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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

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## COMMITTEE ON DELEGATED LEGISLATION

### REPORT ON THE KENYA DEFENCE FORCES (PENSIONS AND GRATUITIES) (OFFICERS AND SERVICE MEMBERS) REGULATIONS, 2017

MARCH 2018

*Directorate of Committee Services*

*The National Assembly,*

*Parliament Buildings, Continental House, Room 402*

**NAIROBI.**





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## ABBREVIATIONS

EM Explanatory Memorandum

NLC National Land Commission

SI Statutory Instruments

SO Standing Order

## CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 304 (l) (g) of the Kenya Defence Forces Act, No.25 of 2012, which empowers the Defence Council to make the Regulations *vide* section 304(g), the Cabinet Secretary for Defence and Chairperson of the Defence Council published the Kenya Defence Forces (Pensions and Gratuities) (Officers And Service Members) Regulations, 2017 on 7<sup>th</sup> July, 2017 vide LN No. 237/2017.

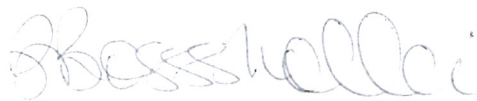
Following publication, the Regulations were tabled in the House on 7<sup>th</sup> November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

The Committee met with the Regulatory Making Authority (RMA) and considered the Regulations in its sitting held on Tuesday, 20<sup>th</sup> March, 2018 and made the decision to annul the Regulations for reasons advanced herein.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing technical support which was vital in the consideration of this instrument.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017.

Signed.....



Date.....



**HON. GLADYS BOSS SHOLLEI, CBS, MP**

**CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

## EXECUTIVE SUMMARY

The Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017 were tabled in the House on 7<sup>th</sup> November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

Having considered the Regulations, the Committee observed that they were published on 7<sup>th</sup> July, 2017 and submitted to the National Assembly on 25<sup>th</sup> September, 2017. This was considered to be within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act.

The Committee also observed THAT –

- (a) Regulation 4 contravenes Article 206 (2) and (4) of the Constitution and section 13(a) of the Statutory Instruments Act. The Regulation further contravenes section 13(g) of the Statutory Instruments Act, 2013 as it provides for expenditure from the Consolidated Fund.
- (b) Regulation 18 and 38, which establish a Pensions Assessment Board and a Pensions Appeal Board respectively, extends beyond the powers granted by the enabling legislation and are pursuant to section 24 of the Statutory Instruments Act inconsistent with the provisions of the Kenya Defence Forces Act.
- (c) Further, Regulations 18 and 38 contravene section 13(c) of the Statutory Instruments Act, 2013 as they contain matters, which should be more properly dealt with in an Act of Parliament.

**In view of the foregoing, the Committee recommends that pursuant to SO 210 (4) (b) and section 15 (1) of the SI Act, the Kenya Defence Forces (Pensions And Gratuities) (Officers And Service Members) Regulations, 2017 be annulled *in toto* for the following reasons –**

- (a) THAT, the Regulations contravenes section 13(g) of the Statutory Instruments Act, 2013 and Article 206 (2) and (4) of the Constitution on withdrawal of moneys from the Consolidated Fund;**

**(b) THAT, a Pensions Board is not derived from the Kenya Defence Forces Act.  
This is a matter that may be properly dealt with by an Act of Parliament.**



## 1.0 PREFACE

The Select Committee on Delegated Legislation is established pursuant to Standing Order No. 210 and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

### 1.1 Mandate of the Committee

The Committee is mandated to consider in respect of any statutory instrument, whether it: -

- (i) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- (ii) infringes on fundamental rights and freedoms of the public;
- (iii) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- (iv) contains imposition of taxation;
- (v) directly or indirectly bars the jurisdiction of the court;
- (vi) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;

The Committee is equally tasked with the responsibility of scrutinizing statutory instruments, whether: -

- (i) it involves expenditure from the consolidated fund or other public revenues;
- (ii) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- (iii) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- (iv) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (v) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- (vi) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (vii) inappropriately delegates legislative powers;

- (viii) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (ix) appears for any reason to infringe on the rule of law;
- (x) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,
- (xi) accords to any other reason that the Committee considers fit to examine.

## 1.2 Committee Membership

The Committee on Delegated Legislation as constituted by the House in December 2017 comprises of the following Members: -

**Hon. Gladys Boss Shollei, MP - Chairperson**

**Hon. Fatuma Gedi, MP - Vice- Chairperson**

Hon. Alice Wahome, MP

Hon. Robert Mbui, MP

Hon. Daniel Maanzo, MP

Hon. Muriuki Njagagua, M.P

Hon. Isaac Waihenya Ndirangu, MP

Hon. Alfred Bernard Wekesa Sambu, MP

Hon. William Kamket Kassait, MP

Hon. Ronald Kiprotich Tonui, MP

Hon. Munene Wambugu, MP

Hon. Charles Gimose, MP

Hon. Abdi Koropu Tepo, MP

Hon. George Gitonga Murugara, MP

Hon. Jennifer Shamalla, MP

Hon. Muturi Kigano, MP

Hon. Martha Wangari, MP

Hon. Patrick Kariuki Mariru, MP

Hon. Timothy Wanyonyi, MP

Hon. William Kamoti, MP

Hon. Wilberforce Oundo, MP

Hon. Sammy Seroney, MP

### 1.3 Committee Secretariat

The secretariat comprises of the following members of staff;

- |                       |  |
|-----------------------|--|
| 1) Mr. Susan Maritim  | <b>Clerk Assistant I (Team Leader)</b> |
| 2) Mr. Jimale Mohamed | <b>Clerk Assistant</b>                 |
| 3) Mr. Wilson Dima    | <b>Senior Legal Counsel</b>            |
| 4) Ms. Mugure Gituto  | <b>Legal Counsel</b>                   |
| 5) Ms. Anne N. Kigoro | <b>Research &amp; Policy Analyst</b>   |
| 6) Mr. Stanley Lagat  | <b>Serjeant-at-Arms</b>                |

## 2.0 CONSIDERATION OF THE INSTRUMENTS

### 2.1 Introduction and Background Information

In exercise of the powers conferred by section 304 (l) (g) of the Kenya Defence Forces Act, No.25 of 2012, which empowers the Defence Council to make the Regulations *vide* section 304(g), the Cabinet Secretary for Defence and Chairperson of the Defence Council published the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017 on 7<sup>th</sup> July, 2017 vide LN No. 237/2017.

The Regulations are a predecessor of the Kenya Armed Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 1980.

The Regulations deal with the power to grant and assess pensions, gratuities and allowances and provides for powers to grant pensions, the powers of the Defence Council to review pensions where it has been made in error or has been obtained by improper means and the suspension of pension on employment by a foreign power without consent of the Defence Council.

The Regulations provide –

- (i) for computation of pension, gratuity where the length of service does not qualify for pension, pension to dependants, gratuity when officer dies in service and death and indemnity benefit.
- (ii) that pensions may cease where an officer is adjudged bankrupt or declared insolvent by a judgement of a competent court, where the officer has shown him/herself to be disloyal or disaffected towards the Republic of Kenya, has committed subversive activities or has committed any criminal offence for which he is convicted and sentenced to a term of imprisonment. Where such an officer receives pardon from the President, his pension, gratuity or other allowance shall be restored to him retrospectively.
- (iii) establishment of the **Pensions Assessment Board** consisting of two retired senior military officers one of whom shall be the chairperson, a civilian public officer qualified on matters relating to human resources, a legal officer, all appointed by the Defence Council and a civilian medical practitioner appointed by the Defence Council on the recommendation of

the Director of Medical Services. The members of the Board shall hold office for a period of three years.

- (iv) establishment of an Appeals Board being the **Pensions Appeal Board** which consists of a retired general officer appointed by the Defence Council, who shall serve as the chairperson, a medical officer appointed by the Defence Council on the recommendations of the Director of Medical Services, and three other persons appointed by the Defence Council, one of whom shall be a legal officer.
- (v) for an allowance for disablement of an officer caused or aggravated while on duty and pensions for permanent disablement.

## 2.2 Making of the Regulations and Committal to the Committee on Delegated Legislation

The Regulations were tabled in the House on 7<sup>th</sup> November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

Section 304 (l) (g) of the Kenya Defence Forces Act, No.25 of 2012, empowers the Defence Council to make the Regulations, the Cabinet Secretary for Defence and Chairperson of the Defence Council published the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017 on 7<sup>th</sup> July, 2017 vide LN No. 237/2017.

## 2.3 Consideration of the Instruments

The Committee considered the Regulations pursuant to the provisions of Article 94(6) of the Constitution, the Kenya Defence Forces Act, No.25 of 2012 which empowers the Commission to make the Regulations, the Statutory Instruments Act (No. 23 of 2013) and the Interpretation and General Provisions Act (Chapter 2) which regulates the making, scrutiny and publication of the Regulations.

The Committee considered the Regulations in its sitting held on 18<sup>th</sup> January, 2018 and 20<sup>th</sup> March, 2018 in which representatives of the regulatory making authority were in attendance pursuant to section 16 of the Statutory Instruments Act on conferment before tabling the Report.

