

PART I
PRELIMINARY

[Long title]

The Commission considered the long title which was lengthy and decided to simplify it. Further the Commission recommends that consistent with the language of the Constitution reference to “Army” in the long title and throughout the Act should be substituted with “Defence Force”¹. The Commission therefore recommends that the long title should read as follows-

“An Act to provide for the establishment, administration, recruitment, conditions of service, training, command and discipline of the Malawi Defence Force and for connected matters.”.

SECTION 1 *[Short title and commencement]*

The Commission considered section 1 which is the short title for the Act. For reasons given with respect to the long title for the change from “Army” to “Defence Force” the Commission recommends that the short title be similarly amended. The Commission also recommends that subsection (2) which deals with the commencement of the Act be deleted as it is now spent. Section 1 should therefore read as follows-

“This Act may be cited as the Defence Force Act.”.

¹Chapter XVI of the Constitution refers to the “Defence Forces” but the Commission recommends the term “Defence Force” consistent with recommendations in the report of the Law Commission on the Technical Review of the Constitution and also in keeping with the current usage of that term in the military.

SECTION 2 [*Interpretation*]

The Commission examined the various definitions in section 2 of the Act and considered that amendments were needed either for reasons of aligning the language of the Act with the Constitution, or improving on them or introducing new definitions. The Commission therefore recommends the following amendments to section 2-

“appropriate superior authority”

The Commission observed that at present the overall duties, functions and powers of command of the Defence Force are vested in the Commander subject to his delegation. The Commission also observed that presently the power of the Commander to deal summarily with an officer can also be exercised by a commanding officer, who at present is of the rank of lieutenant colonel.² The Commission considered that there was the need to confer powers on officers in between, and inclusive of, the ranks of the Commander and lieutenant colonel to generally deal with persons below them in all matters relating to discipline and general administration of the Defence Force. Such officers should be deemed appropriate superior authorities for purposes of the Act. The Commission therefore recommends the definition of a new term “appropriate superior authority” as follows-

““appropriate superior authority” means the Commander or such officer, not below the rank of lieutenant colonel or corresponding rank, as may be prescribed.”.

"Defence Force"

²The present law defines a commanding officer (who is a person for the time being commanding a unit or detachment) only for purposes of summary dealing with offences. But, see the recommendation regarding section 29 on page 18 and regarding section 76 on page 24.

The term "Defence Force" should be defined to substitute the term "Army" as follows-

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

"Defence Council"

The term "Defence Council" should be defined to substitute the term "Army Council" as follows-

"Defence Council" means the Defence Council constituted under section 8 of the Defence Force Act;".

"Commander"

The Commission noted the recommendation of the Report of the Law Commission on the Technical Review of the Constitution³ that section 161 should be amended to provide, within the Constitution itself, for the office of Commander of the Defence Force and that such provision be made in the recommended new subsection (2) of section 161.

The Commission agrees with that proposal and therefore recommends that the definition of the term "Commander" in the Act should bear reference to that section of the Constitution as follows-

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

"commanding officer"

³Malawi Government Gazette, Vol. XXXV, No. 58, General Notice No. 230 of 1998, Pp. 284 - 285.

The Commission noted that the definition of commanding officer is restricted to situations where a member of the Defence Force has been charged with an offence. It was the view of the Commission that a commanding officer should be vested with general powers of command over a person within a unit or detachment in all circumstances regardless of the commission of an offence.

The Commission therefore recommends that the present definition of “commanding officer” should be deleted and substituted with the following new definition-

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

“co-operating forces”

It was noted that the Defence Force works in close co-operation with friendly foreign forces. Although there are provisions relating to these forces, there is no definition of such forces in the Act for reference purposes. The Commission therefore recommends a proper definition as follows-

“"co-operating forces" means the military forces of another country acting in co-operation with the Defence Force under this Act;".

“corresponding rank”

The Commission considered that reference to the United Kingdom Military Forces in this definition, as in other parts of the Act, was a relic of the country’s colonial past. The Commission recommends that this reference be replaced with “cooperating forces”. The new definition should therefore read as follows-

“corresponding rank”-

- (a) in relation to the Defence Force in its relation with any cooperating force, means such rank in the Defence Force as may be declared by the Defence Council to correspond to a rank in the cooperating force;
- (b) in relation to services within the Defence Force, means such rank in one service as may be declared by the Defence Council to correspond to a rank in another service.”.

"court of appeal"

The Commission recommends that in this definition there should be reference to the Constitution as the source under which the Supreme Court of Appeal of Malawi (which is the court of appeal for the purposes of this Act) is established and recommends the following new definition-

““court of appeal” means the Supreme Court of Appeal for Malawi established under the Constitution;”.

“damage”

The Commission recommends that in this definition reference to cognate variations of the word “damage” be deleted as it is superfluous in light of the General Interpretations Act.⁴ The amended definition should read as follows-

⁴Cap.1:01 of the Laws of Malawi. Section 2 of that Act provides “Where the interpretation of any word or expression is defined in this or any other written law, such definition shall extend, with the necessary modifications, to the interpretation of the grammatical variations and cognate expressions of such word or expression.

““damage” includes destruction;”.

“Deputy Commander”

Following amendments recommended later in this Report to section 182, to vest the power to appoint the Deputy Commander of the Defence Force in the President and not the Commander, the Commission recommends that the definition of Deputy Commander should be amended to read as follows-

““Deputy Commander” means a person appointed as the Deputy Commander of the Defence Force under section 182;”.

“member” and “officer”⁵

The Commission noted that there are frequent references in the Act to the two terms and recommends that there should be definitions of these terms in the Act as follows-

““member” includes an officer and a soldier;”;

““officer” means a person granted a commission in the Defence Force, but does not include any person who is-

- (a) appointed to honorary commissioned rank; or
- (b) a holder of an honorary appointment;”.

“military police”

⁵The distinction comes out clearly in the subsidiary legislation where in this sense, “officers” are governed by the Regular Force (Officers) Regulations while “members” are governed by Regular Force (Other Ranks) Regulations.

The Commission considered that there was need to define the term “military police” as a newly introduced unit of the Defence Force and to make appropriate provision in the Act for the establishment and operation of this unit.⁶ The Commission recommends the insertion of a definition of the term “military police” as follows-

““military police” means a police unit within the Defence Force established under section 183A of the Defence Force Act;”.

“visiting force”

The Commission observed that for textual convenience, the definition of “co-operating forces” should cover “visiting forces”⁷ but exceptional circumstances may require a different interpretation. The Commission therefore recommends that there should be a separate definition for “visiting force” as follows-

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

SECTION 3 [*Provisions as to active service*]

The Commission considered that the expression “on active service” as defined in subsection (1)⁸ should also apply when any unit of the Defence Force is engaged in operations during a state of emergency. The Commission therefore recommends that subsection (1) be amended by inserting after the word “enemy” the words “or during a state

⁶See proposed new section 183A on page 38.

⁷The rationale being that when a force is visiting, it is also acting in co-operation with the national force. See also the proposed enabling provision (new section 6B) on page 8.

⁸At present the use of the expression “on active service” applies only when a unit is engaged in operations against an enemy.

of emergency”.

The Commission also considered that it was necessary to expressly subject the provisions of subsections (2) and (3) to the relevant provisions in the Constitution which govern the exercise of the powers of the President in directing the operations of the Defence Force. The Commission therefore recommends that-

- (a) subsection (2) be amended by inserting at commencement the words “Subject to Chapter XVI of the Constitution,”;⁹
- (b) subsection (3) be amended by inserting at commencement the words “Subject to section 45 of the Constitution,”.¹⁰

SECTION 4 [*Establishment and maintenance of Army*]

The Commission recommends to delete reference to “Territorial Force”¹¹ in subsection (1) for the reason that there is no such force existing. Further, in light of recent developments, it is recommended to give express recognition in the Act to the various services established within the Defence Force namely “the Army, the Air Wing and the Marine. The Commission therefore recommends that section 4 be repealed and replaced as follows-

“Establishment 4. (1) There shall be established and maintained in

⁹In particular, section 161 of the Constitution vests the ultimate responsibility for the Defence Force in the President.

¹⁰Section 45 of the Constitution deals with powers of the President to declare a state of emergency, and also provides for derogation and non-derogation from rights guaranteed in Chapter IV of the Constitution.

¹¹For all practical purposes this has transformed into the current Militia introduced as a component of the Defence Force under Chapter X of the Act by amendment to the Act in 1989. The proposed amendment to the section should have been made at that time.

and maintenance
of the Defence
Force

Malawi a Defence Force to be known as the Malawi
Defence Force (in this Act referred to as the “Defence
Force”) which shall consist of-

- (a) the Regular Force;
- (b) the Reserve Force; and
- (c) the Militia.

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

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

SECTION 5 [*Employment of Army*]

The Commission recommends that the section ought to reflect the constitutional provisions as regards directing the operations of the Defence Force. It is therefore recommended to amend the provision by deleting the rest of the words appearing immediately after the word “such” and substituting the words “duties as are in accordance with the Constitution and this Act”.

SECTION 6 [*Employment of Army outside Malawi*]

The Commission recommends that this section be amended for the same reason given in respect of the amendment to section 5. It is therefore recommended to delete the words "at any time" and to substitute therefor the words ", in accordance with Chapter XVI of the Constitution".

NEW SECTION 6A [*Co-operation with other forces*]

Following the recommendation by the Commission to adopt a new definition regarding "co-operating forces", the Commission recommends the insertion of a new section 6A¹² as an enabling provision. The new section 6A should read as follows-

"Co-operation
with other
forces

6A. (1) If the whole or any part of the Defence Force is required to act in co-operation with any co-operating force, the President may place the Defence Force or any part thereof under the command of the officer commanding the co-operating force if that officer is senior in rank to all the officers of the Defence Force or of such part thereof.

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

(3) In so far as powers of command depend on rank, any member of any co-operating force-

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

(b) whose unit is acting in co-operation with a unit of the

¹²Section 13 of the Armed Forces of Kenya has been adapted with modifications.

Defence Force,

shall have the same powers as a member of the Defence Force of corresponding rank; and for the purposes of sections 38 and 73 any such member of the co-operating force shall be treated as if he were a member of the Defence Force of corresponding rank."

NEW SECTION 6B [*Visiting forces*]

The Commission observed that the Defence Force may accept the presence in the Republic of "visiting forces".

As already explained in relation to the definition of "visiting forces", the Commission recommends the introduction of a provision to cover the presence in Malawi of visiting forces under a new section as section 6B as follows-

"Visiting forces	6B. The President may on the advice of the Defence Council permit the presence in Malawi of visiting forces in accordance with the relevant treaty, agreement or arrangement to which the Government is a party."
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SECTION 7 [*Overseas training*]

The Commission noted that this section confers on the Minister the authority to deploy officers on training or service attachments abroad. However, the Commission considers that this authority is appropriate for the Commander of the Defence Force since it deals with matters of staff administration. The Commission therefore recommends that the word "Minister" be deleted and substituted with the word "Commander" in both subsections (1) and (2) of section 7.

Further the Commission recommends that the marginal note be deleted and substituted with the following-

“External training and attachments”.

PART II
DEFENCE COUNCIL

HEADING OF PART

For reasons already given about the “Army Council” changing to “Defence Council” the Commission recommends that the heading of this Part should be “Defence Council”.

SECTION 8 [*Establishment of Army Council*]

In view of the fact that the Defence Council is now established in the Constitution the Commission recommends that subsection (1) which establishes the Defence Council be amended to provide instead for the overall responsibility of the Defence Council. Further, the Commission recommends several changes to the other provisions of section 8 in order to achieve conformity with the provisions of the Constitution with respect to the Defence Council and to provide for other ancillary matters. Thus, the Commission recommends that section 8 be repealed and replaced as follows-

"Establishment of the Defence Council	8. (1) The Defence Council shall, subject to the powers of command of the President as Commander-in-Chief of the Defence Force and subject to this Act, be responsible for the overall control of the Defence Force and shall perform other functions conferred on it by the Constitution and by this Act."
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The Commission recommends that subsection (2), which relates to the responsibility of the Defence Council, should be deleted since the matters provided for in this subsection will now be adequately stipulated in section 182 (as recommended to be amended) and they are also stipulated in section 161 of the Constitution.

The Commission further recommends that subsection (3), which provides for the composition of the Defence Council, should be amended to include “the Secretary for Defence” and “the Chief of Staff” the latter presently being a member of the Defence Council. In view of the recommended deletion of subsection (2), subsection (3) should be renumbered subsection (2) and redrafted as follows-

“(2) The members of the Defence Council shall be-

- (a) the Minister, who shall be chairperson of the Defence Council;
- (b) the Secretary for Defence;
- (c) the Secretary to the President and Cabinet;
- (d) the Commander;

- (e) the Deputy Commander; and
- (f) the Chief of Staff.”.

In subsection (4), the Commission recommends that the power to co-opt any other person as a member of the Defence Council should best be conferred upon the Defence Council itself, and not on the Minister. Thus, the word “Minister” should be substituted with “Defence Council”.

Additionally, the Commission noted that at present this section does not have a provision relating to quorum for the purpose of holding meetings of the Council. It is therefore recommended that a new provision to be subsection (6) should be inserted as follows-

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

SECTION 9 [*Performance of functions of Army Council*]

The Commission recommends that in view of the recommended new text of section 8 reference, in section 9, to section 8 (2) should be deleted. The Commission further recommends an amendment of the section to substitute the words “Army Council” with “Defence Council”.

PART III

OFFICERS

SECTION 10 [*Officers selection board*]

This section refers to a selection board for the purposes of selecting persons to be granted commissions. The Commission considers that such a board should more appropriately be called a commissions board as it deals with the aspect of granting commissions. The Commission therefore recommends that section 10 be amended by deleting the words “selection board” and substituting the words “commissions board”.

Consequently the marginal note should read “Commissions board”

NEW SECTIONS 11A and 11B [*Compulsory resignation, Compulsory retirement*]

The Commission considered it appropriate to prescribe the grounds for forced resignation and discharge of officers in the Act as a more secure measure of their tenure as opposed to prescribing for such grounds in Regulations. The Commission therefore recommends to adapt regulations 7 and 9 of the present Army (Regular Force) (Officers) Regulations to become the new sections 11A and 11B respectively.

The Act should therefore be amended by inserting the following new sections-

"Compulsory
resignation

11A. (1) An officer may be required by the Defence Council to resign from the Force in any of the following circumstances-

- (a) if he is found guilty of 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 have effect from the date of his conviction by that court, or in the event of his appealing against conviction or the sentence, or both, from the date of the dismissal of the appeal; and
- (c) if, after due inquiry being made, he is, in the opinion of the Commander, so inefficient as an officer as to be unfit to remain in the Force.

(2) An officer who is required to resign from the Force under subsection (1) shall have a right of appeal to the President under section 184 of the Act.

Compulsory
retirement

11B. (1) An officer shall be required to retire from his employment in the Force-

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

promotion for him;

- (b) if he is found by a Medical Board to be mentally or physically unfit for further service;
- (c) on completion of his term of engagement except where further engagement from year to year is authorized by the Minister upon recommendation by the Commander; and
- (d) whatever the length of his pensionable service, on attaining the age of 55 years.

(2) Notwithstanding subsection (1) (d), an officer may, not less than three months before he attains the age of 55 years, apply in writing to his commanding officer for the

grant of permission to continue in his employment in the Force for a further period to be specified in the application not exceeding five years.

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

- (a) order the officer to present himself for, and to submit to, a medical examination;
- (b) obtain a report as to whether the applicant is presently mentally and physically fit to continue his employment for the period so specified; and
- (c) forward the application and the report to the appropriate superior authority for a decision as to whether the application is granted or rejected.”.

SECTION 12 *[Appointment and transfer of officers]*

The Commission observed that actually a member of the Militia cannot be transferred to the other forces contrary to what is stipulated in subsection (2).¹³ It is therefore recommended that subsection (2) be deleted and substituted with the following-

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

SECTION 13 *[Power to make regulations for this Part]*

This section makes provision for power to make regulations applicable to officers. The Commission recommends that subsection (1) should be redrafted so as to confer the power to make regulations on the Minister rather than on the President and further to provide that such power shall be exercised on the advice of the Defence Council. Subsection (1) should therefore be amended by deleting the word “President” and substituting the words “Minister, may, on the advice of the Defence Council,”.

PART IV

ENLISTMENT AND TERMS OF SERVICE IN THE REGULAR FORCE

Heading of Part

¹³Members of the Militia are engaged on a part-time basis and transfers apply only to members of the Regular Force.

The Commission recommends insertion of the words “ OF SOLDIERS” after the word “SERVICE” in the heading to make it clear that the Part deals with enlistment and terms of service for soldiers.

The Commission recommends that the divisions of this Part, denoted by the italicized subject title, should be numbered as *Divisions* 1, 2 and 3.

Division 1 - Enlistment

SECTION 15 [*Enlistment*]

This provision deals with enlistment of persons in the Regular Force. The Commission took the view that it was important to clearly prohibit recruitment of persons under the age of 18 years in the Defence Force.

The Commission therefore recommends the amendment of subsection (2) by deleting all the words appearing after the words “eighteen years” in order to even disallow recruitment of younger persons upon consent by a parent, guardian or other authority. This will be in keeping with provisions in the Employment Act¹⁴ which prohibit engagement of a person between the age of fourteen and eighteen years in any hazardous occupation or activity and would also meet the requirements under international conventions discouraging or prohibiting recruitment of children in the military. Further, the Commission considered the current practice in the Defence Force where there is a limitation regarding the age of recruitment. The Commission was of the view that the maximum age should be 24 years similar to that recommended in regulation 6 (1) of the Cadet Officers Regulations. It is therefore recommended that section 15 (2) should read as follows-

“(2) A recruiting officer shall not enlist a person under the age of eighteen years or above twenty four years.”.

¹⁴Act No. 6 of 2000, section 22.

SECTION 16 [*Terms of Enlistment*]

Following the recommended amendment to section 15(2)¹⁵, the Commission recommends deletion of subsection (3) which is also about the same circumstances of recruitment of persons below the age of eighteen years.

SECTION 17 [*Re-engagement and continuation in service*]

The Commission recommends the amendment of section 17 by inserting a new provision, as subsection (2), to provide for gratuity for members of the Defence Force who are not re-engaged after completing 7 years initial service. The new subsection (2) would read as follows-

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

The existing provision of section 17 should be numbered as subsection (1).

SECTION 18 [*Prolongation in service*]

The Commission recommends that this section be amended to delete the words "state of war" and to substitute therefor the words "state of national defence" in order to align the section with provisions of the Constitution as recommended in the Report of the Law Commission on the Technical Review of the Constitution. The Commission as well as Defence Force are in agreement with the recommendation in that Report.

¹⁵ Ibid.

Division 2 - Discharge and Transfer to Reserve Force

SECTION 19 [*Discharge*]

The Commission observed that the terms "military law" and "service law" have been used throughout the Act interchangeably and wondered whether these two terms are synonymous. After extensive discussion, it was agreed that the two terms be retained as interchangeably used since the Commission felt that such use is unlikely to cause any problems of interpretation.

For good comprehension, the Commission recommends that subsection (2) should be amended in the opening statement by deleting the words "out of Malawi" appearing after the word "serving" and substituting therefor the word "outside Malawi".

SECTION 20 [*Transfer to Reserve Force*]

Similarly, subsection (2) of section 20 should be amended by deleting the words "out of Malawi" immediately after the word "serving" and substituting the words "outside Malawi".

The Commission further recommends that subsection (3) be amended by deleting the words "without giving any reason" as they may be construed as being in contravention of section 43 of the Constitution on the constitutional right to administrative justice.

SECTION 22 [*Discharge*]

The Commission recommends that the section should be amended in order to stipulate the grounds for discharge of officers and soldiers from service. The section as amended would read as follows-

"Discharge
upon
prescribed
grounds

22. An officer or a soldier of the Regular Force may be
ischarged by the appropriate superior authority at any time
during the currency of any term of engagement-

- (a) if within two years after the date of his attestation,
his commanding officer considers that he is unlikely
to be an efficient member of the Defence Force;
- (b) for activities or behaviour likely to be prejudicial to the
preservation of public security;
- (c) if he is convicted of a civil offence for
which he is not given the option of a fine;
- (d) if he is pronounced by the medical board to be
mentally or physically unfit for further service;
- (e) on reduction of establishment;
- (f) at his own request on compassionate grounds;
- (g) if for any reason given to him in writing his services
are no longer required;
- (h) if he is granted a commission;
- (i) if he is sentenced by court-martial to be dismissed
from the Defence Force;
- (j) if he marries another member of the Defence Force

in disobedience to standing orders for peace;

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

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

SECTION 23 [*Right of soldier to purchase discharge*]

Section 23 makes provision for the right of a soldier to seek a discharge conditioned upon him paying a sum of money presently prescribed as £20 (i.e. K40)¹⁶. The Commission recommends that in place of the sum of “£20” the amount should be “the equivalent of 90 days pay”.

SECTION 25 [*Right of warrant officer to discharge on reduction to ranks*]

For similar reasons given in relation to the amendment to section 18, the Commission recommends that the words “state of war” be deleted and substituted with the words “state of national defence”.¹⁷

Division 3 - Miscellaneous and Supplementary Provisions

SECTION 28 [*False answers in attestation papers*]

This section provides for a fine of £50 for the offence of giving false answers in

¹⁶Under the Decimal Currency Act of 1970 (Cap 45:02) the conversion formula for purposes of any written law in Malawi is £1 is equivalent to K2: see section 16 of that Act.

¹⁷Supra page 14.

attestation papers for enlistment. The Commission recommends that this fine, which was prescribed with the enactment of the Act in 1965, be significantly increased to reflect its commensurate value at present in monetary terms and thus recommends a new fine of K10,000.

For the same reason, the Commission is also recommending revision of fines for various other offences in the Act and will merely indicate at the appropriate point the existing fine and the new fine that should be substituted.

PART V

DISCIPLINE, TRIAL AND PUNISHMENT OF MILITARY OFFENCES

The Commission wishes to raise a point of general principle as regards jurisdiction to try offences under military law. At present, jurisdiction is conferred in courts-martial where offences are committed by officers below the rank of captain and in the High Court where offences are committed by officers of that rank and above.

The Commission was briefed by the Defence Force that this position in Malawi has a colonial background when all officers of Malawian origin were below the rank of captain and it was considered expedient to subject them to trial by court-martial rather than engage in the involved procedure of trial by the High Court.

In addition, during those days the Malawi Army was just a battalion and the commanding officer of that battalion was of the rank of lieutenant colonel who could not be conferred jurisdiction to try anybody of the rank of captain and above.

However, the Commission observed that the practice in most Commonwealth jurisdictions and commonly world wide is to subject officers of the rank of lieutenant colonel and below to trial by a court-martial while those of the rank of colonel and above are tried by the High Court. The Commission therefore recommends that this practice be adopted in

Malawi and that the relevant provisions of the Act with respect to jurisdiction for trial of offences be amended accordingly.

