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# GOVERNMENT NOTICE

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## DEPARTMENT OF DEFENCE

No. R. 1046

19 December 2014

### DEFENCE ACT, 2002

### DEFENCE FORCE SERVICE COMMISSION REGULATIONS

The Minister of Defence and Military Veterans has, under section 62L of the Defence Act, 2002 (Act No. 42 of 2002), made the Regulations in the Schedule.

#### SCHEDULE

#### PREAMBLE

**WHEREAS** the Defence Force is a national asset which is mandated under the Constitution, to be structured and managed as a disciplined military force, and in accordance with the principles of international law governing the use of force;

**AND WHEREAS** the Defence Force is essential in the defence of the Constitution, the territorial integrity and national sovereignty of the Republic and our democracy;

**AND WHEREAS** the Defence Force provides a soldiering career wherein members entrust their inalienable right to life which is guaranteed in the Bill of Rights of the Constitution to the nation and the State;

**AND WHEREAS** it is an unavoidable reality that when a soldier is recruited her and his family becomes a part of the larger Defence Force family as an institution

to share in the joys, anxieties and the sometimes unfortunate outcomes of service, including maiming and death;

**AND WHEREAS** it is essential for an effective mechanism to be created to provide for the necessary duty of care to the soldier and his or her family;

**AND WHEREAS** it is therefore necessary to create a working environment for the soldiering professionals that is positively conducive to discipline;

**AND WHEREAS** these factors define the uniqueness of the soldiering profession;

**AND WHEREAS**, in line with the uniqueness of the soldiering profession, the Defence Force Service Commission has been duly established in terms of Section 62A(1) of the Act as a statutory body;

**AND WHEREAS** the Defence Force Service Commission's role will be to provide a comprehensive system of ongoing research, continuous review, investigation and bench-marking on world-class best practice, in order to provide informed advice to the Minister on all aspects of service conditions for members of the Defence Force, to enable the establishment and maintenance of sustainable conditions of high morale and state of combat readiness for the Defence Force;

**AND WHEREAS** the fundamental principles that will guide the Defence Force Service Commission in the execution of its mandate will be objectivity, integrity, impartiality and transparency in conducting its business without bias, fear or prejudice;

**AND WHEREAS** it is necessary to protect the dignity of the Commission in the execution of its functions;

**AND WHEREAS** it is necessary to create procedures, structures and mechanisms whereby the Commission is empowered to fulfil its mandate having regard to the mission, vision and values of the Commission

## CHAPTER 1 DEFINITIONS

### 1. Definitions

In these Regulations, a word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned and, unless the context otherwise indicates-

**'Chairperson'** means the Chairperson of the Commission designated by the Minister in terms of section 62A (3) of the Act;

**'Commissioner'** means a member of the Commission appointed by the Minister in terms of section 62C of the Act;

**'Constitution'** means the Constitution of the Republic of South Africa, 1996;

**'Deputy Chairperson'** means the Deputy Chairperson of the Commission designated by the Minister in terms of section 62A(3) of the Act;

**'Full-time Commissioner'** means a person who does not hold any other full-time or part time position other than a position at an office associated with the Commission;

**'Head office'** means the place which has been designated by the Commission as its head office;

**'Head of the Secretariat'** means the Head of the Secretariat appointed in terms of regulation 25;

**'Military Community'** means the defence force and its members and where applicable their dependants. A military community may consist of a functional community such as bases, units, headquarters or a geographic community which is defined by physical boundaries;

**'Part-time Commissioner'** means a person who also holds other positions or who may hold other positions and who performs his or her duties at the Commission on single workdays or part thereof;

**'Secretariat'** means the Defence Force Service Commission Secretariat established in terms of regulation 25 pursuant to section 621 of the Defence Act, 2002 (Act No. 42 of 2002); and

**'the Act'** means the Defence Act, 2002 (Act No.42 of 2002)

## **CHAPTER 2**

### **DEFENCE SERVICE COMMISSION AND SCOPE OF APPLICATION**

#### **2. Scope of application of Regulations**

(1) These Regulations apply to members of the Defence Force and where appropriate, to employees.

