficient in the performance of his duties;
- (b) if he is charged with and convicted by a court martial or by a civil court for any offence under the Botswana Defence Force Act, or any offence under the laws of Botswana; or
- (c) if, after due investigation, the Commander is satisfied that the member is guilty of any act prejudicial to military discipline, or which is likely to bring disrepute to the Defence Force.

(6) A member appointed to an acting rank or to a local rank shall, for disciplinary purposes, be dealt with in the manner appropriate to the rank in which he is acting.

(7) An appointment to a local rank may be made when it is necessary to raise the status of a member who by virtue of his appointment will be performing the duties of that local rank, but where there is no establishment for members of such rank.

(8) Notwithstanding the provisions of regulation 12, a member appointed to a local rank shall not be entitled to any increase in pay or any other financial benefit.

(9) A member appointed to a local rank shall relinquish such rank when he ceases to perform the duties of that rank, or when he is required to relinquish it in accordance with the provisions of subregulation (5).

#### **9. Discharge certificate**

(1) If a member resigns under these Regulations or is, under section 68 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-

- (a) his name;
- (b) the length of his service in the Force;
- (c) 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 68 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.

**10. Reduction in rank of a member** (1) Subject to the provisions of these Regulations, the Commander, may order the reduction in rank of a member if he is satisfied that-

- (a) the member has demonstrated characteristics which are indicative of inability to perform the duties and responsibilities commensurate with his rank and appointment;
- or
- (b) the member has conducted himself in a manner unbecoming his rank and appointment.

(2) Where the Commander intends to order the reduction in rank of a member, he shall, in writing, inform the member of his intention to make such an order and giving reasons therefor, and to require the member within 14 days of the receipt of the letter to reply in explanation why such order should not be made against him.

(3) A member may, in respect of whom an order for the reduction in rank has been made, appeal against the order to the Defence Council.

### **PART III**

#### ***Pay and Allowances (regs 11-19)***

#### **11. Pay**

(1) Subject to these Regulations, a member shall be paid such salary corresponding to his rank, or class if any, as may be determined by the Defence Council.

(2) In addition to the pay payable under subregulation (1), a member shall receive a ration allowance at such rate as may be determined by the Defence Council.

**12. Acting appointment** (1) Where a member is temporarily appointed to act in an appointment for which a higher rank, or a higher class within his existing rank, is required, he shall, during the subsistence of such temporary appointment, be paid an acting allowance of the difference between his substantive salary and the minimum of the scale applicable to that higher rank or class, as the case may be.

(2) No acting allowance shall be paid to a member in terms of subregulation (1) if his acting appointment subsists for a period of less than 28 consecutive days.

(3) If a member acts continuously in terms of subregulation (1) for a period of 28 consecutive days or more, and then reverts to his substantive appointment, and if he is then, within 14 days thereafter, appointed to act in the same appointment, he shall be entitled to be paid the acting allowance, whether or not he so acts for a further period of 28 days.

**13. 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 such rate as may be determined by the Defence Council for a member classified in the trade group which is applicable to him.

**14. General allowances** A member may be paid, in addition to his salary, such allowances as may be determined by the Defence Council.

**15. Free accommodation**

Every member shall be provided free of charge with accommodation for himself and, where water and electricity are available as part of such accommodation, they shall also be provided free of charge.

**16. Special marriage allowance when serving on duty outside Botswana**

(1) A married member who is maintaining a wife shall, when serving on duty outside Botswana or when outside Botswana for the purpose of attending an approved course of duty, training or instruction, or for any other purposes connected with the duties of his employment and approved by the Commander, be paid a special marriage allowance.

(2) Such special marriage allowance shall be paid in respect of his wife and a maximum of four children at such rate as may be determined by the Defence Council.

**17. Allowances payable on transfer** (1) A member who is posted on transfer not at his own request shall be entitled to free travel facilities to his new station for himself, his wife and his dependants, and to subsistence allowance at such rate as may be determined by the Defence Council, and, where he is a householder and is obliged to transfer his household effects, he shall be entitled to such allowances therefor as may be determined by the Defence Council.

(2) A member who is posted on transfer at his own request shall be entitled to free travel facilities to his new station for himself, his wife and his dependants, to subsistence allowance at half the rate payable under subregulation (1), and where he is a householder and is obliged to transfer his household effects, to half of the allowances payable therefor under subregulation (1).

(3) A commanding officer may authorize a member who is posted on transfer to use his own motor vehicle, and where the member is transferred otherwise than at his own request he shall be entitled to full motor vehicle mileage allowances at the rates payable to public officers. If, due to the nature of the motor vehicle concerned, it is not possible for the member to take

with him all the members of his family eligible under subregulation (1), those eligible family members who cannot travel with the member may travel by military transport, or by such other means as may be decided by the commanding officer, at Government expense.

(4) Where a member is permitted to use his own motor vehicle, and he also qualifies for any subsistence allowance under subregulation (1), allowance shall be paid only in respect of those nights necessarily spent in transit:

Provided that such allowance shall only be payable in respect of such nights where the member has travelled not less than 320 km. during the preceeding day.

#### **18. 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 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 if-
  - (i) he has been convicted by a court-martial, a prescribed officer or a 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 special marriage allowance payable under regulation 16 shall be paid in respect of-

- (i) the first 28 days of any period during which the member is undergoing any such sentence of imprisonment, detention or field punishment;
- (ii) the first 28 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.