### 3.0 COMMITTEE OBSERVATIONS

Having considered the said Regulations, the Committee observed THAT –

- (2) the Regulations were made pursuant to section 304(g) the Kenya Defence Forces Act and the enabling provision is indicated in the Regulations;
- (3) the Regulations were unlikely to impose significant costs on the community or a part of the community and hence the regulatory impact assessment was not prepared for this Regulation pursuant to section 6.
- (4) pursuant to section 11 of the Act, the Regulations were also transmitted to the National Assembly within seven sitting days after the publication of the Regulations together with the explanatory memorandum.
- (5) the Regulations were made available through the Ministry's website and were subjected to a round table discussion with the defunct Commission on the Implementation of the Constitution, the State Law Office and the Kenya Law Reform Commission.
- (6) Regulation (4) provides that the Defence Council with the concurrence of the National Treasury may grant pensions, gratuities and other allowances to members of the Defence Forces and it shall be a charge on the Consolidated Fund. This provision raises two concerns namely that-
  - (a) **the Regulations involves expenditure from the Consolidated Fund. This contravenes section 13(g)of the Statutory Instruments Act, 2013 and the Constitution which provides *vide* Article 206 (2) for specific, precise and unambiguous circumstances upon which money may be withdrawn from the Consolidated Fund;**
  - (b) **further, the concurrence by the Kenya Defence Forces and the National Treasury to charge pensions, gratuities and other allowances contravenes Article 206(4) which requires that money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.**
- (7) **Regulation 18 and 38 establish a Pensions Assessment Board and a Pensions Appeal Board respectively. The power to establish a Pensions Board is not derived from the**

**Kenya Defence Forces Act. This is a matter that may be properly dealt with by an Act of Parliament.**

Further, the Committee observed that:

- 1) the regulatory-making authority in their presentation to the Committee stated that they intend to amend the parent Act (Kenya Defence Forces Act) to provide for the establishment of the **Pensions Assessment Board** and the **Pensions Appeal Board**. This is in contravention of Section 13(f) of the Statutory Instruments Act. Statutory Instruments cannot be made retrospectively.
- 2) there were numerous errors in the citation of the enabling legislation, which the regulation-making authority acknowledged.

#### **4.0 RECOMMENDATION**

Having considered the Regulations against the provisions of Article 94(6) of the Constitution, the Kenya Defence Forces Act, 2012, the Statutory Instruments Act, 2013 and the Interpretation and General Provisions Act (Chapter 2) which regulates the making, scrutiny and publication of the Regulations, the **Committee recommends that pursuant to SO 210 (4) (b) and section 15 (1) of the SI Act, the Kenya Defence Forces (Pensions And Gratuities) (Officers And Service Members) Regulations, 2017 be annulled *in toto* for the following reasons –**

- (a) **THAT, the Regulations contravenes section 13(g)of the Statutory Instruments Act, 2013 and Article 206 (2) and (4) of the Constitution on withdrawal of moneys from the Consolidated Fund;**
- (b) **THAT, a Pensions Board is not derived from the Kenya Defence Forces Act. This is a matter that may be properly dealt with by an Act of Parliament.**

## ANNEXURES

(i) Minutes of Committee sittings

(ii) Adoption List

(iii) Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members)  
Regulations, 2017




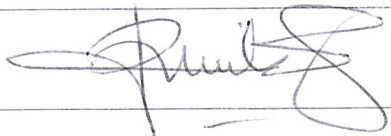

COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

REPORT ON THE KENYA DEFENCE FORCES (PENSIONS AND  
GRATUITY) (OFFICERS AND SERVICE MEMBERS) REGULATIONS,  
2017

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 24<sup>th</sup> March, 2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP(Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Sambu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	



	HON. MEMBER	SIGNATURE
11.	Hon. William Kamoti, MP	
12.	Hon. Patrick Kariuki Matiru, MP	
13.	Hon. Ronald Kiprotich Tonui, MP	
14.	Hon. William Kamket Kassait, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Charles Gimose, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Gitonga Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. (Dr.) Wilberforce Oundo, MP	
22.	Hon. Sammy Seroney, MP	



**MINUTES OF THE 14<sup>TH</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 20<sup>TH</sup> MARCH, 2018, AT 11.00 A.M. IN THE SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS**

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**PRESENT**

1. **Hon. Fatuma Gedi, MP** - **Vice Chairperson**(*Chairing*)
2. Hon. Dan Maanzo, MP
3. Hon. Jennifer Shamalla, MP
4. Hon. George Gitonga Murugara, MP
5. Hon. William Kamoti, MP
6. Hon. Martha Wangari, MP
7. Hon. Ronald Kiprotich Tonui, MP
8. Hon. Muturi Kigano, MP
9. Hon. (Dr.) Wilberforce Oundo, MP
10. Hon. William Kamket Kassait, MP
11. Hon. Timothy Wanyonyi, MP
12. Hon. Charles Gimose, MP
13. Hon. Munene Wambugu, MP
14. Hon. Sammy Seroney, MP

**ABSENT WITH APOLOGY**

15. **Hon. Gladys Boss Shollei, CBS, MP** - **Chairperson**
16. Hon. Muriuki Njagagua, MP
17. Hon. Alice Wahome, MP
18. Hon. Robert Mbui, MP
19. Hon. Alfred Sambu, MP
20. Hon. Isaac Waihenya Ndirangu, MP
21. Hon. Abdi Koropu Tepo, MP
22. Hon. Patrick Kariuki Mariru, MP

**IN-ATTENDANCE**

**National Assembly Secretariat**

- |                    |   |                       |
|--------------------|---|-----------------------|
| Ms. Susan Maritim  | - | First Clerk Assistant |
| Mr. Jimale Mohamed | - | Third Clerk Assistant |
| Mr. Dima Dima      | - | Senior Legal Counsel  |
| Mr. Charles Ayari  | - | Audio Officer         |

**Ministry of Defence**

- |                         |   |                                 |
|-------------------------|---|---------------------------------|
| Mr. Torome Saitoti      | - | Principal Secretary             |
| Lt. Gen. Joseph Kassaon | - | Vice Chief of Defence Forces    |
| Col. Daniel Odeny       | - | Legal Officer – Defence Counsel |
| Mr. Gerald Sakwa        | - | Parliamentary Liaison Officer   |

**MIN.NO. CDL/096/2018: PRELIMINARIES**

The meeting was called to order at 11.25 a.m. followed by a word of prayer said by Hon. George Gitonga Murugara, MP.

**MIN.NO. CDL/097/2018: ADOPTION OF THE PROGRAMME/AGENDA**

The Committee unanimously adopted the agenda as presented without amendments.

**MIN.NO. CDL/098/2018: CONFIRMATION OF MINUTES**

The Minutes of the 13<sup>th</sup> sitting held on Thursday 15<sup>th</sup> March, 2018 were confirmed as true record of the deliberations after being proposed and seconded by Hon. George Gitonga Murugara, MP and Hon. Wambugu Munene, MP, respectively.

**MIN.NO. CDL/099/2018: MATTERS ARISING**

No matter arose.

**MIN.NO. CDL/100/2018: CONSIDERATION OF KDF REGULATIONS, 2017**

The Vice Chairperson welcomed Members and officials from the Ministry of Defence led by the Principal Secretary, Mr. Torome Saitoti. Thereafter, a round of introductions was conducted.

She notified the meeting that the KDF Regulations were considered in Mombasa Retreat among other Regulations, where it was resolved that the regulatory-making authority should be invited for conferring on various Regulations pursuant to section 16 of the Act

The Committee was as follows -

That the Kenya Defence Forces through the Cabinet Secretary for Defence on 25<sup>th</sup> August, 2017 published twelve (12) Regulations which were subsequently submitted to the National Assembly on 25<sup>th</sup> September, 2017 and tabled before the House on 7<sup>th</sup> November, 2017.

**Committee Observations**

Following the meetings held in Mombasa in January 2018, the Committee observed THAT:

- (1) Four (4) of the twelve (12) Regulations complied with the relevant constitutional and legal provisions;
- (2) Seven (7) of the Regulations erroneously cited the enabling provisions. The Committee noted thereafter, that it may be rectified by way of a corrigenda published by the Attorney General. Members were also concerned about numerous errors found in the Regulations citing wrong provisions. In response, the KDF Legal Officer apologised for the oversight on his part and informed the Committee that the Ministry has since written to the Attorney General to rectify the same by way of a corrigenda;
- (3) the Kenya Defence Forces (Internal Grievance Mechanism) Regulations, contravened section 13(j) of the Statutory Instruments Act and section 303(2) of the Kenya Defence Forces Act which demonstrates that there has been unjustifiable delay in its publication.