(2) The powers conferred and the duties imposed upon the Commission by or under these Regulations may be exercised or performed by an authorised Commissioner, in which case the powers and duties are considered to have been exercised or performed by the Commission.

#### **3. Impartiality of Commission and Commissioners**

(1) A Commissioner must serve impartially and exercise his or her powers or perform his or her duties in good faith and without fear, favour, bias or prejudice.

(2) A member or employee may not interfere with, hinder or obstruct the Commission in the performance of its functions.

(3) In executing its mandate, the Commission must at all times seek to maintain a healthy relationship with the Defence Force Military Command in such a way that it enhances the environment of command and control.

#### **4. Code of conduct for Commissioners**

(1) The Commission must develop and implement a code of conduct for Commissioners and staff of the Commission, which code of conduct must reflect the values of the Commission.

(2) The code of conduct must regulate the conduct of Commissioners and staff of the Commission.

(3) The code of conduct must be open to inspection by the public at the head office of the Commission.

#### **5. Misconduct**

- (1) A member or employee who—
- (a) without lawful excuse, wilfully resists or otherwise obstructs a Commissioner in the execution of the Commission's functions under the Act;
  - (b) knowingly gives false or misleading information at an enquiry held in terms of the Act or these Regulations;
  - (c) makes a false report to the Commission pursuant to an enquiry of the Commission whilst the person knows that to be false or misleading; or
  - (d) wilfully interrupts the proceedings at a meeting of the Commission, is guilty of misconduct and may be referred to the appropriate authorities for disciplinary action.

**CHAPTER 3****ADMINISTRATIVE RESPONSIBILITIES AND POWERS OF COMMISSION****6. Administrative Responsibilities of Commission**

The Commission has the following administrative responsibilities:

- (a) The implementation of the Regulations in respect of the functions of the Commission;
- (b) To determine and revise the corporate governance plans and structures of the Commission;
- (c) To determine, oversee and revise the human resources policies and strategies of the Commission; and
- (d) To compile an annual report on the financial state of affairs of the Commission.

**7. Administrative powers of Commission**

- (1) The Commission may, in order to perform its functions effectively and efficiently—
  - (a) form partnerships with academic institutions, organs of state, private sector and non-governmental organisations for purposes of research;
  - (b) draft plans, guidelines or procedures which may be relevant in the execution of the functions of the Commission; and
  - (c) do all that is incidental to the exercise of any of its powers.

**8. Enquiry into conditions of service**

- (1) The Commission may, pursuant to the provisions of section 62B(1)(d)(i) of the Act—

- (a) conduct or cause to be conducted an enquiry which enquiry may include site and benchmarking visits whether in the Republic or elsewhere;
- (b) through a Commissioner call for and receive such particulars and information as may be reasonably necessary in connection with the enquiry;
- (c) require a member or employee of the Department by notice in writing under the hand of the Chairperson of the Commission addressed and delivered by a member of its staff, in relation to an enquiry, to appear before it at a time and place specified in the notice and to produce before the Commission articles or documents in the possession or custody or under the control of such person and which may be necessary in connection with the enquiry.

(2) The Commission may direct that a person or category of persons whose presence is not desirable, be excluded from the proceedings during the enquiry or a part of the enquiry.

#### **9. Performance management system**

(1) The Commission must establish a performance management system based on a peer review model to monitor and evaluate the performance of Commissioners.

- (2) The performance management system must—
- (a) set appropriate key performance indicators as a yardstick for measuring performance;
  - (b) set measurable performance targets; and
  - (c) set a procedure to measure and review performance at least once a year.

## **10. Establishment of committees of Commission**

(1) The Commission may appoint committees to assist the Commission.

(2) A committee must consist of two or more Commissioners and at least one other person.

(3) The Commission must appoint a Commissioner as a chairperson of a committee from among the members of a committee.

(4) The Commission must determine the functions, remuneration and any other terms and conditions of appointment of committee members.

(5) The Commission may -

(a) determine the procedures of the committee; and

(b) remove a member of the committee at any time.

## **11. Conflict of interest**

(1) A Commissioner must avoid a conflict of interest that may arise in representing the interests of the Commission. The Minister may take steps as he or she may deem appropriate to assist Commissioners to avoid such conflict.

