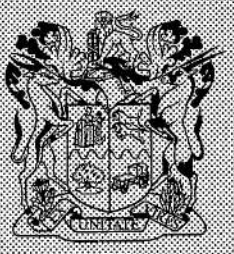
REPUBLIC OF SOUTH AFRICA



REPUBLIEK VAN SUID-AFRIKA

Government Gazette
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Regulation Gazette **No. 6607** ***Regulasiekoerant***

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GOVERNMENT NOTICES
GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HEALTH
DEPARTEMENT VAN GESONDHEID

No. R. 994 **20 August 1999**

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 (ACT No. 54 OF 1972)

REGULATIONS RELATING TO MILK AND DAIRY PRODUCTS: AMENDMENT

The Minister of Health intends, in terms of section 15 (1) of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), to make the regulations in the Schedule.

Interested persons are invited to submit any substained comments or make any representations on the proposed regulations to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for attention of the Director: Food Control), within three months of the date of publication of this notice.

SCHEDULE

Definitions

1. In these regulations "the Regulations" means the regulations published under Government Notice No. R. 1555 of 21 November 1997.

Amendment of Annexure C of the Regulations

2. The Regulations are hereby amended by the substitution for Annexure C of the following annexure:

"ANNEXURE C

LOCAL AUTHORITIES IN WHOSE AREAS OF JURISDICTION RAW DAIRY PRODUCTS LISTED IN REGULATION 3 (1) MAY BE SOLD

Machadodorp
Middelburg
Pietermaritzburg–Msunduzi
Piet Retief
Wakkerstroom.".

No. R. 994 **20 Augustus 1999**

WET OP VOEDINGSMIDDELS, SKOONHEIDSMIDDELS EN ONTSMETTINGSMIDDELS, 1972 (WET No. 54 VAN 1972)

REGULASIES BETREFFENDE MELK EN SUIWELPRODUKTE: WYSIGING

Die Minister van Gesondheid is van voorneme om kragtens artikel 15 (1) van die Wet op Voedingsmiddels, Skoonheidsmiddels en Ontsmettingsmiddels, 1972 (Wet No. 54 van 1972), die regulasies vervat in die Bylae uit te vaardig.

Belanghebbendes word versoek om binne drie maande na die datum van publikasie van hierdie kennisgewing gemotiveerde kommentaar oor of vertoë in verband met die voorgestelde regulasies in te dien by die Direkteur-generaal: Gesondheid, Privaatsak X828, Pretoria, 0001 (vir die aandag van die Direkteur: Voedselbeheer).

BYLAE

Woordomskrywing

1. In hierdie regulasies beteken "die Regulasies" die regulasies afgekondig by Goewermentskennisgewing No. R. 1555 van 21 November 1997.

Wysiging van Aanhangsel C van die Regulasies

2. Die Regulasies word hierby gewysig deur Aanhangsel C deur die volgende aanhangsel te vervang:

"AANHANGSEL C

PLAASLIKE OWERHEDE IN WIE SE GEBIEDE VAN JURISDIKSIE ROU SUIWELPRODUKTE GELYS IN REGULASIE 3 (1) VERKOOP MAG WORD

Machadodorp
Middelburg
Pietermaritzburg–Msunduzi
Piet Retief
Wakkerstroom.".

DEPARTMENT OF LABOUR
DEPARTEMENT VAN ARBEID

No. R. 984 **20 August 1999**

LABOUR RELATIONS ACT, 1995

MOTOR INDUSTRY BARGAINING COUNCIL—MIBCO: AMENDMENT OF AUTO WORKERS' PENSION FUND COLLECTIVE AGREEMENT

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Amending Agreement which appears in the Schedule hereto, which was concluded in the Motor Industry Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 30 August 1999 and for the period ending 31 August 2003.

M. M. S. MDLADLANA
Minister of Labour

SCHEDULE

MOTOR INDUSTRY BARGAINING COUNCIL—MIBCO

AUTO WORKERS' PENSION FUND COLLECTIVE AGREEMENT

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

South African Motor Industry Employers' Association

and the

South African Vehicle Builders' and Repairers' Association

(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the

National Union of Metalworkers of South Africa

Motor Industry Employees' Union of South Africa

and

Motor Industry Staff Association

(hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the Motor Industry Bargaining Council—MIBCO,

to amend the Auto Workers' Pension Fund Collective Agreement published under Government Notice No. R. 960 of 7 August 1998, as extended by Government Notice No. R. 1094 of 28 August 1998.

1. PERIOD OF OPERATION

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 31 of the Act, and shall remain in force for the period ending 31 August 2003.

2. SCOPE OF APPLICATION OF AGREEMENT

(1) Subject to the provisions of subclause (2) of this clause, the terms of this Agreement shall be observed—

(a) in the Motor Industry in the Republic of South Africa;

(b) by all employers who are members of the employers' organisation and by all employees who are members of the trade unions.

(2) Notwithstanding the provisions of subclause (1) of this clause, the provisions of this Agreement shall not apply to—

(a) employees who are members of the Motor Industry Employees' Union of South Africa or the Motor Industry Staff Association;

(b) members of the National Union of Metalworkers of South Africa who are members of the Motor Industry Pension Fund;

(c) journeymen who are not members of the National Union of Metalworkers of South Africa or apprentices who are not members of the National Union of Metalworkers of South Africa, other than those referred to in the definition of "journeyman" and "apprentices", respectively;

(d) any employee who has been granted a retirement benefit by any fund that provides for such benefits;

(e) employees in respect of whom their employer contributes, and for as long as their employer so contributes, to a pension fund/providend fund that was in operation on the date of coming into operation of this Agreement and which, in the opinion of the Council, provides benefits not less favourable than those provided by the Fund;

(f) any employee for six months from the date on which he begins employment in the Motor Industry: Provided that any employer may in his discretion waive this exclusion.

(3) Clauses 1 and 2 (1) (b) of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

3. CLAUSE 12: INDEPENDENT EXEMPTIONS BOARD

Substitute the following for this clause:

"Subject to clause 31 of the Administrative Agreement published under Government Notice No. R. 959 of 7 August 1998, the same conditions and criteria shall apply in respect of appeals from non-parties submitted in terms of the provisions of this Agreement.".

Signed at Randburg, on behalf of the parties, this 28th day of May 1999.

R. BASTICK
President of the Council

M. LOUW
Vice-President of the Council

B. G. DU PREEZ
General Secretary of the Council

No. R. 984 **20 Augustus 1999**

WET OP ARBEIDSVERHOUDINGE, 1995

MOTORNYWERHEID—MIBCO: WYSIGING VAN PENSIOENFONDS VIR MOTORWERKERS KOLLEKTIEWE OOREENKOMS

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Wysigingsooreenkoms wat in die Bylae hiervan verskyn en wat in die Motornywerheidbedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en weknemers in daardie nywerheid met ingang van 30 Augustus 1999, en vir die tydperk wat op 31 Augustus 2003 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

BYLAE

BEDINGINGSRAAD VIR DIE MOTORNYWERHEID—MIBCO

KOLLEKTIEWE OOREENKOMS VIR DIE MOTORWERKERSPENSIOENFONDS

ooreenkomstig die Wet op Arbeidsverhoudinge, 1995, gesluit deur en aangegaan tussen die

South African Motor Industry Employers' Association

en die

South African Vehicle Builders' and Repairers' Association

(hierna die "werkgewers" of die "werkgewersorganisasies" genoem), aan die een kant, en die

National Union of Metalworkers of South Africa

Motor Industry Employees' Union of South Africa

en

Motor Industry Staff Association

(hierna die "werknemers" of die "vakbonde" genoem), aan die ander kant, wat die partye is by die Bedingingsraad vir die Motornywerheid—MIBCO,

tot wysiging van die Kollektiewe Ooreenkoms vir die Motorwerkerspensioenfonds gepubliseer by Goewermentskennisgewing No. R. 960 van 7 Augustus 1998, soos verleng by Goewermentskennisgewing No. R. 1094 van 28 Augustus 1998.

1. GELDIGHEIDSDUUR

Hierdie Ooreenkoms tree in werking op sodanige datum deur die Minister van Arbeid ingevolge artikel 2 van die Wet bepaal en bly van krag vir die tydperk eindigende 31 Augustus 2003.

2. TOEPASSINGSBESTEK VAN OOREENKOMS

(1) Behoudens subklousule (2) van hierdie klousule moet hierdie Ooreenkoms nagekom word—

(a) in die Motornywerheid in die Republiek van Suid-Afrika;

(b) deur alle werkgewers wat lede is van die werkgewersorganisasies en deur alle werknemers in die Nywerheid wat lede is van die vakbonde.

(2) Ondanks die bepalings van subklousule (1) van hierdie klousule is die bepalings van die Ooreenkoms nie van toepassing nie op—

(a) werknemers wat lede is van die Motor Industry Employees' Union of South Africa of van die Motor Industry Staff Association;

(b) lede van die National Union of Metalworkers of South Africa wat lede is van die pensioenfonds vir die Motornywerheid;

(c) vakmanne wat nie lede van die National Union of Metalworkers of South Africa is nie of vakleerlinge wat nie lede van die National Union of Metalworkers of South Africa is nie, uitgesonderd dié van wie daar in die omskrywings van onderskeidelik "vakman" en "vakleerling" melding gemaak word;

(d) 'n werknemer aan wie aftreebystand toegestaan is deur 'n fonds wat vir sodanige bystand voorsiening maak;

(e) werknemers ten opsigte van wie hul werkgewer bydra, en solank as wat hul werkgewer aldus bydra, tot 'n pensioenfonds/voorsorgfonds wat in werking was op die datum waarop hierdie Ooreenkoms in werking getree het en wat, na die mening van die Raad, bystand verskaf wat nie minder gunstig is nie as dié wat deur die Fonds verskaf word;

(f) 'n werknemer vir ses maande vanaf die datum waarop hy by die Motornywerheid in diens tree: Met dien verstande dat 'n werkgewer na goeddunke van hierdie uitsluiting kan afsien.

(3) Klousule 1 en 2 (1) (b) van hierdie Ooreenkoms is nie van toepassing nie op werkgewers en werknemers wat nie lede van onderskeidelik die werkgewersorganisasies en vakbonde is nie.

3. KLOUSULE 12: ONAFHANKLIKE VRYSTELLINGSRAAD

Vervang hierdie klousule deur die volgende:

"Behoudens die bepalings van klousule 31 van die Administratiewe Ooreenkoms wat kragtens Goewermentskennisgewing No. R. 959 van 7 Augustus 1998 gepubliseer is, is dieselfde bepalings en standaarde van toepassing op appèlle van nie-partye wat ingevolge die bepalings van hierdie Ooreenkoms ingedien word".

Namens die partye op hede die 28ste dag van Mei 1999 te Randburg onderteken.

R. BASTICK
President van die Raad

M. LOUW
Vise-President van die Raad

B. G. DU PREEZ
Hoofsekretaris van die Raad

No. R. 985 **20 August 1999**

LABOUR RELATIONS ACT, 1995

MOTOR INDUSTRY—MIBCO: EXTENSION OF ADMINISTRATIVE COLLECTIVE AMENDING AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Amending Agreement which appears in the Schedule hereto, which was concluded in the Motor Industry Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 30 August 1999, and for the period ending 31 August 2000.

M. M. S. MDLADLANA
Minister of Labour

SCHEDULE

MOTOR INDUSTRY BARGAINING COUNCIL—MIBCO

ADMINISTRATIVE COLLECTIVE AGREEMENT

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

South African Motor Industry Employers' Association

and the

South African Vehicle Builders' and Repairers' Association

(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the

National Union of Metalworkers of South Africa

Motor Industry Employees' Union of South Africa

and the

Motor Industry Staff Association

(hereinafter referred to as the "employees" or the "trade unions") of the other part,

being the parties to the Motor Industry Bargaining Council—MIBCO,

to amend the Administrative Collective Ageement published under Government Notice No. R. 959 of 7 August 1998, as amended by Government Notice No. R. 1467 of 20 November 1998.

1. SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Motor Industry—

(a) throughout the Republic of South Africa as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

(b) by the employers and the employees in the Motor Industry who are members of the employers' organisations and the trade unions, respectively.

(2) Notwithstanding provisions of subclause (1), the provisions of this Agreement shall apply to—

(a) apprentices only in so far as they are not niconsistent with the provisions of or any conditions fixed under the Manpower Training Act, 1981; and

(b) trainees undergoing training under the Manpower Training Act, 1981, only in so far as they are not inconsistent with the provisions of or any conditions fixed under that Act.

(3) The provisions of clauses 1 (1) (b) and 2 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in operation for the period ending 31 August 2000.

3. CLAUSE 27: MATERNITY LEAVE

Delete this clause in its entirety.

4. CLAUSE 31: EXEMPTIONS BOARD

Substitute the following clause 31:

"(1) In terms of section 32 (3) (e) of the Act the Council hereby establishes an independent body, to be known as the Exemptions Board, to consider appeals from non-parties against a refusal of a non-party's application for exemptions from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council.

(2) Any non-party employer may lodge an appeal with the Council against the Council's refusal of an application for an exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council, in which event the following procedure shall apply:

(a) An appeal shall be in writing and shall be addressed to the regional secretary concerned for consideration by the Exemptions board appointed by the Council.

(b) All appeals shall be considered by the Council or regional councils with due regard to the criteria contained in the collective agreement when considering applications for exemptions by non-parties.

(c) All appeals shall be substantiated or motivated by the appellant and shall include the following details:

(i) The period for which the exemption is required;

(ii) the agreement or clauses or subclauses of the agreement from which exemption is required;

(iii) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives; and the responses resulting from such consultation, either in support of or against the application, are to be included with the appeal.

(3) The Exemptions Board may, having regard to the individual merits of each appeal, grant or refuse the appeal if—

(a) it does not undermine the agreement;

(b) it is fair to the employer or its employees and other employers and employees in the Industry.

(4) The Exemptions Board shall deal with all appeals within 30 days of the date on which the appeal was submitted: Provided that the Board may defer a decision to a following meeting if additional motivation or substantiation or information is considered necessary to make a decision on the appeal.

(5) Once the Exemptions Board has granted an exemption, it shall issue a certificate and advise the applicant(s) accordingly within 14 days of the date of its decision.

(6) When the Exemptions Board dismisses an appeal for exemption or part of an exemption it shall advise the applicant(s) within 14 days after date of such decision.

(7) ***Exemption criteria:*** The Exemptions Board shall consider all appeals with reference to the following criteria:

(a) The written substantiation and motivation submitted by the applicant;

(b) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;

(c) the scope of exemption required;

(d) the infringement of basic conditions of employment rights;

(e) the fact that a competitive advantage is not created by the exemption;

(f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative compatible *bona fide* benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;

(g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Motor Industry;

(h) any existing special economic or other circumstances that warrant the granting of the exemption;

(i) cognisance of the recommendations contained in the *Report of the Presidential Commission to Investigate labour Market Policy;* and

(j) any recommendation from the Council.".

Signed at Randburg, on behalf of the parties, this 28th day of May 1999.

R. BASTICK
President of the Council

M. LOUW
Vice-President of the Council

B. G. DU PREEZ
General Secretary of the Council

No. R. 985 **20 Augustus 1999**

WET OP ARBEIDSVERHOUDINGE, 1995

MOTORNYWERHEID—MIBCO: UITBREIDING VAN ADMINISTRATIEWE KOLLEKTIEWE WYSIGINGSOOREENKOMS NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Wysigingsooreenkoms wat in die Bylae hiervan verskyn en wat in die Motornywerheidbedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 30 Augustus 1999, en vir die tydperk wat op 31 Augustus 2000 eindig.

M. M. S. MDLADLANA
Minister van Arbeid

BYLAE

MOTORNYWERHEID—BEDINGINGSRAAD—MIBCO

ADMINISTRATIEWE KOLLEKTIEWE OOREENKOMS

ooreenkomstig die Wet op Arbeidsverhoudinge, 1995, gesluit deur en aangegaan tussen die

South African Motor Industry Employers' Association

en die

South African Vehicle Builders' and Repairers' Association

(hierna die "werkgewers" of die "werkgewersorganisasies" genoem), aan die een kant, en die

National Union of Metalworkers of South Africa

Motor Industry Employees' Union of South Africa

en die

Motor Industry Staff Association

(hierna die "werknemers" of die "vakbonde" genoem), aan die ander kant, wat die partye is by die Motornywerheidbedingingsraad—MIBCO,

tot wysiging van die Administratiewe Kollektiewe Ooreenkoms gepubliseer by Goewermentskennisgewing No. R. 959 van 7 Augustus 1998 soos gewysig by Goewermentskennisgewing No. R. 1467 van 20 November 1998.

1. TOEPASSINGSBESTEK

(1) Hierdie Ooreenkoms moet in die Motornywerheid nagekom word—

(a) oral in die Republiek van Suid-Afrika soos dit bestaan het onmiddellik voor die datum van inwerkingtreding van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993);

(b) deur die werkgewers en die werknemers in die Motornywerheid wat lede is van onderskeidelik die werkgewersorganisasies en die vakbonde.

(2) Ondanks subklousule (1) is hierdie Ooreenkoms van toepassing op—

(a) vakleerlinge slegs vir sover dit nie onbestaanbaar is met die Wet op Mannekragopleiding, 1981, of voorwaardes wat daarkragtens gestel is nie; en

(b) kwekelinge wat opleiding ingevolge die Wet op Mannekragopleiding, 1981, ondergaan, slegs vir sover dit nie onbestaanbaar is met daardie Wet of voorwaardes wat daarkragtens gestel is nie.

(3) Klousules 1 (1) (b) en 2 van hierdie Ooreenkoms is nie van toepassing nie op werkgewers en werknemers wat nie lede van onderskeidelik die werkgewersorganisasies en die vakbonde is nie.

2. GELDIGHEIDSDUUR VAN OOREENKOMS

Hierdie Ooreenkoms tree in werking op die datum wat die Minister van Arbeid ingevolge artikel 32 van die Wet vasstel en bly van krag vir die tydperk wat op 31 Augustus 2000 eindig.

3. KLOUSULE 27: KRAAMVERLOF

Skrap hierdie klousule in sy geheel

4. KLOUSULE 31: VRYSTELLINGSRAAD

Vervang klousule 31 deur die volgende:

"(1) Ingevolge artikel 32 (3) (e) van die Wet word hierby deur die Raad 'n onafhanklike liggaam, bekend as die Vrystellingsraad, gestig om appèlle van nie-partye teen die weiering van 'n nie-party se aansoek om vrystelling van enige van die bepalings van 'n gepubliseerde kollektiewe ooreenkoms en die terugtrekking van sodanige vrystelling deur die Raad, te oorweeg.

(2) Enige nie-party-werkgewer kan by die Raad 'n appèl indien teen die Raad se weiering van 'n aansoek om vrystelling van die bepalings van 'n gepubliseerde kollektiewe ooreenkoms en die terugtrekking van sodanige vrystelling deur die Raad, en in welke geval die volgende prosedure van toepassing is:

(a) Alle appèlle moet skriftelik gerig word aan die betrokke Streeksekretaris, vir oorweging deur die Vrystellingsraad soos deur die Raad aangestel.

(b) Alle appèlle moet deur die Raad of Streeksraad oorweeg word met deeglike inagneming van die kriteria vervat in die kollektiewe ooreenkoms by die oorweging van vrystellings vir nie-partye.

(c) Alle appèlle moet deeglik gestaaf of gemotiveer word deur die applikant en moet die volgende inligting bevat:

(i) Die tydperk waarvoor vrystelling benodig word;

(ii) die ooreenkoms en klousules of subklousules van die ooreenkoms waarvan vrystelling versoek word;

(iii) bewys dat die vrystelling waarvoor aansoek gedoen word, wel bespreek is tussen die werkgewer en sy werknemers en hul onderskeie verteenwoordigers. Die reaksies voortspruitend uit sodanige oorlegplegings het sy ten gunste van of teen die aansoek, moet by die appèl ingesluit word.

(3) Die Vrystellingsraad mag, met inagneming van die individuele meriete van elke appèl, die appèl toestaan of weier indien—

(a) dit nie die Ooreenkoms ondermyn nie;

(b) dit regverdig is teenoor die werkgewer of sy werknemers en ander werkgewers en werknemers in die Nywerheid.

(4) Die Vrystellingsraad moet alle appèlle binne 30 dae vanaf die datum waarop die appèl ingedien is, oorweeg: Met dien verstande dat die Raad 'n besluit mag uitstel tot 'n volgende vergadering indien bykomende motivering, stawing of inligting as noodsaaklik beskou word alvorens 'n besluit oor die appèl geneem word.

(5) Sodra die Vrystellingsraad 'n vrystelling verleen het, moet 'n vrystellingssertifikaat uitgereik en die applikant(e) binne 14 dae na die datum van so 'n besluit verwittig word.

(6) Wanneer die Vrystellingsraad 'n appèl om vrystelling van die hand wys of gedeeltelik van die hand wys, moet die applikant(e) binne 14 dae na die datum van sodanige besluit verwittig word.

(7) ***Kriteria vir vrystelling:*** Die Vrystellingsraad moet alle appèlle oorweeg met verwysing na die volgende kriteria.

(a) Die skriftelike stawing en motiviering deur die applikant voorgelê;

(b) die mate van raadpleging met en die versoekskrif vir of teen die verlening van vrystelling soos verskaf deur werkgewers of werknemers wat deur die vrystelling geraak sal word, indien toegestaan;

(c) die bestek van die vrystelling wat verlang word;

(d) die skending van die regte van basiese diensvoorwaardes;

(e) die feit dat 'n mededingende voordeel nie geskep word deur die vrystelling nie;

(f) dat vrystelling van enige werknemervoordelefonds of opleidingsbepaling gesien moet word in verhouding tot die alternatiewe vergelykbare *bona fide*-voordeel of -bepaling, met inbegrip van die koste vir die werknemer, oordraagbaarheid, administrasiebestuur en -koste, groei en stabiliteit;

(g) die mate waarin die voorgestelde vrystelling die kollektiewe bedinging en arbeidsvrede in die Motornywerheid ondermyn;

(h) enige bestaande spesiale ekonomiese of ander omstandighede wat die verlening van die vrystelling regverdig;

(i) die inagneming van die aanbevelings vervat in die *Verslag van die Presidensiële Kommissie van Ondersoek na die Arbeidsmarkbeleid*; en

(j) enige aanbeveling vanaf die Bedingingsraad.".

Namens die partye op hede hierdie 28ste dag van Mei 1999 te Randburg onderteken.

R. BASTICK
President van die Raad

M. LOUW
Vise-president van die Raad

B. G. DU PREEZ
Hoofsekretaris van die Raad

No. R. 986 **20 August 1999**

LABOUR RELATIONS ACT, 1995

MOTOR INDUSTRY BARGAINING COUNCIL—MIBCO: AMENDMENT OF AUTO WORKERS' PENSION FUND COLLECTIVE AGREEMENT

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Amending Agreement which appears in the Schedule hereto, which was concluded in the Motor Industry Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 30 August 1999 and for the period ending 31 August 2003.