The Commission also observed that in several sections under this Part words creating the offences under those sections have been omitted and recommends that such words be inserted. A similar observation applies to sections in other Parts of the Act. The example is where the words “shall be liable to a fine ...” should correctly read “**shall be guilty of an offence and liable to**”

The Commission recommends that various *Divisions* of this Part, denoted by headlines in *italics*, be assigned numbers accordingly.

*Division 1 - Treachery, Cowardice and Offences Arising out of
Military Service*

In the heading of this Division the Commission recommends the insertion of the word *Other* before the word “Offences”.

SECTION 29 (1) [*Aiding the enemy*]

In subsection (1) (d), with regard to the offence of aiding the enemy, the Commission recommends for reasons of clarity that the word “him” be deleted and substituted with the words “**the enemy**”.

Further, the Commission was of the view that the offence under this subsection of aiding the enemy is a serious offence and because of such gravity, the alternative punishment to the death penalty should be life imprisonment and not merely “other punishment provided by this Act” as the section now provides. Thus, the Commission recommends the deletion of the words “any other punishment provided by this Act” and the substitution of the words “life

imprisonment”.

SECTION 30 [*Communication with the enemy*]

In subsection (1), to correct an obvious error, the Commission recommends that the word “an” should be deleted in the phrase “An person” and substituted with the word “Any”.

Further, the offence under this subsection of communicating with the enemy is punishable with death. For similar reasons given in relation to section 29, the Commission recommends that the words “any punishment provided by this Act” be deleted and substituted with the words “life imprisonment”.

SECTION 33 [*Becoming prisoner of war through disobedience or wilful neglect and failing to rejoin forces*]

In subsections (1) and (2), the Commission recommends that in the phrase “shall be guilty of an offence against this section”, the words “against this section” are unnecessary in these subsections and should be deleted. Those words should be retained in subsection (3) where they also appear.

The Commission recommends the amendment of subsection (2) to clearly show that two different situations are being addressed in this provision. Reference to “United Kingdom Forces” should also be replaced with reference to “co-operating forces”. Subsection (2) should therefore be redrafted as follows-

- "(2) Any person subject to military law under this Act who-
- (a) having been captured by the enemy, fails to take any reasonable steps to rejoin the Defence Force or the co-operating force which is available to him; or

(b) prevents or discourages any other person subject to military law captured by the enemy from taking any reasonable steps to rejoin the Defence Force or the co-operating force which is available to him or, as the case may be, to that other person, shall be guilty of an offence against this section."

SECTION 34 [*Offences by or in relation to sentries, etc*]

Subsection (2) of this section deals with drunkenness of service men. The Commission considered that there was need to improve on the language of the provision so as to bring out the element that the other drug or substance also has intoxicating effects and further to broaden the scope of the provision to include, for example, situations of disorderly behaviour. The new subsection (2) should read as follows-

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

In subsection (3), the Commission recommends deleting the words "United Kingdom Forces" and substituting therefor the words "co-operating forces".

Division 2 - Mutiny and Insubordination

SECTION 37 [*Failure to suppress mutiny*]

To correct an obvious error the word "persons" in the phrase "any persons" should be amended to read the singular "person".

With respect to the punishment for the offence created by this section, if committed to assist the enemy, the Commission recommends that the alternative punishment to death

should be life imprisonment and therefore the words “any other punishments provided for by this Act” should be deleted and substituted with the words “life imprisonment”.

SECTION 38 [*Insubordinate behaviour*]

For consistency with acceptable drafting practice, the Commission recommends that the words “the said person” be deleted and substituted with the words “that person”.

SECTION 39 [*Disobedience to particular orders*]

In order to make it clear that the proviso in this section applies to both offences under subsection (1) and subsection (2), it should be better presented as subsection (3) to read as follows-

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

SECTION 41 [*Disobedience to standing orders*]

This provision relates to disobedience to standing orders. In subsection (2) the Commission considered that there was need to empower the appropriate superior authority to make the orders which are the subject of this provision. To this end the Commission recommends an amendment to subsection (2) by deleting the word “made” and substituting therefor the words “that may be made by the appropriate superior authority”.

Division 3 - Desertion, Absence Without Leave, etc.

SECTION 46 [*Failure to perform military duties*]

The word “leave” should properly read “leaves”.

Division 4 - Malingering and Drunkenness

Division 5 - Offences Relating to Property

SECTION 49 [*Offences relating to public and service property*]

In subsections (1) and (2) the Commission considered that there was need to enhance the penalty for the offences created by this section which are offences relating to public or service property, including the offence of theft of such property. The Commission recommends the maximum imprisonment of fourteen years. Thus, both subsections (1) and (2) should be amended by deleting the words “or any less punishment provided by this Act”, and substituting the words “for fourteen years”.

In subsection (3) the Commission recommends that a maximum penalty for the offence under this provision committed in a state of war be prescribed as life imprisonment in view of the serious nature of the offence. The Commission therefore recommends that the words “imprisonment or any less punishment provided by this Act” be deleted and substituted with the words “imprisonment for life”.

Further, the Commission recommends that for the words “the state of war” there should be substituted the words “active service”.

The italicised words “*Offences relating to property*” appearing before section 51A be deleted as they are a repetition of the title of this Division.

*Division 6 - Offences relating to Billeting and requisitioning of
Vehicles, Aircraft or Vessels*

SECTION 53 [*Offences in relation to requisitioning of vehicles, aircraft or vessels*]

The Commission recommends that for the reference to “horses” there should be substituted a reference to “animals” to include other animals that the Defence Force may use in its operations.

Division 7 - Offences Relating to, and by, Persons in Custody

SECTION 54 [*Irregular arrest and confinement*]

This provision deals with irregularities in arrest and confinement. The Commission considered that in subsection (1) the power conferred on the Commander should be exercised by any other appropriate superior authority within the Defence Force in order to avoid unnecessary delays when dealing with those that are arrested or confined . The Commission therefore recommends that subsection (1) (a) be amended by deleting the word "Commander" and substituting the words "appropriate superior authority"

Division 8 - Offences in Relation to Courts-martial

Division 9 - Miscellaneous Offences

SECTION 60 [*Injurious disclosures*]

The Commission considered that the offence in subsection (1) in respect of injurious disclosures was of a very serious nature in the military context and that the punishment for this offence should be raised. The Commission therefore recommends that the punishment of two years imprisonment should be enhanced to ten years imprisonment.

SECTION 62 [*Making of false documents*]

In paragraph (d), the word “cancels” should correctly read "counsels".

SECTION 63 [*Scandalous conduct of an officer*]

The Commission considered that there was need for a definition of the scope of “scandalous behaviour” as used in this section. The Commission recommends to insert a proviso to section 63 as follows-

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

SECTION 64 [*Ill-treatment of officers or members of inferior ranks*]

To correct an obvious error in paragraph (b) the word “interior” should read “**inferior**”.

SECTION 68A [*Political activities*]

With regard to offences relating to political activities, the Commission recommends that in order to cover all electoral processes, in paragraph (c) and in the proviso, the phrase “a national or local authority election” should be redrafted to read “**a parliamentary, presidential or local authority election or a by election thereof or a referendum**”.

The Commission also recommends the introduction of a new provision as subsection (2) of this section to prohibit political activities taking place within the premises of the Defence Force. The new provision should read as follows-

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

Consequently, the existing provision of this section should be numbered as subsection

(1).

Division 10 - Civil Offences

SECTION 69 [*Civil offences*]

The Commission considered that it was proper to subject the trial of offences listed in subsection (4)¹⁸ by court-martial to the consent of the Director of Public Prosecutions. The Commission therefore recommends the addition of a new subsection (6) as follows-

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

Division 11 - Punishments

SECTION 70 [*Punishment of officers*]

The Commission considered that additional types of punishments, including admonition, be prescribed under subsection (2) for the various offences under military law.

Thus, subsection (2) should be amended by deleting paragraphs (g) and (h) and substituting them with the following-

- "(g) severe reprimand;**
- (h) reprimand;**
- (i) admonition;**
- (j) stoppages, where the offence has occasioned any expense, loss or**

¹⁸These are treason, murder, manslaughter, treason-felony and rape.

damage".

SECTION 71 [*Punishment of soldiers*]

Similarly, the Commission recommends that admonition be also prescribed under this section as a form of punishment. Thus, subsection (2)(k) should be amended by deleting the words "or reprimand" and substituting the words ", reprimand or admonition".

The Commission also recommends that paragraph (l) of subsection (2) should be rephrased as follows-

"(l) stoppages, where an offence has occasioned any expense, loss or damage".

Division 12 - Arrest

Division 13 - Investigation of, and Summary Dealing With, Charges

SECTION 74 [*Provisions for avoiding delay after arrest*]

The Commission considered subsection (1) and noted that the sense would better be conveyed if the last part of the provision immediately after the words "unnecessary delay," were to read "and as soon as may be practicable, either proceedings shall be taken to deal with the alleged offence or he shall be released from arrest."

SECTION 76 [*Charges to be dealt with summarily or by court-martial*]

With regard to subsection (1), the Commission considered that the authority conferred on the Commander to deal summarily with charges against members below certain ranks (presently specified as below the rank of captain) should more properly be vested in the appropriate superior authority. The Commission therefore recommends that for the word "Commander" there should be substituted the word "appropriate superior authority".

The Commission further recommends that to take account of developments in the Defence Force the rank of “captain” as specified in subsection (1) should be that of “colonel”.

SECTION 77 [Further proceedings on charges against non commissioned officers and soldiers]

In subsection (3) paragraph (a), the Commission recommends that subparagraphs (ii), (iii) and (iv) be restructured as follows-

- "(ii) severe reprimand;
- (iii) reprimand;
- (iv) stoppages, where the offence has occasioned any expense, loss or damage; and
- (v) admonition".

In subsection (3) (b) the Commission considered that there was need to raise the maximum period of detention from twenty-eight days to forty-two days to strengthen the enforcement of discipline. The Commission therefore recommends that subsection 3 (b) (i) be amended by deleting the words "twenty-eight days" and substituting the words "forty-two days" wherever they appear in the paragraph.

In subsection 3 (b) (iii), the Commission recommends that the subparagraph be redrafted as follows-

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

SECTION 78 [Further proceedings on charges against officers and warrant officers]

The Commission recommends a number of textual changes as follows-

In subsection (3) paragraph (a), for the rank of “captain” there should be substituted the rank “colonel”.

Subsection (4) should be redrafted to read as follows, with the proviso remaining unchanged.

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

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

Except in subsection (7) the word “Commander” should be substituted with the words “appropriate superior authority” wherever it appears.

In subsection (5), paragraphs (c) and (d) should be deleted and substituted as follows-

- “(c) severe reprimand;
- (d) reprimand;
- (e) stoppages, where the offence has occasioned any expense, loss or damage; and
- (f) admonition.”.

In subsection (7), the words “Army Council” be deleted and substituted with the words “Commander for guidance”.

Division 14 - Court-martial : General Provisions

SECTION 84 [*Constitution of court-martial*]

With regard to the composition of a court-martial, the Commission noted that at present membership is confined to officers only. The Commission considered that it would be appropriate to include non-commissioned officers as members of a court-martial where the person being tried is a non-commissioned member; and this should be the case even where the only punishment or the maximum punishment is death. The Commission felt that this would serve to bring about a sense of justice in the mind of the accused if one of their own ranks were on the panel of a court-martial.¹⁹ Therefore the Commission recommends that subsection (1) be redrafted to read as follows-

“Constitution of 84. (1) Every court-martial shall consist of-
of court-martial

- (a) an officer designated as the presiding officer appointed by the appropriate superior authority; and
- (b) not less than four other members who shall-
 - (i) all be officers if the accused is an officer;
 - (ii) include at least one non-commissioned officer if the accused is a non-commissioned officer or a private soldier.”.

The Commission also recommends that subsection (2) of section 84 which has reference to the United Kingdom Forces and specifies qualifying period of service as a member of a court-martial be redrafted to read as follows-

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

¹⁹This point was strongly urged by Commissioners from the Defence Force.

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

In view of the recommended amendments to subsections (1) and (2) of section 84, the Commission recommends that subsection (3) be deleted and subsections (4) and (5) be renumbered as subsections (3) and (4) respectively with the word "captain" in the renumbered subsection (3) being substituted with "major".

Division 15 - Court-martial : Provisions Relating to Trial

SECTION 87 *[Challenges by accused]*

For the same reasons given in relation to section 84 as regards the composition of a court-martial to include members who are not officers, the Commission recommends that in section 87 the words "officer or officers" where they appear in subsections (1), (2), (3) and (5) should be substituted with the words "member or members as appropriate".

SECTION 88 *[Administration of oaths or affirmations]*

The Commission recommends provisions for the administering of oaths and affirmations should follow closely²⁰. To this end, the Commission recommends to incorporate the provisions of section 97 into section 88 with appropriate amendments. Thus, section 88 should be repealed and replaced as follows-

²⁰See section 6 of the Oaths, Affirmations and Declarations Act Cap. 4:07 of the Laws of Malawi.

“Administration
of oaths or

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

(2) Every witness before a court-martial shall be examined on oath except that where a child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court-

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

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

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

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

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

(6) If-

- (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to be sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
- (b) it is not reasonably practicable to administer an oath to such a person in the manner appropriate to his religious belief,

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

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

(8) For the purposes of this section-

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

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

SECTION 96 [*Offences by civilians in relation to court-martial*]

This section relates to offences committed by civilians in relation to a court-martial. Consistent with the recommendation made in relation to section 88, the Commission

recommends that in paragraph (b) there should be inserted after the words "oath" the words "or make a solemn affirmation".

SECTION 97 *Affirmations*]

The Commission recommends that section 97 be repealed following the amendment to section 88.

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

SECTION 102 *[Approval of death sentence by President]*

The Commission noted the reference in this section to paragraph (c) of section 141 and observed that section 141 does not have paragraph (c). The reference should simply be to section 141.

Division 17 - Review of Summary Findings and Awards

Division 18 - Findings of Insanity

Division 19 - Commencement, Suspension and Duration of Sentences

SECTION 107 *[Commencement of sentences]*

The Commission recommends that the reference in subsection (2) to section "110" should be to section "109" which is the section dealing with the same subject of suspension of sentences.

SECTION 108 *[Duration of sentences of imprisonment and detention]*

Similarly, the reference in this section to section 110 should be to section 109.

*Division 20 - Trial of Persons Ceasing
to be Subject to Military Law Under this Act and Time Limits for Trials*

SECTION 115 [*Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto*]

Following the repeal of section 116 as recommended below, the Commission recommends a textual amendment to subsection (1) of this section, by deleting the words "Subject to section 116, where" and substituting the words "Where".

To correct an obvious error in subsection (4), the words "subjection" should correctly read "subsection".

SECTION 116 [*Limitation of time for trial of offences under this Act*]

This section provides for limitation of time for trial of offences under the Act. The Commission recommends that the whole provision should be deleted for the reason that the placing of limitations on prosecutions is undesirable as it may lead to offenders getting away with crime by reason of lapse of time even when sufficient evidence is subsequently found.

Division 21 - Relations Between Military and Civil Courts and Finality of Trials

SECTION 118 [*Persons not to be tried under this Act for offences already disposed of*]

The provisions of this section prohibit trial of persons under the Act for offences already disposed of. The Commission recommends that wherever the word "Commander" occurs in this provision, it should be substituted with the words "appropriate superior authority" so that such matters can be expeditiously dealt with at the appropriate level.

SECTION 119 [*Resolution of conflicts of jurisdiction*]

In subsection (5) paragraph (d) the Commission recommends that the word “if” that was omitted, should be inserted at the commencement.

Division 22 - Inquiries

SECTION 120 [*Boards of inquiry*]

Amend subsection (2) to insert the word “the” immediately before the word “Board”.

SECTION 121 [*Inquiries into absence*]

Amend subsection (1), to insert the word “the” immediately before the word “Board”.

Division 23 - Miscellaneous Provisions

SECTION 122 [*Restitution or compensation for theft, etc.*]

In subsection (2) the Commission considered that the intended meaning of this provision would be clearer if the subsection were redrafted to read as follows-

“(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered to the person appearing to be the owner thereof or the offender may be ordered to pay to such person such sum as may represent a reasonable value thereof.”

SECTION 123 [*Appointment of judge advocates*]

This section provides for the appointment of a judge advocate as a member of a court-martial and confers the power to make such appointment on the Defence Council or on the convening officer within the Defence Force. The Commission was informed that the practice has been for the Commander to consult with the Attorney General on the appointment of a judicial officer to serve as a judge advocate.

The Commission considered that it would be proper to confer the power to appoint a

judge advocate directly on the Chief Justice for a number of reasons which the Commission considered to be compelling. The functions of the judge advocate are of a judicial nature and should be exercised by a competent judicial officer. Appeals from a court-martial lie directly to the Supreme Court of Appeal. In the view of the Commission, it should be the responsibility of the Chief Justice to designate an appropriate judicial officer to serve on a court-martial. The Commission therefore recommends that section 123 be deleted and substituted as follows-

"Appointment of
judge advocate

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

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

SECTION 125 *[Custody of proceedings of court-martial]*

This provision deals with custody of proceedings of a court-martial and the right of the accused to obtain a copy thereof. In subsection (4) the Minister has power to deny any person disclosure of any part of the proceedings on grounds of security. The Commission considered that the appropriate authority to exercise that power should be the Defence Council rather than the Minister. The Commission therefore recommends that subsection (4) be amended by deleting the word "Minister" and substituting the words "Defence Council".²¹

Division 24 - Rules of Procedure, etc.

SECTION 127 *[Rules of procedure]*

Following the recommendation to amend section 88 and to repeal section 97, the

²¹Subsection (4) requires the Minister to certify that for reasons of security, the proceedings or any part thereof should not be disclosed, hence, the applicant (accused) shall not be entitled to a copy of the proceedings or part to which the certificate relates.

Commission recommends that paragraph (i) of subsection (2) should be amended by deleting "94, 95, 96 and 97" and substituting the words "88, 94, 95 and 96".

SECTION 129 [*Board of Inquiry Rules*]

The Commission recommends that in subsection (2) (a) after the word "oath" where it last appears there should be inserted the words "or affirmation".

Division 25 - Interpretation of Part V

SECTION 131 [*Interpretation of Part V*]

The Commission recommends insertion of the following two definitions under subsection (1) required in relation to this Part (i.e. Part V)-

““judge advocate” means the person appointed under section 123 to serve as judge advocate at a court-martial.”.

““appropriate superior authority” means a brigade commander or other officer not below the rank of colonel or corresponding rank as may be prescribed”.

The Commission also recommends that in subsection (3) there should be inserted after the words “commanding officer” the words “or the appropriate superior authority” to cater for situations where such authority is not necessarily the commanding officer.

PART VI

APPEALS FROM COURTS-MARTIAL

SECTION 132 [*Right of appeal*]

The Commission was of the view that the provisions of this section were insufficient as regards the right of appeal from the decision of a court-martial in only allowing for appeals by the convicted person. The prosecution should also be allowed to appeal against sentences or on a point of law. The Commission recommends that the section be deleted and replaced as follows-

"Right of appeal 132. (1) Subject to this Part, where a person has been convicted by a court-martial-

(a) the person convicted may, with the leave of the court-martial given pursuant to section 133, appeal to the court of appeal against the conviction, or against the sentence, or against both;

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

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

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

SECTION 133 [*Applications for leave to appeal*]

To correct an obvious error in subsection (3), the word "that" should be inserted after

the word “fact” so that the phrase reads more correctly as “owing to the fact that the appellant is outside Malawi”.

Further, following the new section 132 as recommended above, which also grants the prosecution in trials before a court-martial the right of appeal in certain circumstances (i.e. against sentence or on a point of law), the Commission recommends that subsection (1) of section 133 should be amended by deleting the word “appellant” and substituting it with the word “person convicted” so that the procedure under section 133 continues to apply only with respect to appeals by a convicted person.

SECTION 145 [*Duties of registrar of court of appeal with respect to appeals, etc.*]

The Commission recommends that subsection (2) would be clearer to the reader and for purposes of interpretation if it was restructured with paragraphs and the last part of it becoming a separate provision as subsection (3) as follows-

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

- (a) to any person who demands such forms or instructions;
- (b) to persons in charge of places where persons sentenced by a court-martial may lawfully be confined for the purpose of serving their sentences; or
- (c) to such other persons as he thinks fit."

"(3) Every person in charge of a place of confinement mentioned in subsection (2) shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to lodge an appeal or

make an application for leave to appeal under this Part."

PART VII
FORFEITURES AND DEDUCTIONS AND ENFORCEMENT OF
MAINTENANCE LIABILITIES

SECTION 151 [*Forfeiture of pay for absence from duty*]

The Commission was of the view that in subsection (1)(b) there should be reference to "appropriate superior authority" in addition to a commanding officer as presently provided. The Commission therefore recommends that after the words "a court-martial" there should be inserted the words ", an appropriate superior authority".

In paragraph (c) of subsection (1) the Commission considered that the power conferred on the Commander should instead be conferred on an appropriate superior authority and recommends that the word "Commander" be deleted and substituted with the words "appropriate superior authority".

In subsection (2) paragraph (b), the Commission recommends that for the words "United Kingdom Forces" there should be substituted the words "any co-operating forces".

SECTION 156 [*Enforcement of maintenance and affiliation orders*]

Section 156 deals with the enforcement of maintenance and affiliation orders, in respect of wives and children of officers and soldiers, by deduction from pay. The Commission noted the use in the proviso to subsection (3) and in subsection (5) (b) of the term "illegitimate child". The Commission observed that section 23 of the Constitution provides that all children regardless of the circumstances of their birth are entitled to equal treatment before the law. The Commission therefore took the view that the Act should not make any distinction as regards *de jure* treatment of a child born outside marriage since all children are entitled to equal treatment under law. Further, the Commission did not consider that there was any case or justification in relation to subsection (3) for making an exception with regard to children born outside marriage.

Thus, the Commission recommends that the proviso to subsection (3) be deleted. The Commission also recommends that for the words “an illegitimate child” in subsection (5) paragraph (b) (and wherever else such words may occur in the Act) there should be substituted the words “a child born out of wedlock”.

Further, the Commission recommends that for the word “wife” there should be substituted the word “spouse” in order to ensure the gender neutrality of the provisions of the Act. This also applies to section 157.

SECTION 158 [*Limit of deductions under sections 156 and 157 and effect on forfeiture*]

This provision deals with limitations on deductions from pay made in respect of maintenance or affiliation orders. The Commission observed that the use of ratios, with all the disparities shown in subsection (1), is not justified. The Commission therefore recommends that subsection (1) be deleted and substituted with the following new subsection-

“(1) The sums deducted under sections 156 and 157 shall not together exceed one half of the defendant’s pay.”.

