



GOVERNMENT GAZETTE

OF THE

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Government Notice

MINISTRY OF HOME AFFAIRS

No. 166 2001

AMENDMENT OF REGULATIONS MADE UNDER THE POLICE ACT, 1990

The Minister of Home Affairs has under section 42 of the Police Act, 1990 (Act No. 19 of 1990) made the regulations as set out in the Schedule.

SCHEDULE

1. In this Schedule "the Regulations" means the Regulations promulgated by Government Notice 167 of 16 September 1994, as amended by Government Notices Nos. 143 of 15 June 1996 and 246 of 1 October 1998.

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is amended -
 - (a) by the deletion of the definition of "district";
 - (b) by the insertion, after the definition of "Public Service Regulations" of the following definitions:

'region' means one or more stations which the Inspector-General determines to be a region for the purpose of these regulations;

'senior' means a member who has command or exercises authority over another member, irrespective of seniority in service or rank;"; and

- (c) by the deletion of the definition of "superior".

Amendment of regulation 2 of the Regulations

3. Regulation 2 of the Regulations is amended by the substitution for paragraph (a) of subregulation (1) of the following paragraph:

- "(a) The fixed establishment of the Force shall be determined by the Inspector-General with the concurrence of the Minister."

Amendment of regulation 3 of the Regulations

4. Regulation 3 of the Regulations is amended by the substitution for subregulation (3) of the following subregulation:

"(3) In the application of the Public Service Regulations to members of the Force by virtue of section 36(b) of the Public Service Act, 1995 (Act No. 13 of 1995) -

- (a) any power, duty or function conferred or imposed on a chief executive officer by those regulations must be deemed to be a power, duty or function conferred or imposed on the Inspector-General; and
- (b) any reference in those regulations to a ministry must be construed as including a reference to the Force".

Amendment of regulation 5 of the Regulations

5. Regulation 5 of the Regulation is amended -

- (a) by the substitution for subparagraph (iv) of paragraph (a) of subregulation (2) of the following subparagraph -

"(iv) free from any conviction of an offence mentioned in Schedule 1 of the Act;"; and

- (b) by the substitution for paragraph (b) of subregulation (2) of the following paragraph:

"(b) Paragraph (a)(v) does not apply in respect of the appointment of auxiliary members."

Amendment of regulation 8 of the Regulations

6. Regulation 8 of the Regulations is amended by the substitution for subregulation (3) of the following subregulation:

"(3) A commander shall, irrespective of seniority in service or rank, be deemed to be the senior of any members over whom the commander exercises authority, command, control or supervision, whether permanently or temporarily."

Amendment of regulation 9 of the Regulations

7. Regulation 9 of the Regulations is amended by the substitution for subregulation (2) of the following subregulation:

“(2) Any such notice shall take effect upon the expiration of a period of one calendar month after the date upon which the notice is lodged with the member’s commanding officer, or on such earlier date as the Inspector-General, at the request of the member, may approve.”

Substitution of regulation 12 of the Regulations

8. The following regulation is substituted for regulation 12 of the Regulations:

“Enquiry into fitness of member to remain in the Force or to retain his or her rank

12. (1) A board of enquiry referred to in section 8(1) of the Act consists of one or more persons designated in writing by the Inspector-General, from among -

- (a) members of the Force; or
- (b) if the Inspector-General considers it expedient in a particular case, staff members in the Public Service who possess an appropriate legal qualification.

(2) If the board of enquiry consists of more than one person the Inspector-General must appoint the chairperson thereof, who, if a member of the Force is appointed, must be an officer higher in rank than the member in respect of whom the enquiry is to be held.

(3) The person who is to preside at the enquiry must, with the concurrence of the Inspector-General or an officer designated by the Inspector-General, fix the time and place of the enquiry.

(4) The Inspector-General, or the officer designated, must give to the member concerned at least fourteen days’ notice in writing of the time and place fixed for the enquiry, which must contain or be accompanied by a copy of the convening order.

(5) The Inspector-General, or the officer designated, may authorise any person to act as *pro forma* prosecutor to present the matter to the board of enquiry and -

- (a) to adduce evidence and argument in support of the allegations referred to in subregulation (4); and
- (b) to cross-examine any person who gives evidence in rebuttal of the allegations.