M. M. S. MDLADLANA
Minister of Labour

SCHEDULE

MOTOR INDUSTRY BARGAINING COUNCIL—MIBCO

AUTO WORKERS' PENSION FUND COLLECTIVE AGREEMENT

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

South African Motor Industry Employers' Association

and the

South African Vehicle Builders' and Repairers' Association

(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the

National Union of Metalworkers of South Africa

Motor Industry Employees' Union of South Africa

and

Motor Industry Staff Association

(hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the Motor Industry Bargaining Council—MIBCO,

to amend the Auto Workers' Pension Fund Collective Agreement published under Government Notice No. R. 961 of 7 August 1998, as extended by Government Notice No. R. 1092 of 28 August 1998.

1. CLAUSE 1: PERIOD OF OPERATION

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 31 of the Act, and shall remain in force for the period ending 31 August 2003.

2. CLAUSE 2: SCOPE OF APPLICATION OF AGREEMENT

(1) Subject to the provisions of subclause (2) of this clause, the terms of this Agreement shall be observed—

(a) in the Motor Industry in the Republic of South Africa;

(b) by all employers who are members of the employers' organisation and by all employees who are members of the trade unions.

(2) Notwithstanding the provisions of subclause (1) of this clause, the provisions of this Agreement shall not apply to—

(a) employees who are members of the Motor Industry Employees' Union of South Africa or the Motor Industry Staff Association;

(b) members of the National Union of Metalworkers of South Africa who are members of the Motor Industry Pension Fund;

(c) journeymen who are not members of the National Union of Metalworkers of South Africa or apprentices who are not members of the National Union of Metalworkers of South Africa, other than those referred to in the definition of "journeyman" and "apprentices", respectively;

(d) any employee who has been granted a retirement benefit by any fund that provides for such benefits;

(e) employees in respect of whom their employer contributes, and for as long as their employer so contributes, to a pension fund/providend fund that was in operation on the date of coming into operation of this Agreement and which, in the opinion of the Council, provides benefits not less favourable than those provided by the Fund;

(f) any employee for six months from the date on which he begins employment in the Motor Industry: Provided that any employer may in his discretion waive this exclusion.

(3) Clauses 1 and 2 (1) (b) of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

3. CLAUSE 12: INDEPENDENT EXEMPTIONS BOARD

Substitute the following for this clause:

"Subject to clause 31 of the Administrative Agreement published under Government Notice No. R. 959 of 7 August 1998, the same conditions and criteria shall apply in respect of appeals from non-parties submitted in terms of the provisions of this Agreement.".

Signed at Randburg, on behalf of the parties, this 28th day of May 1999.

R. BASTICK
President of the Council

M. LOUW
Vice-President of the Council

B. G. DU PREEZ
General Secretary of the Council

No. R. 986 **20 Augustus 1999**

WET OP ARBEIDSVERHOUDINGE, 1995

MOTORNYWERHEID—MIBCO: WYSIGING VAN VOORSORGFONDS VIR MOTORWERKERS KOLLEKTIEWE OOREENKOMS

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Wysigingsooreenkoms wat in die Bylae hiervan verskyn en wat in die Motornywerheidbedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en weknemers in daardie nywerheid met ingang van 30 Augustus 1999, en vir die tydperk wat op 31 Augustus 2003 eindig.

M. M. S. MDLADLANA
Minister van Arbeid

BYLAE

BEDINGINGSRAAD VIR DIE MOTORNYWERHEID—MIBCO

KOLLEKTIEWE OOREENKOMS VIR DIE MOTORWERKERSVOORSORGFONDS

ooreenkomstig die Wet op Arbeidsverhoudinge, 1995, gesluit deur en aangegaan tussen die

South African Motor Industry Employers' Association

en die

South African Vehicle Builders' and Repairers' Association

(hierna die "werkgewers" of die "werkgewersorganisasies" genoem), aan die een kant, en die

National Union of Metalworkers of South Africa

Motor Industry Employees' Union of South Africa

en

Motor Industry Staff Association

(hierna die "werknemers" of die "vakbonde" genoem), aan die ander kant, wat die partye is by die Bedingingsraad vir die Motornywerheid—MIBCO,

tot wysiging van die Kollektiewe Ooreenkoms van die Motorwerkersvoorsorgfonds gepubliseer by Goewermentskennisgewing No. R. 961 van 7 Augustus 1998, soos verleng by Goewermentskennisgewing No. R. 1092 van 28 Augustus 1998.

1. KLOUSULE 1: GELDIGHEIDSDUUR

Hierdie Ooreenkoms tree in werking op sodanige datum deur die Minister van Arbeid ingevolge artikel 32 van die Wet bepaal en bly van krag vir die tydperk eindigende 31 Augustus 2003.

2. KLOUSULE 2: TOEPASSINGSBESTEK VAN OOREENKOMS

(1) Behoudens subklousule (2) van hierdie klousule moet hierdie Ooreenkoms nagekom word—

(a) in die Motornywerheid in die Republiek van Suid-Afrika;

(b) deur alle werkgewers wat lede is van die werkgewersorganisasies en deur alle werknemers in die Nywerheid wat lede is van die vakbonde.

(2) Ondanks die bepalings van subklousule (1) van hierdie klousule is die bepalings van die Ooreenkoms nie van toepassing nie op—

(a) werknemers wat lede is van die Motor Industry Employees' Union of South Africa;

(b) lede van die National Union of Metalworkers of South Africa wat lede is van die Pensioenfonds vir die Motornywerheid;

(c) vakmanne wat nie lede van die National Union of Metalworkers of South Africa is nie of vakleerlinge wat nie lede van die National Union of Metalworkers of South Africa is nie, uitgesonderd dié van wie daar in die omskrywings van onderskeidelik "vakman" en "vakleerling" melding gemaak word;

(d) 'n werknemer aan wie aftreebystand toegestaan is deur 'n fonds wat vir sodanige bystand voorsiening maak;

(e) werknemers ten opsigte van wie hul werkgewer bydra, en solank as wat hul werkgewer aldus bydra, tot 'n pensioenfonds/voorsorgfonds wat in werking was op die datum waarop hierdie Ooreenkoms in werking getree het en wat, na die mening van die Raad, bystand verskaf wat nie minder gunstig is nie as dié wat deur die Fonds verskaf word;

(f) 'n werknemer vir ses maande vanaf die datum waarop hy by die Motornywerheid in diens tree: Met dien verstande dat 'n werkgewer na goeddunke van hierdie uitsluiting kan afsien.

(3) Klousule 1 en 2 (1) (b) van hierdie Ooreenkoms is nie van toepassing nie op werkgewers en werknemers wat nie lede van die onderskeie werkgewersorganisasies en vakbonde is nie.

3. KLOUSULE 12: ONAFHANKLIKE VRYSTELLINGSRAAD

Vervang hierdie klousule deur die volgende:

"Behoudens klousule 31 van die Administratiewe Ooreenkoms wat kragtens Goewermentskennisgewing No. R. 959 van 7 Augustus 1998 gepubliseer is, is dieselfde voorwaardes en kriteria van toepassing op appèlle wat deur nie-partye ingedien word ingevolge die bepalings van hierdie Ooreenkoms.".

Namens die partye op hede die 28ste dag van Mei 1999 te Randburg onderteken.

R. BASTICK

President van die Raad

M. LOUW

Vise-President van die Raad

B. G. DU PREEZ

Hoofsekretaris van die Raad

No. R. 987 **20 August 1999**

LABOUR RELATIONS ACT, 1995

MOTOR INDUSTRY—MIBCO: EXTENSION OF MAIN COLLECTIVE AMENDING AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Amending Agreement which appears in the Schedule hereto, which was concluded in the Motor Industry Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Amending Agreement, shall be binding on the other employers and employees in that Industry, with effect from 30 August 1999, and for the period ending 30 November 2000.

M. M. S. MDLADLANA
Minister of Labour

SCHEDULE

MOTOR INDUSTRY BARGAINING COUNCIL—MIBCO

COLLECTIVE AGREEMENT

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

South African Motor Industry Employers' Association

and the

South African Vehicle Builders' and Repairers' Association

(hereinafter referred to as the "employers" or the "employers' organistions"), of the one part, and the

National Union of Metalworkers of South Africa

Motor Industry Employees' Union of South Africa

and the

Motor Industry Staff Association

(hereinafter referred to as the "employees" or the "trade unions") of the other part,

being the parties to the Motor Industry Bargaining Council—MIBCO,

to amend the Collective Agreement published under Government Notice No. R. 962 of 14 August 1998, as extended and amended by Government Notices Nos. R. 1093 of 28 August 1998 and R. 1468 and R. 1469 of 20 November 1998.

PREAMBLE

1. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in operation for the period ending 30 November 2000.

2. MINIMUM TERMS AND CONDITIONS

The parties agree to the terms and conditions in this Agreement as minimum prescribed conditions applicable to employers and employees in the Industry, and it is accepted that different terms and conditions may be negotiated at establishment level in accordance with the principles of voluntarism and of collective bargaining: Provided that such terms and conditions shall not be less favourable than the terms and conditions prescribed in this Agreement.

3. APPLICATION OF THE BASIC CONDITIONS OF EMPLOYMENT ACT, 1997 (ACT No. 75 OF 1997)

The Parties agree that whenever any amendments are effected to the sections identified by section 49(1) of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), all corresponding clauses in this Agreement must be amended accordingly.

DIVISION A

4. CLAUSE 1: SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Motor Industry—

(a) throughout the Republic of South Africa as it existed prior to the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

(b) by the employers and the employees in the Motor Industry who are members of the employers' organisations and the trade unions, respectively.

(2) Notwithstanding the provisions of subclause (1), the provisions of this Agreement shall apply to—

(a) apprentices only in so far as they are not inconsistent with the provisions of or any conditions fixed under the Manpower Training Act, 1981; and

(b) trainees undergoing training under the Manpower Training Act, 1981, only in so far as they are not inconsistent with the provisions of or any conditions fixed under that Act.

(3) (a) The provisions of this Agreement on ordinary hours of work, overtime and Sunday work as set out in the Schedule of this subclause, shall not apply to managers and foremen who receive not less than—

(i) R1 500,00 per week if employed in any of Areas A;

(ii) R1 275,00 per week if employed in any other area.

(b) Employees earning in excess of R1 500,00 per week if employed in any of Areas A or R1 275,00 per week in other areas shall not be required to work overtime other than on a voluntary basis, free from any form of coercion, intimidation or victimisation.

(4) Clause 1 of the Preamable and clause 1 (1) (b) of Division A of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

DIVISION A

Clause 18	Hours of work
Clause 19	Overtime
Clause 21	Sunday work

5 CLAUSE 3: TERMINATION OF SERVICE

Substitute the following for subclause (5):

"(5) (a) Notice of termination of a contract of employment must be given in writing, except when it is given by an illiterate employee.

(b) If an employee who receives notice of termination indicates to his employer that he is not able to understand it, the notice must be explained orally by or on behalf of the employer to the employee in an official language the employee reasonably understand.".

6 CLAUSE 11: SICK LEAVE

Substitute the following for this clause:

"(1) "Sick leave cycle" means the period of 36 months' employment with the same employer immediately following—

(a) an employee's commencement of employment; or

(b) the completion of that employee's prior sick leave cycle.

(2) During every sick leave cycle an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks, i.e. 30 working days if he normally works a five-day week or 36 working days if he normally works a six-day week.

(3) Despite subclause (2), during the first six months of employment an employee is entitled to one day's paid sick leave for every 26 days worked.

(4) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement of sick leave in terms of subclause (2) by the number of days' sick leave taken in terms of subclause (3).

(5) Subject to subclause (7), an employer must pay an employee for a day's sick leave—

(a) the wage the employee would ordinarily have received for work on that day; and

(b) on the employee's usual pay day.