#### **19. Deductions from pay and allowances**

(1) The Commander 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 Regulations.

(2) If, after examining the proceedings of any board of enquiry, the Commander 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, a prescribed officer or a 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 allowances due to such member in terms of these Regulations of such amount, not exceeding the value of the loss, destruction or damage as in the circumstances he may deem equitable in view of the value of 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 14 days immediately following the date when the deduction was made, appeal in writing to the Defence Council through his commanding officer against such deduction and the Defence Council may confirm, modify or set aside the deduction.

### **PART IV**

### **Leave (regs 20-29)**

#### **20. Classification of leave**

For the purposes of this Part leave shall be divided into the

following classes-

- (a) vacation leave;
- (b) sick leave;
- (c) maternity leave
- (d) compassionate leave;
- (e) embarkation leave;
- (f) disembarkation leave;
- (g) travelling leave;
- (h) unpaid leave.

#### **21. Persons empowered to grant leave**

(1) The Commander or an officer so authorized by the Commander may, in accordance with this Part, grant compassionate leave to a member.

(2) The commanding officer of a member's unit may, in accordance with this Part, grant that member leave under paragraphs (a), (b), (d), (e), (f) and (g) of regulation 20, but may not grant compassionate leave unless authorized to do so under subregulation (1).

#### **22. Pay and allowances during leave**

(1) The commanding officer of a member's unit may authorize the payment in advance of the whole or any part of the pay and allowances due to a member in respect of a period of leave granted to him.

(2) 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.

(3) 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.

**23. Leave without pay** (1) Leave without pay may be granted to a member who has no leave due to him, or insufficient leave to cover the period of leave requested, for urgent private affairs, for study purposes or such other purposes as the Commander may, at his discretion, approve.

(2) Leave without pay shall not earn leave and shall not count as qualifying service in the calculation of a pension or gratuity.

(3) Notwithstanding the provisions of subregulations (1) and (2), where the Commander is satisfied that a course of study may be of value to the Force, he may grant leave for such study purposes with full pay or with such portion of full pay as may, in the circumstances, be determined in accordance with directions issued by the Defence Council.

#### **24. Accrual of vacation leave**

(1) The leave year shall be from 1st January to 31st December.

(2) Subject to this regulation, leave shall accrue to a member at the following rates-

- (a) for every period of qualifying service amounting to 365 days, 25 working days;
- (b) for every period of qualifying service amounting to less than 365 working days, two working days per month.

(3) Vacation leave shall not accrue to a member under this regulation in excess of 90 working days.

#### **25. 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 24.

(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 40 working days.

## **26. Sick leave**

(1) A member may at any time be granted sick leave for a period not exceeding 365 days on the following conditions-

- (a) when the period exceeds 90 days, the member shall furnish a medical certificate as to the state of his health to his commanding officer at the end of every month;
- (b) the first 180 days of any period shall be with pay and any subsequent period shall be with half-pay.

(2) If a member is absent from duty or detained in hospital on the orders of a medical officer, and, in the opinion of the Commander, such absence or detention is rendered necessary by the misconduct of the member, the Commander 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.

**26A. Maternity leave** (1) Subject to subregulation (2), a member may be granted maternity leave with pay for a period not exceeding 84 days on the following conditions:

- (a) maternity leave shall be granted for a maximum of three confinements during the member's service;
- (b) a minimum period of 42 days shall pass following delivery before a member resumes duty;
- (c) a member must have been in continuous service for one year, which period excludes basic military training to qualify for maternity leave;
- (d) there shall be service of a continuous period of at least two years between confinements;
- (e) a stillbirth shall terminate the period of maternity leave.
- (f) infant mortality within seven days of delivery shall be deemed to be a stillbirth.

(2) Where a member requests maternity leave:

- (a) before a continuous period of one year is served; or
- (b) before a continuous period of two years is served between confinements,

the Commander shall grant it as leave under any other class of leave:

Provided that if a part of a period of such other leave falls after the expiration of two years between the allowed confinements, such period shall qualify as maternity leave with full pay.

(3) Where a stillbirth occurs when a part of maternity leave has already commenced, that period shall be taken as sick leave.

(4) Where a member falls ill before maternity leave commences, the normal rules under regulation 26 shall apply:

Provided that sick leave shall cease and maternity leave commence 42 days before delivery.

(5) A member due to proceed on maternity leave shall not be permitted to go for training or any other course of instruction scheduled to end 42 days within the expected date of delivery.

(6) A member shall produce a medical certificate of fitness to resume duty after maternity leave, and where a miscarriage or stillbirth occurs, a medical certificate showing the period when the officer would be fit for duty.

(7) A member shall be granted at least one hour or two half hour intervals each working day for a period of one year for the purpose of nursing her child.

## **27. 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 Commander or any officer so authorized by the Commander 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.

#### **28. Embarkation and disembarkation leave**

(1) A member may be granted 10 working days' embarkation leave with pay immediately prior to proceeding on active service or other duty outside Botswana, provided in the case of that other duty he is out of Botswana for a minimum of six months.

(2) A member may be granted 10 working days' disembarkation leave with pay immediately after his return from active service or other duty outside Botswana, provided that in the case of that other duty he is out of Botswana for a minimum of six months.