The Committee inquired about correspondences between the Ministry and the defunct Constitution Implementation Commission to confirm the true position on the delay in publishing the Regulations;

- (4) The Kenya Defence Forces (Pensions and Gratuities) Regulations, 2017 irregularly seeks to withdraw funds from the Consolidated Fund contrary to Article 206(2). Regulation 4 violates Article 206(4) which provides that money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal;
- (5) Regulation 18 and 38 of the Kenya Defence Forces (Pensions and Gratuities) Regulations, 2017 establishes a Pensions Assessment Board and a Pensions Appeal Board respectively. This extends beyond the powers granted by the enabling legislation and section 24 of the Statutory Instruments Act. However, this may be cured by proposing amendments to the relevant section in the parent Act;
- (6) The Committee was further concerned about death sentence cited in Kenya Defence Forces (Execution of Sentence of Death) Regulations, 2017, and noted that the Supreme Court had pronounced it as unconstitutional and no institution in Kenya could execute death sentence. In response the PS noted that Capital punishment had been carried out in Kenya even before independence and is still provided for under Kenyan law and executions can only be carried out under circumstances of treason;
- (7) Members also inquired about the appointment of a public officer to be the secretary to the Pensions Assessment Board and not seeking from the Pension Fund. It was further observed that Regulation 18 and 38, which establish a Pensions Assessment Board and a Pensions Appeal Board respectively, contravenes section 13(c) of the Statutory Instruments Act, 2013 as they contain matters which should be more properly dealt with in an Act of Parliament; and
- (8) The Committee also inquired about the scope of the stakeholder consultation and engagement undertaken and whether counties were involved and the number of participants from county governments that were consulted. In response, the Ministry responded that the stakeholders' forum was covered by the then Constitution Implementation Commission (CIC) and incorporated views of the participants to the final draft on the KDF Regulations.

### **Committee Resolutions**

The Committee therefore resolved to **approve** the following KDF Regulations for having complied with the relevant constitutional and statutory provisions –

- 1) *The Kenya Defence Forces (Active Service Punishment) Regulations, 2017*
- 2) *The Kenya Defence Forces (Commissioning of Officers) Regulations, 2017*
- 3) *The Kenya Defence Forces (Execution of Sentence of Death) Regulations, 2017*
- 4) *Kenya Defence Forces (Imprisonment) Regulations, 2017*

The Committee further resolved to **approve the following Regulations subject to rectification of the erroneously cited provisions by way of a corrigendum** published by the Attorney General –

- 1) *The Kenya Defence Forces (Board of Inquiry) Regulations, 2017*
- 2) *Kenya Defence Forces (Rules of Procedure) Regulations, 2017*
- 3) *The Kenya Defence Forces (Internal Grievance Mechanism) Regulations, 2017*
- 4) *The Kenya Defence Forces (Retired Officers and Service Members) Regulations, 2017*
- 5) *The Kenya Defence Forces (Constabulary) Regulations, 2017*
- 6) *The Kenya Defence Forces (General) Regulations, 2017*
- 7) *The Kenya Defence Forces (Missing Persons) Regulations, 2017*

The Committee also resolved to **annul the Kenya Defence Forces (Pensions and Gratuities) Regulations, 2017** for the following reasons: -

- a) Regulation 4 contravenes Article 206(2) and (4) of the Constitution and section 13(a) and 13 (g) of the Statutory Instruments Act, 2013 as it provides for expenditure from the Consolidated Fund.
- b) Regulation 18 and 38, which establishes a Pensions Assessment Board and a Pensions Appeal Board respectively, extends beyond the powers granted by the enabling legislation and are pursuant to section 24 of the Statutory Instruments Act inconsistent with the provisions of the Kenya Defence Forces Act.
- c) Regulations 18 and 38 of the Kenya Defence Forces (Pensions and Gratuities) Regulations 2017 contravenes section 13(c) of the Statutory Instruments Act, 2013 as they contain matters which should be more properly dealt with in an Act of Parliament.

**MIN.NO. CDL /102/2018: ANY OTHER BUSINESS**

No other business arose.

**MIN.NO. CDL /103/2018: ADJOURNMENT**

There being no other business, the meeting was adjourned at 01.30 pm until Tuesday, 22<sup>nd</sup> March, 2018 at 11.00am.

Signed:.....

Date: 22/3/2018

**HON. GLADYS BOSS-SHOLLEI, CBS, MP  
(CHAIPERSON)**



5 ✓



**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 136*

*(Legislative Supplement No. 70)*

LEGAL NOTICE No. 237

THE KENYA DEFENCE FORCES ACT

*(No. 25 of 2012)*

THE KENYA DEFENCE FORCES (PENSIONS AND GRATUITIES)  
(OFFICERS AND SERVICE MEMBERS) REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

PART I—PRELIMINARY

*Regulation*

- 1—Citation.
- 2—Application.
- 3—Interpretation.

PART II—POWER TO GRANT AND THE ASSESSMENT OF  
PENSIONS, GRATUITIES AND ALLOWANCES

- 4—Power to grant pensions, gratuities and other allowances.
- 5—Power to review pensions.
- 6—Pensions, etc, not a right.
- 7—Suspension of pension on employment by a foreign power.
- 8—Pensions, etc., not assignable.
- 9—Pensions where promotions, etc., reduces amount of award.
- 10—Computation of pension.
- 11—Gratuity where length of service does not qualify for pension.
- 12—Pension to cease on death.
- 13—Gratuity where officer or service member dies in service or after retirement or discharge.
- 14—Death and Indemnity Benefit.
- 15—Pension to cease on bankruptcy.
- 16—Pension may cease for subversive activities, etc.
- 17—Pension may cease on conviction.
- 18—Establishment of the Pensions Assessment Board.
- 19—Duties and powers of the Board.
- 20—Entitlement to disability pension.

- 21 – Degrees of disablement
- 22 – Pensions for permanent disablement.
- 23 – Additional hardship allowance for permanent disablement
- 24 – Basis of award for permanent disablement.
- 25 – Procedure where disablement is not permanent
- 26 – Award for two or more disabilities
- 27 – Supply of surgical appliances.
- 28 – Optional medical examination.
- 29 – Power to reduce award for misconduct.
- 30 – Power to review awards.
- 31 – Review of pensions
- 32 – Suspension or withholding of pension
- 33 – Cost of living allowance.
- 34 – Payment of pensions, etc
- 35 – Award of pension or gratuity for insanity
- 36 – Procedure as to claims.
- 37 – Nature of award in respect of death.
- 38 – Pensions Appeals Board.

#### PART III – OFFICER'S PENSIONS AND GRATUITIES

- 39 – Officer's service and disablement pensions.

#### PART IV – SERVICEMEMBER'S PENSIONS AND GRATUITIES

- 40 – Service member's service and disablement pensions
- 41 – Service member's service gratuity.

#### PART V – MISCELLANEOUS

- 41 – Reduction of establishment and services
- 42 – Administrative directions.
- 43 – Presumption of Death.
- 44 – Military Pensions Liaison Officer.
- 45 – Payment of pension and gratuity within 90 days
- 46 – Revocation of L.N No 61 of 1980
- 47 – Savings

#### SCHEDULE

## THE KENYA DEFENCE FORCES ACT

(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304 (1) (g) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:—

THE KENYA DEFENCE FORCES (PENSIONS AND GRATUITIES)  
(OFFICERS AND SERVICE MEMBERS) REGULATIONS, 2017

## PART I—PRELIMINARY

1. These Regulations may be cited as the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service members) Regulations, 2017.

Citation.

2. These Regulations shall apply to all claims arising after the 1st July, 1978, in respect of all officers and service members of the Kenya Defence Forces and the dependants of such officers and service members.

Application.

3. (1) In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Kenya Defence Forces Act, 2012;

No. 25 of 2012.

“approved institutional treatment” means approved treatment in hospital or similar institution;

“approved treatment” means such medical, surgical or rehabilitative treatment as may be medically certified to be desirable in connection with any award payable under or by virtue of these Regulations;

“being on duty” means anytime during any twenty-four hour period that an officer or a service member is in the lawful service of the Kenya Defence Forces;

“Board” means the Pensions Assessment Board established by regulation 16;

“child” means a child of an officer or servicemember who is under the age of twenty-one years and who is a dependant and includes a posthumous child, a stepchild and an adopted child, and children shall be construed accordingly;

“death” includes presumption of death under section 245(3) of the Act or by an order of a court of competent jurisdiction;

“degree of disablement” means the percentage of disablement assessed in accordance with regulations 19 and 20;

“dependant” means a member of the family of an officer or servicemember or retired officer or discharged service members who before the death of such officer or servicemember or retirement of the officer or discharge of the servicemember was in receipt from him of regular and substantial support or benefit;

“disablement” means a physical or mental injury or damage, or the loss of physical or mental capacity;

"discharge" means, in the case of a servicemember, being relieved of military duties by the Commander or an officer, authorized by him in that behalf.

"heir" means a person named by the deceased in his will as heir or joint heir, or if the deceased dies intestate, the person who is accepted as the heir by the community to which the deceased officer or servicemember belonged whether by any law for the time being in force or by the law or custom applicable to that community and includes any two or more persons who are accepted as joint heirs of the person declared as an heir by a competent court.

"Medical Board" means a board of medical officers appointed by the Pensions Assessment Board.

"medical officer" means any person who is registered as a medical practitioner under the Medical Practitioners and Dentists Act.

"medically certified" means certified by a medical officer or a medical board.

"military service" means service with the Armed Forces and Kenya Defence Forces and shall include for the period prior to 12th December, 1963, service in any of the British Armed Forces. "month" means a calendar month, and broken periods at the beginning and the end of service shall be totalled and each complete thirty days shall be deemed to be one complete month.

"officer" means a person commissioned in any service of the Kenya Defence Forces.

"pay" includes the basic salary, additional pay and any entitlements which the Defence Council may, with the concurrence of the Treasury, specifically declare to be pensionable entitlements.

"pensionable emoluments" means the rate of pay including additional pay in issue to an officer or servicemember at the time of his retirement or discharge.

"resignation", in the case of an officer, means leaving service in the Kenya Defence Forces in circumstances not amounting to dismissal from the Kenya Defence Forces or termination of commission.

