

## DEPARTMENT OF DEFENCE

NO. 1581

23 DECEMBER 2016

**DEFENCE ACT, 2002  
REGULATIONS FOR THE RESERVE FORCE COUNCIL**

I, Nosiviwe Noluthando Mapisa-Nqakula, Minister of Defence and Military Veterans, hereby under section 82(1)(zD) read with Section 48(7) of the Defence Act, 2002 (Act No. 42 of 2002), make the Regulations in the Schedule.

**N N MAPISA-NQAKULA**  
Minister of Defence and Military Veterans

**SCHEDULE****Arrangement of Regulations**

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**Definitions**

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates—

**"Association"** means the Reserve Force Council Association established as an integral part of the Council by the Council's constitution, as approved by the Minister on 9 November 2013, to represent Reserve Force organisations and individual serving or former Reserve Force members;

**"Constituents"** means the Reserve Force structural components as represented by their officers commanding and the individual serving and retired Reserve Force members, as represented by the Association;

**"constitution"** means the constitution of the Council approved by the Minister under section 48(3) of the Act;

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

**"the Council"** means the Reserve Force Council established by the Minister under section 48(1) of the Act.

#### **Appointment of members of Council**

2. (1) The Reserve Force Council established by the Minister on 23 May 2003 continues to exist, and persons serving at the commencement of these Regulations continue to hold office in accordance with subregulation (2)(a) until new members have been appointed in terms of this regulation, unless they must vacate office in terms of regulation 4(1).

(2) (a) These Regulations, with the exclusion of regulation 3, apply to all persons contemplated in subregulation (1) while they continue to hold office under that provision.

(b) The persons contemplated in subregulation (1) who meet the requirements of regulation 3 may be nominated and appointed as members of the Council in accordance with this regulation.

(3) Before the appointment of new members of the Council, the Minister must, in writing, instruct the chairperson of the Council to invite the Constituents to nominate candidates to be considered for—

- (a) appointment to the Council; and
- (b) if the chairperson's term of office has expired or is about to expire, designation as chairperson.

- (4) To give effect to the Minister's instruction contemplated in subregulation (3), the chairperson of the Council must—
- (a) within 90 days of receipt of the Minister's instruction, invite the Constituents through the Association and all the Officers Commanding of Reserve Force structural components to nominate candidates contemplated in subregulation (3) in accordance with the Council's constitution; and
  - (b) receive the nominations contemplated in paragraph (a), together with a motivation in respect of each nominated candidate.
- (5) The chairperson of the Council must—
- (a) determine which nominated candidates qualify for appointment in terms of regulation 3;
  - (b) list the qualified candidates to separately reflect the nominations made through the Association and the Officers Commanding; and
  - (c) submit the lists contemplated in paragraph (b) to the Minister, together with the motivation in respect of each qualified candidate.
- (6) Upon receipt of the lists submitted in terms of subregulation (5)(c), the Minister must—
- (a) appoint 54% of the members of the Council from the qualified candidates nominated through the Officers Commanding Reserve Force structural components;
  - (b) appoint 23% of the members of the Council from the qualified candidates nominated through the Association;
  - (c) appoint 23% of the members of the Council from qualified candidates who are persons with knowledge and experience in defence and military matters and were either directly identified by the Minister or, alternatively, nominated through the Officers Commanding or the Association; and
  - (d) when making the appointments, consider the needs for the Council to—
    - (i) reflect broadly the racial composition of South Africa;
    - (ii) have both male and female members;
    - (iii) have members representative of the Services and Divisions of the Defence Force; and
    - (iv) represent officers and non-commissioned officers.

- (7) The Minister must—
- (a) appoint the members of the Council to hold office for five years; and
  - (b) within 30 days after appointing the members, by notice in the *Gazette* publish the names of the members so appointed and the date of commencement of their terms of office.

### **Qualifications for members of Council**

3. To qualify for appointment by the Minister as a member of the Council, the candidate must—
- (a) be a fit and proper person;
  - (b) be a South African citizen and permanently resident in the Republic;
  - (c) have knowledge of defence and military matters relating to the Reserve Force;
  - (d) have experience in corporate governance, compliance assurance, management, finance, planning, policy development and international security affairs;
  - (e) be seen to be independent by—
    - (i) not being a member of the Regular Force;
    - (ii) not being a member of the Reserve Force serving in a command or staff post at the level of colonel, its equivalent, or higher rank;
    - (iii) not being an officer commanding a Reserve Force structural component;
    - (iv) not being involved with any other body or person who must consult the Council in terms of section 48(4) of the Act;
    - (v) not holding any office in a legislative body established by the Constitution of the Republic of South Africa, 1996; and
    - (vi) not holding any position other than that of an ordinary member in any political party or organisation;
  - (f) not be an unrehabilitated insolvent;
  - (g) not within the previous five years have served a sentence, after having been convicted of an offence and sentenced to imprisonment without the option of a fine for a period of more than 12 months; and
  - (h) have accepted the nomination in writing and signed an undertaking to comply with the Code of Conduct for the Council, contained in the Annexure.