#### **29. Travelling leave**

A member who has been granted vacation leave for a period of not less than 20 working days may be granted travelling leave with pay for the period during which he is travelling to and from his leave destination.

### **PART V**

#### ***Free Travelling Facilities (regs 30-32)***

#### **30. Travelling facilities on engagement or discharge**

(1) A person engaged for service in the Force shall be granted free travelling facilities from his place of residence to the place where he is required to report:

Provided that if his place of residence is outside Botswana such facilities shall only be granted from the place on the borders of Botswana nearest to his place of residence.

(2) A member who retires during the period of his engagement or who is discharged from the force due to ill-health, arising from his physical or mental condition, shall be granted free travelling facilities to his place of residence in Botswana, or if he resides outside Botswana, to the place on the borders of Botswana nearest to his place of residence.

**31. Travelling facilities on leave** (1) In respect of any leave accruing to a member in accordance with regulation 24, he shall, once in every two years from the date of his engagement, be granted free travelling facilities from his place of duty to his leave destination, and vice versa, as the Defence Council may determine, for himself, his wife and any dependant children:

Provided that, if his leave destination is outside Botswana, such facilities shall only be granted to and from the point on the borders of Botswana nearest to his leave destination.

(2) A member who has been granted-

- (a) embarkation leave;
- (b) disembarkation leave; or
- (c) compassionate leave,

may be granted free travelling facilities to and from his leave destination, on one occasion per year, or the equivalent in money, at the discretion of the commanding officer:

Provided that if his leave destination is outside Botswana, such facilities shall only be granted to and from the point on the borders of Botswana nearest to his leave destination.

#### **32. Travelling facilities for dependants**

(1) If the commanding officer of a member's unit is satisfied that accommodation in official quarters is available for the wife and children of that member he may grant such wife and children free travelling 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 Botswana such facilities shall only be granted to and from the place on the borders of Botswana 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-

- (i) if the member is separated from his wife and children owing to the exigencies of service, or his wife and children are ordered to leave official quarters, or both, such facilities may, at the discretion of the commanding officer of the member's unit, be granted more than once;
- (ii) if a member is transferred to another station within Botswana and the commanding officer of the member's unit approves of his wife 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 his wife and children are occupying official quarters they shall be granted free travelling facilities to their place of residence.

## **PART VI**

### ***Medical Benefits (regs 33-36)***

#### **33. Medical examination**

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) a medical officer;
- (b) a medical practitioner;
- (c) a medical board.

**34. Medical treatment** (1) A member shall, while stationed or on leave within Botswana and while outside Botswana 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 a member is stationed or on leave within Botswana, or while outside Botswana is on active service or other duty, a medical officer authorizes the admission to a Government hospital of such member or of any of his dependants, such member shall not be required to pay any of the hospital bills which would normally be incurred during the period the member or any such dependant is kept at the hospital, and shall be entitled in addition to have himself or such dependant, as the case may be, transported to the hospital free of charge.

(3) If the Commander is satisfied that no medical officer was available to authorize-

- (a) the medical treatment of a member or any dependant as referred to in subregulation (1)(b);
- (b) the admission to a Government hospital of a member or any dependant as 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 member 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 a member on leave outside Botswana requires medical or hospital treatment for himself or a dependant, and where satisfactory free medical treatment is not available in local government hospitals, the Commander may authorize him or his dependant to be provided, free of charge, with such medical or hospital treatment (including transport to a hospital) as the Commander considers necessary in the circumstances.

(5) If, while a member is stationed or on leave within Botswana, or is outside Botswana 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 Commander shall authorize the admission of such member or dependant to such other hospital or institution as may be named by him, and thereupon the member shall be entitled to have the amount of any hospital fees and the cost of transporting the patient to the hospital or other institution paid by the Government.

(6) If, while a member is stationed or on leave within Botswana, or is outside Botswana on active service or other duty, it is necessary for any dependant of such member to receive medical treatment which a medical officer certifies is not available at the place where such member is stationed, the member shall be granted a refund of the reasonable transport expenses incurred by him in respect of his dependant, not exceeding the amount of a return rail fare from the appropriate point of departure by rail nearest to the place where the member is stationed to the railway station nearest to the place where the medical treatment is available, 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 member or by an escort, the member or the escort, as the case may be, shall be-
  - (i) granted a refund of the transport expenses incurred by him, not exceeding the amount of a return rail fare from the appropriate point of departure by rail nearest to the place where the member is stationed to the railway station nearest to the place where the medical treatment is available;
  - (ii) paid a daily subsistence allowance at such rate equivalent to that paid to public officers on duty; or
- (b) if the Commander certifies in the case of a dependant who is a child that it is necessary on medical grounds for the member and his wife to accompany such dependant to the place where the medical treatment is available, the member and his wife shall each be-
  - (i) granted a refund of the transport expenses referred to in paragraph (a)(i); and
  - (ii) paid the subsistence allowance referred to in paragraph (a)(ii).

(7) The reference to rail fare in this regulation, shall mean rail fare at such rate as the Defence Council may determine.

(8) Notwithstanding the previous provisions of this regulation, the Commander may, on the advice of a medical officer, authorize the payment to a member, of the cost of any medical treatment incurred within Botswana, or the cost of any specialist medical advice or medical treatment not available in Botswana, incurred by such member or any of his dependants.