"retirement", in the case of an officer, means leaving service while holding a regular commission in the Kenya Defence Forces -

compulsorily after attaining the specified age of his rank as laid down in the terms and conditions of service and being eligible by length of service to a pension in accordance with these Regulations.

- (a) voluntarily after serving for a period that makes him eligible by length of service to a pension in accordance with these Regulations.

"retired officer" means an officer who has retired from the Kenya Defence Forces.

"service member" means any member of a service of the Kenya Defence Forces who is not an officer.

“termination of commission” means terminating the commission of an officer pursuant to the provisions of section 251 of the Act;

“the Appeal Board” means the Pensions Appeal Board established under regulation 37;

“widow” includes a widower; and

“wife” includes, in the case of an officer or service member in whose religion or customs, polygamy is lawful, any person to whom the officer or servicemember is lawfully married in accordance with the tenets of the religion or customs, and in that case the amount of the pension, gratuity or other allowance to which a wife is eligible under these Regulations shall be divided equally among all the wives during the period in which there is more than one wife eligible therefore; and “widow” shall be construed accordingly.

(2) For the purposes of assessing pension under these Regulations, qualifying service shall be ten years for officers and twelve years reckonable service for service members subject to the fulfilment of the requirements of regulation 38 in the case of officers and regulation 39 in the case of service members.

(3) For the purposes of assessing pension and gratuity under these Regulations reckonable service shall be any paid service with the Kenya Defence Forces excluding therefrom –

- (a) all periods during which an officer or servicemember has been absent from duty by reason of imprisonment, desertion or absence without leave for a period exceeding seven days;
- (b) any period of service while the person was below the age of eighteen years; or
- (c) any periods ordered by a court-martial to be forfeited;
- (d) service preceding a five-year interval in the service unless specifically allowed by the Defence Council at the time service is resumed; except that where during the break in service the officer, or service member has been a member of the regular reserve and has been called out for periodical training as provided under Part XVI of                      , the period during which the officer or service member was on the regular reserve shall not be considered as an interval in the service for the purposes of deciding whether the previous service is admissible.

(4) For the purpose of these Regulations, a disablement or death shall be deemed to be due to service if –

- (a) the disablement is due to wound, injury or disease---

- (i) which is attributable to service; or
  - (ii) which existed before or arose during the service and has been and remains aggravated thereby;
  - (iii) in both cases the injury or wound shall not have been self-inflicted, and
- (b) the death was due to or hastened by
- (i) a wound, injury or disease which was attributable to service; or
  - (ii) the aggravation by service of a wound, injury or disease which existed before or arose during service.

(5) For the purpose of these Regulations, where a commander issues a certificate of presumption of death in respect of any officer or servicemember or where declaration of presumption of death is made by a court of competent jurisdiction, the date on which the officer or servicemember is deemed to have died shall be the date stated in the certificate of presumption of death or declaration of presumption of death by the Court

#### PART II— POWER TO GRANT AND THE ASSESSMENT OF PENSIONS, GRATUITIES AND ALLOWANCES

4. Pensions, gratuities and other allowances may be granted by the Defence Council with the concurrence of the National Treasury in accordance with these Regulations to officers and service members of the Kenya Defence Forces and shall be a charge on the Consolidated Fund
5. The Defence Council may at any time review an award of pension made under these Regulations where it has been made in error or where, in the opinion of the Defence Council, it has been obtained by improper means and may on such review confirm, vary or cancel the award.
6. No officer or servicemember shall have an absolute right to compensation for past services or to pension, gratuity or other allowance nor shall anything in these Regulations affect the right of the Defence Council to terminate the commission of any officer or the Commander to discharge or dismiss a servicemember at any time and without compensation. An officer or servicemember sentenced to dismissal by Court Martial or Commanding Officer shall not be entitled to pension, gratuity or other allowance
7. If a retired officer or a discharged servicemember enters the service of a foreign power without the consent of the Defence Council or he continues in such service after the consent previously granted is withdrawn his service pension or other allowances granted under these Regulations may be suspended or withheld for such period as the Defence Council, with the concurrence of the National Treasury may determine
8. A pension, gratuity or allowance granted under these Regulations shall not be assignable or transferable except for the

Power to grant pensions etc

Power to review pensions

Pensions, etc., not a right

Suspension of pension on employment by a foreign power

Pensions etc., not assignable

purpose of satisfying an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or child, of the officer or servicemember to whom the pension, gratuity or other allowance has been granted, and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim other than a debt due to the Government.

9. (1) Where a service member who has been promoted by being granted a commission retires or resigns and thereby becomes eligible for an award of pension which is smaller than what he would have been entitled to had he not been commissioned he may receive an award assessed as though he had retired or resigned from the service in the rank which he held before being granted the commission.

Pensions where promotion, etc., reduces amount of award.

(2) Where an officer or service member has held acting rank for a period of 90 days or more at the date of retirement, the pension granted to him shall be that applicable to such higher rank.

(3) Where an officer or service member on promotion earns less pay than he earned in the previous rank, on retirement, computation for his pension will have regard to the higher pay earned in the previous rank.

10. (1) Every pension granted to an officer or servicemember in accordance with these Regulations shall be assessed at the annual rate of one-four hundredth of his pay for each completed month of his reckonable service.

Computation of pension.

(2) A pension payable to an officer or service member shall not be less than five thousand shillings per month:

Provided that a pension granted to an officer or servicemember under these regulations shall not exceed the highest pensionable emoluments drawn by him at any time in the course of his service in the Kenya Defence Forces.

(3) Any officer or servicemember who is entitled to a pension under these Regulations which does not exceed two hundred and fifty pounds per annum may commute up to one-half of the annual pension at equivalent of twenty times the amount of the annual pension commuted.

(4) Any officer or service member who is entitled to a pension under these Regulations which exceeds two hundred and fifty pounds per annum may commute up to one-quarter of that annual pension at the equivalent of twenty times the amount of the annual pension commuted.

(5) The normal retirement date is the date when an officer or service member attains retirement age.

11. Every officer or service member, otherwise qualified for a pension, who has not been in the service of the Kenya Defence Forces for ten years in the case of officers and twelve years in the case of service members, may be granted on retirement or discharge, as the case may be, a service gratuity not exceeding five times the annual amount of the pension which would have been granted to him had he

Gratuity where length of service does not qualify for pension.

service in the defence forces for a period of not less than five years in the case of officers and twelve years in the case of other members worked out at an annual rate of one ten hundredth of his pensionable emoluments for each completed month of his reckonable service.

12 (1) Subject to these regulations, in the case of the death of an officer or a service member or a retired officer or discharged service member there shall be continued to be paid a dependant's pension in addition to the grant made under regulation 13, on the terms and subject to the conditions set out in paragraph (3) to the widow or widower or the children of the officer or service member for a period of five years next following the officer's or service member's death at the rate of the officer's or service member's pension on the date of his death.

Pension to  
dependants of an  
officer or a  
service member

(2) Where a widow or a widower to whom a dependant's pension has been granted under this regulation dies or otherwise ceases to be entitled to a dependant's pension, the child or children who are entitled in accordance with the terms and conditions set out in paragraph (3), to a dependant's pension shall be entitled in accordance with these terms and conditions to receive the dependants' pension for the remainder of the period of 5 years from the date of the officer's or service member's death, which is still outstanding at the date when the widow or widower dies or otherwise ceases to be entitled to the dependants' pension.

(3) For the purposes of paragraph (1) a dependant's pension under these regulations shall be paid on the following terms and subject to the following conditions:

- (a) where the deceased officer or service member leaves a widow or a widower whether or not he or she also leaves a child, for so long as he or she is alive and remains unmarried, he or she is entitled to receive the whole of the dependants' pension at the appropriate rate provided for under paragraph (1);
- (b) where the deceased officer or service member does not leave a widow or a widower, or within the period of five years during which the dependants' pension is payable under this regulation the deceased officer's or service member's widow or widower dies or remarries, any child of the deceased officer or service member who is entitled at the appropriate date to receive the dependants' pension shall be entitled to receive, and if more than one child, in equal shares, the dependants' pension at the appropriate rate provided for under paragraph (1);
- (c) a dependant's pension or a share thereof shall not be payable to a child who has attained the age of 21 years or less, and only during the time that the child is receiving full time education at university, college, school or other educational institution approved by the Board for the purposes of this regulation;
- (d) a dependant's pension or a share thereof granted to a female child under this regulation shall cease upon her marriage at any time.



- (e) in the event of a child ceasing to be entitled to a share of a dependant's pension, his or her share shall, from the date of the cessation, be divided equally between all other children then still entitled to receive the pension and if only one child remains entitled, the whole of dependants' pension shall be paid to him;
- (f) where the deceased officer or service member leaves more than one widow then the dependants' pension shall be shared equally among them and in the event of any one of them dying or otherwise ceasing under any of the provisions of this regulation to be entitled to a share of the dependants' pension, then the pension shall be paid to the child or shared equally among the children of the dead widow and in the case the dead widow leaves no child or children then the pension shall be paid to the remaining widow or shared equally among the remaining widows accordingly;
- (g) no dependants' pension or share thereof shall be payable at any time after the fifth anniversary of the officer's or service member's death.
- (h) the dependant's pension shall be paid irrespective of the cause or circumstances of the officer's or service member's death.