(6) At the enquiry the member concerned has the right -

- (a) to be represented by a legal practitioner;
- (b) to give evidence and call witnesses;
- (c) to cross-examine a person called as a witness in support of the allegations referred to in subregulation (4); and
- (d) to inspect any document produced in evidence.

(7) The person presiding at the enquiry must keep proper record of the proceedings of the enquiry.

(8) At the conclusion of the enquiry, the board of enquiry must -

- (a) make a finding as to the fitness of the member to remain in the Force or to retain his or her rank;

- (b) inform the member of the finding and, in the case of an adverse finding, of the members' right in terms of subregulation (9) to submit representations to the Inspector-General; and
- (c) report to the Inspector-General the result of the finding.

(9) If the board of enquiry finds that the member is not fit to remain in the force or to retain his or her rank, the member may, within 14 days of the date on which he or she is informed of the finding, submit to the Inspector-General representations in writing regarding the Inspector-General's power in relation to the steps which may be taken under subregulation (10).

(10) After consideration of the documents relating to the enquiry and any representations made in terms of subregulation (9), the Inspector-General may -

- (a) decide not to take steps in the matter;
- (b) reduce the member's rank to the extent determined by the Inspector-General; or
- (c) discharge the member from the Force.

(11) The Inspector-General must as soon as possible inform the member in writing of his or her decision and of the member's right in terms of section 8(2) of the Act to appeal against the decision."

Substitution of regulation 13 of the Regulations

9. The following regulation is substituted for regulation 13 of the Regulations:

"Appeal against discharge or reduction in rank under section 8(2) of the Act

13.1 (1) A member who wishes to appeal to the Minister in terms of section 8(2) of the Act -

- (a) against a finding of the board of enquiry that the member is unfit to remain in the Force or to retain his or her rank;;
- (b) against a decision of the Inspector-General that the member be discharged from the Force or be reduced in rank; or
- (c) against both the finding and the decision,

must lodge his or her appeal in writing with the Inspector-General within 14 days of the date on which he or she is informed of the Inspector-General's decision, which must set forth the grounds on which the appeal is based.

(2) Upon receipt of an appeal the Inspector-General must forthwith submit to the Minister all documents relating to the enquiry and the appeal.

- (3) In determining the appeal, the Minister may -
 - (a) dismiss the appeal and confirm the decision; or
 - (b) uphold the appeal wholly or in part and set aside the decision or substitute for that decision such other decision as, in the opinion of the Minister, the Inspector-General ought to have taken."

Amendment of regulation 14 of the Regulations

10. Regulation 14 of the Regulations is amended by the substitution for subregulation (1) of the following subregulation:

“(1) Upon the resignation, discharge or retirement of a member from the Force, the member must be provided with a certificate of service setting forth -

- (a) his or her rank;
- (b) his or her period of service in the Force; and
- (c) the reason for the cessation of his or her service in Force: Provided that if a member is discharged in terms of section 8(1) or 9 of the Act, the certificate of service shall not state the circumstances in which the member was discharged.”

Amendment of regulation 15 of the Regulations

11. Regulation 15 of the Regulations is amended -

(a) by the substitution for paragraph (e) of the following paragraph:

“(e) without leave or a valid reason is absent from duty or leaves his or her place of duty or post while on duty;”;

(b) by the substitution for subparagraph (iii) of paragraph (i) of the following subparagraph -

“(iii) disobeys, disregards or refuses to carry out a lawful order given to him or her by a person having the authority to give it, or by word or conduct shows insubordination;”;

(c) by the substitution of paragraph (n) for the following paragraph

“(n) conducts himself or herself in a disgraceful, improper or unbecoming manner which may cause embarrassment to the Force;”;

(d) by the substitution for subparagraphs (i) and (ii) of paragraph (x) of the following subparagraphs -

“(i) is under the influence of intoxicating liquor or any stupefying drug without the prescription of a medical practitioner, whether or not he or she is on or off duty;

(ii) without the prescription of a medical practitioner, uses intoxicating liquor or a stupefying drug while on duty;”;