The Commission also recommends that subsection (3) should be deleted since the deductions under subsection (1) of this section apply across the board and not only for the purposes of paragraphs (b) and (c) of that subsection (1) as subsection (3) purports.

PART VIII

BILLETING AND REQUISITIONING OF VEHICLES,
AIR CRAFT OR VESSELS

The Commission recommends that as with earlier Parts, this Part should also have Division numbers. *Division 1* should comprise sections 160 - 169 under the title "*Billeting*". Thus, after the heading of the Part there should be inserted the following new Division-

"Division 1 - Billeting"

SECTION 163 [*Billeting schemes*]

With regard to billeting schemes, the Commission recommends that in subsection (4), instead of the words "Minister of Local Government" there should be substituted the words "Minister responsible for Local Government" in order to bring out the ministerial responsibilities for the portfolio rather than to refer to the title of the Minister.

SECTION 165 [*Appeals against billeting*]

Similarly, in subsection (1) of this section, the words "Minister of Local Government" should be deleted and substituted with the words "Minister responsible for Local Government".

SECTION 166 [*Compensation for damage*]

In subsection (3) the Commission recommends that from the phrase "A subordinate court of the first class" the words "of the first class" should be deleted so that all subordinate class courts should have the jurisdiction conferred by this subsection.

SECTION 167 [*Refusal to receive persons billeted, etc.*]

Fine

Delete "K100" and substitute with "K10,000".

SECTION 169 [*Suspension of laws against billeting*]

For better phraseology the Commission recommends that the words “so much of any law as” be deleted and substituted with the words “any part of a law that”, since law cannot be spoken of in quantitative terms.

Division 2 - Requisitioning of Vehicles, Aircraft or Vessels

SECTION 171 [*Provision of vehicles, aircraft or vessels*]

In subsection (2)(b) the Commission recommends that for the words “one hundred miles” there should be substituted the words “one hundred and sixty kilometres” which reflects the exact conversion to metric measures.

SECTION 174 [*Payment for vehicles, aircraft or vessels furnished*]

In subsection (1) paragraph (c) in order to correct an obvious omission the Commission recommends that after the word “vehicle” where it first occurs there should be inserted the words “aircraft or vessel”.

SECTION 177 [*Enforcement of provisions as to requisitioning*]

Fine

In subsection (1) delete “K100” and substitute “K10,000”.

Division 3 - General

PART IX

GOVERNMENT AND GENERAL PROVISIONS

The Commission recommends that Division numbers be inserted to each of the Divisions of the Part as denoted by the headings appearing in italics.

Division 1 - Command

SECTION 182 [*Command of Army*]

Subsection (1) provides for the appointment of the Commander of the Defence Force. As stated earlier in this Report, the Commission supports the recommendation of the Law Commission on the Technical Review of the Constitution that provision for the appointment of the Commander be made in the Constitution.

Thus, the Commission recommends that subsection (1) be deleted and replaced with a provision that merely vests the command of the Defence Force in the Commander as follows-

“(1) The command of the Defence Force shall vest in the Commander.

Secondly, the Commission recommends that a provision be made in the Act under this section as regards appointment of the Deputy Commander of the Defence Force. Such provision would be subsection (2) and would read as follows-

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

The existing subsection (2) and subsection (3) should be renumbered as “(3)” and “(4)”, respectively.

In subsection (3) as so renumbered, the Commission recommends that after the word “Commander” there should be inserted the words “and Deputy Commander” so that it is the President who assigns the rank and title to both Commander and Deputy Commander.

The Commission also considered the subject of tenure of office for the Commander of the Defence Force and took the view that it would be in the interest of the good governance of the Defence Force if the term of office were to be specified in the Act. To that end, the Commission recommends that the Commander should serve a term of four years which may

be extended by a further two years making a maximum of six years.

The Commission wishes to observe that the practice of limiting the terms of office for the Commander of the Defence Force is now common in a number of other jurisdictions. The holder may however be sooner removed from office. The Commission therefore recommends that there should be added to this section the following new subsection (5)-

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

NEW SECTION 183A [*Military Police*]

The Commission recommends a new provision to establish the military police unit as follows-

“Military police 183A. (1) There is hereby established a unit, to be known as military police, which shall be part of the Regular Force, and which shall consist of a provost marshal and such other members as the Commander may determine.

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

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

(a) to maintain military discipline;

(b) to maintain the security and orderly regulation as well as ensure protection (including protection

against fire and other damage) -

- (i) of all public establishments; and
- (ii) all public property under the charge of the Defence Force.

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

- (a) is performing his functions in respect of public property under the charge of the Defence Force; or
- (b) is in charge of fresh pursuit of a person who is reasonably suspected of having committed an offence-

- (i) in or on such establishment;
- (ii) in relation to public property under the charge of the Defence Force; or
- (iii) in relation to a member of the military police, or to a member of the Defence Force, or to a person employed in the service of a unit of the Defence Force.

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

- (a) any establishment of the Defence Force; and

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

NEW SECTION 183B and 183C [*Provost Marshal and Directorate of Legal Services*]

The Commission considered it necessary to make further provision for the office of the provost marshal as head of the military police within the Defence Force and specify in the Act the duties assigned to that office. In the view of the Commission the existing provisions relating to the office of provost marshal were rather inadequate.

The Commission also considered that it was similarly necessary to establish the directorate of legal services in the Act so that the establishment of such a department is not left to chance given the large body of law that needs to be professionally administered by the high command of the Defence Force. The establishment of the office of the provost marshal and the establishment of the directorate of the legal services will be in-keeping with trends in neighbouring jurisdictions.

The Commission therefore recommends the introduction of two new sections as follows-

“Provost marshal 183B. (1) There shall be a provost marshal who shall be appointed by the Commander from among the officers of the Defence Force.

(2) The provost marshal shall-

- (a) be responsible for the enforcement of discipline within the Defence Force; and
- (b) carry out such other duties as the Commander may assign to him in accordance with this Act.

Directorate of Legal
Services

183C. (1) There shall be a Directorate of Legal Services within the Defence Force.

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

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

- (a) advise the Commander on all legal matters affecting the Defence Force;
- (b) prosecute and defend charges before a court-martial;
- (c) defend a member of the Defence Force in a civil court or other tribunal in matters pertaining to performance of military duties; and
- (d) perform such other duties as the Commander may assign to him in accordance with this Act.”.

Division 2 - Redress of Complaints

Division 3 - Exemptions for Officers and Soldiers

Division 4 - Provisions Relating to Deserters and Absentees Without Leave

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

SECTION 194 [*Punishment for pretending to be a deserter*]

Fine

Delete "£50" and substitute therefor "K10,000".

SECTION 195 [*Punishment for procuring and assisting desertion*]

Fine

Delete "£100" and substitute therefor "K20,000".

SECTION 196 [*Punishment for obstructing officers or soldiers in execution of duty*]

Fine

Delete "£50" and substitute therefor "K10,000".

SECTION 197 [*Punishment for aiding malingering*]

Fine

Delete "£100" and substitute therefor "K20,000".

SECTION 198 [*Unlawful purchase, etc., of military stores*]

Fine

Delete “£500” and substitute therefor “K100,000”.

SECTION 199 [*Illegal dealings in documents*]

Delete “£100” and substitute therefor “K20,000”.

SECTION 200 [*Unauthorized use and dealing in decorations, etc.*]

This section is about unauthorized use of and dealing in decorations or other items of dress forming the uniform of the Malawi Army or the United Kingdom Forces.

In paragraph (a) of subsection (1), the Commission recommends that for the words “in the Army or in the United Kingdom Forces” there should be substituted the words “in the Defence Force or any co-operating forces”.

Similarly, in paragraph (b) of subsection (1) the Commission recommends that for the words “the Army Council or by the Government of the United Kingdom” there should be substituted the words “the Defence Council or any co-operating forces”.

In subsection (2) the Commission recommends that the words “Army or United Kingdom Forces” be deleted and substituted with the words “Defence Force or co-operating forces”.

Fine

In subsection (3), delete “£50” and substitute therefor “K10,000”.

Division 6 - Provisions as to evidence

SECTION 201 [*General provisions as to evidence*]

In subsection (4) (a), the Commission recommends that the word “Army” and the words “United Kingdom Forces” be deleted and substituted with the words “Defence Force” and “co-operating forces” respectively.

With regard to paragraph (b) of subsection (4) the Commission observed that members of the Malawi Defence Force are no longer *posted* or *transferred* to the United Kingdom Forces as was the case in the past nor are they posted or transferred to cooperating forces, but rather members only do get attached to co-operating forces. The Commission therefore recommends that the words “, posted or transferred” be deleted from this paragraph.

In subsection 7(b) the Commission recommends that the words “Army Council” and “United Kingdom” be deleted and substituted with the words “Defence Council” and “co-operating forces”, respectively.

Division 7 - Miscellaneous Provisions

PART X

MILITIA

The Commission noted that the italicized heading appearing between sections 207 and section 208 (i.e. “*Enlistment, Re-engagement and Discharge*”) should be deleted as it does not serve any purpose.

SECTION 207 [*Composition*]

The Commission observed that the provisions of this Part are to a large extent repeated in regulations 3 and 4 of the Militia Regulations of 1993, and also that those regulations contain certain substantive provisions suitable for enactment in the Act itself. The Commission therefore recommends that section 207 be deleted and redrafted to incorporate provisions of those regulations, as follows-

“Composition,
discipline and
functions of
the Militia

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

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

(3) Units of the Militia or parts thereof shall train for and undertake military service either independently of, or jointly with, other components of the Defence Force.

(4) A member of the Militia shall at all times be liable to serve anywhere within or outside Malawi, save that a member shall be liable to serve outside Malawi only with the approval of the President.”.

SECTION 209 [*Training*]

The Commission considered that the power conferred on the Commander in this section regarding training should more appropriately be conferred in the Defence Council. The Commission therefore recommends that both in subsections (1) and (2) the word “Commander” should be deleted and substituted with the words “Defence Council”.

SECTION 214 [*Failure to fulfil training obligations*]

Fine

Delete “K200” and substitute therefor “K10,000”.

SECTION 215 [*Power to make regulations under this Part*]

This section confers power on the Defence Council to make regulations for a number of matters listed thereunder.²²

The Commission recommends that the power should extend to the making of regulations for the attachment of members of the Regular Force to the Militia. Thus, section 215 should be amended by adding to it the following paragraph (f)-

“(f) the attachment of members of the Regular Force to the Militia.

PART XI RESERVE FORCE

SECTION 217 [*Discharge from Reserve*]

Firstly, the Commission considered that this provision, which deals with the discharge of a member from the Reserve Force, should apply to all members of the Defence Force and not to soldiers only as presently provided.

Secondly, since the section provides for the discharge of members of the Reserve Force, the Commission considered that it was appropriate to specify in this section the grounds for such discharge. To that end, the Commission felt that the grounds for discharge should be similar to those stipulated in section 211 in respect of members of the Militia. The Commission therefore recommends that section 217 be deleted and substituted as follows-

²²For example, the constitution, powers and functions of the Militia, enlistment of persons into and their discharge from the Militia, pay, allowances, pension, gratuity, etc.

“Discharge from 217. (1) An officer or a soldier of the Reserve Force
Reserve Force may be discharged by the appropriate superior authority at
any time during the currency of any term of engagement-

(a) for disobedience to orders issued to him while doing any military duty, or for neglect of such duty, or for misconduct by him as a member of the Reserve Force, or for other sufficient or reasonable cause as may be determined by the commanding officer or appropriate superior authority;

(b) if, in the opinion of his commanding officer or appropriate superior authority, he is considered to be either-

(i) unlikely to make an efficient soldier;
or

(ii) likely to bring discredit upon the Defence Force.

(2) A member of the Reserve Force who is discharged from service shall deliver up in good order, fair wear and tear, all arms, clothing and appointments, being public property issued to him, or in cases where for any good or sufficient cause the delivery of the property mentioned is impossible, paying the value of the property.

(3) The commanding officer or appropriate superior authority may, if it appears to him that the reasons for

which the discharge is claimed are of sufficient urgency or weight, dispense either wholly or in part with all or any of the requirements specified in subsection (2).”.

SECTION 219 [*Embodiment*]

In light of the provisions of the Constitution which confer the power to deploy the Defence Force within or outside Malawi on the President,²³ the Commission recommends that the power of embodiment of the Reserve Force should similarly be conferred on the President and not on the Minister. On the other hand, the Commission recommends that the order of deployment of members of the Defence Force should be made by the Defence Council and not by the President.

Thus, the Commission recommends that subsection (1) be redrafted into two subsections as follows-

“Embodiment 219. (1) The President may, in accordance with Chapter XVI of the Constitution, by notice published in the *Gazette* or otherwise, order the employment of the whole or any part of the Reserve Force.

(2) Where the President has made an order under subsection (1) the Defence Council may order employment of any officer or soldier from the Reserve Force for service within or outside Malawi.”.

As a consequence, the existing subsections (2) and (3) should be re-numbered as

²³See section 161 of the Constitution.

“(3)” and “(4)”, respectively.

Subsection (3) as so renumbered should, in consequence of the new subsections (1) and (2), be redrafted as follows-

“(3) Any officer or soldier of the Reserve Force employed by reason of an order issued pursuant to subsections (1) and (2) shall remain so employed until released by the Defence Council.”.

Subsection (4) as so renumbered should be amended by deleting the words “Territorial Force” and substituting the word “Militia”

NEW SECTION 219A [*Training of Reserve Force*]

The Commission recommends that a new section to reflect the aspect of training of the Reserve Force should be inserted as section 219A. The new section 219A should read as follows-

“Training
of Reserve Force

219A. (1) Subject to subsection (2), officers or soldiers of the Reserve Force shall receive continuing military training at such places and for such periods as may be determined by the Defence Council and shall fulfill such conditions relating to training as may be prescribed.

(2) The requirements of subsection (1) may be dispensed with in whole or in part with respect to the Reserve Force or any part thereof by the Defence Council and with respect to any individual member of the Reserve Force by his commanding officer or appropriate superior authority subject to any general directions of the Defence Council.

NEW SECTION 219B [*Failure to fulfil training obligations*]

Following the recommendation to provide for training for members of the Reserve Force the Commission also recommends that a provision be made as section 219B creating an offence for failure to attend training as follows-

“Failure to fulfil training obligations	219B. Where a member of the Reserve Force, without leave lawfully granted, or such sickness or reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for training or fails to attend the number of drills or institutional parades or to fulfil the other conditions relating to training which may be prescribed, he shall be guilty of an offence and shall be liable to a fine of K10,000.”.
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SECTION 220 [*Postponement of Discharge*]

The Commission considered that this provision regarding postponement of discharge should apply to all members of the Reserve Force, including officers, and not to soldiers only and recommends that the word “soldier” be deleted and substituted with the word “member”.

SECTION 221 [*Failure to attend on embodiment*]

Fine

Delete K200 and substitute K10,000.

PART XII

APPLICATION OF ACT AND SUPPLEMENTARY PROVISIONS

The italicized subheading “*Persons subject to Military Law*” should be the heading of *Division 1* of this Part comprising sections 223 to 226. The last sections of the Act, from sections 227, should constitute *Division 2* of this Part under the heading *Supplementary Provisions*.

Division 1 - Persons subject to Military Law

SECTION 223 [*Persons subject to military law*]

In section 223 (1) in the phrase “Subject to section 225 and 226 of the following persons” the word “of” should be deleted as it is an obvious error and a comma should be inserted in its place.

In subsection (1)(a) the word “soliders” should correctly read “soldiers”.

SECTION 224 [*Application of Act to civilians*]

Fine

Delete K100 and substitute K5,000

Earlier in this Report the Commission has recommended the repeal of section 116.²⁴ The Commission therefore recommends that reference to section 116 in subsection (2) (g) of this section should be deleted.

SECTION 225 [*Application of Act to members of friendly forces*]

²⁴Supra, page 30.

The Commission observed that the last part of subsection (2) was an obvious textual error and the transitional purpose of those words is now well spent. The Commission recommends that all the words appearing after the words “military law of that country for the offence thereunder” be deleted.

The Commission recommends that subsection (3) be deleted as it is a repetition of subsection (2).

SECTION 226 [*Application of Act to Militia and Reserve Forces*]

Following the introduction of the provision on training under the new section 219B the Commission recommends a consequential amendment to section 226, to make reference to that new section. Thus after the words “section 219” there should be inserted the words “or 219B”.

SECTION 227 [*Power to make regulations*]

In accordance with constitutional and administrative law practice, the power of the executive to make subsidiary legislation is ordinarily conferred on Ministers who may exercise such powers on the advice of a competent body. The Commission recommends that section 227 (which confers power to make regulations under the Act on the Defence Council) should be amended to confer such power on the Minister to be exercised on the advice of the Defence Council. Thus, the words “the Army Council may make regulations” should be deleted and substituted with words “the Minister may, on the advice of the Defence Council, make regulations”.

Further, the Commission considered that it would be appropriate to give powers to the Defence Council to give recognition to the award of medals to deserving service members, and where appropriate, to civilians who in one way or another have supported military duties. It is therefore recommended that the present paragraph (f) should be paragraph (g) and that a new provision to be paragraph (f) should be inserted as follows-

“(f) the award of medals to service members, and where appropriate, to

civilians for an act or acts done in support of military duties;”.

SECTION 228 [*Powers exercisable in subsidiary legislation*]

In subsection (1), the Commission recommends that for proper language usage the words “classes or cases” wherever appearing should read “cases or any class of cases”.

In subsection (2), for proper grammar in the text of this subsection, the word “person” in the phrase “to the satisfaction of any person” should be in plural form. Thus, the word “person” should be deleted and substituted with the word “persons”.

SECTION 231 [*Transitional provisions*]

This section made transitional provisions necessary at the relevant time to cover transfers from the Defence Force of Nyasaland and the Defence Force of the Federation of Rhodesia and Nyasaland to the Malawi Army. These provisions are now spent and the Commission recommends that the section be deleted.

FIRST SCHEDULE and NEW SECOND SCHEDULE

Following the recommendation to insert a provision on the establishment of the military police, it was considered by the Commission that the current Schedule should be designated as “First Schedule”. A new Schedule should be introduced, to be referred to as “Second Schedule”, to prescribe the oath of allegiance by members of the military police. The Commission therefore recommends the insertion of the new Second Schedule as follows-

“SECOND SCHEDULE

s.183A

OATH OF ALLEGIANCE

I,

do hereby swear by Almighty God [or do hereby solemnly and sincerely affirm]
that-

- (i) I will be faithful and bear true allegiance to the Republic of Malawi;
- (ii) I will faithfully serve the people and the Republic of Malawi as a member of the military police;
- (iii) I will obey all laws, and all orders, regulations, directions and instructions, concerning the military police; and
- (iv) I will discharge all the duties of a member of the military police according to the law, without fear, favour, affection or ill-will.

.....
*Signature or thumb-print of person
 making the oath*

Sworn [or affirmed] by the said

 after the oath had been read over and
 explained to him in the

 language, which he acknowledged to
 understand, at this
 day of, 20.....”

SUBSIDIARY LEGISLATION

The Commission noted that a number of rules and regulations made under the Act were extensively amended in 1993 under various Government Notices. Thus, the Commission's recommendations in this Report in relation to these Regulations and Rules are in light of those amendments.

DEFENCE FORCE (REGULAR FORCE) (OFFICERS) REGULATIONS²⁵

PART I

PRELIMINARY

Regulation 2 [*Interpretation*]

The Commission considered this regulation which deals with the definition of terms and recommends the introduction of certain new definitions and amendment of existing ones.

²⁵As amended by Government Notice No. 6 of 1993.

“chaplain”

The Commission observed that although this term is defined in these Regulations there are no substantive provisions in relation to the functions, duties and powers of that office, and that in any case these are well provided for under the standing orders for peace as they are mainly for administrative purposes. The Commission therefore recommends the definition be deleted for irrelevance.

“disabled officer”

The Commission recommends the insertion of a new term “disabled officer” to be defined as follows-

““disabled officer” means an officer, or a person who was an officer, who is suffering from disablement which is attributable to, or which has been aggravated by, military service without any misconduct or serious negligence on the part of the disabled officer.”.

“dental officer”

The Commission recommends that the term “dental officer” which is used in the Act be defined as is the case with the term “medical officer”. The definition would be as follows-

““dental officer” means a person appointed as a dental officer in the Force;”.

"other employment in the service of the Government or a Commonwealth country or of a friendly country or of other international armed forces"²⁶

The Commission recommends that in this definition, the words “Commonwealth country

²⁶Ibid, regulation 2.

or of a friendly country or of other international armed forces” be deleted and substituted simply with the words “co-operating force”.

"recognized wife"

The Commission recommends that since it is recognized that an officer may have more than one wife the reference to the sole wife in the definition of a recognized wife is not tenable. Further, the Commission considered the need to use gender neutral terms in light of the recent developments with the recruitment of women in the Defence Force. The Commission therefore recommends that this term changes to “recognized spouse” to be defined as follows-

““recognized spouse” means a person who is recognized by the Commander as a spouse of the officer;”.

“surviving spouse”

The Commission noted that there was need to define this term in view of regulation 65 regarding death benefits. It is therefore recommended that the term be defined as follows-

““surviving spouse”, in relation to a deceased officer, means a recognized spouse of the officer, but does not include a person who was separated, whether by order of court or otherwise, from the officer at the date of his death;”.

"Selection Board"

The Commission considered that it was proper for the composition of the Selection Board (instituted for the purposes of selecting suitable officers for promotion) to be provided for in the body of the Regulations rather than in the definition. The Commission therefore recommends that the definition should be amended to read as follows-

““Selection Board” means the Selection Board appointed under regulation

12A;”²⁷

“gratuity” and “medical board”

²⁷ *Infra*, page 57.

The Commission recommends that these terms, which are used in these Regulations, should be defined in regulation 2 in the same way that they are defined in Other Ranks Regulations²⁸ as follows-

“gratuity” means a lump sum payment calculated in accordance with regulation 66;

“medical board” means a medical board constituted under regulation 3 of the Defence Force (Medical and Pensions Board) Regulations;”.

Regulation 3 [*Non-application of the regulations*]

Following the Commission’s recommendation in relation to section 7 of the Act that the authority to second or attach members of the Defence Force to other military forces be vested in the Commander, the Commission recommends that in subregulation (1) (a) (which provides for connected matters), for “Minister” there should be substituted “Commander”.

In subregulation (2) the Commission recommends that since, in accordance with the recommendation made in relation to section 227 of the Act, these Regulations are to be made by the Minister on the advice of the Defence Council, the waiver of application of the Regulations should similarly be made on the advice of the Council. The Commission therefore recommends that there should be inserted after the words “the Minister may” the words “, on the advice of the Defence Council,”.