13. (1) Where an officer or servicemember dies while still serving in the Kenya Defence Forces, the Defence Council, in consultation with the National Treasury, may grant to his dependants a death gratuity of an amount not exceeding twice his annual pensionable emoluments or his commuted pension or gratuity, whichever is the greater.

Gratuity where officer or service member dies in service or after retirement or discharge.

(2) Where an officer or servicemember dies after his retirement or discharge, as the case may be, from the Kenya Defence Forces having been granted or having become eligible for a pension under these Regulations and the amount payable to him at the date of his death on account of such pension including any amount awarded by way of gratuity under regulation 11, but excluding any additional disablement pension awarded under regulation 21, is less in total than twice the amount of his annual pension, the Defence Council may grant a gratuity equal to the deficiency to his dependants.

(3) The death gratuity payable to dependants under paragraphs (1) and (2) shall be paid irrespective of circumstances or cause of the officer's or service member's death.

14. (1) Where an officer or service member dies while still serving in the Kenya Defence Forces, the Defence Council shall pay a death and indemnity benefit to a beneficiary to the widow or widower recorded in the officer's or service member's records or the designated next of kin where the officer or service member is unmarried, for a period of three consecutive months following the death of the officer or service member.

Death and  
Indemnity  
Benefit

(2) The death and indemnity benefit shall be equivalent to the officers or service member's salary net after statutory deductions

(3) The death and indemnity benefit shall not be deemed to be part of the estate of the deceased officer or service member.

15. (1) Subject to paragraph (3), where an officer or service member to whom a pension has been granted under these Regulations is adjudicated bankrupt or is declared insolvent by judgement of a competent court the pension shall cease as from the date of adjudication or declaration

Pension to cease  
on bankruptcy

(2) Where an officer or service member qualifies for a pension under these Regulations and is adjudicated bankrupt or is declared insolvent by a judgement of a competent court

- (a) after qualifying, he may be granted a pension or gratuity, but the pension shall cease as at the date of adjudication or declaration, or the gratuity shall not become payable, as the case may be, or
- (b) before qualifying and at the date of qualifying he has not obtained his discharge from the bankruptcy or ceased to be insolvent, he may be granted a pension or gratuity, but the pension shall cease from the date of qualifying or the gratuity shall not become payable, as the case may be

(3) Where by virtue of paragraph (1) pension ceases to be payable or a gratuity fails to become payable to any person the Defence Council may, from time to time, during the remainder of that person's life or such shorter periods either continuous or discontinuous as the Defence Council, with the concurrence of the Treasury, thinks fit direct that all or any part of the money which the person would have been entitled to by way of pension or gratuity had he not become bankrupt or insolvent shall be paid or applied for the maintenance or benefit of that person and his wife, children or other dependants or any of them in such proportion and manner as it thinks proper or for the discharge of that person's debts and the money shall then be paid or applied accordingly

(4) Where a person whose pension has ceased or whose gratuity has failed to become payable by virtue of paragraph (2) obtains his discharge from the bankruptcy or ceases to be insolvent the Defence Council may direct that his pension shall be restored from the date of such discharge or that he be paid any unpaid balance of his gratuity which has not been paid or applied, as the case may be, and his pension or gratuity shall then be paid accordingly

16. Where the Defence Council is satisfied that an officer or service member to whom a pension has been granted under these Regulations—

Pension may  
cease for  
subversive  
activities, etc.

- (a) has shown himself by act or speech to be disloyal or disaffected towards the Republic of Kenya;
- (b) has during any war in which the Republic of Kenya is engaged, unlawfully traded or communicated with the enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy during war;
- (c) has failed to fulfil his commitments concerning the reserve;
- (d) has committed any criminal offence for which he is convicted and sentenced to a term of imprisonment; or
- (e) has engaged in activities which are subversive within the meaning of Chapter VII of the Penal Code,

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it may direct that the pension granted to the officer or service member shall cease from a specified date:

Provided that the Defence Council, with the concurrence of the National Treasury, may in its discretion at any time divert the whole or part of the pension to or for the benefit of his wife or husband, children or other dependants and may at any time after his pardon or release from prison restore the pension.

17. (1) Where an officer or service member to whom pension, gratuity or other allowance has been granted under these regulations is sentenced to a term of imprisonment by a competent court for any criminal offence, such pension, gratuity or allowance shall cease if the Defence Council so directs with effect from such date as the Defence Council shall determine.

Pension may  
cease on  
conviction.

(2) Where after retirement an officer or service member is sentenced to a term of imprisonment by a competent court for any criminal offence and in the circumstances in which he is eligible for pension, gratuity or some other allowance under these regulations, but before that pension, gratuity or some other allowance is granted then:

- (a) paragraph (1) shall apply in respect of any pension, gratuity or allowance which may be granted to him; and
- (b) the Defence Council may direct that any pension, gratuity or allowance which should have been paid to such an officer be not paid.

(3) Where pension, gratuity or any other allowance ceases by reason of this regulation, it shall be lawful for the Defence Council to direct all or any part of the money to which such officer or service member was entitled by way of pension, gratuity or any other allowance to be paid or applied in the same manner in all respects as provided for in these regulations and such money shall be paid and applied accordingly.

(4) Where an officer or service member whose pension, gratuity or any other allowance has ceased under this regulation, subsequently receives pardon from the President his pension, gratuity or other allowance shall be restored to him retrospectively

18 (1) There is hereby established a Board, to be known as the Pensions Assessment Board, which shall consist of

Establishment of  
the Pensions  
Assessment  
Board

- (a) two retired senior military officers one of whom shall be the chairperson, appointed by the Defence Council.
- (b) a civilian public officer qualified on matters relating to human resources appointed by the Defence Council,
- (c) a legal officer appointed by the Defence Council; and
- (d) a civilian medical practitioner appointed by the Defence Council on the recommendation of the Director of Medical Services

(2) The members of the Board shall hold office for a period of three years renewable from the date of appointment

(3) The Defence Council shall on the recommendation of the Director of Pensions appoint a public officer to be the secretary to the Board

(4) The Chairperson shall preside over all meetings of the Board and in the absence of the Chairperson, the other members present at the meeting shall appoint one of the members to act as Chairperson for the purpose of that meeting

(5) The quorum for a meeting of the Board shall be three members and the Secretary

(6) Subject to the provisions of these Regulations and to any direction issued by the Defence Council under these Regulations, the Tribunal shall regulate its own procedure

19 (1) Where an officer or service member suffers disablement as a result of a wound, injury or disease, the Board shall

Duties and  
powers of the  
Board

- (a) shall determine whether the wound, injury or disease was due to, hastened by or aggravated by his service, or
- (b) in the case of disability, assess the degree thereof.

and may award pension for permanent disablement and additional hardship allowance in accordance with regulations 21 and 22

(2) In the exercise of its powers and duties under these Regulations the Board may appoint a service medical officer or board of service medical officers

- (a) to advise on any claim, or
- (b) to carry out any medical examination which is required to be carried out by or under these Regulations or which, in the

opinion of the Board, should be carried out in order to enable the Board to assess the entitlement or the degree of disablement of any officer or service member for any other reason which the Board considers sufficient.

(3) Where in these Regulations a power is conferred upon the Board to review and revise any pension, gratuity or allowance, such power shall include the power to review and revise any pension or allowance awarded under the provisions of any of the regulations repealed by these Regulations (hereinafter referred to as the "repealed Regulations") except that the Board shall not revise such award if the effect of such revision would be to decrease the amount previously awarded.

(4) The Board shall keep a record of all the awards made and shall—

- (a) furnish a copy thereof to the Chief of the Kenya Defence Forces; and
- (b) inform every person in respect of whom an award has been made of the terms of the award and the procedure to be followed in order to obtain payment.

20. (1) The disablement of an officer or service member or retired officer or discharged service member shall be accepted as due to service for the purpose of these Regulations if—

Entitlement to  
disability per

- (a) the disablement is due to a wound, injury or disease which was inflicted or caused while on duty; or
- (b) it arose during service or has been aggravated by service.

(2) For the purpose of these regulations every officer and service member shall, unless the contrary is proved, be deemed to have been medically fit and not suffering from any wound, injury or disease at the effective date of his commissioning or enlistment, as the case may be.

(3) Where a wound, injury or disease which has led to an officer's or service member's retirement or discharge during service was not recorded in any medical report made on the officer or service member at the commencement of his service, such wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions set out in paragraph (1) are not fulfilled.