(6) An employee may take one day per year sick leave in terms of the provisions of this clause for medical tests, e.g. PAP smears, TB tests and/or similar health care tests: Provided that proof is supplied to the employer that the employee did undergo those tests.

(7) (a) A person who is required by his employer to produce a medical certificate or other evidence of illness if he has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period, must produce such medical certificate or other satisfactory evidence within a period of not more than two days after his return to duty or otherwise will forfeit his right to sick pay.

(b) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subclause (7) (a) unless the employer provides reasonable assistance to the employee to obtain the certificate.'.

7. CLAUSE 18: HOURS OF WORK

Substitute the following for subclause (6):

"(6) Whenever any service supply salesperson is at any time during the course of his employment required to work away from the establishment of his employer, the provisions of subclause (2) of this clause shall not apply and the hours of work stipulated in subclause (1) of this clause may for purposes of such work be extended by up to 15 minutes in a day but not more than 60 minutes in a week.".

8. CLAUSE 26: ANNUAL LEAVE AND ACCRUED LEAVE PAY

In subclause (6), insert the following new paragraphs (c) and (d):

"(c) Subject to subclause (6) (a) of this clause, an employer shall permit an employee, at the employee's written request, to take leave during a period of unpaid leave, which permission shall not unreasonably be withheld.

(d) An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full pay granted to the employee at the employee's request in that leave cycle.".

9. CLAUSE 28: INDEPENDENT EXEMPTIONS BOARD

Substitute the following for this clause:

"Subject to clause 31 of the Administrative Agreement published under Government Notice No. R. 959 of 7 August 1998, the same conditions and criteria shall apply in respect of appeals from non-parties submitted in terms of the provisions of this Agreement.".

10. Insert the following new clause 30:

"30. NIGHT WORK

(1) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must—

(a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands—

(i) of any health and safety hazards associated with the work that the employee is required to perform; and

(ii) of the employee's right to undergo a medical examination in terms of paragraph (b);

(b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning the above-mentioned hazards—

(i) before the employee starts, or within a reasonable period of the employee starting, such work; and

(ii) at appropriate intervals while the employee continues to perform such work; and

(c) transfer the employee to suitable day work within a reasonable time if—

(i) the employee suffers from a health condition associated with the performance of night work; and

(ii) it is practicable for the employer to do so.

(2) For the purposes of subclause (1), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.".

11. Insert the following new clause 31:

"31. MATERNITY LEAVE

(1) An employee is entitled to at least six consecutive months' maternity leave.

(2) An employee may commence maternity leave—

(a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or

(b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

(4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.

(5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date of on which the employee intends to—

(a) commence maternity leave; and

(b) return to work after maternity leave.

(6) Notification in terms of subclause (5) must be given—

(a) at least four weeks before the employee intends to commence maternity leave; or

(b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(7) For the purposes of calculating the period of employment in the Industry, the period an employee is on maternity leave shall be regarded as employment in the Industry.".

DIVISION B

1. CLAUSE 4: ORDINARY HOURS OF WORK

(1) Substitute the following for subclause (1) (a) (ii):

"(ii) an employee who does not ordinarily work on more than five days a week may on any working day be required or permitted to work for an additional period of 15 minutes per day to a maximum of 60 minutes per week;".

(2) Substitute the following for subclause (4):

"(4) Whenever any traveller or his assistant is at any time during the course of his employment required to work away from the establishment of his employer, the provisions of subclause (2) of this clause shall not apply and the hours of work stipulated in subclause (1) (a) of this clause may for purposes of such work be extended by up to 15 minutes in a day but not more than 60 minutes in a week.".

2. CLAUSE 8: ANNUAL LEAVE

In subclause (7), insert the following new paragraphs (c) and (d):

"(c) Subject to subclause (6) (a) of this clause, an employer shall permit an employee, at the employee's written request, to take leave during a period of unpaid leave, which permission shall not unreasonably be withheld.

(c) An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full pay granted to the employee at the employee's request in that leave cycle.".

3. CLAUSE 10: TERMINATION OF SERVICE

Substitute the followiong for subclause (5):

"(5) (a) Notice of termination of a contract of employment must be given in writing, except when it is given by an illiterate employee.

(b) If an employee who receives notice of termination indicates to his employer that he is not able to understand it, the notice must be explained orally by or on behalf of the employer to the employee in an official language the employee reasonably understands.".

4. CLAUSE 12: RETRENCHMENT PAY

In subclause (2) (a), subsitute the expressions "R78 000" and "R66 300" for the expressions "R72 000" and "R60 000", respectively.

Signed at Randburg, on behalf of the parties, this 28th day of May 1999.

R. BASTICK
President of the Council

M. LOUW
Vice-President of the Council

B. G. DU PREEZ
General Secretary of the Council

No. R. 987 **20 Augustus 1999**

WET OP ARBEIDSVERHOUDINGE, 1995

MOTORNYWERHEID—MIBCO: UITBREIDING VAN HOOF KOLLEKTIEWE WYSIGINGSOOREENKOMS NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Wysigingsooreenkoms wat in die Bylae hierby verskyn en wat in die Motornywerheidbedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Wysigingsooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie nywerheid, met ingang van 30 Augustus 1999, en vir die tydperk wat op 30 November 2000 eindig.

M. M. S. MDLADLANA
Minister van Arbeid

BYLAE

MOTORNYWERHEID—BEDINGINGSRAAD—MIBCO

KOLLEKTIEWE OOREENKOMS

ooreenkomstig die Wet op Arbeidsverhoudinge, 1995, gesluit deur en aangegaan tussen die

South African Motor Industry Employers' Association

en die

South African Vehicle Builders' and Repairers' Association

(hierna die "werkgewers" of die "werkgewersorganisasies" genoem), aan die een kant, en die

National Union of Metalworkers of South Africa,

Motor Industry Employees' Union of South Africa

en die

Motor Industry Staff Association

(hierna die "werknemers" of die "vakbonde" genoem), aan die ander kant,

wat die partye is by die Motornywerheidbedingings-raad—MIBCO,

tot wysiging van die Kollektiewe Ooreenkoms gepubliseer by Goewermentskennisgewing No. R. 962 van 14 Augustus 1998 soos verleng en gewysig by Goewermentskennisgewings Nos. R. 1093 van 28 Augustus 1998, R. 1468 en R. 1469 van 20 November 1998.

AANHEF

1. GELDIGHEIDSDUUR VAN OOREENKOMS

Hierdie Ooreenkoms tree in werking op die datum wat die Minister van Arbeid ingevolge artikel 32 van die Wet vasstel en bly van krag vir die tydperk wat op 30 November 2000 eindig.

2. MINIMUM BEPALINGS EN VOORWAARDES

Die partye het ooreengekom oor die bepalings en voorwaardes in hierdie Ooreenkoms as minimum voorgeskrewe voorwaardes van toepassing op werkgewers en werknemers in die Nywerheid, en daar word aanvaar dat ander bepalings en voorwaardes beding kan word op bedryfsinrigtingvlak ooreenkomstig die beginsels van voluntarisme en van gesamentlike bedinging: Met dien verstande dat sodanige bepalings en voorwaardes nie minder gunstig mag wees nie as die bepalings en voorwaardes voorgeskryf in hierdie Ooreenkoms.

3. TOEPASSING VAN DIE WET OP BASIESE DIENSVOORWAARDES, 1997 (WET No. 75 VAN 1997)

Die Partye het ooreengekom dat wanneer ook al enige wysigings gemaak word aan die artikels soos bepaal word by artikel 49(1) van die Wet op Basiese Diensvoorwaardes (Wet No. 75 van 1997), moet alle ooreenstemmende klousules in hierdie Ooreenkoms dienooreenkomstig gewysig word.

AFDELING A

4. KLOUSULE 1: TOEPASSINGSBESTEK

(1) Hierdie Ooreenkoms moet in die Motornywerheid nagekom word—

(a) oral in die Republiek van Suid-Afrika soos dit bestaan het onmiddellik voor die datum van inwerkingtreding van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993);

(b) deur die werkgewers en die werknemers in die Motornywerheid wat lede is van onderskeidelik die werkgewersorganisasie en die vakbonde.

(2) Ondanks subklousule (1) is hierdie Ooreenkoms van toepassing op—

(a) vakleerlinge slegs vir sover dit nie onbestaanbaar is met die Wet op Mannekragopleiding, 1981, of voorwaardes wat daarkragtens gestel is nie; en

(b) kwekelinge wat opleiding ingevolge die Wet op Mannekragopleiding, 1981, ondergaan, slegs vir sover die nie onbestaanbaar is met daardie Wet of voorwaardes wat daarkragtens gestel is nie.

(3) (a) Hierdie Ooreenkoms betreffende gewone werkure, oortydwerk en Sondagwerk wat in die Bylae van hierdie subklousule uiteengesit word, is nie van toepassing op bestuurders en voormanne wat minstens die volgende ontvang nie:

(i) R1 500,00 per week indien hulle in diens is in enigeen van Gebiede A;

(ii) R1 275,00 per week indien hulle in diens is in enige ander gebied.

(b) Daar mag nie van werknemers wat meer as R1 500,00 per week verdien indien hulle in enigeen van Gebiede A, werksaam is, of R1 275,00 per week verdien indein hulle in enige ander gebiede werksaam is, verwag word om oortyd te werk nie tensy dit op 'n vrywillige basis is, vry van enige vorm van dwang, intimidasie of viktimisering.

(4) Klousule 1 van die Aanhef en klousule 1 (1) (b) van Afdeling A van hierdie Ooreenkoms is nie van toepassing op werkgewers en werknemers wat nie lede van onderskeidelik die werkgewersorganisasies en die vakbonde is nie.

AFDELING A

Klousule 18 ..... Werkure
Klousule 19 ..... Oortydwerk
Klousule 21 ..... Sondagwerk

5 KLOUSULE 3: DIENSBEËINDIGING

Vervang subklousule (5) deur die volgende:

"(5) (a) Kennis van beëindiging van 'n dienskontrak moet skriftelik gegee word, behalwe wanneer dit deur 'n ongeletterde werknemer gegee word.

(b) Indien 'n werknemer wat kennisgewing van beëindiging ontvang, aan sy werkgewer aandui dat hy nie in staat is om dit te verstaan nie, moet die kennisgewing mondeling, in 'n amptelike taal wat die werknemer redelikerwys verstaan, deur of namens die werkgewer aan die werknemer verduidelik word.".

6 KLOUSULE 11: SIEKTEVERLOF

Vervang hierdie klousule deur die volgende:

"(1) "Siekteverlofsiklus" beteken die tydperk van 36 maande diens by dieselfde werkgewer wat onmiddellik volg op—

(a) die aanvang van 'n werknemer se diens; of

(b) die voltooiing van daardie werknemer se vorige siekteverlofsiklus.

(2) Gedurende elke siekteverlofsiklus is 'n werknemer geregtig op 'n hoeveelheid siekteverlof met betaling wat gelyk is aan die getal dae wat die werknemer gewoonlik sou werk gedurende 'n tydperk van ses weke, i.e. 30 werksdae as hy gewoonlik vyf dae per week werk of 36 werksdae as hy gewoonlik ses dae per week werk.

(3) Ondanks subklousule (2) is 'n werknemer, gedurende die eerste ses maande diens, geregtig op een dag siekteverlof met betaling vir elke 26 dae wat hy gewerk het.

(4) Gedurende 'n werknemer se eerste siekteverlofsiklus kan die werknemer 'n werkgewer se geregtigheid op siekteverlof ingevolge subklousule (2) verminder met die getal dae siekteverlof wat ingevolge subklousule (3) geneem is.