(e) by the substitution for paragraph (z) of the following paragraph:

“(z) misappropriates or wilfully or negligently causes damage or loss -

(i) to property of the Government or under the control of the Government or for which the Government is responsible, including property issued to him or her to another member at public expense for use in the execution of his or her or that member's duties;

(ii) to property belonging to another member, a club, mess or any other institution of the Force, or to any prisoner or other person in custody;

- (iii) to property being and exhibit in a criminal case, or property abandoned, lost or unclaimed and found or taken into safekeeping by the member or any other member, or which is in his or her or any other member's possession;";
- (f) by the addition to paragraph (aa) of the following subparagraph:
 - "(iii) uses his or her position in the Force or utilises any property of the State to promote or prejudice the interest of any political party."; and
- (g) by the addition of the following paragraphs:
 - "(ai) uses his or her position in the Force or utilises any property of the State to promote or prejudice the interest of any business or private agency, except in the performance of his or official duties; or
 - (aj) is convicted of an offence."

Amendment of regulation 16 of the Regulations

12. Regulation 16 of the Regulations is amended -
- (a) by the deletion in subparagraph (ii) of paragraph (e) of subregulation (1) of the expression "or 19"; and
 - (b) by the substitution in paragraph (b) of subsection (2) for the word "district" of the word "region".

Substitution of regulation 17 of the Regulations

13. The following regulation is substituted for regulation 17 of the Regulations:

"Disciplinary proceedings against members under section 18 of the Act

17. (1) Subject to these regulations, disciplinary proceedings in terms of section 18 of the Act must be conducted as nearly as is practicable in the manner followed in summary criminal proceedings in a magistrate's court.
- (2) (a) Disciplinary proceedings in relation to an alleged act or omission constituting misconduct referred to in regulation 15 must be instituted within 12 calendar months from date on which the act or omission was committed or occurred or on which the senior of the member concerned had knowledge or might reasonably have been expected to have knowledge of the act or omission, whichever is the later date.
 - (b) For the purposes of paragraph (a) disciplinary proceedings are considered to be instituted on the date on which a copy of the charge sheet is served on the member in terms of subregulation (6).
 - (3) The person designated under section 18(2) of the Act before whom disciplinary proceedings are to be conducted (hereafter referred to as "the presiding officer") must determine the time and place of the proceedings, and if the proceedings for any reason cannot be arranged to commence within 21 days of the date of the presiding officer's designation, the presiding officer must forthwith in writing furnish the Inspector-General with the reason therefor and determine the time and place of commencement of the proceedings with the concurrence of the Inspector-General.
 - (4) The presiding officer must designate a member equal or senior in rank than the member charged to act as *pro forma* prosecutor. If the prosecutor is required to give evidence against the member charged which is not merely of a formal nature, he or she must as far as practicable do so before any other evidence is recorded.

- (5) (a) Subject to paragraph (b), no person other than the presiding officer, the *pro forma* prosecutor, the member charged and his or her legal representative, a witness while giving evidence and an interpreter, if required, may be present at the disciplinary proceedings.
- (b) If the proceedings arise from a complaint by a person who is not a member, the presiding officer must, subject to paragraph (c), allow the complainant to attend the proceedings and, if the presiding officer considers it appropriate on account of the age of the complainant or for any other reason, allow the complainant to be accompanied by a friend or a relative: Provided that if the complainant, friend or relative concerned is to be called as a witness at the proceedings, he or she may not be allowed to attend the proceedings before his or her evidence has been recorded.
- (c) If it appears to the presiding officer that any evidence to be given at the proceedings may disclose information which in the public interest ought not to be disclosed to any person other than a member, the presiding officer may exclude any person to in subparagraph (b) from all or any part of the proceedings.
- (6) At least seven days (Sunday and public holidays excluded) before the commencement of the proceedings the presiding officer must serve or cause to be served on the member concerned a copy of the charge sheet in the form as determined by the Inspector-General, which must indicate the time, date and venue of the proceedings.
- (7) (a) The prosecutor must arrange for the attendance of all witnesses by giving them reasonable notice of the time, date and venue of the proceedings.
- (b) In the case of witnesses who are not members, the prosecutor must, if required, serve or cause to be served on them subpoenas signed by the presiding officer and the service of which must be effected in the manner prescribed for the service of a subpoena in criminal proceedings in a magistrate's court.
- (c) If the member charged requires any witness to be subpoenaed to testify on his or her behalf, he or she may submit an application to that effect to the presiding officer: Provided that if, on conclusion of the evidence given by any such witness, the presiding officer is of the opinion that the evidence given by the witness was not necessary and of material importance, the Inspector-General may order the member charged to refund any amount paid from public funds to secure the attendance of that witness and may cause that amount to be recovered from the member as a debt owing to the State.
- (8) If a member on whom a charge of misconduct has been served admits the charge in writing and the Inspector-General, having regard to the nature of the alleged misconduct and other relevant circumstances, is of the opinion that a fine not exceeding N\$200 should be imposed, the Inspector-General must direct that member to appear before him or her or another officer designated by the Inspector-General and if on such appearance the member pleads guilty to the charge, the Inspector-General or that officer may find the member guilty of misconduct without hearing evidence and, subject to subregulation (9), reprimand him or her or impose upon him or her a fine not exceeding N\$200,00.