(4) Where after the expiration of the period of seven years from the retirement of an officer or discharge of a service member, a claim is made in respect of his disablement, such disablement shall be accepted as due to service if—

- (a) in the case of disablement the Board is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled; and
- (b) in the case of death the retired officer or discharged service member was at the time of his death, or had at any time previously thereto been, in receipt of a pension or temporary

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allowance awarded by the Board in respect of the wound, injury or disease which was the cause of or substantially hastened his death and the Board is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled

(5) Where upon reliable evidence a reasonable doubt exists as to whether in respect of a claim under paragraph (3) the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant, and where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted

(6) Where a wound, injury or disease which has led to an officer's or service member's death during his service was not recorded in any medical report made at the commencement of his service, the wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions in paragraph (1) (a) and (b) are not fulfilled

(7) Where after the expiration of a period of seven years from the retirement of an officer or discharge of a service member, a claim is made in respect of his death (being death occurring after the expiration of that period), such death shall be accepted as being due to service if at the time of his death or anytime previous thereto the officer or service member had been in receipt of a pension or temporary allowance awarded by the Board in respect of the wound, injury or disease which was the cause of or substantially hastened his death and the Board is satisfied that the death is due to service

21. (1) The degree of disablement to be assessed by the Board shall be the measure of disablement which is considered to have been suffered by an officer or service member or retired officer or discharged service member by a comparison of his current condition with the condition of a healthy able-bodied person of the same age without taking into account -

- (a) his earning capacity in his disabled condition in his own or in any other specific trade or occupation, and
- (b) the effect of any individual factors or extraneous circumstances

(2) The degree of disablement shall be expressed as a percentage (100 per cent representing total disablement) in any one of the following classifications

- (a) 100 per cent.
- (b) less than 100 per cent but not less than 80 per cent.
- (c) less than 80 per cent but not less than 60 per cent.
- (d) less than 60 per cent but not less than 40 per cent.
- (e) less than 40 per cent but not less than 20 per cent
- (f) less than 20 per cent but not less than 11 per cent.
- (g) 10 per cent and under

Degrees of  
disablement

(3) In the case of disablement suffered by reason of two or more disabilities attributable to service the degrees of disablement shall be determined with reference to the combined disablement from the disabilities together, but it shall not exceed 100 per cent.

(4) The degree of disablement for specified injuries and certain other disabilities shall be assessed in accordance with the Schedule.

22. (1) Subject to the provisions of regulation 20, in the case of the permanent disablement of a retired officer or discharged servicemember the Board shall award, in addition to the gratuity or pension provided for under these Regulations, pension in accordance with the following table—

Pensions for permanent disablement.

MONTHLY RATES OF PENSIONS AND ALLOWANCES FOR  
DISABLEMENT

Degree of disablement	1%-9%	10% - 19%	20%-39%	40%-79%	80%-100%
Rates of pensions and allowances	"Lump-sum" 2 months' pay	"Lump-sum" months' pay	25% of monthly pay as at the date of retirement	35% of monthly pay as at the date of retirement	50% of monthly pay as at the date of retirement

(2) An award of pension under this regulation shall, where temporary allowances have been granted under these Regulations, be made to take effect after the cessation of the payment of such temporary allowances, and where no temporary allowances has been granted such award shall, except where the Board otherwise directs, be made to take effect—

- (a) in the case of a retired officer or discharged service member, where the application for the award was made prior to his retirement or discharge, from the day following the date of his retirement or discharge; or
- (b) in any other case, from the date on which the application for the award was made or on such other date as the Board may determine.

23. (1) Where a pension has been awarded under these Regulations based on a degree of disablement, and in the opinion of the Board there are conditions of exceptional hardship, the Board may award an additional allowance of an amount not exceeding fifty per cent of the pension.

Additional hardship allowance for permanent disablement.

(2) An additional pension allowance under paragraph (1) may be of either a temporary or permanent nature as the Board may determine.

(3) Where the allowance is made on a temporary basis, it shall be reviewed and may be varied or terminated, at such time or times as the Board may direct.

24. (1) Every award under these Regulations shall be made on the degree of disablement assessed by the Board at the time it accepts the

Basis of award for permanent

disablement as permanent, except that the Board may at any time make a final assessment of the degree of disablement and if, at the expiration of seven years from the date of retirement or from the date on which the retired officer or discharged service member was first notified of the award, whichever is the later, the Board has not made such final assessment, it shall thereupon do so having regard to all the circumstances of the case.

disablement

(2) Nothing in this regulation shall be read as precluding a review of a final assessment in accordance with these Regulations.

25 (1) Where the Board has reason to believe that the disablement accepted as being due to service may not be permanent, and the degree of disablement is assessed at less than 20 per cent, but the Board considers that the disablement or the degree of disablement accepted as due to service is likely to persist for more than one year from the date of retirement or from the date of application, as the case may be, it may in its discretion award a gratuity equal to one half of the disablement gratuity appropriate to the degree of disablement then found in accordance with these Regulations which shall be deducted from any award which may be made later should the Board accept the disablement as permanent.

Procedure where  
disablement is not  
permanent

(2) Where -

- (a) the Board has reason to believe that the disablement or the degree of disablement accepted as being due to service may not be permanent,
- (b) in the case of a disablement accepted as permanent, in the opinion of the Board and on the medical evidence there is likely to be a material and early decrease in the degree of disablement; or
- (c) in either case, the degree of disablement is assessed as 20 per cent or over,

the Board may award a temporary allowance which shall be at the appropriate rate set out in these Regulations, which allowance may be reviewed and reassessed after medical examination at a date to be recorded in the proceedings of the Board and which medical examination shall be carried out at such time and place as the Board may direct.

(3) The Board shall have power to direct that the medical examination referred to in sub regulation (2) be done by service medical officers.

(4) Where a retired officer has been awarded a temporary allowance under paragraph (2) and there has been no material decrease in the degree of his disablement during the period of two years from the date of his retirement or from the date on which he was notified of the award of such temporary allowance, whichever is the later, during which time he has received adequate medical treatment, the Board may in its discretion make an award of a gratuity equal to one half of the disablement gratuity appropriate to the degree



of disablement than that found in accordance with regulation 19, which award shall be deducted from any award of gratuity made thereafter, should the Board accept the disablement as permanent, but the retired officer or discharged service member shall be required to make any refund if the amount of the final gratuity is less than the award made by the Board under this paragraph.

(5) Where the Board has reason to believe that an increase in the degree of disablement of a retired officer or discharged service member to whom an award of a pension has been made after a final assessment under these regulations may not be permanent, it may award a temporary allowance, in addition to the pension, of an amount that will bring the combined awards up to the rate appropriate to the increased degree of disablement, and such temporary allowance shall be reviewed and reassessed from time to time after medical examination as the Board may direct, and may be reduced, increased, terminated or made permanent as the Board, having regard to the circumstances, may decide.

26. (1) Where an award is to be made in respect of disablement suffered by reason of two or more disabilities, not all of which are accepted as permanent, and the permanent disability or disabilities is as set out in the Schedule, the Board shall, subject to the provisions of these Regulations, award the appropriate gratuity immediately, notwithstanding that the award made in respect of the combined disablement from the disabilities together may be temporary.

Award for two or more disabilities.

(2) Where the disability or disabilities referred to in sub-regulation (1) and which are not accepted as permanent are subsequently so accepted or disappear, and when a final assessment is made and a pension awarded, then the amount of gratuity appropriate on assessment of the combined disablement may be awarded.

27. In cases where it is medically certified that the disablement in respect of which an award has been made under these Regulations renders surgical appliances necessary the Board may order that such appliances be supplied free of charge.

Supply of surgical appliances.

28. Any retired officer or discharged service member who has been awarded a pension under these Regulations other than on an interim basis may at his own request be medically examined by a service medical officer or a board of service medical officers appointed by the Board, once in every year, at such time and place as the Board may consider appropriate.

Optional medical examination.

29. (1) Where a retired officer or discharged service member who has been awarded a pension whether on an interim or other basis, for any reason neglects or refuses to be medically examined as required by the Board under these Regulations, the Board may, if it considers that such neglect or refusal is unreasonable, reduce the pension as it thinks fit, and the amount so reduced shall not be restored until the retired officer or discharged service member has been medically examined or until the Board is satisfied that the neglect or refusal was not or is no longer unreasonable.

Power to reduce award for misconduct.

(2) Where a retired officer or discharged service member who has been awarded a temporary allowance neglects or refuses to present

himself for medical examination as required under these Regulations, the Board may, if it considers the neglect or refusal unreasonable, suspend the award until he so presents himself, and in so doing it shall be for the Board to determine, having regard to the circumstances, from what date the restoration (if any) of the award shall take effect.

(3) Where it is medically certified that a retired officer or discharged service member should receive approved treatment or approved institutional treatment, and such retired officer or discharged service member, having been so informed, refuses or neglects to receive such treatment, the Board may, if it considers the refusal or neglect unreasonable, reduce the gratuity, pension or temporary allowance in respect of such retired officer's or discharged service member's disablement by such amount not exceeding one half, as the Board may think fit.

(4) For the purpose of paragraph (3), any misconduct on the part of a retired officer or discharged service member which in the opinion of the Board, prevents the treatment from being given or counteracts its effects may be considered as a refusal by such retired officer or discharged service member to receive the treatment.

(5) Where the Board is satisfied that the death or disablement in respect of which a claim is made is attributable to negligence or misconduct on the part of the retired officer or discharged service member concerned, it may refuse to award a pension, gratuity or allowance, either in whole or in part.

(6) Where third party compensation is paid by or on behalf of a person alleged to be responsible for any act, omission or circumstances which caused the injury or death of an officer or service member or a retired officer or discharged service member the Board may reduce any pension, gratuity or allowances to be awarded under these Regulations by such amount as the Board may, in all the circumstances of the case, consider appropriate.

30 The Board may at any time review an award made under these Regulations where it has been made in error or where, in the opinion of the Board, it has been obtained by improper means, and on any such review the Board may confirm, vary or cancel the award or may substitute another award.

Power to review awards

31 Pensions and gratuities shall be kept under review from time to time but in any event within a maximum interval of four years by the Defence Council in consultation with the National Treasury and on the advice of the Salaries and Remuneration Commission.