(9) A member receiving medical treatment or advice outside Botswana in accordance with subregulation (8) shall be entitled to be paid the daily subsistence allowance paid to public officers on duty outside Botswana.

(10) For the avoidance of doubt, "medical advice" and "medical treatment" include surgical advice and surgical treatment respectively.

### **35. Dental treatment**

If the examination and treatment of a member's teeth by a dentist is authorized by a medical officer any costs incurred thereby shall be paid by the Government.

### **36. Treatment by oculists, etc.**

If the examination and treatment of a member's eyes by an oculist is authorized by a medical officer any costs incurred thereby shall be paid by the Government, including the provision of free spectacles.

## **PART VII**

### ***Dress and Equipment (regs 37-38)***

#### **37. 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 expense of the Government.

### **38. Wearing of uniform**

A member shall not wear any article of uniform which he is not authorized to wear.

## **PART VIII**

### ***Disablement Benefits (regs 39-47)***

**39. Award of pensions, and appeal** (1) The right of any person to an award under this Part and the amount of such award shall be determined by the Commander.

(2) Within six months after the date on which any decision of the Commander has been communicated to a claimant under this Part such claimant may, if aggrieved by such decision, by notice in writing to the Commander, appeal to the Defence Council.

(3) On any such appeal the Defence Council may confirm the decision of the Commander or may, subject to the provisions of these Regulations, vary such decision.

(4) A claimant may appeal the decision of the Defence Council to the President, who may, on such appeal, confirm or vary the decision of the Defence Council.

(5) The President's decision shall be given effect to by the Defence Council.

### **40. Review of awards**

The Defence Council may at any time review, amend or withdraw any award under this Part which-

- (a) has been incorrectly made by error or interpretation of fact; or
- (b) it has reason to believe has been obtained by improper means.

**41. Administration of awards** Any award payable to or in respect of any person under this Part may, in the discretion of the Commander and for reasons deemed by him to be sufficient, be administered under such conditions as the Commander may determine instead of being paid to the grantee.

### **42. Benefits on discharge for ill-health in certain circumstances**

If the unfitness for further service of a disabled member 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 10 years, a gratuity at the rate prescribed in regulation 48;
- (b) if his pensionable service amounts to 10 or more years, a pension at the rate prescribed in regulation 48.

**43. Pension 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 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 pension according to the degree of the disablement which is attributable to the discharge of such duties or to such aggravation, as the case may be, and in accordance with the provisions of regulation 48(2) and the following provisions-

- (i) where the degree of such disablement is 100 per cent, he shall be awarded a pension equal to 50 per cent of his retiring pensionable emoluments;
- (ii) where the degree of such disablement is less than 100 per cent, he shall be awarded a pension bearing the same proportion to the pension calculated in accordance with paragraph (i) as the degree of such disablement bears to 100 per cent.

(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 provisions of 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 pension 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 (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 Commander as the date of disablement.

(4) If a member resumes duty in the Force in terms of regulation 46 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 Force, he is still suffering from the ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was previously awarded a pension under this regulation, he shall be awarded a pension calculated in accordance with subregulation (2).

(5) Any pension payable under this regulation shall be in addition to any other pension 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 regulation, to be discharging his duties while he is so participating.

(7) Where, in consequence of personal injury suffered by a disabled member, compensation is payable under any law for the time being in force providing for the payment of workmen's compensation, the Commander may reduce or withhold any pension payable in accordance with this regulation in such manner and to such extent as he considers reasonable.

(8) Where the Commander is satisfied that damages have been or will be recovered in respect of personal injury for which a pension is payable in accordance with this regulation, the Commander may take those damages into account against such pension in such manner and to such extent as he thinks fit and may reduce or withhold the pension accordingly.

(9) For the purposes of subregulation (8) damages shall be deemed to be recovered whether they are paid in pursuance of a judgment or order of a court or by way of settlement or compromise of the relevant claim and whether proceedings are or are not instituted to enforce that claim.

**44. 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 includes drugs, dressings, proprietary preparations and surgical appliances and, in special cases authorized by the Commander, attention and treatment by a person recommended by the Commander, and accommodation at a hospital or institution other than a Government hospital or institution.

(2) A disabled member who has been awarded a pension under regulation 43 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 Commander 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 Commander may determine; and
- (b) to be paid such subsistence allowance as the Commander 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 Commander to undergo a further medical examination he shall not be entitled to any allowance under subregulation (3)(b) for any period which he is necessarily absent from his home for the purpose of undergoing such further medical examination.

**45. Medical examination or treatment of pensioners** (1) Any member who has been awarded a pension under this Part may at any time be required by the Commander to submit to a medical examination or to undergo medical or surgical treatment involving no appreciable risk to his life.

(2) If any member referred to in subregulation (1) fails to submit himself to the examination or to undergo the treatment required by the Commander 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 member submits to the examination or undergoes the treatment required by the Commander such pension shall be revived with effect from the date on which he submits himself to that examination or undergoes that treatment.

(3) For the purposes of this regulation a certificate given by the majority of the members of a special medical board shall be conclusive on the question whether or not the medical or surgical treatment required by the Commander involves appreciable risk to the life of the person concerned.

**46. Resumption of duty by disabled member** (1) If a disabled member who has been awarded a pension under this Part 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 he has not attained the age of 45 years, he may, subject to subregulation (3), be required by the Commander to resume duty in the Force.