(9) If at disciplinary proceedings before a presiding officer the member pleads guilty to the charge of misconduct, the presiding officer, after questioning the member with regard to the alleged facts of the case to ascertain whether the member admits the allegations in the charge sheet, may find the member guilty of misconduct without hearing evidence: Provided that if the presiding officer is not the commanding officer of the member charged, the Inspector-General or the commanding officer, having regard to the nature of the alleged offence and other relevant circumstances, may direct that notwithstanding a possible plea of guilty, evidence must be led by the member charged to establish the nature and extent of the offence in question.

(10) (a) If at disciplinary proceedings the member charged is found guilty, the *pro forma* prosecutor must produce a certified extract from the conduct sheet of the member as contemplated in regulation 22, and the presiding officer must direct the member charged to admit or deny any previous convictions for misconduct recorded thereon.

(b) If the member charged does not admit an alleged previous conviction the *pro forma* prosecutor may, with the leave of the presiding officer, lead evidence to prove that conviction.

(c) A previous conviction admitted by the member or proved in terms of paragraph (b) must be taken into consideration by the presiding officer for the purpose of imposing a penalty.

(11) Before imposing any penalty, the presiding officer must -

(a) advise the member concerned of the possible penalties which may be imposed in terms of regulation 18(1); and

(b) allow the member concerned and the *pro forma* prosecutor to adduce evidence and to make representations with regard to the proper penalty to be imposed.

(12) (a) The member charged and all other members required to attend a disciplinary hearing is regarded as being on duty and is entitled to the travelling privileges and subsistence allowances provided for in regulation D.1 of the Public Service Regulations.

(b) Witnesses, other than those referred to in paragraph (a), are entitled to the subsistence allowances and travelling facilities prescribed for witnesses in criminal proceedings in a magistrate's court, which must be met from public funds.

(13) The member charged is responsible for the payment of the fees of a legal representative who appears on his or her behalf.

(14) The member concerned or his or her legal representative may, under the supervision of a member designated by the presiding officer, inspect the report of the proceedings and make a copy thereof, free of charge and, if the member concerned so requests, he or she may be furnished with a copy on payment of a fee at the rate charged for the supply of a copy of the record of proceedings at a summary trial in a magistrate's court.

(15) A person who -

(a) has been duly notified or summoned in terms of subregulation (6) or (7) and who fails without sufficient cause to attend at the time and place specified in the notice or subpoena or to remain in attendance until excused by the presiding officer from further attendance;

(b) prevents another person from obeying a subpoena or from giving evidence; or

- (c) obstructs or interrupts the proceedings; or
- (d) insults the presiding officer,

is guilty of an offence and on conviction liable to a fine not exceeding N\$2000,00 or to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

(16) A person who commits an offence referred to in paragraph (c) or (d) of subregulation (14) may be removed from the proceedings by order of the presiding officer.”.