Review of pensions

32 (1) The Defence Council shall have the power to suspend or withhold pensions or gratuities either wholly or in part as the case may be, and subject to any other regulations made under this Act or generally relating to pensions.

Suspension or withholding of pensions

(2) In exceptional cases payment of part or the whole of suspended pensions, gratuity or any other allowance, may with the consent of the Treasury be made by the Defence Council to or for the benefit of the wife or other dependant of the officer or service member.

33. Every award of a pension or temporary allowance made by the Board under these Regulations shall be subject to such increase by the addition of a cost of living allowance as the Government may from time to time, by order published in the Gazette, provide.

Cost of living allowance.

34. (1) Subject to the provisions of these Regulations the Principal Secretary to the Treasury shall pay all pensions, allowances, gratuities and other charges payable under or by virtue of these Regulations, including such travelling and other expenses as may be certified under these Regulations.

Payment of pensions, etc.

(2) Every pension payable under or by virtue of these Regulations shall be payable monthly in arrears.

(3) Every temporary allowance payable under or by virtue of these Regulations shall be payable in arrears, at intervals not less frequent than once in every month for such length of time as may be determined by the Board.

35. An officer or servicemember who is pronounced by a medical board to be mentally unfit and has at least ten years' service in the case of officers and twelve years of reckonable service in the case of service members, may be granted a service pension and where the remaining period is less than ten years in the case of officers and less than twelve years' reckonable service in the case of service members, he may be granted a gratuity.

Award of pension or gratuity for insanity.

36. All claims for pensions, allowances or gratuities under these Regulations shall be submitted to the Board, which shall, on receipt thereof, obtain from the appropriate service authorities –

Procedure as to claims.

- (a) full particulars of the officer or service member in respect of whom the claim is made, including all such particulars regarding his service as may be relevant to the claim;
- (b) the medical history of the officer or service member and a copy of the proceedings and findings of the medical board with regard to him;
- (c) a copy of the proceedings of any court of inquiry into the cause of the accident, injury or death giving rise to the claim, and where the claim is based on the death of an officer or service member—
  - (i) a certificate of death signed by a medical officer; and
  - (ii) unless unobtainable a declaration of death, signed by a responsible service authority; or
  - (iii) where the claim is based on presumed death, a certificate of presumption of death or a declaration of presumption of death made by a court of competent jurisdiction, as the case may be; and
- (d) the names, addresses and particulars of—
  - the officer's or service member's dependants and the degree of their dependency on him; and

- (ii) the officer's or service member's heir or
- (iii) where there is a will, particulars of the executor named in the will

37 (1) In the case of the death of an officer or service member or retired officer or discharged service member (in this regulation referred to as the 'deceased') the Board may, as from the day next following the death of the deceased, award -

Nature of award  
in respect of  
death

- (a) where the deceased leaves a widow or widower a pension to him or her at the rate not exceeding one-third of the deceased's rate of pay as at the date of his death or retirement and if there is more than one widow, the pension shall be divided equally between them;
- (b) if in addition to the widow or widower, the deceased leaves a child or children, a pension in respect of each child until such child attains the age of twenty one years, of an amount not exceeding one quarter of the pension awarded to the widow
- (c) where the deceased leaves no widow or widower but leaves a child or children, or if the pension payable to the widow or widower ceases, or if no pension is payable to the widow or widower, the pension payable to each of the children under subparagraph (b) shall be doubled from the date following the date of the death of the deceased or from the date on which the pension payable to the widow or widower ceases, as the case may be.

Provided that-

- (i) a pension to a child under subparagraph (b) shall cease upon the marriage of such child,
- (ii) where any widow who is in receipt of a pension under subparagraph (a) and who has under her charge a child or children in receipt of a pension under this subparagraph dies or otherwise ceases to be entitled to a pension the Board may in its discretion continue to pay the pension or any part of it to an approved guardian, provided that it is applied towards the maintenance and education of the child or children to the satisfaction of the Board

(2) Where any widow or widower to whom a pension has been awarded under this regulation remarries, or cohabits with any person as his wife or as her husband, the Board shall, if there is no child of the deceased under his or her charge, cease payment of the pension from the date next following such remarriage or cohabitation upon confirmation of the same, but if the widow or widower has under his or her charge such child or children of the deceased the Board may continue to pay the pension or any part thereof to the widow or widower or in the event of his or her death to an approved guardian on the conditions set out in paragraph (1) (b)

(3) Where any child is in receipt of a pension under paragraph (1) (b) and is under the charge of the widow or widower of the deceased the pension shall be paid to the widow or widower provided that it is applied towards the maintenance and education of the child to the satisfaction of the Board.

(4) Where there is no widow or widower, or if the widow or widower abandons any child of the deceased, the Board may in its discretion continue to pay the pension or any part thereof to which the child may be entitled under paragraph (1) (b) to an approved guardian provided it is applied towards the maintenance and education of the child to the satisfaction of the Board.

(5) Where the pension of a childless widow or widower has been terminated in accordance with the provisions of paragraph (2) or has ceased on her death the Board may in its discretion after consultation with the County Commissioner of the County in which the deceased resided award to any needy dependant of the deceased as a gratuity, the total amount of the pension for six months that would be awarded to the widow, and such gratuity shall be distributed at the discretion of the Board.

(6) Where the deceased leaves neither a widow or widower nor children, the Board may in its discretion, award a gratuity to any surviving parents, brothers and sisters of the deceased of an amount not exceeding the pension for six months that would be awarded to the widow or widower and such gratuity shall be distributed at the discretion of the Board.

(7) Where the deceased leaves neither a widow or widower, children nor dependants, the Board shall award to the heir of the deceased a gratuity not exceeding the deceased's pay for one month as at the date of his death or retirement.

(8) No widow or widower shall be entitled to an award under this regulation unless his or her marriage to the deceased was recognized by any law for the time being in force or by the law or custom of the community to which the deceased belonged.

(9) A gratuity awarded under paragraph (7) shall be in full and final settlement.

38. (1) There is hereby established an Appeals Board to be known as the Pensions Appeal Board which shall consist of –

Pensions Appeal Board.

- (a) a chairperson who shall be a retired general officer appointed by the Defence Council;
- (b) a medical officer appointed by the Defence Council on the recommendations of the Director of Medical Services; and
- (c) three other persons appointed by the Defence Council, one of whom shall be a legal officer,

and none of whom may also be a member of the Pensions Assessment Board established under regulation 18.

(2) The chairperson, the secretary and two other members shall constitute quorum for any meeting of the Appeals Board.

(3) The members of the Appeals Board appointed under paragraph (1) shall hold office for a period of three years.

(4) Subject to the provisions of these Regulations and to any direction issued by the Defence Council under these Regulations the Appeals Board shall regulate its own procedure.

(5) There shall be a secretary who shall be a public officer to be appointed by the Defence Council on the recommendation of the Director of Pensions.

(6) An appeal shall lie to the Appeals Board against any decision of the Board established under these Regulations affecting

- (a) an entitlement to pension, gratuity or allowance under these Regulations,
- (b) the degree of disablement under these Regulations where:
  - (i) final assessment and award of a disablement pension or gratuity or both, has been made, or
  - (ii) a disablement pension awarded on an interim basis, or a temporary allowance, has been terminated by the Appeals Board on the ground either that there is now no disablement due to or aggravated by service or that disablement still persisting is under 20 per cent.
- (c) the suspension of a temporary allowance under regulation 32; or
- (d) the reduction of or refusal to make an award, under these regulations, and against any decision of the Board on review.

(7) Every appeal under this regulation shall be brought within twelve months from the date on which the decision of the Board is notified to the claimant except that the Appeals Board may allow an appeal to be brought after the expiration of the period limited by this paragraph if in the opinion of the Board there was reasonable excuse for delay.

(8) Notice of the time, date and place of hearing of an appeal shall be given to the appellant provided that where the Appeals Board is satisfied that an appellant cannot be traced it shall be sufficient if such notice shall have been sent to him by registered post to his last known address or place at which he was last known to reside.

(9) Every appellant shall have the right of appearing before the Appeals Board in person or by a legal representative and should an appellant fail to appear, either in person or by a legal representative, at the time and at the date and place notified to him for the hearing of the appeal, the Appeals Board may, in the absence of any satisfactory explanation, proceed to determine the appeal.

(10) The Appeals Board shall have power to vary the amount of any award made by the Board, either by increasing or decreasing the award, but except in an appeal against such a decision the Appeals Board shall not make an award where no award has been made by the Board.

(11) The Appeals Board shall have power to call for any document relating to the appellant's service from the appropriate service authority, and to order the appellant to undergo a medical examination by a medical officer to be appointed by the Appeals Board in any particular case and may certify to the Principal Secretary to the National Treasury any reasonable travelling and other expenses which have been incurred by any person appearing, with the permission and in accordance with the instructions of the Appeals Board or before any medical examination of such person under the provisions of this paragraph.

(12) The decision of the Appeals Board upon an appeal made under this Regulation shall be final.

### PART III— OFFICER'S PENSIONS AND GRATUITIES

39. (1) An officer who is —

Officer's service  
and disablement  
pensions.

- (a) retired or allowed to retire on or after reaching the normal age of retirement as laid down in the terms and conditions of service in the Defence Forces drawn under the provisions of the Act; or
- (b) retired compulsorily before reaching the age of retirement because it has been decided that further employment is not available for him, may, provided that he has completed at least ten years reckonable service, be granted on retirement a service pension in accordance with these Regulations.