PART II

ENGAGEMENT, PERIOD OF SERVICE
AND TERMINATION

Regulation 4 [*Engagement of officers*]

In connection with this regulation (which makes provision for engagement of officers in the Defence Force), the Commission felt that there was need to further provide for reserve

²⁸Infra, page 103.

obligations which must be assumed upon one's engagement in the service but discharged after end of service. To that end, the Commission recommends that regulation 4 be amended by the addition of the following new subregulations-

“(5) When an officer has completed his period of engagement the following reserve obligations shall apply to him-

- (a) if he completed less than twenty years of service, he shall have reserve obligations for seven years; and
- (b) if he completed twenty or more years of service, he shall have reserve obligations for 5 years.

(6) The reserve obligations of an officer under subregulation (4) shall cease upon the officer attaining the age of-

- (a) fifty-five years, in the case of an officer of the rank of colonel or corresponding rank and above; and
- (b) fifty years, in the case of an officer of the rank of lieutenant colonel or corresponding rank and below.

Regulation 5 [*Resignation*]

With regard to subregulation (3) on liquidated sums payable upon an officers's early resignation, the Commission considered that there was need to ensure that the Defence Force benefits from the knowledge and experience of the officers before they are allowed to quit service prematurely given that considerable resources are involved in their training and development. Thus, the Commission recommends that the provision of this section regarding conditions for early resignation be made more stringent by raising the prescribed amounts of the liquidated sums.

The Commission also considered that it was appropriate to provide for a different formula for expressing the monetary payments so as to avoid having to revise the figures

every so often due to inflationary trends. The Commission therefore recommends that subregulation (3) be amended as follows-

“in paragraph (a), by deleting K3,504 and substituting 12 months pay;
in paragraph (b), by deleting K2,336 and substituting 10 months pay;
in paragraph (c), deleting K1,168 and substituting 8 months pay;
in paragraph (d), deleting K774 and substituting 6 months pay;
in paragraph (e), deleting K510 and substituting 4 months pay;
in paragraph (f), deleting K260 and substituting 3 months pay; and
in paragraph (g), deleting K130 and substituting 2 months pay”;

In relation to subregulation (4), the Commission recommends a similar approach in revising the monetary figures, as follows-

“in paragraph (a) by deleting K200 and substituting 4 months pay;
in paragraph (b) by deleting K150 and substituting 3 months pay;
in paragraph (c) by deleting K100 and substituting 2 months pay; and
in paragraph (d) by deleting K50 and substituting 1 month’s pay”.

Regulation 7 [*Compulsory resignation*]

In view of its recommendation earlier in this Report to shift the provisions of this regulation to the proposed new section 11A in the Act²⁹, the Commission recommends that regulation 7 be deleted in whole.

Regulation 8 [*Dismissal by the President*]

This regulation simply provides that an officer may be dismissed from the Force at any time by the President. Since the Commission has recommended new provisions in the Act for the discharge of officers, balancing the interest of the service and the interest of justice for the individual, this regulation would be unnecessary and should be deleted.

²⁹Supra, page 11.

Regulation 9 [*Compulsory retirement*]

As with regulation 7, the Commission has earlier in this Report recommended to shift the provisions of this regulation to the Act to be the new section 11B of the Act³⁰, and recommends that regulation 9 be deleted.

Regulation 10 [*Transfer to and from other employment in the service of a commonwealth country*]

This regulation deals with the transfer of members of the Malawi Defence Force to the forces of other countries or to international co-operating forces. Apart from the fact that transfers no longer apply the issue of attachment of members of the Defence Force to other forces has already been provided for under section 7 of the Act. The Commission therefore recommends that this regulation be deleted.

PART III

PROMOTION, SENIORITY, PAY AND GENERAL

ALLOWANCES

Regulation 11 [*Appointment to commissioned rank and subsequent promotion in case of direct entries*]

The Commission noted that the amendments in 1993 introduced a proviso to subregulation (3) which should more properly have been a proviso to subregulation (2) allowing for the appointment of an officer who holds a University Degree directly to the rank of lieutenant rather than being appointed to the entry rank of second lieutenant for officers. The Commission therefore recommends that subregulation (2) be amended by inserting the following new proviso-

³⁰Supra, page 11.

“Provided that an officer who on enlistment as a cadet officer held a degree or an equivalent qualification from a recognized university or similar institutions shall, on first being granted a commission, be appointed to the rank of lieutenant.”.

Subregulation 3 should thus be amended by deleting the proviso which was introduced in 1993.

Subregulations (4), (5) and (6) of this regulation provide for conditions that must be satisfied for an officer to be promoted to a higher grade. The Commission received a submission from the Ministry of Defence and from the Defence Force indicating that new conditions have been prescribed by the Defence Council so that this provision should reflect those developments. Thus, the Commission recommends that subregulations (4) (5) and (6) should be deleted and substituted as follows-

- “(4) Promotion to the rank of lieutenant colonel or colonel shall be made-
- (a) after the officer has successfully completed a Grade II staff course;
 - (b) after the officer has commanded a company size, unit or staff appointment at Grade II level;
 - (c) after the officer has received an up to date recommendation for promotion to lieutenant colonel or colonel;
 - (d) provided that there is a vacancy in the establishment for lieutenant colonel or colonel; and
 - (e) provided that the officer is physically fit.
- (5) Promotion to the rank of brigadier general and major general shall be made-

- (a) after the officer has gone through an approved strategic military training;
- (b) after the officer has received an up to date recommendation for promotion to generalship; and
- (c) upon approval by the Defence Council.

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

(7) For the avoidance of doubt, nothing in subregulations (4), (5) and (6) shall be construed as affecting the validity of the promotion of any person to the relevant ranks before the commencement of those subregulations.”.

Regulation 12 [Appointment to commissioned rank and subsequent promotion in the case of officers who have served in the ranks]

The Commission recommends the retention of sub-regulation (2) (a) as amended in 1993 with regard to officers who were warrant officers.

New regulation 12A [Selection Board]

The Commission recommends that a provision be made establishing a selection board for purposes of promotions within the Defence Force, taking the present wording in the definition of the term “Selection Board”. Thus, a new regulation 12A should be inserted to read as follows-

“Selection Board 12A. (1) There shall be a board to be known as the Selection Board which shall have the function of selecting suitable officers for promotion and which shall consist of-

- (a) the Deputy Commander who shall be the

chairperson;

- (b) the Chief of Staff who shall be the secretary;
- (c) the Director of Personnel;
- (d) the Director of Training; and
- (e) the Director of Medical Services.

(2) The Selection Board may co-opt any person as its member if necessary for the proper performance of its functions.”.

Regulation 14 [*Acting rank*]

In subregulation (5) the Commission recommends that the words “, which is” should be deleted as the punctuation provided by the “comma” and those words are not necessary.

Regulation 16 [*Seniority*]

The Commission recommends that the existing provision should be amended by inserting after the words “in the Force” the words “or their personal number” so that seniority among officers where appropriate may also be reckoned by order of personal number.

The Commission also considered that it was appropriate to indicate the order of seniority of ranks of officers within the Defence Force and felt that regulation 16 was the appropriate point at which to do so. The Commission recommends that the existing

provisions of regulation 16 should be numbered as subregulation “(1)” and the following new subregulation should be inserted-

“(2) Seniority among officers by rank, with the rank of General being the most senior, shall be in the following order-

General;
Lieutenant General;
Major General;
Brigadier General;
Colonel;
Lieutenant Colonel;
Major;
Captain;
Lieutenant;
Second Lieutenant.”.

Regulation 18 [*Acting allowance*]

The Commission considered that the approach of prescribing the rates of acting allowances under this regulations by way of specifying the actual amounts was inconvenient as such amounts then need to be revised from time to time. The Commission also received submissions from the Defence Force that the allowances are actually payable only after an officer has acted in the higher post beyond thirty days.

The Commission therefore recommends that it would be more convenient if these allowances were to be calculated in relation to the month’s salary. Thus, subregulation (1) should be amended by deleting the words “prescribed in Part I of the Second Schedule” and substituting the words “of 5 per cent of the officer’s basic pay per month” and subregulation (2) should be amended by deleting the words “specified in Part II of the Second Schedule” and substituting the words “of 5 per cent of the officer’s basic pay per month”.

In subregulation (3) (a), the Commission recommends that there should be inserted immediately before the words "Lieutenant Colonel" the words "**, Commandant and Brigade Commander**", being new senior posts introduced over the years.

Regulation 19 [*Entertainment allowance*]

The Commission recommends that in subregulation (3), for the words "in no case exceed the rate of K2,400 per annum"³¹ there should be substituted the words "**be determined by the Minister from time to time**" in order to allow for the need to change the prescribed rate as necessary.

Regulation 20 [*Clothing grant*]

Similarly, the Commission recommends that the sum of "K750" as raised in 1993 should be deleted and substituted with the words "**equivalent to a month's pay**".

Regulation 21 [*Uniform upkeep allowance*]

With regard to uniform up-keep allowance the Commission recommends that all the words commencing with the words "payable in accordance with" to the end be deleted and substituted with the words "**equivalent to $\frac{1}{30}$ th of his basic pay per annum or as may be determined by the Minister from time to time**".

Regulation 23 [*Batman allowance*]

The Commission recommends that the sum of K120 per annum (as raised in 1993 and prescribed as batman's allowance) be deleted and substituted with the words "**as the**

³¹The sum of K200 was raised to K2,400 in 1993.

Minister may, from time to time, determine”.

New Regulation 23A [*Other allowances*]

Over the years with expanding services and structure of the Defence Force it has become necessary to establish more types of allowance relative to the duties performed by officers. In order to take account of such developments, the Commission recommends that there should be a general provision to empower the Minister from time to time to establish and determine such allowances.

The Commission therefore recommends that a new regulation 23A be inserted as follows-

“Other allowances 23A. The Minister may from time to time on the recommendation of the Defence Council establish any other allowances payable to officers and may determine the rates of such allowances.”.

Regulation 24 [*Married quarters*]

The Commission considered that the requirement for officers to live in officers’ mess for the minimum of six months before they are provided with married quarters was rather restrictive. The Commission recommends that subregulation (1) be redrafted as follows-

“(1) An officer who is married and who resides with his family shall be provided with furnished married quarters provided there are such quarters available.”.

In subregulation (2) the Commission noted that the amendments in 1993 provided for

a barracks allowance of $\frac{1}{50}^{\text{th}}$ of basic pay per annum for officers provided with married quarters. The current allowance actually payable is 24 per cent of basic pay. The Commission therefore recommends that subregulation (2) be amended by deleting the words " $\frac{1}{50}^{\text{th}}$ of basic pay per annum" and substituting the words "24 per cent of the annual basic pay".

Regulation 25 [*No pay or allowance in certain circumstances*]

The Commission considered that the circumstances leading to denying an officer an allowance should extend to an order of conviction by a commanding officer or the appropriate superior authority. The Commission therefore recommends that paragraph (b) (i) should be amended by deleting the words "court-martial or prescribed officer" and substituting the words "court-martial, commanding officer or an appropriate superior authority".

Regulation 26 [*Family allowances when serving outside Malawi*]

This regulation provides for family allowance for officers serving outside Malawi. Presently, the allowances are expressed in monetary figures which with time have fallen in value. As with other earlier provisions in these Regulations, the Commission recommends that the family allowance be left to be determine from time to time by the Minister.

Thus, the Commission recommends that regulation 26 be amended by deleting all the words commencing with the words "at the following rates" to the end and substituting the words "in respect of a recognized spouse and children at the rates determined by the Minister from time to time". In this recommendation the Commission has moved away from the present position whereby the allowance in respect of children is limited to four children. The Commission considered that the present limitation to four children may be construed as being inconsistent with the constitutional requirement under section 23 (1) that all children are entitled to the same rights without discrimination.

Regulation 27 [*Special pay increment when attending a course outside Malawi*]

This regulation makes provision for the basic pay of officers while on training abroad to be adjusted to the level of the pay of an officer of equivalent rank in the country of training. The Commission received submissions from the Defence Force that with the devaluation of the Malawi Kwacha over the years this provision has become untenable in budgetary terms.

The Commission therefore recommends that the basic pay for officers on training abroad should be as determined by the Minister on the recommendation of the Defence Council. Thus regulation 27 should be deleted and substituted as follows-

“Special pay when attending a course outside Malawi	27. When attending a course of instruction outside Malawi an officer shall be entitled to have his basic pay up-graded in a manner determined by the Minister on the recommendation of the Defence Council.”.
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Regulation 30 [*Travelling and baggage allowance*]

The Commission recommends that subregulation (1) which makes provision regarding travel and baggage allowance for officers should be redrafted partly to raise the entitlement for officers of the rank of Brigadier General and above (commonly termed as general officers) to allowances applicable in business class travel. Thus subregulation (1) should be deleted and substituted as follows-

“(1) An officer travelling on duty or for the purposes of attending a course of instruction outside Malawi shall be entitled-

- (a) if he is an officer of the rank of Colonel and below, to economy class air passage to and from Malawi;**
- (b) if he is an officer of the rank of Brigadier General, and above, to business class passage to and from Malawi;**

- (c) in the case of the Commander and Deputy Commander, to first class air passage to and from Malawi.”.

Regulations 31A, 31B and 31C [*Warm clothing, field and risk allowances*]

The Commission noted that the 1993 amendments to these Regulations introduced three new regulations then, namely, regulations 31A, 31B, and 31C, providing for warm clothing allowance, field allowance and risk allowance, respectively. These allowances were expressed in monetary figures. For reasons of inflation, the Commission recommends that the allowances should be left to be determined by the Minister from time to time. Thus, in regulation 31A, subregulation (1), the words “K500 warm clothing allowance” should be deleted and substituted with the words “a warm clothing allowance determined by the Minister from time to time”; in regulation 31B the words “of K5 per day” should be deleted and substituted with the words “determined by the Minister from time to time”; in regulation 31C the words “of K1.65 per day” should be deleted and substituted with the words “determined by the Minister from time to time”.

Regulation 32 [*Deductions from pay and allowances*]

The Commission considered that authority to order deductions from pay and allowances of officers should be exercised by the commanding officer or the appropriate superior authority, as the case may be, rather than by the Commander as presently provided.

The Commission therefore recommends that in subregulation (1) the word “Commander” should be deleted and substituted with the words “commanding officer or appropriate superior authority”.

Similarly in subregulation (2) the word “Commander” should be deleted and substituted with the words “commanding officer or appropriate superior authority”, and in paragraph (b) of that subregulation, the words “prescribed officer” should be deleted and substituted with the words “commanding officer, appropriate superior authority”.

Also in subregulation (2), subparagraph (ii), the Commission recommends that the amount of various deductions from an officer's pay or allowances for loss or destruction of, or damage to, Government property occasioned by deliberate or negligent act of the officer (presently prescribed at K150 maximum) be prescribed at "a maximum of 20 per cent of his one month pay".

In subregulation (3), in light of the recommendation to vest the authority with regard to ordering deductions in a commanding officer or in an appropriate superior authority, the Commission recommends that appeals provided for in this subregulation should be lodged to the next higher authority in the chain of command. Thus, subregulation (3) should be amended by deleting all the words from "to the Army Council" to the end and substituting the words "to the next higher authority against such deductions and such authority may confirm, modify or set aside the deductions; and the officer shall have the right to make further appeals against the decision of the higher authority within 14 days of the date of the decision.".

PART IV

LEAVE AND BENEFITS

Regulation 33 [*Classification of leave*]

This regulation provides for classes of leave for officers. Taking cognisance of the recruitment of women in the Defence Force, the Commission recommends that provision should be made in this regulation for maternity leave by adding a new paragraph as follows-

"(g) maternity leave.".

Regulation 34 [*Persons empowered to grant leave*]

The Commission recommends that the authority to grant leave should be exercised by the commanding officer or the appropriate superior authority of the officer. Thus the words

“Commander” should be deleted and substituted with the words “commanding officer or appropriate superior authority”.

Regulation 35 [*Pay and allowances during leave*]

Similarly, for payment, in advance, of pay and allowances during leave the Commission recommends that authority to make such decision should be vested in the commanding officer or the appropriate superior authority. Subregulation (1) should be amended by deleting the words “Commander” and substituting the words “commanding officer or appropriate superior authority”.

Regulation 37 [*Grant of annual leave*]

At present subregulation (3) provides that sundays and public holidays shall count as part of the period of the annual holiday of an officer. The Commission did not consider that there was sufficient reason for maintaining this position in regard to the administration of the Defence Force and recommends that Sundays, Saturdays and public holidays should not count as part of the holiday period similar to the position in other parts of the public service. The Commission therefore recommends that subregulation (3) should be deleted and substituted as follows-

“(3) Any Saturday or Sunday or a public holiday during the period of the officers annual leave shall not count as part of the officer’s annual leave days.”.

Regulation 38 [*Sick leave*]

The Commission considered that sick leave granted to officers ought to be with full pay but that if leave continues beyond 180 days a medical board should be convened to assess if the officer is fit for continued engagement in the Defence Force. The Commission therefore recommends that subregulation (1) should be amended as follows-

(a) by inserting after the words “sick leave” where they first appear the words

“with full pay”;

(b) by deleting paragraph (b) and substituting the following-

"(b) after 180 days a medical board shall be convened for the purpose of assessing his suitability to continue in the service."

Further, the Commission recommends that authority to grant sick leave should be exercised by the commanding officer or the appropriate superior authority. Thus subregulation (2) should be amended by deleting the word "Commander" wherever it appears and substituting the words "commanding officer or appropriate superior authority".

Regulation 39 [*Compassionate leave*]

The Commission recommends that compassionate leave under this regulation should be granted to officers by the commanding officer or the appropriate superior authority. Thus, this provision should be amended by deleting the word "Commander" and substituting the words "commanding officer or appropriate superior authority".

New regulation 40B [*Maternity leave*]

Following the recommendation in relation to regulation 33 to introduce a new class of leave (namely, maternity leave), the Commission recommends that a provision relating to maternity leave should be introduced as regulation 40B as follows-

“Maternity leave 40B. (1) A female officer may be granted maternity leave with full pay for ninety days from the expected date of confinement, except that an officer may return to work at any time before the expiry of the period of confinement.

(2) In this regulation, “date of confinement” means the

date of birth of a child, whether living or not, after thirty-four weeks of pregnancy, but in the event of still birth occurring during the first thirty-four weeks of pregnancy the maternity leave shall in accordance with subregulation (1) apply.”

Regulation 41 [*Travelling facilities on leave*]

This regulation provides for travel facilities for officers going on leave. In light of the introduction of maternity leave the Commission recommends that subregulation (1) should be amended to cover maternity leave as follows-

(a) by adding the following paragraph-

“(f) maternity leave”.

(b) by deleting the words “and compassionate leave” and substituting the words “, compassionate and maternity leave”.

PART V

MEDICAL BENEFITS

Regulation 42 [*Grant of free travel fares or equivalent on retirement*]

As earlier recommended, the expression “recognized wife” should be substituted with “recognized spouse” throughout this regulation.

Regulation 44 [*Medical and hospital treatment*]

Subregulation (6) of this regulation entitles officers to refunds for transport expenses incurred in relation to medical treatment. The refunds are pegged to the amount of rail fares.

The Commission observed that travel by rail is rather outdated in Malawi and is not an option in the greater part of the country not serviced by a railway line. While travel by rail would still be convenient to officers who fall sick while in a developed country outside Malawi, the Commission recommends that the provision should simply require that the Government should make full refund of transport expenses by the officer, whatever be the means of transport.

Thus, subregulation (6) should be amended by deleting the words “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” in both places where those words occur.

Further, in subregulation (6)(b) the words “his wife” should be substituted with “the spouse”.

New subregulation (7) of regulation 44

The Commission was informed by the Defence Force that it was necessary in order to avoid administrative difficulties that have been faced at times to make a clear provision in the regulations as regards payment of allowances to members of the Defence Force admitted to hospitals abroad with the approval of the Commander.

In this regard the Commission took the view that it would be appropriate that some supportive allowance at a reasonable rate be paid to the patients and the Commission recommends that provision be made as a new subregulation (7) as follows-

“(7) An officer admitted to hospital abroad for medical treatment shall be entitled to receive an allowance equivalent to US\$50 for each day actually spent in the hospital, subject to a maximum of thirty days.”.

PART VI

TRANSFERS AND TRAVELLING ON DUTY

Regulation 48 [*Allowance for subsistence and travelling expenses in Malawi*]

In paragraph (ii) of the proviso to this regulation, to correct an obvious error, reference to regulation 31(ii) should be to regulation 31(b) which is the correct reference.

In keeping with legislative practice, the two paragraphs of the proviso numbered (i) and (ii) should be numbered with letters (a) and (b) respectively.

Regulation 52 [*Expenses on transfer other than at the request of an officer*]

In paragraph (a), reference to regulation 31 should more precisely be to regulation 31(b). The Commission further recommends that in paragraph (c) the limitation by weight of the officers personal baggage that may be transported at Government expense on his transfer to another duty station should be removed. Further certain words in this paragraph need to be transposed for the paragraph to read better. Thus paragraph (c) should be redrafted to read as follows-

“(c) have his personal baggage transported at Government expense to his new home.”.

For proper legislative drafting, the words “and/or” appearing at the end of paragraph (e) (i) should be deleted and substituted with the word “or”.

Wherever the word “wife” appears in this regulation it should be substituted with the word “spouse”.

Regulation 53 [*Travel by private motor vehicle*]

In view of the recommendations made in relation to regulations 30, 41 and 42 where an officer’s entitlement to travel facilities is classified in terms of rank the Commission felt that there was need to insert a new provision to define the term “general officer”. Therefore the Commission recommends a new subregulation (3) as follows-

“(3) For the purposes of this Part, the term "general officer" means an officer of the rank of Brigadier and above.”.

PART VII

DRESS AND EQUIPMENT

Regulation 55 [*Clothing and equipment*]

The Commission noted that the practice in the Defence Force is to refer to payments regarding clothing and equipment as “grants” and not “gratuities”. Therefore the Commission recommends that subregulation (2) should be amended by deleting the word “gratuity” and substituting the word “grant”.

Regulation 56 [*Wearing of uniform*]

Regulation 56 prohibits any officer from wearing uniform which he is not authorized to wear. The Commission noted that there is no penalty attached to the contravention of that provision. The Commission recommends that the regulation should provide for an offence that would be punishable under the Act. The penalty provision would become subregulation (2) to read as follows-

“(2) Any officer who contravenes this regulation shall be guilty of an offence punishable under the Act.”.

PART VIII

DISABLEMENT BENEFITS

Regulation 61 [*Pension in respect of ill-health*]

The Commission noted that the awards referred to in this regulation apply in respect of ill health occasioned by the discharge of duty by an officer. Such awards are regarded as compensation and not pension. The Commission therefore recommends that for the word

“pension” wherever it occurs in this regulation there should be substituted the word “compensation”.

The Commission considered that compensation under this regulation ought to be calculated in accordance with the provisions of the Defence Force (Compensation for Injuries) Regulations.³² The Commission therefore recommends that regulation 61(1) should be amended by deleting all the words appearing after the words “he shall be awarded...” and substituting the words “a compensation payable and calculated in accordance with the Defence Force (Compensation for Injuries) Regulations”.