(5) Behoudens subklousule (7) moet 'n werkgewer 'n werknemer vir 'n dag siekteverlof—

(a) die loon betaal wat die werknemer gewoonlik sou ontvang het vir werk op daardie dag; en

(b) op die werknemer se gewone betaaldag betaal.

(6) 'n Werknemer mag een dag per jaar van sy siekteverlof gebruik vir mediese toetse bv. PAP-smere, TB-toetse en/of soortgelyke mediesesorgtoetse: Met dien verstande dat bewyse aan die werkgewer voorgelê word dat die werknemer sodanige toetse ondergaan het.

(7) (a) Iemand wie se werkgewer vereis dat hy 'n doktersertifikaat of 'n ander bewys van siekte voorlê, as hy afwesig was van sy werk vir meer as twee opeenvolgende dae of by meer as twee geleenthede gedurende 'n tydperk van agt weke, moet sodanige doktersertifikaat of ander bevredigende bewys binne hoogstens twee dae nadat hy terug is by die werk voorlê, anders verbeur hy sy reg op siektebesoldiging.

(b) Indien dit nie redelikerwys uitvoerbaar is vir die werknemer wat op die werkgewer se perseel woon om 'n mediese sertifikaat te bekom nie, mag die werkgewer nie betaling ingevolge subklousule (7)(a) weerhou nie, tensy die werkgewer redelike bystand aan die werknemer verleen om die sertifikaat te bekom.".

7. KLOUSULE 18: WERKURE

Vervang subklousule (6) deur die volgende:

"(6) Wanneer daar van 'n diensverkoper vereis word om te eniger tyd in die loop van sy diens werk op 'n ander plek as in die bedryfsinrigting van syw erkgewer te verrig, is subklousule (2) hiervan nie van toepassing nie en kan die ure voorgeskryf in subklousule (1) van hierdie klousule vir die doeleindes an sodanige werk verleng word met tot 15 minute per dag maar met hoogstens 60 minute in 'n week.".

8. KLOUSULE 26: JAARLIKSE VERLOF EN BESOLDIGING VIR OPGELOPE VERLOF

In subklousule (6), voeg die volgende nuwe paragrawe (c) en (d) in:

"(c) Behoudens die bepalings van subklousule (6) (a) van hierdie klousule moet 'n werkgewer 'n werknemer op die werknemer se skriftelike versoek toelaat om verlof te neem gedurende 'n tydperk van verlof sonder betaling en die toestemming daarvoor mag nie onredelik geweier word nie.

(d) 'n Werkgewer kan 'n werknemer se geregtigdheid op jaarlikse verlof verminder met die getal dae geleentheidsverlof met volle besoldiging wat in daardie verlofsiklus op versoek van die werknemer aan die werknemer toegestaan is.".

9. KLOUSULE 28: ONAFHANKLIKE VRYSTELLINGSRAAD

Vervang hierdie klousule deur die volgende:

"Behoudens die bepalings van klousule 31 van die Administratiewe Ooreenkoms gepubliseer by Goewermentskennisgewing No. R. 959 van 7 Augustus 1998, is dieselfde voorwaardes en kriteria van toepassing vir appèlle wat deur nie-partye ingedien word ingevolge die bepalings van hierdie Ooreenkoms.".

10. Voeg die volgende nuwe klousule 30 in:

"30. NAGWERK

(1) 'n Werkgewer wat van 'n werknemer vereis om op 'n gereelde grondslag na 23:00 en voor 06:00 die volgende dag werk te verrig, moet—

(a) die werknemer skriftelik inlig, of indien die werknemer nie in staat is om 'n skriftelike kommunikering te verstaan nie, mondeling, in 'n taal wat die werknemer verstaan, omtrent—

(i) enige gesondheids- en veiligheidsgevare wat verbonde is aan die werk wat die werknemer moet verrig; en

(ii) die werknemer se reg om 'n mediese ondersoek ingevolge paragraaf (b) te ondergaan;

(b) die werknemer, op versoek van die werknemer en vir die rekening van die werkgewer, in staat stel om 'n mediese ondersoek te ondergaan betreffende bogenoemde gevare—

(i) voordat die werknemer begin, of binne 'n redelike tydperk nadat die werknemer begin, met daardie werk; en

(ii) met gepaste tussenposes terwyl die werknemer voortgaan om daardie werk te verrig; en

(c) die werknemer binne 'n redelike tyd na geskikte dagwerk oorplaas indien—

(i) die werknemer aan 'n gesondheidstoestand ly wat met die verrigting van nagwerk verband hou; en

(ii) dit vir die werkgewer moontlik is om dit te doen.

(2) Vir die doeleindes van subklousule (1) werk 'n werknemer op 'n gereelde grondslag indien die werknemer vir 'n tydperk van langer as een uur na 23:00 en voor 06:00 vir minstens vyf keer per maand of 50 keer per jaar werk.".

11. Voeg die volgende nuwe klousule 31 in:

"31. KRAAMVERLOF

(1) 'n Werknemer is geregtig op minstens ses opeenvolgende maande kraamverlof.

(2) 'n Werknemer kan met kraamverlof begin—

(a) te eniger tyd vanaf vier weke voor die verwagte datum van geboorte, tensy anders ooreengekom; of

(b) op 'n datum met ingang waarvan 'n mediese praktisyn of vroedvrou sertifiseer dat dit vir die gesondheid van die werknemer of van haar ongebore kind nodig is.

(3) 'n Werknemer mag vir ses weke na die geboorte van haar kinders nie werk nie, tensy 'n mediese praktisyn of vroedvrou sertifiseer dat sy geskik is om dit te doen.

(4) 'n Werknemer wat 'n miskraam gedurende die derde trimester van swangerskap het of 'n doodgebore kind baar, is geregtig op kraamverlof vir ses weke na die miskraam of doodgeboorte, ongeag of die werknemer ten tyde van die miskraam of doodgeboorte met kraamverlof begin het.

(5) Tensy 'n werknemer nie in staat is om dit te doen nie, moet die werknemer 'n werkgewer skriftelik in kennis stel van die datum waarop die werknemer van voorneme is om—

(a) met kraamverlof te begin; en

(b) na kraamverlof terug te keer werk toe.

(6) Kennis ingevolge subklousule (5) moet gegee word—

(a) minstens vier weke voordat die werknemer van voorneme is om met kraamverlof te begin; of

(b) indien dit nie redelikerwys moontlik is om dit te doen nie, so gou as wat dit redelikerwys moontlik is.

(7) Vir die doeleindes van berekening van die dienstydperk in die Nywerheid, word die tydperk waartydens 'n werknemer met kraamverlof is, geag diens in die Nywerheid te wees.".

AFDELING B

1. KLOUSULE 4: GEWONE WERKURE

(1) Vervang subklousule (1) (a) (ii) deur die volgende:

"(ii) daar van 'n werknemer wat nie gewoonlik op meer as vyf dae in die week werk nie, op 'n werksdag vereis of hy toegelaat kan word om vir 'n addisionele tydperk van 15 minute op 'n dag te werk nie, maar hoogstens 60 minute per week;".

(2) Vervang subklousule (4) deur die volgende:

"(4) Wanneer daar van 'n handelsreisiger of sy assistent vereis word om te eniger tyd in die loop van sy diens werk op 'n ander plek as in die bedryfsinrigting van sy werkgewer te verrig, is subklousule (2) hiervan nie van toepassing nie en kan die werkure voorgeskryf in subklousule (1) (a) van hierdie klousule vir die doeleindes van sodanige werk verleng word met tot 15 minute per dag, maar met hoogstens 60 minute in 'n week.".

2. KLOUSULE 8: JAARLIKSE VERLOF

In subklousule (7), voeg die volgende nuwe paragrawe (c) en (d) in:

"(c) Behoudens die bepalings van subklousule (6) (a) van hierdie klousule moet 'n werkgewer 'n werknemer op die werknemer se skriftelike versoek toelaat om verlof te neem gedurende die tydperk van verlof sonder betaling en die toestemming daarvoor mag nie onredelik geweier word nie.

(d) 'n Werkgewer kan 'n werknemer se geregtigdheid op jaarlikse verlof verminder met die getal dae geleentheidsverlof met volle besoldiging wat in daardie verlofsiklus op versoek van die werknemer aan die werknemer toegestaan is.".

3. KLOUSULE 10: DIENSBEËINDIGING

Vervang subklousule (5) deur die volgende:

"(5) (a) Kennis van beëindiging van 'n dienskontrak moet skriftelik gegee word, behalwe wanneer dit deur 'n ongeletterde werknemer gegee word.

(b) Indien 'n werknemer wat kennisgewing van beëindiging ontvang, aandui aan sy werkgewer dat hy nie in staat is om dit te verstaan nie, moet die kennisgewing mondeling, in 'n amptelike taal wat die werknemer redelikerwys verstaan, deur of namens die werkgewer aan die werknemer verduidelik word.".

4. KLOUSULE 12: AFLEGGINGSBESOLDIGING

In subklousule (2) (a), vervang die uitdrukkings "R72 000" en "R66 000" deur onderskeidelik die uitdrukkings "R78 000" en "R60 300".

Namens die partye op hede die 28ste dag van Mei 1999 te Randburg onderteken.

R. BASTICK
President van die Raad

M. LOUW
Vice-President van die Raad

B. G. DU PREEZ
Hoofsekretaris van die Raad

SOUTH AFRICAN NATIONAL DEFENCE FORCE
SUID-AFRIKAANSE NASIONALE WEERMAG

No. R. 998 **20 August 1999**

DEFENCE ACT, 1957

AMENDMENT TO THE GENERAL REGULATIONS FOR THE SOUTH AFRICAN NATIONAL DEFENCE FORCE AND RESERVE

The Minister of Defence has, under section 87 (1)(*r*B), read with section 126C of the Defence Act, 1957 (Act No.44 of 1957), made the regulations in the Schedule.

SCHEDULE

1. In this Schedule "the Regulations" means Chapter XX of the General Regulations for the South African National Defence Force and the Reserve.

2. The Regulations are hereby amended by the inclusion of Chapter XX.

CHAPTER XX

LABOUR RIGHTS

Definitions

1. In this Chapter, unless the context otherwise indicates –

"Act" means the Defence Act, 1957 (Act No. 44 of 1957);

"agreement" means a binding written agreement concluded between the parties to the Council in respect of matters of mutual interest, and "collective agreement" shall have the same meaning;

"Board" means the Military Arbitration Board established by regulation 72;

"collective bargaining" means the process whereby the employer and military trade unions engage in negotiations on matters of mutual interest;

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"Council" means the Military Bargaining Council established by regulation 62;

"Defence Force" means the South African National Defence Force;

"employer" means the Department of Defence or any authorised person acting as its representative;

"former constituent force" means any of the former South African Defence Force, Bophuthatswana Defence Force, Transkei Defence Force, Ciskei Defence Force, Venda

Defence Force, Umkhonto we Sizwe, Azanian Peoples Liberation Army or a Self Protection Unit;

"grievance" means a complaint by a member or members of the Defence Force affecting the employment relationship of the member or members concerned, or where there is an alleged violation of his or her or their rights, including any unfair labour practice;

"military trade union" means a trade union established in terms of these regulations;

"office-bearer" means a member of the military trade union who is elected in terms of the constitution of a military trade union to hold office in that military trade union and who is not an official;

"official" in relation to a military trade union means a person employed as a secretary, assistant secretary or organiser of a military trade union, or in any other prescribed capacity in a full time post;

"registered" means registered in terms of these Regulations;

"Registrar" means the Registrar of Military Trade Unions appointed by the Minister in terms of regulation 41;

"remuneration" means any payment in money or in kind, or both money and in kind, made or owing to a member for that person serving in the Defence Force, and remunerate has a similar meaning;

"secondary strike" means a strike, or conduct in contemplation or furtherance of a strike by other employees against their employer, that is in support of any other strike or in solidarity with a strike undertaken by employees other than members of the Defence Force against any employer;

"strike" means the partial or complete concerted refusal to serve, or the retardation or obstruction of service, or failure to serve, by members of the Defence Force, for the purpose of protest, petition or remedying a grievance or resolving a dispute in respect of any matter of mutual interest between the employer and member and every reference to "serve" in this definition includes overtime service or duty, whether it is voluntary or compulsory;

"unfair labour practice" means any unfair act or omission that arises between a member and the employer, involving –

(a) unfair discrimination, either directly or indirectly, against a member on any arbitrary ground, including, but not limited to membership of a former constituent force, race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;

(b) the unfair conduct by the employer relating to the appointment to a post, promotion, demotion or training of a member or relating to the provision of benefits to a member;

(c) the unfair suspension or dismissal of a member or other disciplinary action short of dismissal; or

(d) the failure or refusal by the employer to reinstate or re-employ a former member in terms of any agreement.