(2) Every officer otherwise eligible for pension who has not completed ten years' reckonable service may be granted on retirement a gratuity in accordance with regulation 11;

(3) An officer who is removed from service in the Defence Forces for misconduct or whose services are terminated pursuant to section 251 of the Act, and who has at least ten years reckonable service may be granted a pension at such rate as the Defence Council may determine, not exceeding ninety per cent of the sum which would have been granted to him under paragraph (1) had he retired in normal circumstances.

(4) Notwithstanding any other regulation, an officer who has suffered disablement as a result of a wound, injury or disease may, if his retirement is necessitated or materially accelerated by the wound, injury or disease before completing ten years' reckonable service, be granted, in lieu of a gratuity under paragraph (2), a pension under paragraph (1).

(5) A gratuity may be granted in accordance with regulation 11 to an officer who is ineligible for a service pension when retired for the following reasons—

- (a) on reduction of the establishment; or
- (b) if for any reason his services are no longer required.

## PART IV - SERVICE MEMBER'S PENSIONS AND GRATUITIES

40 (1) A service member who is

Service member's  
service and  
disablement  
pensions

- (a) discharged on or after the completion of colour service or
- (b) discharged compulsorily having regard to the usefulness of such service member in the Kenya Defence Forces and the circumstances of the case

may, provided that he has completed twenty one year's reckonable service, be granted a service pension in accordance with the provisions of these Regulations.

(2) A service member who is discharged for inefficiency, or misconduct or any other cause within his control but not amounting to gross misconduct and who has completed at least twelve years' reckonable service may be granted a service pension at such rate as the Defence Council may determine, not exceeding ninety per cent of the sum which would have been granted under paragraph (1) had he applied for his discharge.

(3) A service member who is pronounced by a medical board to be mentally or physically unfit may be granted a pension provided it is not connected to the service, and provided he has completed at least twelve years' reckonable service and the mental or physical unfitness is not connected to the service.

(4) Notwithstanding any other regulation, a service member who has suffered disablement as a result of a wound, injury or disease due to, hastened by or aggravated by his service may, if his retirement is necessitated or materially accelerated by his service and has not completed more than twelve years' reckonable service, be granted in lieu of a gratuity, a pension under paragraph (1)

41 (1) A gratuity in accordance with the provisions of regulation 11 may be granted to

Service member's  
service gratuities

- (a) a service member who is transferred to the reserve or discharged before or after the completion of his colour service without being granted a service pension, or
- (b) a service member who is discharged under paragraphs (d), (e), (f) and (g) of section 255 of the Act provided that he has completed at least one year's reckonable service

(2) A gratuity of thirty per cent of the amount that would have been granted under sub regulation (1) may be granted at the discretion of the Defence Council to a service member discharged for inefficiency or unsuitability due to causes not within his control

## PART V - MISCELLANEOUS

42 An officer or service member retired or discharged from the service when eligible for pension in consequence of the abolition of his office or for the purpose of facilitating improvement in the Defence Forces by which a greater efficiency or economy may be effected, may be granted an additional pension of one sixtieth of his annual pension for each period of three years' reckonable service

Reduction of  
establishment and  
services



Provided that such additional pension shall not exceed ten sixtieth of such annual pension.

(2) When an officer or a service member who is in receipt of a pension is recalled for service with the Defence Forces, he shall be entitled to his full pension notwithstanding that he is in receipt of any other pay.

(3) When an officer or service member who was previously retired or discharged with a pension is re-commissioned or re-enlisted, as the case may be, his pension shall cease from the date on which his further service commences, and he shall either repay both his pension and gratuity already received or have it deducted from the pension he would finally be entitled to so as to allow his previous service to count towards his pension when he finally retires.

43. The Defence Council may from time to time issue such directions, not inconsistent with the provisions of these Regulations, as it may consider necessary for the administration of these Regulations, and without prejudice to the generality of the foregoing such direction may make provisions for—

Administrative directions.

- (a) the registration of pensions, allowances and gratuities awarded;
- (b) the issue of pension certificates;
- (c) the notification to the person entitled thereto of the amounts of the pensions, allowances and gratuities awarded;
- (d) the procedure to be followed in drawing pensions, allowances and gratuities;
- (e) the procedure to be followed in the hearing of an appeal by the Appeals Board.

44. A declaration of presumption of death by a Service Commander shall be done in accordance with regulations 5 and 6 of Kenya Defence Forces (Missing Persons) Regulations, 2017.

Presumption of Death.

45. The Defence Council shall appoint an officer to serve as the Military Pensions Liaison Officer, who shall liaise with the National Treasury on pension matters.

Military pensions liaison officer.

46. Any pension or gratuity awarded under these Regulations shall be paid within 90 days from the date of retirement or 90 days from the date of the death of an officer or service member except where such payment is delayed by legal proceedings.

Payment of pension and gratuity within 90 days.

47. The Armed Forces (Pensions and Gratuities)(Officers and Service Members) Regulations, 1980 are revoked.

Revocation of L.N No. 61 of 1980.

48. Notwithstanding regulation 47, an officer or service member or retired officer or discharged service member entitled to a pension, gratuity or allowance under the Armed Forces (Pensions and Gratuities) (Officers & Service members) Regulations, 1980 (now revoked) shall be deemed to be entitled to pension, gratuity or allowance under these Regulations.

Savings.

The losses or damage caused to or suffered by the organs (being or in this part are those which are total and permanent in relation to the normal functioning of the organ concerned.

#### Part C

##### *Other Disabilities*

48. Very severe facial disfigurement . . . . . 100
49. Absolute deafness . . . . . 100
50. Ankylosis of any joint . . . . . 25-100% depending on the degree of incapacity suffered for loss of use of the joint or part thereof according to whether the joint is ankylosed in a favourable or unfavourable position

*Note*—When the scheduled assessment for a specified injury involving multiple losses differs from the sum of the assessment for the separate injuries the former shall be the appropriate assessment.

#### Part D

##### *Disablement due to Diseases and Surgical Conditions*

51. A confirmed chronic medical or surgical condition or conditions only (e.g. diabetes (as opposed to the condition itself or the conditions which additionally, has or have a complication(s) and further to the complication itself or complications themselves which result from the condition or conditions in question) . . . . . 10% for each specific condition subject to a maximum of 50% where two or more such conditions exist. A chronic condition is one requiring a life-time management.
52. Two or more confirmed chronic medical or surgical conditions with a complication or complications (e.g. diabetes with hypertension) . . . . . 20% for the conditions, whatever their number, plus 10% for each specific complication involved upto a maximum of 80% for both. This provision does not apply to a situation of end organ failure.
53. Terminal illness, end-organ failure or removal of an internal organ (e.g. brain, heart, lung, liver, kidney or part thereof) . . . . . 50-100%

#### Part E

##### *Psychiatric Conditions*

54. Chronic neurotic condition . . . . . 50%. The condition must be chronic and persistently relapsing in nature.
55. Chronic psychotic condition . . . . . 51% to 100%

#### Part F

##### *Inclusion Of the "X" Factor In Certain Composite Injuries Other Than Injuries To The Hand And Feet*

66. Injuries to a, b . . . etc . . . . . a+b+X% (the X% is the "X" factor. It represents the percentage by which the sum of the schedule percentages of the two or more injuries shall be increased).
67. The "X" factor shall be taken into account in certain cases where there are several injuries suffered are especially disabling or disabatingous to the claimant (e.g. loss of hand and a foot both on one side of the body). The injuries must in all cases where the "X" factor is applied be composite.

68. The "X" factor shall be added to the sum of the schedule percentages of the two or more injuries suffered by the claimant (subject to a maximum of 100%) save where these regulations have expressly made provision for such cases (e.g as in paragraphs 12,13 and 29 of part A).
69. The "X" factor shall be 20% of the sum of the several injuries involved.

*Part – G*

*Composite Injuries Involving The Hand And Feet*

70. Injuries involving the hand or the feet:
- (i) Where 2 digits are lost ..... $D1 + D2 +$  "X" factor of 20%
  - (ii) Where 3 digits are lost..... $D1 + D2 + D3 +$  "X" factor of 30%
  - (iii) Where 4 digits are lost..... $D1 + D2 + D3 + D4 +$  "X" factor of 40%
  - (iv) Where the big toe or the big thumb has been lost in addition to the other
  - (v) 4 digits on one foot or hand..... $D1 + D2 + D3 + D4 +$  Big toe/thumb+ such an "X" factor as to render the assessment 100%.
- "D" means a digit of the hand or foot and the figure following it represents the number of digits lost by the claimant.
71. In each of the first four of the mentioned cases in this part, the sum total assessment for the lost digits shall be increased by 20%, 30% or 40% as the case may be according to the number of digits lost. In the last case of this part the assessment shall amount to 100% where the big toe or thumb, as the case may be, and whether on one foot or one hand or on all the said limbs has been lost in addition to all the other digits on the same foot or hand or on all the said limbs.

Dated the 17 July, 2017.

SAITOTI TOROME,  
*Principal Secretary and  
Secretary to the Defence Council.*

AMB. RAYCHELLE OMAMO,  
*Cabinet Secretary for Defence and  
Chairperson of the Defence Council.*