(2) If a member required to resume duty in the Force in terms of subregulation (1) refuses without reasonable cause to do so his right to any pension 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 member required to resume duty in the 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 his discharge;
- (c) his right to any pension 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 pension under this Part, but that period shall not form part of his pensionable service.

(4) For the purposes of this regulation, a certificate given by the majority of the members

of a special medical board shall be conclusive on the question of the fitness of the person concerned for duty in the Force.

**47. Benefits to widow 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; or
- (b) a member who has been awarded a pension under regulation 43 dies owing to ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was awarded that pension,

there shall be awarded to his widow and in respect of his children, if any, a pension and gratuity or, if he leaves no widow, may be awarded to persons dependent on him, a pension and gratuity calculated in accordance with this regulation.

(2) The pension awarded to the widow shall be 40 per cent of the pension to which her husband would have been entitled under regulation 43(1)(i) at the date of his death had he not died.

(3) The pension awarded in respect of the children shall be determined in accordance with the First Schedule.

(4) The right of any widow to a pension awarded to her under subregulation (2) shall cease as from the date on which she remarries.

(5) If the deceased member does not leave a widow and if his mother was wholly or mainly dependent on him for her support, a pension may, in the discretion of the Commander, be awarded to the mother of an amount not exceeding the pension which would have been awarded to the widow.

(6) If the deceased member does not leave a widow or mother, or if no pension is granted to his mother, and if his father was wholly or mainly dependent on him for his support, a pension may, in the discretion of the Commander, be awarded to the father of an amount not exceeding the pension which would have been awarded to the widow.

(7) If the deceased member does not leave a child or children who is or are eligible for a pension under this regulation, and if any brother or sister was wholly or mainly dependent on him for support, a pension may, in the discretion of the Commander, be awarded to such brother or sister until he or she attains the age of 21 years of the same amount and subject to the same conditions as the pension which would have been awarded under subregulation (3).

(8) Any pension 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 Commander and shall, in accordance with the determination of such Commander, be paid in respect of one child or apportioned between any two or more of the children.

(9) If a child dies or ceases to be a child, the pension awarded under this regulation in respect of the child shall cease or, if there are other children, shall be adjusted accordingly.

(10) Any pension awarded under this regulation shall be in addition to any other pension or benefit payable under these Regulations.

(11) The gratuity payable under this regulation shall be of an amount equal to the greater of-

- (a) four years' salary of the deceased member; and
- (b) the sum produced by commuting one-third of such member's annual pension entitlement at the date of death determined in accordance with regulation 54(10).

(12) The gratuity calculated under subregulation (11) shall be paid-

- (a) if the deceased member leaves a widow, to the widow;
- (b) if the deceased member does not leave a widow, but leaves a child or children in

respect of whom a pension is awarded, to the person or persons determined by the Commander for the purposes of subregulation (8);

- (c) if the deceased member does not leave a widow or a child or children, and a pension is awarded to his mother under subregulation (5), to his mother;
- (d) if the deceased member does not leave a widow or a child or children, and a pension is awarded to his father under subregulation (6), to his father; or
- (e) if the deceased member does not leave a widow or a child or children and a pension is not awarded to his mother or father, but a pension is awarded under subregulation (7) in respect of his brother or sister, to such person or persons as may be determined by the Commander.

(13) Not more than one gratuity shall be payable under this regulation in respect of the death of a member.

(14) 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 regulation, to be discharging his duties while he is so participating.

(15) Where, in respect of the death of a member, compensation is payable under any law for the time being in force providing for the payment of workmen's compensation, the Commander may reduce or withhold any pension payable in accordance with this regulation in such manner and to such extent as he considers reasonable.

(16) Where the Commander is satisfied that damages have been or will be recovered in respect of death for which a pension is payable in accordance with this regulation, the Commander may take those damages into account against such pension in such manner and to such extent as he thinks fit and may reduce or withhold the pension accordingly.

(17) For the purposes of subregulation (16) damages shall be deemed to be recovered whether they are paid in pursuance of a judgment or order of a court or by way of settlement of the relevant claim and whether proceedings are or are not instituted to enforce that claim.

## **PART IX**

### ***General Provisions relating to Pensions, Gratuities and other Benefits (regs 48-59)***

#### **48. Calculation of pensions and gratuities**

(1) Subject to these Regulations-

- (a) a pension payable to a member under this Part or regulation 42 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;
- (b) a gratuity payable to a member under this Part or regulation 42 shall be calculated at the rate of one-twelfth of his retiring pensionable emoluments for each completed year of his pensionable service.
- (c) a gratuity payable to a member shall be enhanced in accordance with the Fourth Schedule hereto.

(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 42, 43, 51 and 54 shall be P30 per annum.

#### **49. 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.

(2) Pensionable service shall include-

- (a) time spent on duty;
- (b) time spent on leave;
- (c) time spent on attachment or secondment to the military forces of any other Government under section 7 of 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 Defence Force is later engaged for service in the Force under section 14 of the Act then, if-

- (a) such person is not a disabled member who is required to resume duty in the Force under regulation 46(1);
- (b) the previous service terminated not more than two years prior to the date of such later engagement for service in the 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-

- (a) while he is under the age of 18 years; or
- (b) in respect of which, by virtue of regulation 18, 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 subregulation.

(5) The period of pensionable service shall be calculated by the month, and fractions of a month shall be disregarded.