PART 1

OBJECTIVES AND APPLICATION

Application

2. The Defence Force, being an all volunteer force that is structured and managed as a disciplined military force, requires that all citizens who voluntarily join the Defence Force accept the rights and limitations with respect to their labour rights as specified in these Regulations.

Objectives

3. The objectives of these Regulations are to provide for -

(a) fair labour practices;

(b) the establishment of military trade unions;

(c) collective bargaining on certain issues of mutual interest;

(d) to ensure that trade union activities do not disrupt military operations, military exercises and training and do not undermine the Constitutional imperative of maintaining a disciplined military force; and

(e) generally to provide for an environment conducive to sound and healthy service relations.

PART 2

RIGHTS AND LIMITATIONS

Individual Rights And Limitations

Rights of members

4. (1) Subject to the provisions of these Regulations, a member shall be entitled to exercise his or her labour rights as contemplated in section 23 of the Constitution, on an individual basis or collectively through a military trade union.

(2) No member of the Permanent Force or of any Auxiliary Service may join or belong to any trade union other than one established in terms of these Regulations.

(3) These regulations apply to members of the Citizen Force and Commandos only in respect of military service rendered, or required to render by them, in their capacity as members of the Citizen Force or Commandos, as the case may be.

Lawful commands

5. No member may refuse to obey a lawful command on the grounds that some matter is, or may become, the subject of collective bargaining, joint consultation or grievance proceedings.

Strikes

6. No member may participate in a strike, secondary strike or incite other members to strike or to support or to participate in a secondary strike.

Prohibited activities

7. Subject to regulation 8, no member may participate in peaceful and unarmed assembly, demonstration, picket and petition in support of a strike or secondary strike if this relates to any Defence matter.

Permissible activities

8. Members have the right to peaceful and unarmed assembly, demonstration, picket and petition, and to present petitions in their private capacity: Provided that such right shall not be exercised –

(a) while in uniform or wearing any part of a uniform or displaying any insignia linked to the Defence Force, in a manner which indicates in any other way employment in the Defence Force or the Department of Defence; or

(b) in respect of any matter concerning either the employment relationship with the Department of Defence or any matter related to the Department of Defence.

ORGANISATIONAL RIGHTS OF MILITARY TRADE UNIONS

Collective rights

9. Only a registered military trade union has collective bargaining and organisational rights in respect of members.

Right to recruit

10. A military trade union that wishes to register has the right to recruit members with the aim of meeting the threshold requirements for registration provided that –

(a) such a military trade union gives notice to the Minister to that effect; and

(b) the Minister causes the existence of the said union to be communicated within the Defence Force within 14 days of receipt of such notification.

Right to organise own affairs

11. Subject to the provisions of these Regulations, a military trade union has the right-

(a) to determine its own constitution and rules;

(b) to hold elections for its office-bearers and representatives;

(c) to appoint its officials; and

(d) to plan and organise its administration and lawful activities, including the right to hold meetings with its members as agreed upon by the parties to the Council.

Exclusivity of military trade unions

12. (1) Military trade unions may be formed and joined only by members of the Defence Force.

(2) The establishment or membership of a military trade union shall not be based on any political affiliation, former constituent force, race, gender, sexual orientation or religion.

Affiliation with other organisations

13. A military trade union shall not affiliate or associate with -

(a) any labour organisation, labour association, trade union or labour federation that is not recognised and registered; and

(b) any political party or organisation.

Employment and remuneration of staff

14. Military trade unions may employ any person who is not a member of the Defence Force for their own internal administration as employees or officials, and may determine the remuneration and conditions of service that they deem appropriate for such employees or officials.

Prohibited remuneration

15. No official of a military trade union shall receive any remuneration or benefit from the Defence Force in relation to his or her duties on behalf of, or on instruction from, any military trade union.

Independence of military trade unions

16. All military trade unions shall be independent of and shall not be subject to the command and control of the Defence Force, save that members who are office bearers in such military trade unions shall remain subject to Defence legislation at all times.

Membership voluntary

17. (1) Membership of a military trade union shall be voluntary.

(2) No person may –

(a) prevent a member forcibly or in any other manner from joining a military trade union or engaging in any activity of a military trade union; or

(b) discriminate against a member for exercising any right conferred by these Regulations.

Membership restriction

18. A member may not belong to more than one military trade union at the same time.

Prohibited agreements

19. Military trade unions shall not have the right to negotiate a closed shop or agency shop agreement with the employer.

Prohibited funding

20. The Department of Defence shall not fund the activities of military trade unions, and shall not fund the costs incurred by any official or employee of a military trade union in the execution of their activities, save as provided for in a collective agreement.

DISCLOSURE OF INFORMATION

Duty to disclose information

21. (1) Subject to the limitations in terms of these Regulations the employer must disclose to a registered military trade union all relevant information that will allow that union to effectively perform the functions contemplated in these Regulations.

(2) The employer is not required to disclose information –

(a) that is legally privileged;

(b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any Court;

(c) that relates to military operations, military exercises, operational planning (including contingency planning), military acquisition programmes or military equipment;

(d) that if disclosed, may cause substantial harm to a member or the employer;

(e) that is private personal information relating to a member, unless that member consents in writing to the disclosure of that information.

Classified information

22. (1) The employer shall notify a registered military trade union in writing if any information disclosed in terms of these Regulations is classified.

(2) The employer may require a military trade union or a representative of such a registered military trade union to sign an undertaking relating to the non-disclosure of official information before making any classified information available.

MILITARY TRADE UNION REPRESENTATIVES

Election of trade unions representatives

23. (1) Military trade union members may elect from amongst themselves one union representative for every twenty-five members, but not more than ten representatives per union per any one unit or base.

(2) The constitution of a military trade union shall govern the nomination, election, terms of office and removal from office of a military trade union representative.

Adherence to military professionalism and discipline

24. Military professionalism and military discipline shall be adhered to at all times by members of military trade unions.

Rights of military trade union representatives

25. A military trade union representative has the right to -

(a) at the request of a member, assist the member with respect to grievance and disciplinary proceedings, but not to representation;

(b) at the request of a member, assist the member in redressing any alleged unjust administrative action or unfair labour practice through the use of the official channels for redressing such alleged unjust administrative action or unfair labour practice;

(c) report, in writing, any alleged contravention of these Regulations or a collective agreement binding on the employer to –

(i) the registered military trade union;

(ii) the commander or manager of the unit, base, headquarters or head office; and

(iii) failing any action by the commander or manager to remedy or solve the alleged contravention, the immediate superior of such commander or manager, provided that such commander or manager be so informed.

(d) perform any other function agreed to in the form of a collective agreement.

Time off during official working hours

26. Subject to the operational and training schedule of the unit, base or headquarters, and the maintenance of good order and military discipline, a military trade union representative is entitled to take reasonable time off with pay during working hours, but not more than eight hours per month, to –

(a) perform the functions of a military trade union representative; and

(b) be trained in any subject relevant to the performance of the functions of a military trade union representative, provided that such training shall not be at the expense of the Department of Defence.

ASSISTANCE WITH RESPECT TO DISCIPLINARY AND GRIEVANCE PROCEEDINGS

Assistance to members by military trade unions

27. Military trade unions may –

(a) assist their members with respect to grievance procedures, including the formulation of grievances; or

(b) assist their members with respect to any disciplinary hearings and military court proceedings,

provided that such assistance shall not include representation by an official, office bearer or military trade union representative.

DEDUCTION OF SUBSCRIPTIONS AND LEVIES

Authorised deductions from wages or salaries

28. Any member who is a member of a military trade union may authorise the employer in writing to deduct subscriptions or levies payable to that military trade union from the member's wages or salary.

Deductions by employer

29. On receiving the authorisation contemplated in regulation 28 the employer shall make the authorised deduction within 30 days, and shall remit the amount deducted to the military trade union by not later than the 15th day of the month following the date when each deduction was made.

Revocation of authority

30. A member may revoke an authorisation contemplated in regulation 28 by giving the employer and the registered military trade union three months' written notice.

Continuation of deduction

31. The employer shall, upon receipt of a notice contemplated in regulation 30, continue to make the authorised deduction until the notice period has expired and shall then cease the deduction.

Information to military trade unions

32. With each monthly remittance, the employer must give the respective military trade unions –

(a) a list of the names of members of that military trade union from whose salary the employer has made deductions that are included in the remittance;

(b) details of the amounts deducted and the period to which the deductions relate; and

(c) a copy of every notice or revocation in terms of these Regulations.

ACCESS TO DEPARTMENT OF DEFENCE PREMISES

Conditions for access to Defence premises

33. (1) Any office-bearer or official of a military trade union is entitled to enter a unit, base, headquarters or head office in order to recruit members, communicate with members or otherwise serve their interests, provided that the time of entry be agreed to by the Officer Commanding prior to entry.

(2) An Officer Commanding shall not unreasonably deny the access contemplated in subregulation (1).

(3) Access shall be limited to those areas of a unit, base, headquarters or head office that are designated as restricted by the Minister for military security reasons as specified in the Act.

(4) Access shall not be granted to operational vehicles, aircraft or vessels of the Defence Force.

Time of meetings

34. A military trade union is entitled to hold meetings with members outside their working or training hours on the employer's premises.

Voting on Defence premises

35. The members of a registered military trade union are entitled to vote at the employer's premises by prior arrangement with the employer in any election or ballot contemplated by the military trade unions' constitution.

COLLECTIVE BARGAINING RIGHTS OF MILITARY TRADE UNIONS

Limitations on collective bargaining rights

36. Military trade unions may engage in collective bargaining, and may negotiate on behalf of their members, only in respect of -

(a) the pay, salaries and allowances of members, including the pay structure;

(b) general service benefits;

(c) general conditions of service;

(d) labour practices; and

(e) procedures for engaging in union activities within units and bases of the Defence Force.

LIMITATIONS ON MILITARY TRADE UNIONS

Military operations or exercises

37. (1) No member may participate in the activities of a military trade union while participating in a military operation including operation in fulfilment of an authorised international obligation as contemplated in section 201(2)(c) of the Constitution or military exercise, undergoing training as an integral part of a military operation or during military training.

(2) No military trade union may liaise or consult with its members whilst such members participate in a military operation or exercise, undergo training as an integral part of a military operation or during military training.

Emergencies

38. As from the date of a declaration of state of emergency, or when the President has employed the Defence Force in the defence of the Republic as provided for in section 201(2)(b) of the Constitution, all activities other than administrative and financial maintenance functions of trade unions shall be suspended until termination of such declaration or employment.

Prohibition on impediment of military activities

39. A military trade union shall not undertake or support any activity which may impede military operations, military exercises, training during military operations or exercises or the preparation for military operations or exercises or during military training.