(2) A Commissioner may not be assigned to a project of the Commission and may not accept such assignment where there is a reason to believe that participation in such a project would constitute a conflict of interest unless—

(a) full disclosure of the circumstances of the possible conflict are made in writing to the Commission, and

(b) the assignment has been approved, in writing, by the Chairperson of the Commission and carried out in accordance with such conditions as may be specified by the Commission.

**12. Disclosure of interest upon appointment as Commissioner**

(1) A Commissioner must, not later than 30 April of each year, disclose to the Commission, particulars of all her or his registrable interests.

(2) A commissioner who assumes duty as a commissioner after 1 April in a year must make such disclosure within 30 days after assumption of duty.

(3) The following interests are registrable interests in terms of sub-regulation (1)-

- (a) Shares and other financial interests in private or public companies and other corporate entities recognised by law;
- (b) Directorships, trusteeships and partnerships;
- (c) Remunerated work outside the Commission;
- (d) Consultancies and retainerships;
- (e) Sponsorships;
- (f) Gifts and hospitality from a source other than a family member; and
- (g) Ownership and other interests in land and property, whether inside or outside the Republic.

**13. Disclosure of interest at meeting of Commission**

(1) If a Commissioner has a direct or indirect pecuniary or other interest in any matter in which the Commission is concerned, which could conflict with the proper performance of his or her duties in relation to that matter, he or she must disclose that interest as soon as practicable after the relevant facts come to his or her knowledge.

(2) If a Commissioner is present at a meeting of the Commission at which the matter is to be considered, the Commissioner must disclose the nature of his or her interest to the meeting immediately before the matter is considered.

(3) If a Commissioner is aware that the matter is to be considered at a meeting of the Commission at which he or she does not intend to be present, he

or she must disclose the nature of his or her interest to the chairperson before the meeting is held.

(4) A Commissioner who has made a disclosure under sub-regulation (2) must not be present during any deliberation or take part in any decision of the Commission in relation to the matter in question.

(5) A disclosure made under this regulation must be noted in the minutes of the relevant meeting of the Commission.

#### **14. Liability of Commissioners**

(1) A Commissioner is not personally liable by virtue of a report, finding made or expressed in good faith or made known in terms of the Act and these Regulations.

(2) A Commissioner is not liable in respect of an act or omission done in good faith while performing a function in terms of these Regulations.

#### **15. Commission to allow representations by interested parties**

The Commission may, on request by an interested party, member or employee, allow such person or persons to make representations, give oral or written evidence in support of such representations as the Commission may decide from time to time.

#### **16. Administrative rules of procedure**

The Commission may make rules which are not inconsistent with the Act regarding-

- (a) the sittings of the Commission;
- (b) the manner of dealing with matters and business before the Commission, generally;

- (c) the apportionment of the work of the Commission among Commissioners and the assignment of commissioners to review representations to the Commission;
- (d) any matter which in terms of these Regulations is required or permitted for the proper functioning of the Commission;
- (e) the filing of representations by interested parties;
- (f) steps which may be taken to give public notice or notice to persons who have an interest in any matter under investigation by the Commission;
- (g) the giving of notice to parties to attend a meeting of the Commission;
- (h) the keeping and preservation of records, documents and other evidence relating to an enquiry or recommendations by the Commission;
- (i) the rights or privileges of persons attending inquiries of the Commission as representatives, advisers, experts or observers; and
- (j) the procedure of meetings of the Commission and Committees of the Commission.

**17. Manner of dealing with representations**

- (1) The Commission—
  - (a) may receive representations made to it pursuant to an enquiry in any manner the Commission considers appropriate;
  - (b) must keep a record of the representations; and
  - (c) must consider the representations before preparing its final report.
- (2) A representation made to or received by the Commission by a person is not privileged with respect to that person.

## **18. Cooperation between Commission and other State Institutions**

(1) The Commission may make appropriate arrangements with other State Institutions to assist the Commission in the performance of its functions in so far as such institution has the power to assist the Commission.

(2) The Commission must co-operate with other State Institutions where the functions of the Commission overlap with those of such other State Institutions.