The Commission also recommends that subregulation (5) should be redrafted to reflect that pension and other benefits are payable in addition to any compensation payable under these Regulations. The Commission therefore recommends that subregulation (5) should read as follows-

“(5) Any compensation payable under this regulation shall be in addition to any pension or other benefit payable under these Regulations.”.

Regulation 62 [*Free medical attention for Army pensioners*]

The Commission recommends that the word “pension” should be substituted with the word “compensation”. The Commission also recommends that the marginal note should reflect that the provision is dealing with disabled officers and not generally with “Army pensioners” and should read as follows-

“Free medical attention for disabled officers”.

Regulation 63 [*Medical examination or treatment of pensioners*]

³²Government Notice No. 16 of 1993. These Regulations refer to payment and calculation of the percentage of incapacity as specified under the Workers Compensation Act (Act No. 21 of 1990). That Act has since been replaced by the Worker’s Compensation Act (Act No. 7 of 2000).

In subregulations (1) and (2), the Commission similarly recommends that the word “pension” should be substituted with the word “compensation” wherever it appears, and that in the marginal note the word “pensioners” should be substituted with the word “disabled officers”.

In subregulation (3) the Commission noted that there is reference to a “special medical board” but the expression is not defined in these Regulations. However the Commission noted that the same expression is used and defined in Other Ranks Regulations.³³ In this regard, the Commission was informed that “special medical boards” as opposed to “medical boards” have never been utilised in practice and therefore provisions relating to them are of no practical value. Accordingly, the Commission recommends that subregulation (3) should be deleted. The Commission will make similar recommendations with regard to “special medical boards” in the Other Ranks Regulations.

Regulation 64 [*Resumption of duty by disabled member*]

The Commission recommends that the word “pension” in this regulation should be replaced with the word “compensation”.

Regulation 65 [*Benefits to widow and children in respect of death in the course of duty*]

This regulation makes provision for benefits that accrue to a surviving wife, children and dependants of a deceased officer. The Commission was of the view that such benefits would best be calculated in accordance with the current Third Schedule (to be renumbered “First Schedule” due to the deletion of other Schedules). The Commission further recommends that this provision should be drafted in gender neutral language so as to include a surviving husband now with the recruitment of women in the Defence Force. The Commission therefore recommends that regulation 65 should be deleted and substituted as

³³“special medical board” has been defined as a special medical board constituted under regulation 6 of the Army (Medical and Pensions Boards) Regulations.

follows-

- “Benefits to surviving spouse and children in respect of death in course of duty
65. (1) If-
- (a) an officer dies owing to-
- (i) an injury received or from an illness contracted in and by the discharge of his duties without any misconduct or serious negligence on his part; or
- (ii) illness, which was not contracted initially in and by the discharge of his duties but which was, without any misconduct or serious negligence on his part, aggravated to a material extent in and by the discharge of his duties;
- (b) an officer who has been awarded a compensation under regulation 61 dies owing to ill-health, physical or mental unfitness, physical or mental incapacity or personal injury in respect of which he was awarded that compensation,

there shall be awarded to the surviving spouse, children and dependants, if any, a compensation calculated in accordance with the First Schedule.”.

Further, the Commission recommends that a new subregulation (7) should be inserted to provide for benefits for officers who die on active duty before reaching qualifying service for retirement. The new subregulation (7) should read as follows-

“(7) Upon certification by the Board of Inquiry, an officer whose service is less than twenty years and who dies on active duty in or outside Malawi-

- (a) during a state of national defence;
- (b) in a peace-support operation under an international or a regional body sanctioned by the Government;
- (c) in any military operation in support of civil authorities; or
- (d) in any military operation in respect of a disaster,

shall be entitled to full benefits as if he had served for a period of twenty years at the rank that he held at the time of his death regardless of the length of service actually completed.”.

New regulations 65A, 65B, 65C and 65D [*Vocational training, travelling and subsistence allowance payable to a disabled officer, further disablement of a disabled officer, allowance in respect of nursing attendants*]

The Commission recommends the introduction of new provisions to provide for vocational training for disabled officers.³⁴ These provisions will be in line with the Commission’s recommendation to introduce a new regulation 6 under the Defence Force (Medical and Pensions Boards) Regulations establishing vocational boards. The following are the proposed new regulations-

“Vocational 65A. (1) The Pensions Board may in its discretion refer the training case of any disabled officer to a vocational board to consider the needs of the officer for vocational training.

³⁴Regulations 36, 37, 38 and 39 of Militia Regulations have been adopted with slight modifications.

(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.

(3) If the Pensions Board, after considering the report of a vocational board, considers that the disabled officer should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.

(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and such deductions in respect of the earnings of the disabled officer while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled officer may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this regulation, the Pensions Board may award the disabled officer a sum determined by the vocational board for the purchase of tools required by him in the vocation in which he has been trained.

(7) If a disabled officer refuses to undergo any vocational

training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

Travelling and
subsistence
allowance
payable to a
disabled
officer

65B. (1) When a disabled officer is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo medical treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to subregulations (3) and (4), when a disabled officer is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled,

during the period of necessary absence from home, to a subsistence allowance at the rate determined by the Minister from time to time.

(3) A disabled officer shall not be entitled to any subsistence allowance under subregulation (2)-

(a) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(b) if the period of absence from home is less than four hours.

(4) If a disabled officer is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof he is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to

any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

Further	65C.	If a disabled officer who has been awarded a
disablement		disablement compensation continues to undergo military
of a disabled		service and suffers a further disablement attributable to, or
officer		aggravated by, military service without any misconduct or serious negligence on his part, the Pensions Board may award him a supplementary compensation, based on his rank and class, appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone.

Allowance	65D.	Where a disabled officer has been awarded a disablement
in respect of		compensation for one hundred per centum disablement and
nursing		the Pensions Board is satisfied that his disablement necessitates
attendants		the constant and continuous attendance of a nurse or other attendant, it may award such officer, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.”.

PART IX

GENERAL PROVISIONS RELATING TO PENSIONS, GRATUITIES AND OTHER BENEFITS

Regulation 66 [*Calculations of pensions and gratuities*]

In light of the fact that these are Officers Regulations, the Commission recommends

that in paragraph (a) the words “a member” should be substituted with the words “an officer”.

Further, the Commission noted that the current practice in the Defence Force introduced through circulars is to calculate pension payable to a member at the rate of $\frac{1}{360}^{\text{th}}$ and no longer $\frac{1}{600}^{\text{th}}$. Therefore the Commission recommends that paragraph (a) should be amended by deleting the words “one six-hundredth” and substituting the words “one three hundred sixtieth”.

Regulation 67 [*Pensionable service*]

The Commission considered that subregulation (1) as it stands does not specify the actual period from which pensionable service begins to run. It was noted that the current practice is to calculate pensionable service from the date of enlistment. The Commission therefore recommends that subregulation (1) should be amended by inserting the words “from the date of enlistment” at the end.

The Commission also recommends that subregulation (2) (c) should be amended in order to align it with the provisions relating to attachment or secondment of officers to other Forces. Subregulation (2) (c) should therefore read as follows-

“(c) time spent on attachment or secondment to any other forces in accordance with this Act;”

Further, in subregulation (5), the Commission considered that to disregard fractions of a month when calculating the period of pensionable service (as this provision requires at present) would be inappropriate in certain cases, so that there is need to bring those fractions to the nearest whole figure. Therefore, the Commission recommends that subregulation (5) should be redrafted to read as follows-

“(5) The period of pensionable service shall be calculated by the month, but fractions of a month shall be taken to the nearest whole month.”.

Regulation 70 [*Free medical attention in special cases*]

Consistent with other provisions of these Regulations, the Commission recommends to amend subregulation (4) by deleting the word “member” and substituting the word “officer”.

Regulation 71 [*Benefits on discharge or dismissal on prescribed grounds*]

The Commission took note of the 1993 amendments to this regulation and considered that the appropriate authority with regard to benefits on discharge or dismissal should be the Defence Council and not the Minister. The Commission therefore recommends that the word “Minister” should be replaced with the words “Defence Council”.

Regulation 72 [*Benefits to dependants on death of a member pensioner*]

For consistency with other provisions in these Regulations, the Commission recommends that in subregulation (1) the word “member” should be deleted and substituted with the word “officer”.

Regulation 73 [*Commutation of pension*]

The Commission observed that the nearest half age with regard to the commutation factor for pension shown in the Fifth Schedule is 30 years. The Commission also noted that the proviso to subregulation (5) vests the powers in the Minister to fix the commutation factor where the applicant is below the age of 29 $\frac{1}{2}$ years. In this connection, the Commission was informed by the Defence Force that in practice the Minister has never fixed the commutation factor and that the age factor causes problems when calculating pension for those officers who qualify for pension at 28 years of age (that is, if an officer joined the Regular Force at 18 years he then qualifies for pension at the age of 28 years). The Commission therefore recommends that the proviso should be amended by deleting the words “may be fixed by the Minister” and substituting with the words “applicable to those whose nearest half age is 30 years”.

The Commission further recommends that the Fourth and Fifth Schedules which have been referred to in this regulation become the “Second Schedule” and “Third Schedule”

respectively due to the renumbering of the Third Schedule as the First Schedule.

Regulation 74 [*Benefits not to be pledged or ceded*]

To correct an obvious drafting error, the numbering “(1)” should be deleted as this is a single provision without subregulations.

Regulation 77 [*Deductions from pension, gratuity or other benefits*]

In subregulation (1), to correct an obvious error in the text, the word “or” where it last occurs, should be deleted and substituted with a comma.

Following the recommended amendment to regulation 32, in subregulation (2) of regulation 77, the word “Commander” should be replaced with the words “appropriate superior authority”.

PART X

MISCELLANEOUS PROVISIONS

Regulation 82 [*Active participation in politics*]

The Commission considered subregulation (3) (b) which allows officers to explain Government policy in the course of their duties. The Commission noted that the provision is too open as it does not elaborate as to what type of Government policy an officer is permitted to explain. The Commission recommends that paragraph (b) should be amended to read as follows-

“(b) explaining Government policy relating to the Defence Force in the course of his duties.”.

With regard to subregulation (3) (d) which permits officers to vote in an election, the Commission noted that voting in a presidential election and in a referendum ought to be included in this provision. Therefore, the Commission recommends that paragraph (d) should

be redrafted as follows-

“(d) voting in a parliamentary, presidential or local authority election or participating in a referendum.”.

Regulation 83 [*Sale of effects of a deserter*]

The Commission considered subregulation (2) which makes provision for disposal of the proceeds of sale realized from a deserting officer's property. The Commission recommends that it would be appropriate in this case to give priority consideration to the spouse, children or any dependants of the officer and, if none, then to direct the proceeds to the Government. It is therefore recommended that all the words beginning with the words “thereafter to the liquidation of ...” where they first appear should be deleted and substituted with the words “the balance to be paid to the surviving spouse, children or dependants as the Commander may direct and, if none surviving, to the Government.”.

SECOND SCHEDULE

Following the recommendation in relation to regulation 18 to prescribe incorporate the rate of allowances in the regulation, the Commission recommends to delete the Second Schedule as it would become irrelevant.³⁵

THIRD SCHEDULE

Consistent with earlier recommendations the Commission considered that in addition to pension the Third Schedule should cover other benefits accruing to an officer that are payable to the surviving spouse, children and dependants. The Commission also observed that the rates as currently stipulated do not conform to the current practice. There is also need to make the provisions of this Schedule gender neutral. The Commission therefore recommends that the “Third Schedule” which, for reasons given above, should be amended to read “First Schedule”, should be appropriately redrafted to reflect these principles as follows-

³⁵ Note that the First Schedule was deleted by the 1993 amendments.

RATES OF PENSION OR OTHER BENEFITS PAYABLE
IN RESPECT OF SURVIVING SPOUSES, CHILDREN
AND DEPENDANTS

1. If the officer entitled to a pension or other benefits dies intestate and unmarried such pension or other benefits should be distributed equally between the parents, and if there is no parent, be paid to the next of kin.
2. If the officer entitled to a pension or other benefits dies intestate and there is a surviving spouse without children, such pension or other benefits should be distributed as follows-
 - (a) one half should be paid to the surviving spouse;
 - (b) one half should be distributed equally to the parents or, if there is no parent, be paid to the next of kin.
3. If the officer entitled to a pension or other benefits dies intestate and there is a surviving spouse and children, such pension or other benefits should be distributed as follows-
 - (a) six eighths should be distributed equally to the children;
 - (b) one eighth should be distributed to the surviving spouse or equally to the surviving spouses
 - (c) one eighth should be distributed equally between the parents or, if there is no parent, be paid to the next of kin.
4. If the officer entitled to a pension or other benefits dies intestate and leaves children and no spouse, such pension or other benefits should be

distributed as follows-

- (a) seven eighths should be distributed equally to the children;
- (b) one eighth should be distributed equally to the parents or, if there is no parent, be paid to the next of kin; and
- (c) one eighth should be paid to any person who, being a relation, undertakes to be guardian of the children.

5. Any share of pension or other benefits that remains undistributed shall be distributed equally to the children or, where there are no children, to the other beneficiaries.”.

FOURTH SCHEDULE

The Commission considered that the authority to authenticate solemn declarations should equally be vested in the appropriate superior authority. The Commission therefore recommends that in the endorsement segment the words “appropriate superior authority” should be inserted.

SIXTH SCHEDULE

The Commission noted that this Schedule was inserted by the 1993 amendments. However, the Commission recommends that this Schedule should be redesignated as the “Fourth Schedule”. Further, due to the renumbering of some of the Schedules as recommended in this Report, the Commission recommends that all the remaining Schedules should be re-arranged as follows-

<i>Original</i>	<i>New</i>
Third Schedule	First Schedule
Fourth Schedule	Second Schedule
Fifth Schedule	Third Schedule
Sixth Schedule	Fourth Schedule

DEFENCE FORCE (REGULAR FORCE) (CADET OFFICERS)
REGULATIONS³⁶

Regulation 2 [*Interpretation*]

The Commission made some observations with regard to definitions under this regulation.

“commandant”

The Commission noted that the definition of “commandant” as introduced by the 1993 amendments does not reflect the full scope of the meaning of the word. The Commission therefore recommends that the word “commandant” should be redefined as follows-

““commandant” means the commanding officer of a military training institution.”.

“mid-course leave”

³⁶As amended by Government Notice No. 7 of 1993.

The Commission was informed that the term “mid-course leave” applies to leave granted to a cadet officer during training. It does not include sick leave or compassionate leave. Therefore, the Commission recommends to insert in this interpretation regulation a definition of “mid-course leave” as follows-

““mid-course leave” means leave granted to a cadet officer during training as a cadet officer other than sick leave or compassionate leave;”.

Regulation 6 *[Qualifications for selection]*

The Commission considered this provision in the light of section 15 of the Act which provides for the minimum age of recruits into the Regular Force. Further the Commission was of the view that there is need to review the maximum age for appointment as a cadet officer in order to give room to those that may have been at a university or college for some years before applying for this training. The Commission therefore recommends that subregulation (1) should be redrafted as follows-

“(1) Where a candidate is seeking appointment as a cadet officer direct from civil life he must be eighteen years or over, but under twenty-five years of age.”.

The Commission also recommends that subregulation (2) should be amended by raising the age limit (presently at twenty-five years) in order to accommodate those members of the Defence Force who may already be serving in the Regular Force at the time of applying for training as cadet officers. The Commission recommends that the age of “twenty-five years” should be substituted with “thirty years”.

The minimum educational qualifications prescribed in subregulation (3) are outdated in terms of present day practice. The Commission recommends that subregulation (3) should be amended to reflect what obtains at present and should read as follows-

“(3) The minimum education requirements for a candidate shall be a Malawi

School Certificate of Education, or its equivalent, with credit passes in six subjects, one of which shall be the English language."

Regulation 7 [*Grant of travel warrants and subsistence allowance*]

The Commission considered that there was need to put restrictions on the means of transport to be used by a candidate who is called to attend for an interview by the Selection Board in order to avoid unnecessary expenses as the Defence Force no longer issues free travel warrants. The Commission therefore recommends that paragraph (a) should be deleted and replaced as follows-

"(a) be issued with transport refund in respect of the journey for the cheapest and most direct mode of transport."

Further, the Commission noted that paragraph (b) was amended in 1993 to provide for the rate of K1.00 per day as subsistence allowance to a candidate while travelling for an interview before the Selection Board. The Commission was of the view that there is need to take account of the depreciation of the currency. The Commission therefore recommends that the words "at the rate of K1.00 per day" should be deleted and substituted with the words "at the rate determined by the Minister from time to time".

Regulation 8 [*Subsistence allowance while attending Selection Board*]

Similarly, in light of the 1993 amendments with regard to subsistence allowance of K1.00 if accommodation is provided or K2.00 if not for candidates attending before a selection board, the Commission recommends to delete the rest of the provision beginning with the words "either of the following rates" and to substitute the words "the rate determined by the Minister from time to time".

Regulation 9 *[Pay]*

Similar to the recommendations in relation to regulations 7 and 8 with regard to rates of allowances the Commission recommends that subregulation (1) should be amended by substituting the words “prescribed in the Schedule” with the words “as may be determined by the Minister from time to time”.

In line with the recommended amendment to regulation 27 of the Officers Regulations, the Commission recommends the insertion of a new provision as subregulation (3) regarding rates of pay while an officer is on a course of instruction outside the country. The new subregulation (3) should read as follows-

"(3) When attending a course of instruction outside Malawi a cadet officer shall be entitled to have his basic pay up-graded in a manner determined by the Minister on the recommendation of the Defence Council."

Regulation 10 *[Classification of leave]*

The Commission observed that the term “annual leave” does not apply in the context of cadet training. In practice this type of vacation is referred to as “mid-course leave”. The Commission therefore recommends that in paragraph (a) “annual leave” should be substituted with “mid-course leave”.

Regulation 11 *[Person empowered to grant leave]*

The Commission considered that the power to grant mid-course leave, sick leave or compassionate leave to a cadet officer ought to be vested in the commandant as the immediate head of the institution and not in the Commander. The Commission therefore recommends that the word “Commander” be deleted and substituted with the word “commandant”.

Further, following the introduction of mid-course leave, reference to “annual leave” should be deleted and substituted with “mid-course leave”.

Regulation 12 [*Pay and allowance during leave*]

The Commission noted that this provision deals with pay and not pension. The Commission therefore recommends that subregulation (1) should be amended by substituting the words “paid the amount of his pensionable emoluments and of” with the words “be entitled to his pay and”.

For consistency with the just introduced language in subregulation (1), in subregulation (2) there should be inserted the words “entitled to be” before the words “paid half amount of his pay”.

Regulation 13 [*Annual leave*]

The Commission noted the 1993 amendments in respect of this provision and recommends that in subregulation (1) the words “annual leave” should be substituted with the words “mid-course leave”, and the marginal note should also be amended accordingly.

Further, with the introduction of mid-course leave which is applicable only during the period of training, the Commission recommends that subregulation (2)³⁷ be deleted as it is irrelevant.

Regulation 14 [*Sick leave*]

Following earlier recommendations the word “Commander” in subregulation (1) should be substituted with the word “commandant”.

³⁷This subregulation provides that “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”.

The Commission observed that the periods of sick leave provided for in this regulation are too long to ensure effectiveness and successful completion of training as a cadet officer. The Commission therefore recommends that “180 days” should be substituted with “30 days” and “90 days” should be substituted with “14 days”.

In subregulation (2), the Commission was of the view that as the cadet officers course is a leadership course any cases of misconduct, such as absenteeism, should not be tolerated. The Commission therefore recommends that subregulation (2), which allows for the days of absence to be counted as part of the cadet officers leave, should have no application to cadet officers undergoing training and should be deleted.

Regulation 15 [*Compassionate leave*]

In order to reflect the current practice in the Defence Force regarding compassionate leave, the Commission recommends that this provision should be deleted and replaced as follows-

"Compassionate leave	15. A cadet officer may be granted compassionate leave with full pay for a period or periods not exceeding in the aggregate ten days during his period of training as a cadet officer."
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New regulation 16 [*Discharge of a cadet officer*]

The Commission observed that there is no provision relating to the discharge of cadet officers while undergoing training, yet circumstances may arise warranting their discharge. The Commission therefore recommends the introduction of a new regulation, as regulation 16 to provide for the discharge of a cadet officer on prescribed grounds as follows-

"Discharge of a cadet officer	16. A cadet officer may be discharged by an appropriate superior authority at any time during the course of training- (a) on the ground of any act of indiscipline;
----------------------------------	--

(b) for unsatisfactory performance; or

(c) if for any reason given to him in writing, he is
considered to be unfit to be a
member of the Defence Force.”.

SCHEDULE

Following the recommended amendment to regulation 9 regarding rates of pay of cadet officers the Commission recommends that the Schedule should be deleted as it is rendered irrelevant.

The Commission noted that the various Parts of these Rules do not have Part numbers (Part I, Part II, etc.) although headings for each Part have been supplied. The Commission recommends that all Parts be assigned Part numbers.

PART I

PRELIMINARY

Rule 2 *[Interpretation]*

The Commission recommends that for self reference to the Rules, the words “in the Rules” should properly read “**In these Rules**”.

PART II

ARREST AND AVOIDANCE OF DELAY

Rule 3 *[Avoidance of delay by commanding officers in investigating charges]*

Following earlier recommendations by the Commission it is recommended that in subrule (2) “Commander” should be substituted with “appropriate superior authority”.

Rule 4 *[Eight day delay report]*

Similarly, in this rule “Commander” should be substituted with “appropriate superior authority”.

PART III

INVESTIGATION OF CHARGES BY

COMMANDING OFFICER

Rules 6, 11, 12 *[Methods of investigating charges, Dismissal of charges by commanding officer, Reference of charges to the Commander]*

The word “Commander” throughout these provisions should be substituted with the

words “appropriate superior authority”.

PART IV
PREPARATION OF CHARGE-SHEETS AND
FRAMING OF CHARGES

Rule 14 [*Charges*]

The Commission recommends that in subrule (5) the word “particular” should correctly read plural “particulars”.

PART V
ACTION BY THE COMMANDER ON RECEIPT OF A CHARGE

Rule 17 [*Action by Commander on receipt of charges*]

The Commission recommends that the word “Commander” in the heading of this Part and in rule 17 should be substituted with the words “appropriate superior authority”.

PART VI
INVESTIGATION OF, AND SUMMARY DEALINGS WITH,
CHARGES BY THE COMMANDER

Rules 18, 19, 20 [*Documents to be given to officers and warrant officers dealt with summarily, Investigation of an summary dealings with charges against officers and warrant officers, Alternative courses open to the Commander*]

The Commission recommends that the word “Commander” in the heading of the Part

and wherever it appears in rules 18, 19 and 20 should be substituted with “appropriate superior authority”.