(6) Any person who is engaged in the force on or after 1st April, 2001 shall automatically be a member of the Botswana Public Officers Pension Fund.

#### **50. Benefits on resignation or discharge for ill-health**

(1) A member who resigns or who is discharged under section 23 of the Act for reasons of ill-health shall, if his pensionable service amounts to five or more years but less than 10 years, be entitled to be paid the following benefits-

- (a) a clothing grant at such rate as may be determined by the Defence Council;
- (b) a sum equivalent to his pensionable emoluments for a period of 28 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 completed period of 30 days' service spent on active service outside Botswana.

(2) In the calculation of completed periods of 30 days' service for the purposes of subregulation (1)(c), all periods of service spent on active service outside Botswana shall be aggregated.

#### **51. Benefits on retirement**

A member who retires shall be entitled to-

- (a) if his pensionable service amounts to 10 or more years but less than 20 years, a gratuity at the rate prescribed in this Part less any benefits paid to him in terms of regulation 50;
- (b) if his pensionable service amounts to 20 or more years, or if, whatever the length of his service, he is compulsorily retired in terms of regulation 6(2) or (3), a pension at the rate prescribed in this Part.

#### **52. Benefits on discharge or dismissal on prescribed grounds**

(1) A member who, under section 23 of the Act (other than on the grounds of medical or physical unfitness occasioned without any misconduct or negligence on his part) or under section 68 of the Act is discharged or dismissed from the Force may be paid-

- (a) if his pensionable service amounts to 10 or more years but less than 20 years, such gratuity as the Commander may determine; or
- (b) if his pensionable service amounts to 20 or more years, such pension, subject to regulation 48(2), as the Commander may determine.

(2) Where the Commander intends to order the forfeiture of the pension or gratuity referred to in subsection (1) or both the pension and the gratuity, the Commander shall-

- (a) inform the member of such intention in writing; and
- (b) give the member reasons for such forfeiture.

(3) Where the Commander gives notice in accordance with subsection (2), the member may, within 14 days of receipt of such notice, give reasons why such order should not be made against him.

### **53. Benefits to dependants on death of a member or pensioner**

(1) If a member whose pensionable service amounts to two or more years dies in circumstances other than those specified in regulation 47(1), there shall be paid to his dependants an amount equal to the greater of-

- (a) one year's salary of the deceased member; and
- (b) the sum produced by commuting one-third of such member's annual pension entitlement at the date of death determined in accordance with regulation 54(10).

(2) If a member who is receiving a pension under regulation 51 dies within five years after the date of his retirement, there shall be paid to his dependants a gratuity equal to the aggregate of the pension which would have been payable to such member had he not died, for the period from the day following the date of his death to the expiry of five years from the date of his retirement.

### **54. Commutation of pensions**

(1) In this regulation, unless the context otherwise requires-  
"applicant" means a member about to become entitled to a pension in terms of regulation 42, 43, 51 or 52 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;

"form" means the appropriate form set out in the Fourth Schedule.

(2) Subject to this regulation and regulation 55(2), a member entitled or about to become entitled to a pension or pensions under any one or more of regulation 42, 43, 51 or 52 may apply to the Defence Council for the commutation of up to one-third of the pension or of the aggregate of the pensions to which he is or is about to become entitled.

(3) The Defence Council may, on application by a member under subregulation (2), commute up to one-third 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 on Form No. 1 as set out in the Second Schedule and shall be submitted to the Commander.

(5) The Defence Council may-

- (a) in the case of an applicant who is about to retire in terms of regulation 6(2) or (3) and applies for commutation before the date of his retirement, grant, subject to subregulation (3), the commutation applied for;
- (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 on Form No. 2 as set out in the Second Schedule 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 Defence Council a report on that applicant on Form No. 3 as set out in the Second Schedule.

(8) If the medical board certifies in the report forwarded under subregulation (7) that the applicant is not suffering from, nor in its opinion is specially liable to suffer from, any disease or physical disability likely to affect adversely his normal expectation of life, which it considers to be fully up to the average for persons of the applicant's age, the Defence Council may grant,

subject to subregulation (3), the commutation applied for.

(9) If the medical board certifies in the report forwarded under subregulation (7) that it considers that the application of the applicant should be rejected on health grounds the Defence Council 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 Fifth 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:

Provided that where the age of the applicant at the date of his application for commutation is under 29 years and six months or over 75 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 may be fixed by the Defence Council.

(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 51;
- (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 Defence Council.

(12) For the purposes of this Part the forms and table set out in the Second and Third Schedules respectively shall, with such adaptations or modifications as the circumstances may require, be used.

#### **55. Benefits not to be pledged or ceded**

(1) Except 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 Regulations 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 Defence Council so determines:

Provided that the Defence Council 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 it may determine.

(2) If no portion of a pension has been commuted under regulation 54 the Defence Council 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 widow or in respect of a child.

#### **56. Conviction of pensioner**

If a person 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 directions, if any, of the Defence Council, be discontinued during the whole or part of the period of imprisonment:

Provided that the Defence Council 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 Defence Council may determine.

#### **57. 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;
- (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 Defence Council, accepts directly or indirectly any testimonial or gift of a pecuniary value in connection 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 Defence Council, be suspended, reduced or forfeited, as the case may be.