(3) The Commission must develop protocols for cooperation between the Commission and other State Institutions.

## **19. Guidelines**

(1) The Commission may issue guidelines on the Commission's policy approach to any matter within its jurisdiction.

(2) A guideline issued in terms of sub-regulation (1) is not binding on the Commission, an institution, interested party or a court of law.

## **20. Protection of confidential information**

(1) A person, including a member of the Commission, Committee, or Secretariat of the Commission, may not disclose confidential information or a confidential document obtained by that person in the performance of his or her functions in terms of the Act, except-

- (a) to the extent to which it may be necessary for the proper administration of a provision of the Act;
- (b) to a person who of necessity requires it for the performance of a function in terms of the Act; or
- (c) when required to do so by order of a court of law.

## **21. Recommendations by Commission**

(1) In making its recommendations the Commission may take into account one or more or all of the following:

- (a) The need to recruit, retain and motivate able and suitably qualified personnel taking into account the specific needs of the Defence Force;
- (b) Regional or local variations in labour markets and their effects on the recruitment and retention of staff;
- (c) Relevant legal obligations of the Defence Force, including legislation regarding age, gender, race, sexual orientation, religion and belief and disability;
- (d) Government policies for improving the public services, including the requirement to meet Defence Force output targets for the delivery of services;
- (e) The funds available to the Department as set out in the Government's departmental expenditure limits;
- (f) The competitiveness of the Defence Force with the private sector;
- (g) Differences in terms and conditions of employment between the public and private sectors;
- (h) The economic and technical evidence submitted by professional representatives and others;
- (i) The Government's inflation target;
- (j) Remuneration policies;

- (k) Recruitment and retention policies;
- (l) Education and training accreditation;
- (m) Programmes unique to military dispensations;
- (n) Military communities;
- (o) Veterans' dispensations;
- (p) Occupation specific dispensations;
- (q) Legislative imperatives;
- (r) Compensatory practices;
- (s) Operational requirements;
- (t) The need for the remuneration of the Armed Forces to be broadly comparable with remuneration levels in civilian life; and
- (u) Any other relevant factor in relation to conditions of service as defined in section 1(1) of the Act.

## CHAPTER 4

### DEFENCE FORCE SERVICE COMMISSION SECRETARIAT

#### 22. Establishment of Secretariat

A Secretariat for the Commission contemplated in section 621 of the Act must be established on the date on which the Commission is constituted.

#### 23. Composition of Secretariat

(1) The Secretariat must consist of the Head of Secretariat and such persons appointed or designated by the Minister after consultation with the Commission.

(2) The Head of Secretariat must attend, or be represented at the meetings of the Commission.

(3) The Head of Secretariat does not have voting rights at meetings of the Commission.

#### 24. Administrative functions of Secretariat

(1) The Secretariat must-

(a) co-ordinate the functions of the Commission;

(b) perform the secretarial and administrative functions of the Commission;

(c) develop Protocols in conjunction with the Commission;

(d) render logistical and technical support to the Commission and perform all other work that is incidental to the exercise or performance of the powers and duties of the Commission;

(e) organise the work, meetings and visit programmes of the Commission;

(f) attend to all domestic and foreign travel arrangements of the

Commission;

- (g) provide policy and statistical advice to the Commission;
- (h) liaise with all stakeholders on all matters related to the Commission;
- (i) carry out the instructions of the Commission, for which the Secretariat must be accountable; and
- (j) carry out the administrative work of the committees of the Commission.

(2) The Secretariat has such other administrative functions as may be assigned to the Secretariat by the Commission from time to time.

## **25. Appointment of Head of Secretariat**

(1) The Minister must, after consultation with the Commission, appoint a person as the Head of Secretariat of the Commission.

(2) When appointing the Head of Secretariat in terms of sub-regulation (1) the Minister may take into account the person's—

- (a) management qualifications, relevant knowledge and experience in the private and public sector;
- (b) special skills, expertise and administrative experience; and
- (c) suitability and competence for the efficient discharge of the powers and duties of the Head of Secretariat under these Regulations.

(3) The Head of Secretariat is appointed on such conditions as may be agreed upon by the Minister, after consultation with the Commission, and the person appointed.