Other prohibited activities

40. A military trade union shall not engage in collective bargaining with the employer with respect to military operations, military exercises, operational planning (including contingency planning), military acquisition programmes, military equipment or curriculum or geographic location of military training.

PART 3

REGISTRATION OF MILITARY TRADE UNIONS

REGISTRAR OF MILITARY TRADE UNIONS

Appointment of Registrar

41. A person designated by the Minister as the Registrar of military trade unions shall exercise the powers and perform the duties conferred on him or her by or in terms of these Regulations.

Functions of Registrar

42. The Registrar -

(a) shall exercise all the powers and perform all the duties conferred on him or her by or in terms of these Regulations;

(b) shall keep a register of registered military trade unions;

(c) shall within 30 days of making an entry in or deletion from a register, give notice of that entry or deletion in the Government Gazette;

(d) may on good cause shown, extend or condone late compliance with any of the time periods established in this Part, except the period within which a person may note an appeal against a decision of the Registrar; and

(e) shall remove from the appropriate register the name of any military trade union that has been deregistered, wound up, liquidated or sequestrated.

Requirements for registration

43. (1) A military trade union may apply to the Registrar for registration if –

(a) it is composed exclusively of serving members of the Defence Force;

(b) it has adopted a constitution that meets the requirements of these Regulations;

(c) it has an address in the Republic;

(d) it is independent as contemplated in subregulation (2), and

(e) it has a proven membership that meets the threshold requirement of five thousand members of the Defence Force on the date of application for registration.

(2) A military trade union shall be deemed to be independent if –

(a) it is not under the direct or indirect control of the Department of Defence; and

(b) it is not aligned to any political party or organisation or to any trade union or trade union federation outside the Defence Force, or does not receive any funding from such a party.

(3) A military trade union that intends to register may not have a name or a shortened form of the name which so closely resembles the name or shortened form of the name of any other local or international organisation that it is likely to mislead or cause confusion.

(4) The constitution of a military trade union shall –

(a) state that membership of the union is restricted to members of the Defence Force and the union is independent as contemplated in regulations 13 and 16;

(b) state that the military trade union is an association not for gain;

(c) provide for the adoption of a code of conduct, and methods of dealing with breaches of such a code;

(d) establish the circumstances in which a member will no longer be entitled to the benefits of membership;

(e) provide for the termination of membership;

(f) provide for appeals against loss of the benefits of membership or against termination of membership, prescribe a procedure for those appeals and determine the body to which those appeals may be made;

(g) provide for membership fees and the method for determining membership fees and other payments by members;

(h) prescribe rules for the convening and conducting of meetings of members and meetings of representatives of members, including the quorum required for, and the minutes to be kept of those meetings;

(i) establish the manner in which decisions are to be made;

(j) establish the office of secretary and define its functions;

(k) provide for other office-bearers, officials and military trade union representatives, and define their respective functions;

(l) prescribe a procedure for nominating or electing office-bearers;

(m) prescribe a procedure for appointing or nominating and electing officials;

(n) establish the circumstances and manner in which office-bearers, officials and representatives, may be removed from office;

(o) provide for appeals against removal from office of office-bearers, officials and representatives, prescribed a procedure for those appeals and determine the body to which those appeals may be made;

(p) established the circumstances and manner in which a ballot must be conducted;

(q) provide for banking and investing its money;

(r) establish the purposes for which its money may be used;

(s) provide for acquiring and controlling property;

(t) determine a date for the end of its financial year;

(u) prescribe a procedure for changing its constitution; and

(v) prescribe a procedure by which it may resolve to wind up.

(5) The constitution of a military trade union may not include any provision that discriminates directly or indirectly against any person on the grounds of political affiliation, membership of former constituent force, religion or religious beliefs, race, gender or sexual orientation.

Procedure for registration

44. (1) A military trade union may apply for registration by submitting to the Registrar –

(a) a completed form in the format approved by the Registrar that has been properly completed;

(b) a copy of its constitution; and

(c) a list of names of its paid up members in the format approved by the Registrar.

(2) The Registrar may require additional information from a military trade union in support of the application.

Approval of application

45. The Registrar shall consider the application and any further information provided by the applicant and, if he or she is satisfied that the applicant meets the requirements for registration, shall register the applicant by entering the applicant's name in the register of military trade unions.

Request for further information

46. (1) If the Registrar is not satisfied that the applicant meets the requirements for registration, the Registrar shall send the applicant a written notice of the decision and the reasons for that decision and in that notice, inform the applicant that it has 30 days from receipt of the notice to meet the specified requirements.

(2) If the applicant meets the requirements for registration within the period contemplated in subregulation (1), the Registrar shall register the applicant by entering the applicant's name in the appropriate register.

Proof of registration

47. After registering the applicant, the Registrar shall –

(a) issue a certificate of registration in the applicant's name; and

(b) send the certificate and a certified copy of the registered constitution to the applicant.

Effect of registration of a military trade union

48. (1) A certificate of registration is sufficient proof that a military trade union is a body corporate.

(2) Service of any document directed to a registered military trade union at the address most recently provided to the Registrar shall, for all purposes, be deemed to be proper service of that document on that military trade union.

Cancellation of registration of a military trade union

49. (1) Whenever the Registrar receives information which indicates that a military trade union does not comply with the provisions of these Regulations, the Registrar may inform the military trade union concerned that he or she intends terminating its registration.

(2) A military trade union contemplated in subregulation (1) shall within 30 days of receiving a notification to that effect, provide the Registrar with reasons why its registration should not be cancelled, failing which its registration will be cancelled.

(3) Upon receipt of the reasons contemplated in subregulation (2), the Registrar shall within 30 days make a decision with regard to the cancellation of the registration of such military trade union or allow the continued registration of such a military trade union subject to conditions imposed by the Registrar .

Amalgamation of military trade unions

50. (1) Any military trade union may resolve to amalgamate with one or more other military trade unions.

(2) The amalgamating military trade unions may apply to the Registrar for registration of the amalgamated military trade union, even if any of the amalgamating military trade unions is itself already registered, and the Registrar must treat such application as a new application in terms of these Regulations.

(3) After the Registrar has registered the amalgamated military trade unions, the Registrar must cancel the registration of each of the amalgamating military trade unions by causing the removal of their names from the appropriate register.

(4) The registration of an amalgamated military trade union takes effect from the date that the Registrar causes its name to be entered in the appropriate register.

Effects of amalgamation of military trade unions

51. When the Registrar has registered an amalgamated military trade union –

(a) all the assets, rights, obligations and liabilities of the amalgamating military trade unions devolve upon and vest in the amalgamated military trade union; and

(b) that military trade union succeeds the amalgamating military trade unions in respect of –

(i) any right that the amalgamating military trade unions enjoyed;

(ii) any fund or funds established in terms of their constitution or any other law;

(iii) membership of the Council;

(iv) any written authorisation by a member for the periodic deduction of levies or subscriptions due to the amalgamating military trade unions;

(v) any arbitration award or court order; and

(vi) any collective agreement or other agreement.

Duty to provide information to the Registrar

52. Every military trade union must provide to the Registrar –

(a) by 31 March each year, a statement, certified by the General Secretary of the military trade union that accords with its records, showing the number of members as at 31 December of the previous year and any other related details that may be required by the Registrar;

(b) within 30 days of receipt of its auditor's report, a certified copy of that report and of the financial statements;

(c) within 30 days of receipt of a written request by the Registrar, an explanation of anything relating to the statement of membership, the auditor's report and the financial statements;

(d) within 30 days of any appointment or election of its office-bearers, the names and work addresses of those office-bearers, even if their appointment or election did not result in any changes to its office-bearers; and

(e) at least 30 days before a new address for service of documents will take effect, notice of that change of address.

Withdrawal of registration

53. The Registrar may withdraw the registration of a military trade union that does not comply with the provisions of this part and inform the military trade union of such withdrawal in writing: Provided that if a military trade union wishes to continue exercising its activities in terms of these Regulations, it may reapply for registration in the manner prescribed in these Regulations.

Other information

54. Any military trade union that has been registered in terms of these Regulations shall submit to the Registrar –

(a) within 90 days of its registration, and after that by 31 March each year, the names and addresses of its members and the number of persons each military trade union represents; and

(b) within 90 days of its registration, and after that within 30 days of any appointment or election of its national office-bearers, the names and work addresses of those office-bearers, even if their appointment or election did not result in any changes to its office-bearers.

ACCOUNTING RECORDS AND AUDITS

Keeping of books and financial records

55. A registered military trade union shall, in accordance with the standards of generally recognised accounting practice –

(a) keep books and records of its income, expenditure, assets and liabilities; and

(b) within six months after the end of each financial year, prepare financial statements, including at least –

(i) a statement of income and expenditure for the previous financial year; and

(ii) a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.

Annual audit

56. A registered military trade union shall arrange for an annual audit of its books, records of account and financial statements by an auditor registered in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), who shall –

(a) conduct the audit in accordance with generally recognised auditing principles;

(b) report to the military trade union by means of a certified report on the following:

(i) The paid-up membership numbers at the time of the audit;

(ii) the growth or decline in membership numbers since the previous report;

(iii) the number of official meetings held by the military trade union and whether all meetings were properly minuted;

(iv) the number and names of office bearers at the time of the audit;

(v) the number of disputes resolved or unresolved since the previous audit;

(vi) the number of disputes referred for arbitration since the previous audit;

(vii) whether the military trade union complies with the requirements for registration under these Regulations at the time of the audit;

(viii) whether the military trade union complied with its constitution during the audit period, and

(ix) the cost of membership during the audit period and any changes therein; and

(c) in that report express an opinion as to whether or not the military trade union has complied with those provisions of its constitution relating to financial matters.

Submission to members

57. A registered military trade union shall –

(a) make the financial statements and the auditor's report available to its members for inspection; and

(b) submit the statements contemplated in paragraph (a) and the auditor's report contemplated in regulation 56, to a meeting or meetings of its members or their representatives as provided for in its constitution.

Preservation of documents

58. A registered military trade union shall preserve its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheet, and auditor's reports, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate.

Duty to keep records

59. In addition to the records required by these Regulations, a registered military trade union shall keep –

(a) a list of its members;

(b) the minutes of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate; and

(c) the ballot papers for a period of three years from the date of every ballot.

Changing of a constitution or name

60. (1) A registered military trade union may resolve to change or replace its constitution.

(2) A military trade union must submit to the Registrar a copy of the resolution contemplated in subregulation (1) and a certificate signed by its secretary stating that the resolution complies with its constitution.

(3) The Registrar shall –

(a) register a changed or new constitution if it meets the requirements for registration; and

(b) send the registered military trade union a copy of the resolution endorsed by the Registrar, certifying that the change or replacement has been registered.

(4) A changed or new constitution takes effect from the date of the registrar's certification.

Change of name

61. (1) A registered military trade union may resolve to change its name, whereafter the military trade union shall submit to the Registrar a copy of the resolution and the original of its current certificate of registration.

(2) If the new name of a registered military trade union meets the requirements of these Regulations the Registrar shall –

(a) cause the new name to be entered in the appropriate register and issue a certificate of registration in the new name of the military trade union;

(b) remove the old name from that register and cancel the earlier certificate of registration; and

(c) send a new certificate of registration to that military trade union.

(3) The new name of a registered military trade union takes effect from the date that the Registrar causes it to be entered in the appropriate register.

PART 4

MILITARY BARGAINING COUNCIL

Establishment of Council

62. The Military Bargaining Council is hereby established.

Functions of Council duties

63. The powers and duties of the Council include –

(a) the conclusion of collective agreements;

(b) the enforcement of collective agreements;

(c) the prevention and resolution of labour disputes; and

(d) the promotion of labour relations and training in this regard.