#### **58. Deductions from pension, gratuity or other benefits**

(1) The Defence Council may authorize the deduction from any pension, gratuity or other benefit to which a member in receipt of a pension under these Regulations or his estate is entitled under this Part or Part VIII of any liquidated amount which that member is liable to pay to the Government.

(2) No deduction shall be authorized under this regulation of a liquidated amount which the Commander has, under regulation 19, authorized to be deducted from the pay and allowances due to a member.

#### **59. Proof of age, etc.**

(1) A member shall, if required to do so, submit proof of the date of his birth.

(2) No payment of any pension to a widow 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 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 Defence Council.

### **PART X**

#### ***Miscellaneous Provisions (regs 60-63)***

#### **60. 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 wife and children may, at the discretion of the commanding officer of his unit, be provided with free accommodation in official quarters.

(3) A member residing in official quarters shall not be charged for electricity or water, if supplied.

#### **61. Engagement for profit in trade or business**

(1) Except with the written consent of the Commander and in accordance with such directions, if any, as the Commander may from time to time give him, a member shall not-

- (a) engage for profit in any business or occupation other than his official duties;
- (b) be or become a director or engage directly or indirectly in the management or direction of any public company or syndicate.

(2) For the purposes of this regulation the traditional practice of cattle farming shall not be regarded as a business or occupation provided it is undertaken outside duty hours and so long as it does not affect the performance of the member's duties in any way.

#### **62. 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;
- (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 Defence Council at which the audience consists only of persons in the employment of the Government;
- (b) explaining Government policy in the course of his duties as a member;
- (c) performing the duties of a returning officer, polling officer or like officer at a Parliamentary or local authority election;
- (d) voting at a Parliamentary or local authority election.

(4) A trade union or employers' organization shall, for the purposes of subregulation (2)(a) and (b), be deemed to be a movement or organization of a political character.

### **63. Funeral expenses**

The amount of any reasonable expenses incurred in burying a member shall be paid by the Government.

## **FIRST SCHEDULE BENEFITS TO WIDOW AND CHILDREN**

*(reg. 47(3))*

1. If a member receiving a pension leaves a widow, the pension in respect of his children shall be at the following rates-

For one child .....	A pension equal to 25 per cent of his widow's pension
For two children .....	A pension equal to 40 per cent of his widow's pension
For three children .....	A pension equal to 50 per cent of his widow's pension
For four children .....	A pension equal to 60 per cent of his widow's pension
For five or more children ..	A pension equal to $66 \frac{2}{3}$ of his widow's pension:

Provided that if owing to the death or remarriage of the widow her pension ceases the pension in respect of the children shall be at the rates prescribed in paragraph 2.

2. If a member receiving a pension leaves no widow, the pension in respect of his children shall be at the following rates-

For one child .....	A pension equal to 50 per cent of the pension which would have been payable to his widow had he left one
For two children .....	A pension equal to 80 per cent of the pension which would have been payable to his widow had he left one
For three children .....	A pension equal to 100 per cent of the pension which would have been payable to his widow had he left one
For four children .....	A pension equal to 120 per cent of the pension which would have been payable to his widow had he left one
For five or more children	A pension equal to $133 \frac{1}{3}$ per cent of the pension which would have been payable to his widow had he left one.

## **SECOND SCHEDULE**

**FORMS**

(reg. 54)

**Form 1**

**APPLICATION FOR COMMUTATION OF PENSIONS**

The Commander,  
Headquarters,  
Botswana Defence Force,  
GABORONE.

1. Full names 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 P .....

4. Date 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*

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, pledged or hypothecated.

Date .....

*Signature of applicant*

Declared before me this ..... day of ....., 20.....

.....

*Notary Public*

*Commissioner of Oaths*

*Magistrate*

*District Commissioner or*

*District Officer*

**Form 2**

**DECLARATION OF HEALTH BY AN APPLICANT FOR COMMUTATION 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 and 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 infection of the lungs or throat?
    - (b) fits of any kind, mental or nervous disease?
    - (c) palpitation, fainting, or any infection 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 infection of the stomach, liver, gall-bladder or bowels?
    - (g) any infection of the kidneys, bladder or urinary organs?
    - (h) malaria or blackwater fever?
    - (i) rheumatism, gout or rheumatic fever?
    - (j) discharge from the ears?
    - (k) cancer or tumour, any tubercular infection or suppurating glands?
    - (l) any venereal diseases?
  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 near 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 matter or circumstance having a bearing on my present or future health or expectation of life.

I further agree that if any statement made by me on this form is hereafter found by the Commander 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 .....

**Form 3**

**REPORT OF MEDICAL BOARD ON AN APPLICATION FOR COMMUTATION OF PENSION**

Full names of applicant (in block letters):

Surname .....

Forenames .....

Date of birth .....

Address .....

*Questions*

*Answers*

1. Cardiovascular System:

- (a) Is there any evidence of-
  - (i) abnormality? .....
  - (ii) arteriosclerosis? .....
  - (iii) valvular disease? .....
  - (iv) other disease of the blood vessels? .....
- (b) Record:
  - (i) rate of heart .....
  - (ii) rhythm of heart .....
  - (iii) size of heart .....
  - (iv) position of apex beat .....
  - (v) pulse .....
  - (vi) systolic blood pressure .....
  - (vii) diastolic blood pressure .....