Substitution of regulation 18 of the Regulations

14. The following regulation is substituted for regulation 18 of the Regulations:

Penalty for misconduct

“**18.** (1) If a member is found guilty of misconduct, the presiding officer, after compliance with regulation 17(11), may -

- (a) caution or reprimand the member;
- (b) subject to subregulation (2)(a), recommend to the Inspector-General that the salary or rank, or both the salary and rank, of the member be reduced to the extent indicated;
- (c) impose on the member a fine not exceeding N\$2000,00 but the presiding officer may suspend the payment of the fine, or any part thereof, for a period not exceeding three years on any condition relating to good conduct; or
- (d) recommend to the Inspector-General that the member be discharged, or be called upon to resign from the Force with effect from a date to be specified by the Inspector-General.

(2) A penalty imposed in terms of subregulation (1)(b) shall not be such as to reduce the salary of the member below the scale of salary for his or her rank.

(3) A fine imposed under subregulation (1)(c), the payment of which is not suspended, may be recovered by way of deductions from the member's salary or allowances in instalments as the Inspector-General may determine, but not exceeding N\$100 per month.

Substitution of regulation 19 of the Regulations

15. The following regulation is substituted for regulation 19 of the Regulations:

“Appeal against conviction for misconduct and penalty

19. (1) A member who intends to appeal in terms of section 18(8) of the Act against -

- (a) a finding that he or she is guilty of misconduct;
- (b) any punishment imposed under regulation 18(1); or
- (c) against both that finding and that punishment,

must within 14 days after the date on which he or she is notified of the confirmation of that finding and punishment in terms of section 18(6) or (7) of the Act, lodge a notice of appeal with the presiding officer.

(2) The Minister may, upon application of the member concerned, and if it appears to the Minister that substantial prejudice may occur, extend the period of 14 days referred to in subregulation (1) or condone the late lodging of an appeal.

(3) A notice of appeal lodged in terms of subregulation (1) must -

- (a) specify whether the appeal is against the finding or the punishment or both the finding and the punishment;
- (b) set out clearly in detail the grounds on which the appeal is based; and
- (c) be accompanied by such representations in writing as the member may wish to submit in support of the appeal.

(2) On receipt of the appeal the presiding officer must compile a written reply in which he or she must set forth -

- (a) the facts found to be proved;
- (b) the reason for his or her finding regarding any fact in connection with which the appeal is noted; and
- (c) the reasons for his or her ruling on any point of law which was raised or on the admission, credibility or rejection of evidence in connection with which the appeal is lodged.

(3) The presiding officer must submit the notice of appeal and his or her reply, together with the record of the proceedings and all other relevant documents, to the Inspector-General who in turn must submit all those documents to the Minister together with such written comment as the Inspector-General may consider appropriate.

(4) After consideration of the documents relating to the appeal, the Minister may make any decision referred to in section 18(9) of the Act.”

Repeal of regulation 20 of the Regulations

17. Regulation 20 of the Regulations is repealed.

Repeal of regulation 21 of the Regulations

18. Regulation 21 of the Regulations is repealed.

Amendment of regulation 24 of the Regulations

19. Regulation 24 of the Regulations is amended -

- (a) by the substitution for subregulations (3), (4) and (5) of the following subregulations:

“(3) The convening order must stipulate -

- (a) the terms of reference of the board of enquiry;
- (b) the facts which gave rise to the enquiry.
- (c) the person to whom the board’s report must be submitted.
- (4) The chairperson of the board must -
 - (a) determine the place where the enquiry is to be held and the date and time of commencement thereof;