PART VII

CONVENING OF COURTS-MARTIAL

Rule 21 [*Duties of convening officer when convening courts-martial*]

In paragraph (b) the word “Commander” should be deleted and substituted with the words “appropriate superior authority”.

The Commission observed that in terms of paragraph (f), the appointment of a judge advocate to serve on a court-martial involves a request to the Minister of Defence. The Commission was made aware that in practice the proper authority to which the request is, and should indeed be, directed is the Chief Justice since it is High Court Judges who are appointed as judges advocate.³⁸

Therefore the Commission recommends that in paragraph (f) the word “Minister” should be deleted and substituted with the words “Chief Justice”.

Rule 23 [*Officers under instruction*]

Reference to “any officer” in the first line of subrule (1) and to “An officer” in subrule (2) should be changed to read “any member” and “A member” respectively, in order to cater for situations where the individual concerned is not of the rank of officer.

Rule 24 [*Preparation of defence*]

The Commission recommends that to ensure that an accused before a court-martial has the right to be defended by counsel of his choice paragraph (a) should be amended by inserting the words “of his choice” immediately after the word “counsel”.

³⁸See recommendation regarding section 123 of the Act.

The Commission also observed that paragraph (b) is not clear as to who is empowered to appoint the defending officer for an accused although in practice the convening officer does the appointing. The Commission recommends that in paragraph (b) the words “by the convening officer” should be inserted immediately after the phrase “shall be appointed”.

PART VIII

ASSEMBLY AND SWEARING OF COURT

Rule 25 *[Preliminary matters to be considered by court and beginning of trial]*

With the recommendation to include members who are not officers in the composition of a court-martial, the Commission recommends that in subrule (1) (b) the word “officers” should be substituted with the word “members”.

The Commission also recommends that subrule (2) should be better restructured as follows to accord with proper legislative drafting format-

"(2) The presiding officer may-

- (a) where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, appoint a duly qualified waiting member to fill that vacancy; and
- (b) if the interests of justice so require, substitute a duly qualified waiting member in the place of a member appointed by the convening officer."

Rule 33 *[Oaths and solemn affirmations]*

The Commission noted the reference to Scotland in relation to administration of oaths

and affirmations. Bearing in mind that the governing legislation in this respect is the Oaths, Affirmations and Declarations Act,³⁹ the Commission recommends that in subrule (1)(a) the words “in which an oath is usually administered in Scotland” should be deleted and substituted with the words “prescribed by the Oaths, Affirmations and Declarations Act”.

In subrule (4), following the recommendation to delete section 97 of the Act and bring its provisions under section 88, the correct reference now should be to “section 88”. The word “Commander” should be substituted with the words “appropriate superior authority”.

PART IX

ARRAIGNMENT OF ACCUSED

Rule 36 [*Objection to charge*]

The Commission was of the view that this provision, particularly in the proviso to subrule (2), and subrule (3) (a) and (b), should be redrafted in order to show that it is the accused who is being tried on the charge as opposed to trying the charge as it has been put.

The Commission therefore recommends that subrule (3) should be amended as follows-

- (a) in paragraph (a) (iii), by deleting the words “try it” and substituting therefore the words “try the accused on the charge”;
- (b) in paragraph (b) (i), by deleting the words “try the charge” and substituting the words “try the accused on the charge”.

PART X

PROCEDURE AFTER RECORDING A FINDING OF GUILTY

PART XI

CHANGES OF PLEA

³⁹Cap. 4:07 of Laws of Malawi.

PART XII

PROCEDURE ON PLEAS OF NOT GUILTY

PART XIII

CALLING AND EXAMINATION OF WITNESSES

PART XIV

SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASES

PART XV

CASE FOR THE DEFENCE

PART XVI

SUMMING UP BY JUDGE ADVOCATE

PART XVII

DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON THE CHARGE

PART XVIII

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

Rule 73 [Sentence and recommendation to mercy]

The Commission observed that subrule (1) provides for the award of one sentence in respect of all the offences of which the accused is found guilty. The Commission considered that to accord with the correct sentencing principle, sentences should be recorded and awarded separately for each offence and this is actually what happens in practice. Therefore the Commission recommends that the words “one sentence in respect of all the offences” should be deleted and substituted with the words “a sentence in respect of each offence”.

PART XIX

ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

PART XX

GENERAL DUTIES OF THE PRESIDING OFFICER, PROSECUTOR AND THE DEFENDING OFFICER OR COUNSEL

Rule 78 [*Counsel*]

In subrule (3), the Commission recommends that the phrase “his court-martial” should correctly read “his trial”.

PART XXI

POWERS AND DUTIES OF THE JUDGE ADVOCATE

PART XXII

WITHDRAWAL AND AMENDMENTS OF CHARGE SHEETS AND CHARGES

Rule 82 [*Amendment of charge-sheets and charges by the court*]

Similar to the recommendation in regard to rule 36, the Commission recommends that in subrule (3) (a) the word “try it” should be substituted with the words “try the accused on the charge”. Similarly, subrule (3) (b) should be redrafted to read as follows-

- “(b) direct the court to proceed with the trial of the accused on the charge without amending it; or”.

PART XXIII

SITTINGS AND ADJOURNMENT OF THE COURT

Rule 84 [*Sittings of the court*]

The Commission observed that the proviso makes an exemption regarding the sittings of the court on Sunday or any public holiday. It was the view of the Commission that Saturday should be included since it is no longer a working day as it used to be and that under normal circumstances the court does not sit on Saturday unless the exigencies of the service so require. The Commission therefore recommends that “Saturday” should be inserted immediately before “Sunday,”.

Rule 85 [*Adjournment*]

Subrule (2) requires the court to adjourn at any time in order to consult the convening officer on a point of law. The Commission was aware that in practice not all convening officers will be lawyers or legal experts and to entrust all such persons with decisions on points of law would not appropriate. It was the considered view of the Commission that if the provision remains silent as to who is to be consulted on points of law then the court would have powers to consult widely with legal experts or to source legal material without limiting itself to a particular authority such as the convening officer. The Commission therefore recommends that subrule (2) should be redrafted to read as follows-

“(2) The court may adjourn at any time to consult on a point of law.”.

PART XXIV

INSANITY

PART XXV

INTERVIEWING AND ATTENDANCE OF WITNESSES

PART XXVI

RECORD OF PROCEEDINGS

PART XXVII

CONFIRMATION, REVISION AND PROMULGATION

PART XXVIII

LOSS OF PROCEEDINGS

PART XXIX

CUSTODY OF RECORDS AFTER CONFIRMATION
AND COST OF COPIES

Rule 98 [*Custody and preservation of record of proceedings after confirmation*]

In this rule by “Council” it is meant to refer to the “Army Council” now the Defence Council. Thus, “Council” should read “Defence Council”.

Rule 99 [*Cost of copies of record of proceedings*]

The cost of copies of records of proceedings should be subject to review by the appropriate authority from time to time. Therefore, the Commission recommends that for the words “the estimated cost of the copy required not exceeding four pence for every folio of 72 words” should be substituted with the words “estimated at such cost as the Minister may prescribe from time to time on the advice of the Defence Council”.

PART XXX

PETITIONS

PART XXXI

MISCELLANEOUS PROVISIONS

Rule 102 [*Exceptions from rules on account of the exigencies of the service*]

In subrules (1) and (4) “Commander” should be substituted with “appropriate superior authority”.

Rule 103 [*Exceptions from rules in the interest of security*]

In subrules (1) and (3), “Commander” should be deleted and substituted with “appropriate superior authority”.

SECOND SCHEDULE

In Form 3 (statement of offences), where reference is made to section 213, reference to “TERRITORIAL FORCES” should instead be to “MILITIA”.

THIRD SCHEDULE

The word “Commander” wherever it appears in items (1) through to item (5) should be substituted with the words “appropriate superior authority” but in the last part where the words “*Commander, Malawi Army*” appear in italics there should be substituted the word “*Signature*” implying that whoever is the appropriate superior authority at the particular time is the one to append his or her signature.

FOURTH SCHEDULE

Form 2

The Commission noted a few omissions and errors with regard to the structure and content of Form 2 in relation to convening orders. The Commission recommends that Form 2 be substituted with a new Form 2 as follows-

“ FORM 2 -CONVENING ORDERS

Rule 21

CONVENING ORDERS FOR A Court-martial

ORDERS BY

Commanding officer or Appropriate Superior Authority
(Place and date).....

.....
The details of officers as mentioned below will Name, etc.,
assemble atat of accused.
..... hours on theday
of, 20, for the
purpose of holding a court martial to try the accused
persons named in the margin.

PRESIDING OFFICER

.....

MEMBERS³

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

WAITING MEMBER(S)

.....
.....

JUDGE ADVOCATE

The judge advocate is a Judge of the High Court of Malawi and has been appointed by the Chief Justice. An officer of the rank of major or above having suitable qualifications is not in the opinion of the convening office available with due regard to the public service.*

The record of the proceedings will be forwarded in an envelop marked

confidential to

Signed thisday of, 20.....

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

or

.....
(*Signature, rank and appointment
of the appropriate staff officer)*
An officer authorised to sign for

.....
(*Appointment held by the
convening officer*)

Form 3

Where reference is made to rule 102, the words “*Commander, Malawi Army*” as italicised should be substituted with “*Signature*” for reasons given earlier. Similarly with reference to rule 103, the words “*Commander, Malawi Army*” should be deleted.

Form 4

The words “*Commander, Malawi Army*” as italicized should be deleted.

Form 6

In Part A the Commission recommends that the word “Commander” should be deleted

and substituted with the words “convening officer” being the appropriate authority in this case.

Form 7

The word “Aqital” should correctly read “Acquittal”.

Form 9

In item 13, the word “Commander” should be substituted with the words “appropriate superior authority”.

Form 10

The word “reassembled” should correctly read “resembled”.

Form 15

For appropriate reference to the relevant enabling provision, in the title of the Form the words “(under section 124 of the Defence Force Act)” should be inserted immediately after the word “PROMULGATION” to refer to the relevant enabling section of the Act.

In the Schedule to Form 9 appearing after Form 15, the word “Commander” in the first and fourth columns should be substituted with “appropriate superior authority”.

FIFTH SCHEDULE

The words “Territorial Army” should be substituted with “Militia”.

SIXTH SCHEDULE

In reference to the manner of administering oaths, the Commission was advised by the Defence Force that female officer do also wear head dress as a matter of respect for the court. Therefore, the exemption “unless female” should be deleted.

DEFENCE FORCE (IMPRISONMENT AND DETENTION)
REGULATIONS⁴⁰

Regulation 8 [*Punishment of offences against detention barracks discipline*]

The Commission observed that the decision of the commandant under this provision is subject to review under regulation 10. However, regulation 9 as it stands does not require the commandant to report his decision, which is the subject matter of review under regulation 10, to the appropriate superior authority. The Commission therefore recommends that in order to promote transparency in the procedure a new subregulation (4) should be inserted as follows-

“(4) Subject to this regulation, the commandant shall report his decision, and any action in respect of the decision, to the appropriate superior authority.”.

Regulation 10 [*Review*]

The word "Commander" should be substituted with the words "appropriate superior authority".

Regulation 21 and 22 [*Temporary release from detention, Release from detention*]

The words "Commander" should be substituted with the words "appropriate superior authority".

⁴⁰As amended by Government Notice No. 8 of 1993.

THIRD SCHEDULE

The word "Commander" should be substituted with the words "appropriate superior authority".

FOURTH SCHEDULE

The Commission noted the additions made in the 1993 amendments regarding the number of detention barracks but that the location of detention barracks was not specified with reference to some, namely, the Parachute Battalion, Kamuzu Military College, and Marine Unit. Further, names of some of these detention barracks have since changed, in particular, the Malawi Army Naval Unit and the Kamuzu Military College are now under different names.

The Commission therefore recommends that the Fourth Schedule be amended as follows-

- (a) "Malawi Army Naval Unit" should be substituted with "Marine Unit, Monkey Bay";
- (b) "Kamuzu Military College" should be substituted with "Malawi Defence Force College, Salima in order to align with the recommendation regarding the term "Defence Force;
- (c) The words "Senga Bay, Salima" should be inserted immediately after the words "Parachute Battalion".

DEFENCE FORCE (BOARDS OF INQUIRY) RULES

Rule 2 *[Interpretation]*

The Commission observed that in the definition of "civilian witness" reference to section 215 of the Act is erroneous. The Commission recommends the deletion of the words " , and

includes a person to whom section 215 of the Act applies”.

Rule 13 [*Oaths and affirmations*]

The Commission recommends that this rule should specifically provide that the oaths and affirmations are to be as prescribed under rule 33 of the Rules of Procedure. Thus, subrule (1) should be amended by adding at the end the words “in accordance with rule 33 of the Rules of Procedure (Defence Force)”.

DEFENCE FORCE (MEDICAL AND PENSIONS BOARDS) REGULATIONS⁴¹

Regulation 2 [*Interpretation*]

The Commission paid attention to the definition of the term “Secretary for Health”. The Commission noted that in the past there was no Secretary for Defence since the Ministry of Defence then was a department under the Office of the President and Cabinet and as a result the Secretary for Health was entrusted with the responsibilities relating to medical boards. However, in the present day it would, in the opinion of the Commission, be unrealistic for the Secretary for Health to be responsible for matters relating to the Defence Force when there is the office of the Secretary for Defence as the responsible office. The Commission therefore recommends that the definition “Secretary for Health” be deleted.

Regulation 3 [*Medical boards*]

In subregulations (1) and (2) the words “Secretary for Health” should be substituted with “Secretary for Defence”. However, in subregulation (2), the Commission considered the constitution of a medical board, which at present is the sole responsibility of the Secretary for Health. The Commission was of the view that despite the recommendation to confer powers in this regard to the Secretary for Defence, it appears that still the Secretary for Health will

⁴¹As amended by Government Notice No. 9 of 1993.

be required to recommend medical practitioners who are serving in Government to serve on the medical board. It is therefore recommended that the constitution of a medical board should be made in consultation with the Secretary for Health. Subregulation (2) should therefore read as follows-

“(2) A medical board constituted in terms of subregulation (1) shall consist of three medical practitioners appointed by the Secretary for Defence in consultation with the Secretary for Health.”

Regulation 4 [*Army Pensions Board*]

In order to take account of current procedures in constituting the Pensions Boards, which is done at the level of the Secretary of Defence, the Commission recommends that regulation 4 should be deleted and replaced as follows-

“Defence Force
Pensions Board

4. (1) There shall be established the Defence Force Pensions Board.

(2) The Pensions Board shall consist of not less than three members who shall be appointed by the Secretary for Defence and representing-

(a) the Ministry of Defence who shall be the chairperson;

(b) the Defence Force;

(c) the department of Human Resource Management and Development; and

(d) the Accountant General’s department.

(3) In the absence of the chairperson at any meeting of

the Board, the members present shall elect one of their number to be the chairperson for that meeting.

(4) A majority of the members shall form a quorum at any meeting of the Pensions Board.

(5) On any question before the Pensions Board the chairperson shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(6) The Pensions Board may co-opt any person to be a member of the Board with regard to certain matters but such person shall have no power to vote.

(7) The Pensions Board shall have power to determine its own procedure for the conduct of its business.”.

Regulation 5 [*Army Pensions Appeal Board*]

Similarly, the Commission recommends that regulation 5 on the Pensions Appeal Board, which is appointed by the Defence Council, should be deleted and replaced as follows-

“Defence Force
Pensions Appeal
Board

5. (1) There shall be established the Defence Force Pensions Appeal Board.

(2) The Pensions Appeals Board shall consist of not less than three members who shall be appointed by the Defence Council and may include persons who are not members of the Defence Force or who are not members of the Ministry of Defence.

(3) The Defence Council shall appoint one of the members of the Pensions Appeals Board to be the

chairperson of the Board.

(4) In the absence of the chairperson at any meeting of the Pensions Appeals Board, the members present shall elect one of their number to be the chairperson for that meeting.

(5) A majority of the members shall form a quorum at any meeting of the Pensions Appeal Board.

(6) On any question before the Pensions Appeal Board the chairperson shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) If a member of the Pensions Appeal Board is prevented by illness, absence from Malawi or any other reason whatsoever from exercising his functions on that Board, the Defence Council may appoint another person to act for such member during his absence.

(8) The Pensions Appeal Board shall have power to determine its own procedure for the conduct of its business.”.

Regulation 6 [*Special medical boards*]

The Commission observed that special medical boards created under these Regulations are in practice not operational and the Commission recommends doing away with the whole provision.

New regulation 6 [*Vocational boards*]

The Commission also considered the importance of vocational training to all members of the Defence Force who might become disabled while serving in the Force. The Commission recommends that a new provision should be inserted under the Medical and Pensions Board Regulations establishing vocational boards.

The new provision (to replace regulation 6) should be as follows-

“Vocational boards 6. (1) The Secretary for Defence may from time to time, at the request of the Commander, constitute a vocational board for the purposes of considering a case referred to it by the Pensions Board in respect of a disabled member of the Defence Force.

(2) A vocational board shall consist of-

- (a) a representative of the Ministry of Defence who shall be the chairperson;
- (b) a medical practitioner appointed by the Secretary for Health;
- (c) the Director of Personnel in the Defence Force; and
- (d) a vocational training specialist appointed by the Secretary for Labour.

(3) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board for the purposes of determining whether a disabled member should undergo

vocational training and receive additional pension or allowance.

(4) A majority of the members shall form a quorum at any meeting of the vocational board.

(5) A vocational board shall have power to determine its own procedure and to co-opt any person to assist it in its deliberations.”.

DEFENCE FORCE (SUMMARY JURISDICTION) REGULATIONS⁴²

Regulation 6 [*Charges with which a commanding officer may deal summarily*]

In view of the Commission’s recommendations earlier in this Report, reference in this regulation to section “62(a), (b)” and to section “64(b)” should simply be to section 62 and section 64.

Regulation 7 [*Restriction on power of punishment of commanding officers*]

The Commission recommends that paragraph (b) should be amended to substitute the word “commander” with “appropriate superior authority.”.

Regulation 8 [*Limitation of punishment of acting ranks, etc.*]

In subregulation (1) and (2) the word “commander” should be substituted with the words “appropriate superior authority”.

Regulations 9, 10, 11 and 12 [*Limitation of powers of commanding officers below field rank, Limitation of powers of detachment commanders, Powers of subordinate commanders, charges with which the commander may deal summarily*]

⁴²As amended by Government Notice No. 10 of 1993.

The Commission considered these regulations and noted that there was need to redraft them in order to correct certain errors that were apparent and also to specify the respective ranks of officers who are subject to these Regulations. The Commission also considered it necessary to bring these provisions into line with the recommendations made by the Commission in respect of section 76 of the Act. The Commission therefore recommends that regulations 9, 10, 11 and 12 should be deleted and replaced as follows-

“Charges with
which the
appropriate
superior
authority may
deal summarily

9. The Commander may deal summarily with a charge against an officer of the rank of colonel and above, and an appropriate superior authority may deal summarily with a charge against an officer below the rank of colonel or against a warrant officer under any of the following sections of the Act:

34; 35(c); 38; 39(2); 40; 41; 43; 44; 45; 46; 47(1)(a); 48; 49 (1)(a) (where the subject matter does not exceed in value two thousand Kwacha); 51; 54; 55 (2); 56; 57; 60; 61; 62; 64; 67 (where the principal offence can be dealt with summarily by virtue of this regulation); 68 and 69 (where the civil offence is one which is specified in the Schedule).”.

Limitation of
powers of
commanding
officer of
field rank

10. A commanding officer of field rank may award any of the following punishments-

(a) to a second lieutenant or lieutenant-

- (i) a fine of a sum not exceeding the equivalent of one month pay;
- (ii) severe reprimand;
- (iii) reprimand; and
- (iv) stoppages not exceeding seven days pay.

- (b) to a soldier-
 - (i) imprisonment for a period not exceeding forty-two days;
 - (ii) a fine not exceeding a quarter of month pay;
 - (iii) admonition;
 - (iv) stoppages not exceeding seven days pay; and
 - (v) any other minor field punishment.

Limitation of
powers of
commanding
officer below
field rank

11. A commanding officer of the rank of captain or of corresponding rank may only award the following punishments to a private soldier-

- (a) imprisonment for a period of not exceeding twenty-eight days;
- (b) a fine not exceeding a quarter of one month pay;
- (c) admonition;
- (d) stoppages up to four days pay;
- (e) any other minor field punishment.

Limitation of
powers of
subordinate
commanders

12. A subordinate commander of the rank of major or of a corresponding rank to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 may only award the following punishments-

- (a) to a non-commissioned officer-
 - (i) a fine not exceeding the equivalent of

- one month pay;
- (ii) severe reprimand;
- (iii) reprimand;
- (iv) admonition.

(b) to a private soldier

- (i) imprisonment for a period not exceeding twenty-one days;
- (ii) a fine not exceeding the equivalent of one-half of one month pay;
- (iii) admonition;
- (iv) other minor field punishment.

(12) A subordinate commander of the rank of captain or corresponding rank to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 may only award the following punishments-

(a) to a staff sergeant or sergeant-

- (i) reprimand;
- (ii) admonition;

(b) to a corporal or lance corporal-

- (i) a fine not exceeding the equivalent of a quarter of one month pay;
- (ii) severe reprimand;
- (iii) reprimand;
- (iv) admonition;

(c) to a private soldier

- (i) imprisonment for a period not exceeding fourteen days;
- (ii) a fine not exceeding the equivalent of

- a quarter of one month pay;
- (iii) admonition;
- (iv) any other minor field punishment.”.

New Regulation 12A [*Limitation of powers of detachment commanders*]

The Commission noted that the provisions of regulation 10 repealed and replaced in 1993 still had practical use in the operations of the Defence Force and needed to be restored. The Commission therefore recommends that this provision should now constitute a new regulation 12A as follows-

“Limitation of powers of detachment commanders	12A. The officer commanding a detachment may be restricted from exercising all or any of his powers as commanding officer under these Regulations by the Commander if it appears necessary to do so, having regard to the rank and experience of the officer commanding the detachment.
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(2) Where an officer commanding a detachment has had his powers restricted in accordance with subregulation (1), he may, notwithstanding such restricted powers, exercise his full and unrestricted powers as a commanding officer if it becomes necessary for him to do so for the maintenance of discipline, but if he does so use such full and unrestricted powers, he shall immediately report his action to the Commander.”.

Regulation 13 [*Punishment of stoppages*]

In view of recommendations earlier in this Report regarding stoppages, the Commission recommends that paragraphs (a) and (b) should be deleted and substituted as follows-

“(a) exceeding one-half of one month pay in the case of an officer below the

rank of colonel; and

- (b) exceeding one-third of one month pay in the case of a warrant officer, non-commissioned officer or private soldier,”.

Regulation 14 [*Powers of Commander to reduce in rank*]

The word "Commander" should be substituted with the words "appropriate superior authority". Additionally, the Commission noted that reference in this regulation to "warrant officer (II)" should be to "warrant officer".