**Vacation of office**

4. (1) A member of the Council must vacate his or her office when he or she—
- (a) no longer meets a qualification contemplated in regulation 3;
  - (b) has served the period of his or her appointment;
  - (c) is medically certified to be unable to perform his or her duties;
  - (d) resigns by giving 30 days' notice in writing to the Minister; or
  - (e) is removed from office by the Minister on account of his or her—
    - (i) misconduct;
    - (ii) non-compliance with these Regulations;
    - (iii) absence from three consecutive meetings of the Council without prior apology to the chairperson, or a valid reason for such absence; or
    - (iv) furthering or prejudicing the interests of any political party or organisation in his or her capacity as a member of the Council.
- (2) Any vacancy in the Council must be filled in accordance with regulations 2 and 3.

**Duties of Council**

5. The Council must—
- (a) give advice when consulted in terms of section 48(4) of the Act;
  - (b) in terms of section 48 (4) of the Act, represent the Reserve Force by acting for and on behalf of that Force to promote and maintain it as an integral part of the Defence Force; and
  - (c) execute any task or programme, and investigate any matter, commissioned under section 48(5) of the Act.

**Powers of Council**

6. Subject to regulation 8(2), the Council may do all that is necessary or expedient to perform its functions effectively, which includes the power to—
- (a) subject to the control and approval of the Secretary for Defence—
    - (i) determine its own staff establishment and appoint employees to posts on its staff establishment;
    - (ii) remunerate members of the Council in accordance with regulation 8(3); and
    - (iii) obtain the service of any person or entity to perform any specific act or function;
  - (b) confer with any person or entity; and
  - (c) do research and publish reports.

**Constitution of Council**

7. The constitution must provide for the performance by the Council of its functions, and may provide for—

- (a) the status, objects, guiding principles and membership of the Council;
- (b) the national and regional operation of the Council;
- (c) committees of the Council;
- (d) meetings, decisions and elections by the Council, executives, boards and their committees;
- (e) national and regional secretariats and staff;
- (f) the rules of the Association;
- (g) the appointment of research teams;
- (h) co-operation by the Council with organisations representing reserve forces internationally, and with reserve force organisations of other countries;
- (i) honours and awards to be granted by the Council;
- (j) disciplinary action by the Council; and
- (k) any matter that may facilitate the Council's conducting of its business and the execution of its object, mission, aims and mandates.

**Funding and financial control**

8. (1) The expenses relating to the administration of the affairs of the Council and its structures are paid from the budget of the Department of Defence.

(2) For the purpose of financial control, the Council must, when performing any of its functions, comply with the applicable—

- (a) provisions of the Public Finance Management Act, 1999. (Act No. 1 of 1999);
- (b) Treasury Regulations; and
- (c) financial policies and procedures of the Department.

(3) Any member of the Council not in the full-time employment of the State, may be remunerated, after obtaining the approval contemplated regulation 6(a)(ii), in the case of—

- (a) the chairperson of the Council, at a level equivalent to that of a Chief Director in the Public Service;
- (b) the members of the Council who serve on the national executive committee in accordance with the constitution, at a level equivalent to that of a Director in the Public Service; and
- (c) all members of the Council other than those referred to in paragraphs (a) and (b), at a level not exceeding that of a Deputy Director in the Public Service.

**Offences and penalties**

9. (1) No person may, without the approval of the Council, use any name or emblem which may indicate that such person has any connection with the Council, while in fact there is no such connection.

(2) No person may obstruct or interfere with the Council, its structures or staff in the performance of their functions.

(3) Any person who contravenes or fails to comply with a provision of subregulation (1) or (2) is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding one year.

**Short title**

10. These Regulations are called the Regulations for the Reserve Force Council, 2016.

**ANNEXURE****CODE OF CONDUCT FOR THE RESERVE FORCE COUNCIL**  
**[regulation 3(h)]**

Every member of the Council and the Association, and every member of their staff must—

- (a) serve the Council in support of the constitutional objectives of the Defence Force;
- (b) perform his or her functions correctly, diligently, impartially and with integrity;
- (c) disclose any interest or matter which may disqualify him or her from serving in the Council or participating in the proceedings;
- (d) protect the property, money and resources of the Department and report corruption;
- (e) keep the administration and records of the Council accurately, up to date and confidential;
- (f) comply with all legal provisions and agreements applicable to the Council;
- (g) ensure fair and equitable treatment of every person, without unfair discrimination;
- (h) refrain from conduct that may be prejudicial to the good reputation of the Council, the Association or their structures; and
- (i) comply with the provisions of the constitution.