(4) The Head of Secretariat holds office on a full-time basis.

(5) The Head of Secretariat must be a South African citizen who is a fit and proper person to hold such office.

(6) The Head of Secretariat may not engage in any other paid employment and may not participate in any activity in respect of which he or she is in any way remunerated or receives any benefits or allowances without prior written approval of the Chairperson of the Commission.

(7) The Minister may, at any time, after consultation with the Commission, discharge the Head of Secretariat from office-

- (a) if he or she repeatedly fails to perform the duties of office efficiently;
- (b) if he or she materially fails to comply with the conditions of the performance agreement entered into in terms of regulation 30;
- (c) if, he or she, due to a physical illness, mental illness or any other cause becomes incapable of performing the functions of his or her office or performs them inefficiently; or
- (d) for misconduct.

(8) The Head of Secretariat must vacate his or her office immediately if he or she-

- (a) is convicted-
  - (i) whether in the Republic or elsewhere of murder, robbery, theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or
  - (ii) of any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Companies Act, 2008 (Act No. 71 of 2008), the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Public

Finance Management Act, 1999(Act No. 1 of 1999) or the Act;

- (b) is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine; or
- (c) becomes a political office bearer.

(9) During the term of office of the Head of Secretariat, he or she must not carry on any activity inconsistent with the performance of the duties of the Head of Secretariat under these Regulations.

#### **26. Duties of Head of Secretariat**

(1) The Head of Secretariat is the head of the Commission's administration and manages the Secretariat.

(2) The Head of Secretariat has the powers and must perform the duties conferred upon him or her by or in terms of these Regulations and such powers and duties as may be assigned to him or her by the Commission.

(3) In the exercise of the powers and the performance of duties referred to in these Regulations, the Head of Secretariat is accountable to the Commission.

#### **27. Administrative responsibilities of Head of Secretariat**

(1) Subject to the directions of the Commission, the Head of Secretariat is responsible for-

- (a) the formation and development of an efficient administration for the Commission;
- (b) the organisation, control and management of the staff of the Commission;

- (c) the maintenance of discipline of members of staff of the Commission;
- (d) the carrying out of the decisions and orders of the Commission;
- (e) the effective deployment and utilisation of staff to achieve maximum operational results;
- (f) the secretarial duties at meetings of the Commission; and
- (g) any tasks, assignments or duties delegated by the Commission or the Chairperson related to the administration of the Commission as contemplated in Section 62I of the Act.

**28. Assignment and delegation by Head of Secretariat**

- (1) The Head of Secretariat may—
  - (a) assign, in writing, management or other duties to any member of staff with appropriate skills to assist the Head of Secretariat in the management and the control of the administrative functioning of the Commission; or
  - (b) instruct, in writing, any member of staff of the Commission to perform any of the Head of Secretariat's duties in terms of the Regulations.
- (2) An assignment or instruction under sub-regulation (1)—
  - (a) may be issued subject to conditions that the Head of Secretariat may impose; and
  - (b) does not divest the Head of Secretariat of the power to exercise the powers and perform the duties personally.
- (3) Subject to any limitations specified in the instrument of delegation the Head of Secretariat may—

- (a) delegate to any member or staff of the Commission a power or duty of the Head of Secretariat relating to—
  - (i) convening of meetings; or
  - (ii) directing members of staff or apportioning their work; and
- (b) delegate to any member or staff any power or duty of the Head of Secretariat under these Regulations.

(4) An assignment, instruction or delegation issued under sub-regulations (1) and (3) may be revoked in writing at any time by the Head of Secretariat.

#### **29. Conflict of Interest by Head of Secretariat**

The Head of Secretariat may not, without the prior written approval of the Commission, hold a direct or indirect financial interest in a business with which the Commission is consulting or which the Minister has appointed to assist the Commission.

#### **30. Head of Secretariat and Commission to enter into a Performance Agreement**

The Head of Secretariat and the Chairperson of the Commission must enter into an agreement about the performance of the Head of Secretariat's functions in terms of these Regulations.

#### **31. Short Title**

These Regulations are called the Defence Force Service Commission Regulations, 2014.

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