SCHEDULE

The road traffic offences which have been specified in this Schedule as being triable summarily by a commanding officer or, as recommended in this Report by an appropriate superior authority, are now under different section numbers in the new Road Traffic Act of 1997.

The Commission therefore recommends the deletion and substitution of the Schedule to reflect the new section numbers, as follows-

"SCHEDULE

Regs. 6 & 12

CIVIL OFFENCES WHICH MAY BE DEALT WITH SUMMARILY
BY THE COMMANDING OFFICER AND THE APPROPRIATE
SUPERIOR AUTHORITY

1. Theft where the subject matter does not exceed five thousand Kwacha in value.

Cap. 7:01

2. Common assault contrary to section 253 of the Penal Code.

- (3) Insulting the modesty of a woman contrary to section 137 (3) of the Penal Code

Act No. 26

- of 1997 4. Reckless or negligent driving of a vehicle contrary to section 126 of the Road Traffic Act.

5. Unauthorized acts in relation to a vehicle without the consent of the owner, operator or person in lawful charge of a vehicle contrary to section 129 of the Road Traffic Act.

DEFENCE FORCE (REGULAR FORCE) (OTHER RANKS) REGULATIONS⁴³

Part I of these Regulations should be titled "PRELIMINARY" and should cover the citation and interpretation provisions. Consequently, the other Part numbers will have to shift accordingly.

⁴³As amended by Government Notice No. 11 of 1993.

PART I
PRELIMINARY

Regulation 2 [*Interpretation*]

“child”

The Commission recommends that in line with earlier recommendations regarding the definition of “recognized spouse” the definition of “child” should be redrafted as follows-

““child”, in relation to a member, means an unmarried son or daughter, under the age of eighteen years, of that member with a recognized spouse;”.

“catechist” and “chaplain”

Similar to the rationale given in the Officers Regulations for the deletion of the definition of chaplain, the Commission recommends the two definitions be deleted for irrelevance.

“dependant”

The Commission noted that at present it is the Minister of Finance that is to determine which persons would qualify as dependants of an officer. With the existence of the Ministry of Defence, it would be more appropriate to confer that responsibility on the Minister of Defence.

The Commission therefore recommends that “Minister of Finance” should be deleted and substituted with “Minister” meaning the Minister of Defence.

“other employment in the service of the Government or a Commonwealth country” and
“recognized wife”

The Commission recommends that these two definitions should be amended as done

under the Officers Regulations and for similar reasons.

“special medical board”

As recommended in relation to Officers Regulations, the Commission considered that the definition of the term “special medical board” is irrelevant and should be deleted.

“disabled members” and “gratuity”

The Commission also noted that consistent with the recommendations in relation to Officers Regulations regarding pension, medical and other benefits, there should be inserted new definitions of “disabled member” and “gratuity” as follows-

““disabled member” means a member, or person who was a member, who is suffering from disablement which is attributable to, or which has been aggravated by, military service without any misconduct or serious negligence on the part of the member.

“gratuity” means a lump sum payment calculated in accordance with regulation 52.”.

“surviving spouse”

Similar to the Officers Regulations, the Commission noted that there was need to define this term in view of regulation 51 regarding death benefits. It is therefore recommended that the term be defined as follows-

““surviving spouse”, in relation to a deceased member, means a recognized spouse of the member, but does not include a person who was separated, whether by order of court or otherwise, from the member at the date of his death;”.

Regulation 3 *[Non-Application of these Regulations]*

New trends in military law and co-operating arrangements have necessitated the involvement of international organizations in military, peace keeping and disaster relief operations so that members of the Defence Force are from time to time seconded to those organizations. The Commission therefore recommends the insertion of a reference to arrangements that may be entered into between the Government and international organizations. Thus paragraph (b) should be amended by inserting after the words “between the Government and the Government of the other country concerned” the words “or between the Government and any international organization”.

PART II

ENGAGEMENT, PROMOTION AND DISCHARGE

New Regulation 10 *[Gratuity on non-re-engagement]*

The Commission noted that no provision is made in regulation 10 regarding what happens to a member who is not re-engaged in the service. The Commission considered that it would be fair and just to provide a gratuity where there is no re-engagement. The Commission therefore recommends that a new regulation 10A should be inserted to read as follows-

“Gratuity	10A. A member who, after completing the period of his
on non-	initial engagement, is not re-engaged for service shall be
re-engagement	entitled to a gratuity calculated at one month basic pay, at the
	time of discharge, for each year completed.”.

Regulation 11 *[Transfer to and from other employment in the service of a Commonwealth country]*

This regulation deals with the transfer of members of the Malawi Defence Force to the

forces of other countries or to international co-operating forces. Apart from the fact that transfers no longer apply the issue of attachment of members of the Defence Force to other forces has already been provided for under section 7 of the Act. The Commission therefore recommends that this regulation be deleted.

New regulation 13A [*Discharge of recruits*]

The Commission noted that at present there is no provision relating to the discharge of persons who are recruits and are undergoing basic military training. The Commission recommends a new provision to that effect as follows-

“Discharge of recruits	13A. A person undergoing basic military training as a recruit may be discharged by the appropriate superior authority at any time during the course of training-
------------------------	---

- (a) on the ground of any act of indiscipline;
- (b) for unsatisfactory performance; or
- (c) if for any reason given to him in writing, he is considered to be unfit to be a member of the Defence Force.”.

PART III

PAY AND ALLOWANCES

Regulation 18 [*Marriage allowance*]

The Commission noted that the 1993 amendments substituted a marriage allowance of “two shillings” with “forty three tambala”. At present the practice is to pay these allowances by reference to per centages of a member’s basic pay. Therefore the Commission recommends that both in subregulations (1) and (2) the words “forty-three tambala” should be substituted with “twenty-four per cent of one month basic pay”, which is the current

rate.

Regulation 19 [*Special marriage allowance when serving on duty outside Malawi*]

The Commission considered this regulation in light of the recruitment of women in the Defence Force. The Commission recommends that subregulation (1) should be redrafted in order to be all inclusive as follows-

"(1) A married member who has a recognized spouse shall be paid a special marriage allowance when serving on duty outside Malawi or when outside Malawi for the purpose of attending an approved course of study, training or instruction, or for any other approved purposes connected with the duties of his employment."

Further, the Commission recommends that subregulation (2) (as amended in 1993) should be amended for gender neutrality by deleting the word "wife" and substituting the word "spouse".

Regulation 19A [*Warm clothing allowance*]

This regulation, which provides for warm clothing allowance, was inserted in 1993. The Commission observed that the allowance provided for does not reflect the current practical realities and that the amount prescribed may be subject to further adjustments every now and then due to the instability of the currency. The Commission recommends that the allowance should be pegged to a dollar equivalent in order to accommodate currency fluctuations. Regulation 19A should be redrafted as follows-

"Warm	19A. (1) A member proceeding on a course of study, training
clothing	or instruction to a cold climate country shall be entitled to
allowance	warm clothing allowance of US\$200 once in every three years.

(2) For the purposes of this regulation, cold climate countries shall include only those that lie wholly or principally outside the latitude of 30 degrees north or south of the Equator."

Regulation 19B [*Field allowance*]

To take account of inflationary trends, the Commission recommends that this regulation, which provides for a field allowance, should be redrafted to allow for the Minister to determine the allowance from time to time, as follows-

"Field allowance	19B. A member shall, in respect of any period during which he serves on active duty and any such other period as the Minister may determine, be paid a field allowance as the Minister may determine from time to time."
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Regulation 19C [*Disturbance allowance*]

The Commission observed that this provision discriminates against "unmarried members" who like others ought to be entitled to a disturbance allowance on moving residence. The Commission therefore recommends that the word "married" should be deleted.

Regulation 20 [*Rations*]

The Commission was informed that the provision of rations⁴⁴ to a wife and children of a member is no longer applicable in practice. The Commission recommends that the rest of the words, beginning with the words "When a member is on duty out of barracks ..." should be deleted and substituted with the words "as determined by the Minister".

⁴⁴i.e. when a member is on duty out of barracks for periods longer than 48 hours.

Regulation 21 [*Regimental sergeant-major's allowance*]

The Commission noted that over the past few years, new posts have been created in the Defence Force. These posts attract payment of certain allowances, and the Commission recommends that such allowances be expressed as a per centage of basic pay. Thus, the Commission recommends that regulation 21 be redrafted to read as follows-

- | | |
|---|--|
| “Regimental
sergeant-major
allowances | 21. A member who holds the appointment of- |
| | (a) Defence Force sergeant-major; |
| | (b) brigade sergeant-major; |
| | (c) regimental sergeant-major; |
| | (d) garrison sergeant-major; or |
| | (e) company sergeant-major or equivalent
appointment, |

shall be paid an allowance at the rate of fifteen per cent of one month basic pay."

Regulation 22 [*Company sergeant-major's allowance*]

In view of the incorporation of the allowance of company-sergeant-major in regulation 21, the Commission recommends that this regulation should be deleted.

Regulation 24 [*No pay or allowances in certain circumstances*]

The Commission recommends that in this regulation the word "Commander" wherever it appears should be substituted with the words "commanding officer or appropriate superior authority" being the competent authority in situations covered by this provision.

The Commission also recommends that in subregulation (2) the words “prescribed officer” should be substituted with the words “appropriate superior authority”.

PART IV

LEAVE

Regulation 25 [*Classification of leave*]

The Commission recommends that with the recruitment of women in the Defence Force there is need to make provision for maternity leave under these Regulations. The Commission therefore recommends the insertion of a new paragraph as follows-

“(h) maternity leave.”.

Regulation 26 [*Persons empowered to grant leave*]

Similar to other recommendations, the Commission recommends that subregulation (1) should be amended by deleting the word "Commander" and inserting the words "commanding officer or appropriate superior authority".

Regulation 28 [*Accrual of vacation leave*]

The Commission recommends that the vacation leave year should follow the Government financial year which at present has been changed to run from 1st July to 30th June. Subregulation (1) which prescribes that the vacation leave year shall run from 1st January to 31st December, should be amended accordingly to read as follows-

"(1) The vacation leave year shall be the same as the financial year of the

Government".

Additionally, the Commission recommends that the word "leave" in subregulation (2) should be qualified by the word "vacation".

The Commission noted that subregulation (3) was deleted in 1993 and therefore recommends that the current subregulation (4) should become subregulation (3).

Regulation 30 [*Sick leave*]

This provision relates to sick leave. The Commission recommends that members granted sick leave should receive full pay regardless of the period they are on leave. However they should be subjected to medical examination during sick leave to determine their suitability to continue in service. Thus, similar to the recommendation in relation to Officers Regulations, subregulation (1) should be amended to read as follows-

"(1) A member may at any time be granted sick leave with full pay 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 or appropriate superior authority at the end of every month;
- (b) after 180 days a medical board shall be convened for the purpose of assessing his suitability to continue in the service."

In subregulation (2), the word "Commander" wherever it appears should be substituted with the words "commanding officer or appropriate superior authority".

Regulation 31 [*Compassionate leave*]

In subregulation (1), the word “Commander” should be deleted and substituted with the words “commanding officer or appropriate superior authority”.

The Commission observed that in the civil service, compassionate leave is granted in addition to vacation leave but recommends that the current position in the Defence Force should be maintained due to the nature of operations in the Defence Force where only 15 per cent of the members are allowed to go on leave at any one particular time.

New Regulation 33B [*Maternity leave*]

As with Officers Regulations, there is need for a new provision to cover maternity leave for women members. Thus, the Commission recommends the following new regulation-

“Maternity leave 33B. (1) A female member may be granted maternity leave with full pay for ninety days from the expected date of confinement; but the member granted maternity leave may return to work at any time before the expiry of the period of confinement.

(2) In this regulation, “date of confinement” means the date of birth of a child, whether living or not, after thirty-four weeks of pregnancy, but in the event of still birth occurring during the first thirty-four weeks of pregnancy the maternity leave in accordance with subregulation (1) shall apply.”

PART V

FREE TRAVELLING FACILITY

Regulation 35 [*Travelling facilities on leave*]

Following the recommendation to insert new regulation 33B, the Commission recommends the insertion of a new paragraph (f) as-

“(f) maternity leave”.

The Commission noted that the subregulation numbering “(1)” appearing in this regulation was erroneous as there is no other subregulation, and should be deleted.

Regulation 36 [*Travelling facilities for dependants*]

This regulation provides for free travel for wives, children and dependents of members on posting to a new duty station. With the recruitment of women members who may have husbands, the Commission recommends that in this regulation where the word “wife” appears there should be substituted the word “spouse”.

PART VI

MEDICAL BENEFITS

Regulation 37 [*Medical examination*]

The Commission noted an obvious error in the numbering of this provision as “27”. It should be numbered “37”. Further, the word “Commander” should be substituted with the words “commanding officer or appropriate superior authority.”

PART VII

DRESS AND EQUIPMENT

Regulation 41 [*Clothing and personal equipment*]

The Commission recommends that a member be provided with a clothing and upkeep allowance towards the care of the member's clothing or personal equipment. The Commission therefore recommends the following new subregulation (5)-

"(5) A member shall be entitled to receive a clothing and upkeep allowance as may be determined by the Minister from time to time."

Regulation 42 [*Wearing of uniform*]

The Commission recommends that this provision, which is similar to regulation 56 of the Officers Regulations, prohibits the wearing of uniform without authority should similarly create an offence and a penalty for such unauthorized conduct. Regulation 42 as it is would be subregulation (1) and a new subregulation (2) should be added as follows-

(2) Any member who contravenes subregulation (1) shall be guilty of an offence punishable under the Act."

PART VIII

DISABLEMENT BENEFITS

Regulation 47 [*Pension in respect of ill-health occasioned by the discharge of duty*]

This provision deals with pension in respect of ill-health occasioned by the discharge of duty and is similar to regulation 61 of the Officers Regulations. The Commission

recommends similar amendments with appropriate modifications.⁴⁵

Regulation 49 [*Medical examination or treatment of pensioners*]

As with regulation 63 of Officers Regulations⁴⁶, the Commission recommends that in subregulation (1) for the word “pension” there should be substituted the word “compensation”. In the marginal note, the word “pensioners” should change to “disabled member”.

As with Officers Regulations the Commission recommends that subregulation (3), which makes provision for a special medical boards, should be deleted.

Regulation 50 [*Resumption of duty by disabled member*]

This provision deals with resumption of duty by a disabled member. The Commission recommends the adaptation of recommendations in relation to regulation 64 of the Officers Regulations which is similar to this regulation.⁴⁷

Regulation 51 [*Benefits to widow and children in respect of death in the course of duty*]

This provision deals with death benefits due to a surviving spouse and children where a member dies in the course of duty. The Commission recommends the adaptation of recommendations made in regulation 65 of the Officers Regulations.⁴⁸ Further, in subregulation (6), reference to “this section” should be to “this Part”.

⁴⁵Supra, page 67.

⁴⁶Supra, page 68.

⁴⁷Ibid.

⁴⁸Ibid.

New Regulation 51A, 51B, 51C and 51D [*Vacational training for disabled member, Travelling and subsistence allowance payable to a disabled member, Further disablement of a disabled member, Allowance in respect of nursing attendants*]

Similar to its recommendations regarding new regulation 65A under the Officers Regulations with respect to vocational training, the Commission recommends the introduction of new regulations with regard to members of the other ranks as follows-

- | | |
|---------------------------------------|--|
| “Vocational

disabled
member | <p>51A. (1) The Pensions Board may in its discretion refer the training for case of any disabled member to a vocational board for the member’s vocational training.</p> <p>(2) A vocational board shall investigate any case or application referred to it under subregulation (1) and shall submit a report thereon to the Pensions Board.</p> <p>(3) If the Pensions Board, after considering the report of a vocational board, considers that the disabled member should, in consequence of his disablement, receive vocational training, it may order him to undergo such training and may award him, in addition to any other benefits to which he may be entitled under these Regulations, a temporary allowance in respect of the period during which he undergoes such training at a rate not exceeding the rate of additional compensation which he would have been awarded had he had no earning capacity.</p> <p>(4) A temporary allowance awarded under subregulation (3) shall be paid for such period and subject to such conditions and</p> |
|---------------------------------------|--|

such deductions in respect of the earnings of the disabled member while he is undergoing vocational training as the Pensions Board may determine.

(5) The whole or any part of any charges, fees or expenses incurred in respect of the vocational training of a disabled member may be paid under such conditions as the Pensions Board may determine.

(6) At the termination of any period of vocational training under this regulation, the Pensions Board may award the disabled member an amount determined by the vocational board for the purchase of tools required by him in the vocation in which he has been trained

(7) If a disabled member refuses to undergo any vocational training ordered under this regulation the Pensions Board may reduce or withdraw any additional compensation awarded to him.

Travelling and
subsistence
allowance
payable to a
disabled
member

51B. (1) When a disabled member is required by the Pensions Board to make a journey in order to submit to a medical examination or to undergo medical treatment or vocational training he shall be entitled to travel at the expense of the Government.

(2) Subject to subregulations (3) and (4), when a disabled member is required by the Pensions Board to make a journey for the purposes mentioned in subregulation (1), he shall be entitled, during the period of necessary absence from home, to a subsistence allowance at the rate determined by the Minister from time to time.

(3) Except as otherwise provided under the Act, a disabled

member shall not be entitled to any subsistence allowance under subregulation (2)-

(a) in respect of any period during which he is receiving free maintenance as an in-patient at a hospital or other institution; or

(b) if the period of absence from home is less than four hours.

(4) If a disabled member is unfit owing to his own misconduct or serious negligence to undergo a medical examination and in consequence thereof he is required by the Pensions Board to undergo a further medical examination, he shall not be entitled to any subsistence allowance under subregulation (2) in respect of any period during which he is necessarily absent from home for the purpose of undergoing such further medical examination.

Further 51C. If a disabled member who has been awarded a disablement of a disabled member aggravated by, military service without any misconduct or serious negligence on his part, the Pensions Board shall award him a supplementary compensation, based on his rank and class, appropriate to his case in respect of the further disablement represented by the difference between the degree of disablement due to his combined disablements and that from his earlier disablement or disablements alone.

Allowance in respect of nursing attendants 51D Where a disabled member has been awarded a disablement compensation for one hundred per centum disablement and the Pensions Board is satisfied that his disablement necessitates the constant and continuous attendance

of a nurse or other attendant, it may award such member, in addition to any other benefits to which he may be entitled under these Regulations, an allowance not exceeding the reasonable expenditure actually incurred.”.

PART IX
GENERAL PROVISIONS RELATING TO PENSIONS, GRATUITIES
AND OTHER BENEFITS

Regulation 52 [*Calculation of pensions and gratuities G.N. 204/1970*]

The Commission noted the amendments made in 1993 to this regulation regarding calculations of pension and gratuities. The Commission recommends that in subregulation (2) the amount of “K120” as inserted in 1993 should be substituted with “five per cent of his annual basic pay at the time of his retirement”.

Regulation 53 [*Pensionable service*]

This provision deals with pensionable service. The Commission recommends the adaptation of recommendations relating to the provisions of regulation 67 of the Officers Regulations. Regulation 53 should therefore be amended -

- (a) in subregulation (1), by inserting immediately after the word “continuous” the words “from the date of enlistment”;
- (b) in subregulation (2), by redrafting paragraph (c) to read as follows-
 - “(c) time spent on attachment or secondment to any other forces in accordance with the Act;”;
- (c) by deleting subregulation (4) (a); and

(d) by redrafting subregulation (5) to read as follows-

“(5) The period of pensionable service shall be calculated by the month, but fractions of a month shall be taken to the nearest whole figure.”.

Regulation 54 [*Benefits on resignation or discharge for ill-health*]

The Commission took note of the amendments made in 1993 in respect of subregulation (1) (a) and was of the view that although the provision talks about “clothing grant”, this is actually an up-keep allowance. The Commission therefore recommends that the words “A clothing grant” should be substituted with “An up-keep allowance”.

Regulation 58 [*Benefits on discharge or dismissal on prescribed grounds*]

In considering this regulation, the Commission noted that it conferred power to determine pension or gratuity entitlements on the Minister. The Commission was of the view that this was a proper power to be exercised by the Defence Council. The Commission recommends therefore that “Minister” should be substituted with “Defence Council”.

Regulation 60 [*Commutation of pensions*]

The Commission recommends that with regard to commutation of pensions the recommendation made in respect of regulation 73 (5) of the Officers Regulations should be adapted for subregulation (10).⁴⁹ Regulation 60 should therefore be amended in the proviso to subregulation (10) by deleting the words “may be fixed by the Minister” and substituting the words “applicable to those whose nearest half age is 30 years”.

Regulation 64 [*Deductions from pension, gratuity or other benefits*]

⁴⁹Supra, page 74.

In subregulation (2) the word “Commander” should be substituted with the words “commanding officer or appropriate superior authority”.

PART X

MISCELLANEOUS PROVISIONS

Regulation 66 [*Occupation of official quarters*]

With recruitment of women members who may have dependant husbands, the word “wife” in subregulation (2) should be substituted with “spouse”.

Regulation 68 [*Active participation in politics*]

This provision deals with engaging in political activity by members of the Defence Force. The Commission recommends that the recommendations made in relation to regulation 82 (3) of the Officers Regulations⁵⁰ should be adapted for subregulation (3).

THIRD SCHEDULE⁵¹

The Commission noted that the provisions of this Schedule are similar to those of the Third Schedule under the Officers Regulations. It is recommended that this Schedule should be amended similarly with the substitution of “officer” for “member”.

FOURTH SCHEDULE

The Commission noted the title designation for those who are responsible for endorsing solemn declarations. The Commission was made aware that within the Defence Force such authority is vested in the commanding officer who is always accessible and

⁵⁰Supra, page 75.

⁵¹Note that the 1993 amendment deleted the First Schedule, deleted and replaced the Second Schedule (which the Commission has retained) hence, the Schedules will be renumbered accordingly.

available to readily perform such duties. The Commission recommends that the line of authorities as listed in item 8 beginning with “Notary Public” should be deleted and substituted with “*commanding officer or appropriate superior authority*”.

DEFENCE FORCE (MEDAL FOR LONG SERVICE AND GOOD CONDUCT) REGULATIONS⁵²

Regulation 2 [*Description of medal*]

In subregulation (1), the word “hereafter” should be substituted with “hereinafter”.

Regulation 3 [*Qualifying service for the medal*]

The Commission was informed that the long service and good conduct medal does not apply to private soldiers. In light of this, the Commission recommends that subregulation (1) should be amended by deleting the words “warrant officers, non-commissioned officers and private soldiers” wherever these words appear, and substituting therefor the words “non-commissioned officers”.

The Commission also considered subregulations (2) and (3) which, it was noted, are inapplicable. The Commission recommends that they should be deleted.

The Commission also noted that subregulation (4) makes reference to “Permanent Force of the Commonwealth” which is irrelevant in this day. The Commission therefore recommends that the words “or partly in the Permanent Force of the Commonwealth” should be deleted.