2. Respiratory System:

- Is there any evidence of disease of-
- (i) larynx? .....
  - (ii) trachea? .....
  - (iii) lungs? .....

3. Abdominal Organs:

- (a) Is there any evidence of disease of-
  - (i) alimentary tract? .....
  - (ii) other abdominal organs? .....
- (b) Is a hernia present? .....
- (c) Is any hernia well controlled by a truss? .....

4. Genito-Urinary System:

- (a) Is there any evidence of-
  - (i) urinary bilharziasis? .....
  - (ii) other renal disease? .....
  - (iii) prostatic disease? .....
  - (iv) other genito-urinary disease? .....
- (b) Record urine-
  - (i) frequency .....
  - (ii) specific gravity .....
  - (iii) albumen .....
  - (iv) sugar .....
  - (v) deposit .....

5. Nervous System:

Is there any evidence of disease? .....

6. Endocrine System:

Is there any evidence of disease? .....

7. Skeletal System:

- Is there any evidence of disease of-
- (i) bones? .....
  - (ii) joints? .....

8. Eyes:

.....

Is there any evidence of disease? .....

9. Ears: .....

Is there any evidence of disease? .....

10. Nose, Mouth, Gums and Teeth: .....

Is there any evidence of disease? .....

11. 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 his constitution is sound, and that he is not suffering from, nor in our opinion is he specially liable to suffer from, any disease or 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.

.....  
 (Signature of Member of the Board) (post held)  
 Place .....

**B.**  
**CERTIFICATE OF IMPAIRED HEALTH**

We certify that we have examined the above-named person and we consider that his application should be rejected on health grounds for the following reasons-

.....

.....

.....



51 .....	12,59	74 .....	6,12
511/2 .....	12,47	741/2 .....	5,98
52 .....	12,34	75 .....	5,84
521/2 .....	12,21		

**FOURTH SCHEDULE**  
**GRATUITY ENHANCEMENT** (reg. 48)

AGE	PERCENTAGE
38-39	25
40-44	23
45-46	20
47-48	17
49-50	14
51-52	11
53-54	8
55	5

**PRESCRIPTION OF ORDER OF PRECEDENCE OF CERTAIN OFFICERS OF THE  
BOTSWANA DEFENCE FORCE ORDER**

(section 10)

(12th October, 2009)

ARRANGEMENT OF REGULATIONS

PARAGRAPH

1. Citation
2. Prescription of Order of Precedence

S.I. 84, 2009.

**1. Citation**

This Order may be cited as the Prescription of Order of Precedence of Certain Officers of the Botswana Defence Force Order.

**2. Prescription of Order of Precedence**

Officers appointed to a position that is not a rank but are allocated more responsibility than other officers on the same rank shall take „precedence over officers on the same rank.

<sup>i</sup>Insert "1st", "2nd", "3rd", "Final", or as the case may be.

<sup>ii</sup>Insert "1st", "2nd", "3rd", "Final", or as the case may be.

<sup>iii</sup>Delete if not applicable.

<sup>iv</sup>Delete if not applicable.

<sup>v</sup>Delete if not applicable.

<sup>vi</sup>Delete if not applicable.

<sup>vii</sup>Delete if not applicable.

<sup>viii</sup>Delete if not applicable.

<sup>ix</sup>Delete if not applicable.

<sup>x</sup>Delete if not applicable.

<sup>xi</sup>Delete as necessary.

<sup>xii</sup>Delete as necessary.

<sup>xiii</sup>Delete whichever is not applicable.

<sup>xiv</sup>Delete if not applicable.

<sup>xv</sup>Delete whichever is not applicable.

<sup>xvi</sup>Delete as applicable.

- 
- <sup>xvii</sup>Delete as applicable.
- <sup>xviii</sup>Delete as applicable.
- <sup>xix</sup>Delete whichever is not applicable.
- <sup>xx</sup>Delete whichever is not applicable.
- <sup>xxi</sup>Delete whichever is not applicable.
- <sup>xxii</sup>Delete whichever is not applicable.
- <sup>xxiii</sup>Delete whichever is not applicable.
- <sup>xxiv</sup>Delete whichever is not applicable.
- <sup>xxv</sup>Delete whichever is not applicable.
- <sup>xxvi</sup>Delete whichever is not applicable.
- <sup>xxvii</sup>Delete whichever is not applicable.
- <sup>xxviii</sup>Delete whichever is not applicable.
- <sup>xxix</sup>Delete whichever is not applicable.
- <sup>xxx</sup>Delete whichever is not applicable.
- <sup>xxxi</sup>Delete whichever is not applicable.
- <sup>xxxii</sup>Delete whichever is not applicable.
- <sup>xxxiii</sup>Delete whichever is not applicable.
- <sup>xxxiv</sup>Delete whichever is not applicable.
- <sup>xxxv</sup>Delete whichever is not applicable.
- <sup>xxxvi</sup>Delete whichever is not applicable.
- <sup>xxxvii</sup>Delete whichever is not applicable.
- <sup>xxxviii</sup>Delete whichever is not applicable.
- <sup>xxxix</sup>Delete whichever is not applicable.
- <sup>xl</sup>Delete whichever is not applicable.
- <sup>xli</sup>*Delete as appropriate.*
- <sup>xlii</sup>Delete as appropriate.
- <sup>xliii</sup>give explanation for any delay, the date of the occurrence of such delay and any action taken.