- (b) cause any person in relation to whom the enquiry is to be held to be given reasonable notice of the place, date and time referred to in paragraph (a), accompanied by a copy of the convening order, including any annexure referred to therein.
 - (5) The enquiry must be limited to the terms of reference set out in the convening order.
 - (6) The chairperson may designate a member equal or senior in rank to the person (if any) in respect of whom the enquiry is to be held to present the matter being enquired into and to adduce evidence.
 - (7) The chairperson of the board must -
 - (a) arrange for the attendance of all witnesses by giving them reasonable notice of the venue, date and time of commencement, of the proceedings;
 - (b) cause subpoenas to be issued and served on witnesses -
 - (i) who are not members of the Force;
 - (ii) whom the member in respect of whom the enquiry is conducted requires to attend and give evidence at the enquiry.
- the service of which must be effected in the manner prescribed for the service of a subpoena in criminal proceedings in a magistrate's court;
- (8) A person who is not a member of the Force is not compelled to appear as witness before the board.
- (9) The person in respect of whom the enquiry is held, may -
 - (a) testify in person before the board;
 - (b) either personally or through his or her legal representative -
 - (i) call any witness to testify on any matter or produce any document relevant to the enquiry; and
 - (ii) cross-examine any person called as a witness by the member designated under subregulation (6) or by the board.
- (10) At the enquiry -
 - (a) statements made by witnesses must be recorded and read over and signed by them;
 - (b) the chairperson, if he or she is satisfied that attendance of any witness is for any reason not possible or necessary, may accept a written statement made on oath or affirmation by that witness:

Provided that the chairperson must cause written interrogatories raised by the board, or by the person in respect of whom the enquiry is held or his or her legal representative, to be submitted to such witness for reply.
- (11) After consideration of all the available evidence and any representations made by or on behalf of the person in respect of whom the enquiry is held, the board must -
 - (a) compile a report on the matter investigated, setting forth its findings and recommendations, if any;

- (b) forward that report and the record of the board's proceedings, accompanied by witness statements and documents produced at the proceedings, to the person indicated in terms of subregulation (3)(c) in the convening order.
- (12) The Inspector-General may order a board of enquiry to reconvene in order to -
- (a) examine any additional witnesses;
- (b) subpoena and examine any witness from whom a written statement was accepted in terms of subregulation (10)(b);
- (c) record additional information; or
- (d) reconsider its finding or recommendation.
- (13) If in terms of subregulation (11)(b) the board's report is submitted to a person other than the Inspector-General, that person must -
- (a) record in writing any comments which he or she considers relevant concerning the report; and
- (b) submit those written remarks and the record of the proceedings and other documents referred to in subregulation 11(b) to the Inspector-General.
- (14) A witness who attends the proceedings of an enquiry in terms of this regulation -
- (a) if he or she is a member of the Force, is regarded as being on duty and is entitled to the travelling privileges and subsistence allowances provided for in regulation D.I of the Public Service Regulations;
- (b) if he or she is not a member of the Force, is entitled to the subsistence allowances and travelling facilities prescribed for witnesses in criminal proceedings in a magistrate's court."

Amendment of regulation 29 of the Regulations

20. Regulation 29 of the regulations is amended by the substitution for the word "canteen", wherever it occurs for the word "club".

Insertion of regulation 36 in the Regulations

21. The following regulation is inserted in the Regulations after regulation 33:

"Advisory Board

34. (1) The Advisory Board established by section 43B(1) of the Act consists of such members, being not less than five and not more than seven, as the Minister may appoint, subject to subregulation (3), from amongst persons who have expertise relevant to the functions of the Board and of whom the majority must be persons who are not staff members employed in the Public Service.

(2) A member of the Advisory Board holds office for a period of three years, and is eligible for reappointment.

(3) A person does not qualify for appointment as a member of the Advisory Board if he or she has during the period of ten years immediately preceding the establishment of the Advisory Board or at any time after that date, been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

(4) The members of the Advisory Board must elect from among their number the chairperson of the Advisory Board.

(5) If the chairperson is for any reason unable to preside at a meeting of the Advisory Board, the members present must elect another member to preside at that meeting.

(6) A member who is in the full time employment of the Public Service must be paid such allowances or other remuneration in respect of his or her service as a member of the Advisory Board as the Minister, with the concurrence of the Minister of Finance, may determine.

(7) The Board determines the procedures to be followed at its meetings.

(8) The Chairperson must cause a proper record to be kept of the proceedings of a meeting of the Advisory Board and submit that record to the Minister as soon as possible after the meeting of the Board.

(9) The first meeting of the Board must under the chairmanship of the Minister at the place and time as determined by the Minister and thereafter meetings must be held at places and times as the Advisory Board may determine, but a meeting must be held at least twice a year.