Similarly, the Commission recommends that in subregulation (5), the words “territorial volunteer or auxiliary military force” should be deleted for irrelevance.

Subregulation (7) should also be deleted for irrelevance, since persons under the age

⁵²As amended by Government Notice No. 12 of 1993.

of eighteen years should no longer be recruited in the Defence Force following the Commission's recommendation in relation to section 16 (3) of the Act.

Regulation 4 [*Recommendations and award of the medal or clasp*]

In light of the recommendation in relation to regulation 3 that private soldiers do not qualify for the long service and good conduct medal, the Commission recommends that in subregulation (2) the words "private soldier" should be deleted.

Regulation 6 [*Grant or gratuity*]

The Commission noted that the 1993 amendments prescribed a sum of K350 as the amount to be awarded to recipients of this medal. The Commission recommends that this provision should be amended in order to provide for the award to be paid as a per centage of the recipients basic pay. Regulation 6 as amended would read as follows-

“Grant	6. An amount equivalent to ten per cent of annual basic pay shall be granted to every recipient of the medal.”.
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DEFENCE FORCE (MERITORIOUS SERVICE MEDAL)
REGULATIONS⁵³

Regulation 3 [*Eligibility for the award of the medal*]

In subregulation (4), the Commission noted that there is reference to the Permanent Force of the British Commonwealth. The correct reference in this case would be to “co-operating force”. The Commission recommends that all the words beginning with “the Permanent Force of the British Commonwealth” should be deleted and substituted with the words “a co-operating force”.

Regulation 4 [*Recommendation and award of the medal*]

In subregulation (1), reference to “section 3” should be to “regulation 3”.

Regulation 6 [*Grant of gratuity*]

The Commission noted that the 1993 amendments prescribed a sum of K500 as the amount to be awarded to the recipient of this medal. The Commission recommends that in order to reflect the current practice regulation 6 should be redrafted to read as follows-

“Grant	6. An amount equivalent to 15 per cent of annual basic pay shall be granted to every recipient of the medal.”.
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Regulation 7 [*Forfeiture and restoration of the medal or clasp*]

The Commission considered this provision which relates to forfeiture and restoration of the medal or clasp. The Commission considered that since this medal or clasp is granted purely on merit at a particular time, it was unfair and inappropriate to have it forfeited and

⁵³As amended by Government Notice No. 13 of 1993.

restored at some stage. Once granted the medal or clasp should not be withdrawn. The Commission therefore recommends that this provision should be deleted altogether.

Editors Note

The Commission noted that the Editors Note⁵⁴ appearing at page 284 of the text of Chapter 12:01 is now spent and should be deleted.

⁵⁴Relates to the repeal of subsidiary legislation made under the repealed Federal Defence Act, No. 23 of 1955.

DEFENCE FORCE (EFFICIENCY MEDAL) REGULATIONS⁵⁵

Regulation 11 [*Forfeiture and restoration of the medal or clasp*]

In subregulation (3), reference to “subsection (1)” should correctly be to “subregulation (1)”.

Regulation 12 [*Gratuity*]

The Commission recommends deletion of this regulation which provides for the amount of the grant attached to this medal since this medal no longer carries a grant.

NEW REGULATIONS ON MEDALS

The Commission’s attention was drawn to several other new medals which have been introduced over the past years. These are the-

Re-engagement and Continuous Service Medal;
Command Medal;
Campaign Medal;
Bravery Medal; and
Commendable Act Medal.

The Commission recommends that these medals be properly regulated under special Regulations for each medal.

“DEFENCE FORCE (RE-ENGAGEMENT AND CONTINUOUS SERVICE MEDAL) REGULATIONS (*Under S.227*)

Citation 1. These Regulations may be cited as the Defence Force (Re-engagement

⁵⁵As introduced by Government Notice No. 14 of 1993.

and Continuous Service Medal) Regulations.

Description	<p>2. (1) The medal shall be designated the “Re-engagement and Continuous Service Medal” and is hereinafter referred to as “the medal”.</p> <p>(2) The medal shall be of silver, bearing Malawi Government Court of Arms and on the reverse the inscription “FOR RE-ENGAGEMENT AND CONTINUOUS SERVICE” circumscribing the badge of the Defence Force.</p> <p>(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be black with red and green stripes marked diagonally on the main colour black.</p>
Eligibility for the award of the medal	<p>3. The medal shall be awarded to a warrant officer, non-commissioned officer and private soldier who has completed seven years initial engagement and has offered himself for continuous service.</p>
Recommendation for medal	<p>4. (1) Recommendations for the medal shall be by the commanding officer or appropriate superior authority and forwarded in writing to the Commander.</p> <p>(2) The Commander shall recommend to the President only those warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.</p> <p>(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the <i>Gazette</i>.</p> <p>(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.</p>

Loss and replacement	<p>5. (1) When a medal has been lost and it is desired to replace it, a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.</p> <p>(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at the holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.</p> <p>(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.</p>
Grant	<p>6. There shall be no grant awarded to any recipient of the medal.</p>

DEFENCE FORCE (COMMAND MEDAL) REGULATIONS

(Under S.227)

Citation	<p>1. These Regulations may be cited as the Defence Force (Command Medal) Regulations.</p>
Description	<p>2. (1) The medal shall be designated the "Command Medal" and is hereinafter referred to as "the medal".</p> <p>(2) The medal shall be of silver star, bearing letters MDF and on the reverse the inscription "FOR COMMAND" circumscribing the badge of the</p>

Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be gold marked with black stripes on either side.

Eligibility 3.
for the award
of medal

(1) The medal shall be awarded to an officer who, during service with the Defence Force-

(a) has attained the rank of Brigadier General; or

(b) in the case of an officer who has not attained the rank of Brigadier General, has commanded a brigade and passed a staff course or its equivalent.

Recommendation

4. (1) The Commander shall recommend to the President only those officers who are in every way worthy of the award of the medal.

(2) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(3) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and
replacement

5. (1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant 6. There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (CAMPAIGN MEDAL) REGULATIONS

Under section 277

Citation 1. These Regulations may be cited as the Defence Force (Campaign Medal) Regulations.

Description 2. (1) The medal shall be designated the "Campaign Medal" and is hereinafter referred to as "the medal".

(2) The medal shall be of bronze, bearing crossed rifles positioned upright and on the reverse the inscription "FOR CAMPAIGN" circumscribing the badge of the Defence Force, and the name of the campaign shall be inscribed on the bar on the ribbon.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be maroon with two stripes in the centre.

Eligibility for the award of 3. (1) The medal shall be awarded to officers, warrant officers, non-commissioned officers and private soldiers, and where

the medal appropriate to civilians, who actively participate in a designated campaign against the enemy or hostile force or forces in any act or acts against the enemy or hostile force or forces in any theatre of operation:

 Provided that such campaign shall have been sanctioned by the State as provided for in Chapter VXi of the Constitution to protect national interest vital to national integrity.

(2) A clasp shall be awarded for any subsequent operation in the same campaign.

Recommendation 4. (1) Recommendation for the medal shall be by the commanding officer or appropriate superior authority and in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and
replacement 5. (1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect,

replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant 6. There shall be no grant awarded to any recipient of the medal.

DEFENCE FORCE (BRAVERY MEDAL) REGULATIONS

(Under S.227)

Citation 1. These Regulations may be cited as the Defence Force (Bravery Medal) Regulations.

Description 2. (1) The medal shall be designated the "Bravery Medal" and as hereinafter referred to as "the medal".

(2) The medal shall be of silver, bearing a lion charging for a prey and on the reverse the inscription "FOR BRAVERY" circumscribing the badge of the Defence Force.

(3) The medal shall be worn suspended on the left breast by a ribbon 2.5 cm in width which shall in colour be green on the left and right marked with black stripes on either side and the centre marked with a red stripe .5 cm in width.

Eligibility 3.
for the award
of the medal

(1) The medal shall be awarded to an officer, warrant officer, non commissioned officer and a private soldier who-

(a) shows courage in action and sets an example of bravery, gallantry and devotion to duty; or

(b) renders bravery action during active service.

(2) A clasp shall be awarded for any subsequent act or acts.

Recommendation

4. (1) Recommendation for the medal shall be by the commanding officer or appropriate superior authority and in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and replacement	<p>5. (1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.</p> <p>(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made at the expense of the Government.</p> <p>(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.</p>
Grant	<p>6. Every recipient of the medal shall awarded an amount to be determined by the President.</p>

DEFENCE FORCE (COMMENDABLE ACT MEDAL) REGULATIONS

(Under S.227)

Citation	<p>1. These Regulations may be cited as the Defence Force (Commendable Act Medal) Regulations.</p>
Description	<p>2. (1) The medal shall be designated the "Commendable Act Medal" hereinafter referred to as "the medal".</p> <p>(2) The medal shall be of silver, bearing a lion charging for a prey and on the reverse the inscription "FOR COMMENDABLE ACT" circumscribing the badge of the Defence Force.</p> <p>(3) The medal shall be worn suspended on the left breast by a ribbon</p>

2.5 cm in width which shall in colour be black, red and green with white stripes in between the other colours.

Eligibility 3. (1) The medal shall be awarded to officers, warrant officers, non commissioned officers and a private soldiers for exceptionally diligent, courageous, and outstanding act or acts in peace-time.

(2) A clasp shall be awarded for subsequent acts or acts.

Recommendation 4. (1) Recommendation for the medal shall be by the commanding officer or appropriate superior authority and in writing to the Commander.

(2) The Commander shall recommend to the President only those officers, warrant officers, non-commissioned officers and private soldiers, who are in every way worthy of the award of the medal.

(3) The medal shall be awarded on the authority of the President and notice of each award shall be published in the *Gazette*.

(4) A register of the names of those to whom the medal has been awarded shall be kept by the Commander.

Loss and replacement 5. (1) When a medal has been lost and it is desired to replace it a sworn affidavit shall be made stating the circumstances under which the loss occurred and the number, rank, name and unit of the person to whom the medal belonged, and the affidavit shall be forwarded to the Commander.

(2) When a medal has been lost through carelessness or neglect, replacement may be recommended at holder's expense but, in the case where loss occurred through no fault or neglect of the holder, the Commander may recommend to the Minister that replacement be made

at the expense of the Government.

(3) Replacement of a lost medal shall not be made until a period of six months has elapsed after the date on which the loss was reported.

Grant 6. There shall be no grant awarded to any recipient of the medal.”.

DEFENCE FORCE (MILITIA) REGULATIONS⁵⁶

PART I

PRELIMINARY

Regulation 2 [*Interpretation*]

The Commission made a number of observations regarding definitions.

⁵⁶As introduced under Government Notice No. 15 of 1993.

“chaplain”

Similar to reasons given in the Officers and Other Ranks Regulations, the Commission recommends that this definition be deleted.

“child”

The Commission considered the definition of “child” in these Regulations and noted that this expanded definition can be subject to different interpretations. The Commission recommends that the definition of “child” as recommended in Other Ranks Regulations should be adopted in respect of Militia Regulations as follows-

““child”, in relation to a member, means an unmarried son or daughter, under the age of eighteen years of that member with a recognized spouse;”.

“commanding officer”

At present this definition states that this as “an officer to command a unit”. The Commission recommends that it would improve the clarity of the language if this definition were redrafted to read as follows-

““commanding officer” means an officer commanding a unit.”.

“member”

The Commission noted that the definition of “member” in these Regulations wrongly includes officers as under Officers Regulations and members as under Other Ranks Regulations. Yet, reference in these Militia Regulations should specifically be to those members serving in the Militia. The Commission recommends that the definition of a member of the Militia should expressly state that the term extends to a commissioned officer in the Militia. Thus, after the words “means a member of the Militia” there should be inserted the words “including a commissioned officer in the Militia;”.

PART II

GENERAL

Regulation 7 [*Promotion*]

The Commission noted that the power to promote a member to a higher rank is vested in the Minister. The Commission considered that this process is an administrative one, not requiring the Minister's indulgence. The Commission therefore recommends that the word "Minister" should be substituted with the words "appropriate superior authority".

Regulation 8 [*Discharge*]

The provisions regarding discharge from the Defence Force, including the Militia, have already been recommended under section 211 of the Act. The Commission was of the view that this regulation should merely refer to section 211 and recommends that regulation 8 should be deleted and substituted as follows-

"8. A member of the Militia shall be discharged in accordance with section 211 of the Act."

Regulation 12 [*No pay or allowances in certain circumstances*]

The Commission noted a drafting error in subregulation (1) (b) where the word "and" appearing after "civil court" is being used conjunctively as if all the three events in (a), (b) and (c) all needed to be satisfied. The word "and" should be deleted and substituted with the word "or" in order to show that each of the provisions applies independent of the other.

Regulation 13 [*Deductions from pay*]

The Commission recommends that the proper authority to direct deductions from pay should be the "commanding officer or appropriate superior authority" instead of the Commander. The opening words should be amended accordingly.

Regulation 17 [*Issues of arms, clothing and personal equipment to members*]

In subregulation (2), the Commission recommends that with regard to issuance of arms, clothing and personal equipment “Commander” should be substituted with “commanding officer or appropriate superior authority”. In subregulation (3) the provision has omitted reference to the conduct which it is sought to punish. The Commission therefore recommends that the word “fails” be inserted immediately before the words “to return”.

Regulation 18 [*Wearing of uniforms*]

In subregulation (1) the Commission recommends that “Commander” should be substituted with “commanding officer or appropriate superior authority”, being the correct competent authority for authorizing the wearing of uniforms in this case.

The Commission also noted that the mention of “peace” training in paragraph (b) distorts the intended meaning. The Commission recommends that the word “peace” should be deleted since members are not trained just for peace as stated.

PART III

ADMINISTRATION OF DISABLEMENT BENEFITS

Regulation 23 [*Interpretation of terms in Part III, IV and V*]

“child”

The Commission noted that the word “child” as defined in this regulation provides an expanded meaning. In the Commission’s view, there is no need to have a separate definition that even categorizes or classifies children for purposes of disablement benefits to a disabled member. The Commission recommends that the definition should be deleted as there is no justification.

“deceased member”

The word “aggrevated” should correctly read “aggravated”.

“disablement pension”

It was the view of the Commission that this term would best be understood if it was referred to as “disablement compensation” which is what the issue is all about. The Commission therefore recommends that the term “disablement pension” should be deleted and substituted as follows-

““disablement compensation” means compensation awarded to a disabled member under these Regulations whether it is awarded as temporary or as a permanent disablement compensation.”.

The Commission also recommends similar changes throughout the text.

“pension”

The Commission observed that what is called a “pension”, in light of these Regulations, is actually “compensation”. The Commission recommends that the term to be used and define in place of “pension” is “compensation” as follows-

““compensation” means compensation payable under these Regulations.”.

“widow”

With the recruitment of women in the Defence Force and the recommendation for use of gender neutral terms, the Commission recommends that this definition should be deleted and a new term “surviving spouse” should be inserted and defined as follows-

““surviving spouse”, in relation to a deceased member, means a spouse of that member, but, save as specifically provided in these Regulations, does not include a person who was separated, whether by order of court or otherwise,

from the member at the date of his or her death.”.

Regulation 25 [*Review, suspension or cancellation of awards*]

The Commission recommends change of procedure in paying any benefits in these Regulations to a member of the Militia in the event of member being under a sentence of imprisonment. In the view of the Commission such benefits should be paid directly to the beneficiary of the member and therefore subregulation (3) should be redrafted to read as follows-

“(3) If a member in receipt of an award made under these Regulations is convicted of any offence and is required to undergo a period of imprisonment exceeding three months, payment of the award shall, during the term of imprisonment, be made to, or for the benefit of, a spouse, children or dependants of such member.”.

Regulation 27

The Commission observed that this regulation makes provision for commutation of pension by a disabled member. The Commission further noted that where pension is commuted under this regulation, any payment of allowance awarded under these Regulations in respect of the wife or children must be discontinued and the right to such allowance forfeited. Considering the recommendation to do away with pension as regards members of the Militia, the Commission recommends that regulation 27 should be deleted.⁵⁷

Regulation 28 [*Disablement pensions*]

In this regulation the words “disablement pension” wherever they occur, should be substituted with “disablement compensation” and the word “pension” should be substituted

⁵⁷ Regulations 40-47, *infra*, page 133.

with the word “compensation”. Further, in subregulation (6), reference to “subsection (5)” should correctly be “subregulation (5)”.

Regulation 29 [*Additional pension*]

In this regulation the word “pension” wherever it appears should be substituted with the word “compensation”.

Regulation 30 [*Degree of disablement*]

In subregulation (5) the correct reference should be to “subregulation (4)” and not “subsection (4)”.

Regulation 31 [*Allowance in respect of wife and children of a disabled member*]

The Commission recommends that references to “wife”, “her husband” and “his marriage” should be made gender neutral throughout the provision. Again, the word “pension” should be substituted with the word “compensation”.

The Commission also noted that the amounts specified in subregulation (2) are outdated for reasons of inflation. The Commission recommends that these amounts be increased. The amounts in paragraphs (a), (b) and (c) should respectively read K3,600, K1,800, K3,600, K1,800, K2,160 and K1,080.

Regulation 32 [*Payment of medical expenses*]

The Commission recommends that subregulation (1) would read correctly without the word “pensionable”.

Regulation 33 [*Temporary allowance in connection with medical examination or treatment*]

In subregulation (2) the word “pension” where it appears should be substituted with

the word “compensation”.

Regulation 34 [*Medical examination of disabled member*]

In this regulation, the word “pension” should be substituted with the word “compensation”.

The Commission also recommends that in paragraphs (a) and (b) of subregulation (3), the words “his pension” should read “the award” in light of the recommended change from “pension” to “award”.

Regulation 35 [*Medical treatment of disabled member*]

In this regulation, the word “pension” should be substituted with “compensation”.

In subregulation (3), in view of the recommendation made earlier to abolish special medical boards the Commission recommends that the words “by a special medical board” should be deleted.

In subregulation (4) the phrase “Where a special medical board decides” should be substituted with “Where the independent medical examination establishes”.

The marginal note should change to read “Medical treatment of a disabled member”.

Regulation 36 [*Vocational training*]

The word “pension” throughout this regulation should be substituted with “compensation”.

In subregulation (6), the Commission was of the view that it would be appropriate to leave it to the Pensions Board to determine the appropriate sum for the purchase of tools of trade. Thus, the words “may award the disabled member a sum not exceeding K100”

should be deleted and substituted with the words “shall determine the sum to be awarded to the disabled member”.

Regulation 38 [*Further disablement of disabled member*]

The word “pension” should be substituted with “compensation”.

Regulation 39 [*Allowance in respect of nursing attendants*]

The word “pension” should be substituted with “compensation” and the word “pensionable” should be deleted.

Regulations 40, 41, 42, 43, 44, 45, 46 and 47 [*Allowance in respect of wear and tear on clothing, Pensions for a widow , Pensions for separated or divorced wife entitled to maintenance, Pensions under regulation 41 or 42 to cease on remarriage, Allowance for parent or guardian in respect of children of deceased member, Pensions for orphan child, Pension for dependant parents, Pension for other dependants of a deceased member*]

The Commission noted that by its very nature service in the Militia is voluntary and part-time and that it cannot attract payment of pension in the same way as full time service entails in the Regular Force. The Commission also noted that members of the Militia are eligible to payment of compensation in the event of being disabled apart from the regular pay that they are entitled to during service.

The Commission is of the view that provisions in these Regulations regarding payment of pension to members of the Militia and their dependents are not warranted. These provisions are contained in regulations 40 to 47 all of which the Commission recommends should be deleted.

Regulation 48 [*Initial and subsequent training*]

The Commission observed that the provision does not reflect the current practice

regarding initial and subsequent training of members of the Militia. Further, subsequent training is subject to the provisions of regulation 49 on call-up. The Commission therefore recommends that regulation 48 should be redrafted to read as follows-

“48. A person who has volunteered for the Militia shall receive initial military training for a period not exceeding twelve weeks and, thereafter, subsequent training pursuant to a call-up under regulation 49”.

Regulation 52 [*Classification on training*]

The Commission recommends that the words “by the appropriate prescribed officer” should be deleted and substituted with the words “by the appropriate training authority”.

Regulation 55 [*Exemption boards*]

This regulation provides for the appointment, composition and functions of the exemption board.

In subregulation (4), the Commission noted that the power to determine the procedures for the conduct of exemption boards is conferred on the Minister. The Commission considered that it would be more appropriate to leave such power to the exemption board itself. The Commission therefore recommends that subregulation (4) should be redrafted to read as follows-

“(4) The exemption board shall have power to determine the procedure for the conduct of its business.”.

Regulation 57 [*Embodiment*]

The Commission recommends that in subregulation (1) (a) the word “the” be inserted immediately before the word “employment”.

Regulation 58 [*Reporting from time to time by members*]

This provision confers on the Minister the power to deploy the Militia. The Commission considered this provision in light of sections 5 and 6 of the Act where powers to deploy the Defence Force are conferred on the President in accordance with Chapter XVI of the Constitution. The Commission therefore recommends that the word “Minister” should be substituted with the word “President”.

FIRST SCHEDULE

Following the recommendation to delete regulation 27, the Commission recommends that the First Schedule which relates to that regulation should also be deleted for irrelevance.

SECOND SCHEDULE

The word “pension” should be substituted with “compensation” and that the rates should be raised to K18,900, K15,120, K15,120, K13,092, K13,092 and K11,340, respectively. Further, the words “per centum” in relation to “rate” should be deleted.

THIRD SCHEDULE

Following the recommendation to delete regulation 41 to which this Schedule relates, the Commission recommends deletion of this Schedule for irrelevance.

FOURTH SCHEDULE

Similarly, the Commission recommends deletion of this Schedule which relates to

regulation 44 which the Commission has recommended to be deleted.

FIFTH SCHEDULE

The Commission recommends that this Schedule should be deleted as it relates to regulation 47 which the Commission has recommended to be deleted.⁵⁸

⁵⁸The Second and Sixth Schedules will have to be renumbered accordingly.

DEFENCE FORCE (COMPENSATION FOR INJURIES) REGULATIONS⁵⁹

The Commission noted that at present the percentage of incapacity in relation to injury is calculated in accordance with provisions of the Workers Compensation Act.⁶⁰ That Act has been repealed by the new Workers Compensation Act of 2000⁶¹. Section 2 of the new Act excludes a member of the Defence Force from the definition of worker. However, it was the view of the Commission that only for purposes of compensation for injury, the provisions of the Workers Compensation Act dealing with percentages of incapacity should be made applicable to members of the Defence Force. The Commission therefore recommends that regulation 2 of the Army (Compensation for Injuries) Regulations should be amended by deleting the words "Worker's Compensation Act, 1990" and substituting therefor the words "Worker's Compensation Act, 2000".

⁵⁹As introduced by Government Notice No. 16 of 1993.

⁶⁰Cap.55:03 of Laws of Malawi.

⁶¹Act No. 6 of 2000.