Constitution of Council

64. The constitution of the Council shall provide for –

(a) the appointment of representatives of the parties to Council;

(b) the circumstances and manner in which representatives must vacate their seats and the procedure for replacing them;

(c) rules for the convening and conducting of meetings, including the quorum required for and the minutes to be kept of, those meetings;

(d) the vote weights of parties in Council, including the determination of how vote weights are to be allocated, provided that the employer shall have a fifty percent vote;

(e) the manner in which representations shall be made to Council;

(f) the manner in which decisions are to be made;

(g) the appointment or election of the chair-person, secretary and supporting secretariat of the Council, their functions, and the circumstances and manner in which they may be removed from office;

(h) the setting up of an executive committee to manage administrative matters addressed to Council;

(i) the establishment and functioning of committees;

(j) the resolution through conciliation, or failing conciliation, arbitration of any dispute arising between the parties to Council about the interpretation or application of Council's constitution;

(k) the resolution through conciliation, and failing conciliation, referral to the Board of any dispute arising between the parties to the Council about matters of mutual interest on which an agreement can not be reached;

(l) the procedure for exemption from collective agreements;

(m) the institution of a levy to fund the operation of the Council, provided that such levy shall be compulsory for all members, and the amount of which shall be determined by agreement

(n) subject to regulation 63, the delegation of its powers and duties;

(o) the admission of additional military trade unions as parties to Council, including the recalculation of vote weights;

(p) the admission of two or more military trade unions that are acting together to meet the threshold for admission to the Council;

(q) a procedure for changing the Councils' constitution; and

(r) a procedure by which the Council may resolve to wind up.

Chairperson of Council

65. (1) The parties to the Council may appoint an independent, non-voting chairperson for the Council.

(2) The remuneration of a chairperson contemplated in subregulation (1) shall be determined by collective agreement and shall be divided in the percentage of 50 percent for the employer and 50 percent for the admitted military trade unions in the Council.

Committees of Council

66. (1) The Council may delegate any of its powers and functions to a committee of the Council on any condition determined by the Council in accordance with its constitution, provided that –

(a) committees shall consist of equal numbers of representatives of military trade unions and the employer, unless otherwise agreed to in the Council;

(b) members of committees need not be official representatives in the Council;

(c) committees may co-opt experts to assist and advise on the matter at hand, provided that payment to such experts shall be determined by collective agreement; and

(d) committees shall not have the power of decision-making or entering into collective agreements.

(2) Any committee of the Council shall present its findings to the Council for a decision or collective agreement, as the case may be.

Formal setting up of first Council

67. (1) The establishment of the first Council shall take place on a date to be determined by the Minister.

(2) All military trade unions that comply with the threshold requirements for admission referred to in regulation 69 shall be recognised in Council for not more than 60 days, within which 60 days such admitted trade unions must furnish the Council with a certified list of the members of that trade union.

(3) Any failure by a military trade union to provide the Council with a list contemplated in subregulation (2), shall result in the automatic exclusion of that union from the Council until it meets the threshold and reapplies for admission in terms of these Regulations.

(4) The first Council shall adopt a Constitution for the Council within 120 days of its first sitting.

(5) The Council shall be chaired by a person appointed by the Minister until such time as the Council appoints a chairperson as contemplated in the constitution of the Council

(6) The employer shall provide a secretariat for the setting up of Council.

(7) The procedures to be followed during the setting up of the Council shall be as determined by the appointed chairperson.

Admission of parties to the council

68. (1) A registered military trade union may apply in writing to the Council for admission as a party to the Council if that union meets the threshold requirement of fifteen thousand members on the date of application.

(2) Military trade unions may act jointly with one another to gain admission to the Council on the proviso that such military trade unions acting together meet or exceed the threshold requirement.

(3) An application contemplated in subregulation (1) shall be accompanied by a certified copy of the applicant's registered constitution and certificate of registration and shall include certified details of the applicant's membership.

(4) The Council shall, within 60 days of receiving an application for admission, evaluate the application and decide whether to grant or refuse an applicant admission, and shall thereafter advise the applicant of its decision.

(5) If the Council refuses to admit an applicant it must within 30 days of the date of refusal, advise the applicant in writing of its decision and the reasons for that decision.

(6) An applicant may request the Board to investigate the reasons and make recommendations in any case of refusal of admission.

Legal effect of collective agreements

69. (1) A collective agreement shall be implemented by the parties bound by such an agreement in terms of subregulation (2), and within the time limit provided for in the agreement.

(2) A collective agreement binds –

(a) the parties to the agreement;

(b) the members of every party to the agreement, insofar as the provisions are applicable to them;

(c) members who are not members of military trade unions and military trade unions not party to the agreement: Provided that –

(i) such members are identified in the agreement;

(ii) the agreement expressly binds the members; and

(iii) the agreement is not prejudicial in any way to such members.

(3) Subject to subregulation (2), where a collective agreement has the effect of amending a contract of employment, such contract shall be deemed to have been amended accordingly.

(4) Unless a collective agreement provides otherwise, no party may unilaterally withdraw from such agreement.

(5) The employer shall communicate the contents and implications of collective agreements in a concise and accessible manner within the Department.

Disputes about collective agreements

70. (1) Every collective agreement shall provide for a procedure to resolve any dispute about the interpretation or application of the agreement, which procedure must first require the parties to attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, through referral to the Board for compulsory arbitration.

(2) If there is a dispute about the interpretation or application of a collective agreement, any party to the dispute may refer the dispute in writing to the Board for dispute resolution if –

(a) the collective agreement does not provide for a procedure as required by these Regulations;

(b) the procedure provided for in the collective agreement is not operative; or

(c) any party to the collective agreement has frustrated the resolution of the dispute in terms of the collective agreement.

(3) A party who refers a dispute for conciliation, or to the Board for compulsory arbitration, must satisfy the Council that a copy of the referral has been served on all the other parties to the dispute.

Dispute resolution functions of Council

71. (1) In this regulation, *"dispute"* means any disagreement in respect of a collective agreement, or any other matter which is or could be the subject of collective bargaining, and the parties to the dispute may include –

(a) parties to the Council;

(b) military trade unions not party to the Council; and

(c) members.

(2) The council shall attempt to resolve a dispute between the parties through conciliation in accordance with the constitution of the Council.

(3) A party who refers a dispute to the Council must satisfy the Council that a copy of the referral has been served on all the other parties to the dispute.

(4) The Council may enter into an agreement with an independent agency for the purposes of conducting conciliation in terms of its dispute resolution functions specified in this section.

(5) If an agency contemplated in subregulation (4) is unable to achieve a conciliation within 60 days of referral –

(a) that agency shall issue a certificate to this extent; and

(b) the Council shall refer the matter to the Board.

PART 5

THE MILITARY ARBITRATION BOARD

Establishment of Board

72. The Military Arbitration Board to whom matters shall be referred for arbitration as specified in these Regulations is hereby established.

Composition of Board

73. The Board shall consist of five independent persons appointed by the Minister.

Secretariat of Board

74. The employer and the military trade unions shall provide a secretariat for the Board, each bearing half of the cost.

Dispute resolving procedure

75. (1) Any dispute referred for arbitration shall be dealt with in accordance with these Regulations and in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965), where applicable.

(2) The Board may conduct the arbitration in a manner that it considers appropriate in order to resolve the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

(3) Subject to subregulation (2), a party to a dispute may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the Board.

(4) The Board may at any stage prior to or during arbitration proceedings attempt to resolve the dispute through conciliation with the consent of the parties to the dispute, and if the Board deems it appropriate the Board may refer the dispute to be conciliated by an independent conciliator.

(5) Any of the parties subject to arbitration may be represented during the proceedings as they see fit, including legal practitioners, provided that each party be represented on an equal footing.

(6) Arbitration awards may be delivered other than in the presence of the parties, thereby enabling the Board to deliver awards to parties by post or other similar means.

Failure to appear

76. (1) If a party who referred a dispute to the Board fails to appear in person or to be represented at the arbitration proceedings, after having been given written notification thereof, the Board may dismiss the matter, and the Board's decision in respect of that matter shall be final and binding on all parties to the dispute.

(2) If a party, other than a party who referred the dispute to the Council, fails to appear in person or to be represented at the arbitration proceedings, the Board may –

(a) continue with the arbitration proceedings in the absence of that party; or

(b) adjourn the arbitration proceedings to a later date.

Arbitration orders

77. Within 15 working days of the conclusion of arbitration proceedings, the Board shall issue a signed arbitration award with reasons and the Council shall as soon thereafter as possible serve a copy of that award on each party to the dispute, which award shall be final and binding on all parties to the dispute.

Arbitration Award

78. (1) The Board shall not make an arbitration award that has financial implications for the State as employer that falls outside the mandated position of the employer in the Council.

(2) If an award cannot be made as a result of a limitation contemplated in subregulation (1), the Board shall submit a confidential advisory report to the Minister and inform each party that such submission has been made.

(3) Any arbitration award in terms of subregulation (2) becomes binding -

(a) 30 calendar days after the date of the award if the Minister has not tabled the award in Parliament within that period; or

(b) 30 calendar days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding, which decision shall be final

(4) If Parliament is not in session on the expiry of -

(a) the period referred to in subregulation (3)(a), that period shall run from the beginning of the next session of Parliament;

(b) the period referred to in subregulation (3)(b), that period shall run from the beginning from the next session of Parliament.

(5) The Board shall not be obliged to disclose the contents of a report to any party to the arbitration proceedings.

(6) The Board may make any appropriate award including, but not limited to, an award –

(a) that gives effect to a collective agreement; or

(b) that includes, or is in the form of, a declaratory order.

Costs

79. The Board may not include an order in an arbitration award for costs incurred by the parties, unless a party, or the persons who represented that party in the arbitration proceedings, acted in a frivolous, vexatious or malicious manner –

(a) by proceeding with or defending the dispute in the arbitration proceedings; or

(b) in its conduct during the arbitration proceedings.

Variation of rescission of award

80. The Board may on its own initiative, or as a result of an application by an affected party, vary or rescind an award –

(a) erroneously sought or erroneously made in the absence of any party affected by the award; or

(b) in which there is an ambiguity, or any obvious error or omission, but only to the extent of that ambiguity, error or omission; or

(c) granted as a result of a mistake common to the parties to the proceedings.

HIGH COURT

Application to High Court

81. Any of the parties to a dispute, may apply to the High Court to make the arbitration award an order of court.

High Court review procedure

82. (1) Any party to a dispute who alleges a defect in any arbitration proceedings in terms of these Regulations may apply to the High Court for an order setting aside the arbitration award within six weeks of the date on which the award was served on the applicant.

(2) A defect referred to in subregulation (1) above means that –

(a) the Board, or an individual member of the Board –

(i) has committed misconduct in relation to the duties of the Board, or an individual member, as an arbitrator;

(ii) has committed a gross irregularity in the conduct of the arbitration proceedings; or

(iii) has exceeded the Boards' powers; or

(b) that an award has been improperly obtained.

(3) The High Court may stay the enforcement of an award pending its decision.

Award set aside

83. If the award is set aside by the High Court, the court may –

(a) determine the dispute in the manner it considers appropriate; or

(b) make any order it considers appropriate about the procedures to be followed to determine the dispute.

OFFENCES AND PENALTIES

84. Any person who contravenes any provision of these Regulations is guilty of an offence.

DEPARTMENT OF TRANSPORT
DEPARTEMENT VAN VERVOER

No. R. 999 **20 August 1999**

AVIATION ACT, 1962

PROPOSED AMENDMENT OF THE CIVIL AVIATION REGULATIONS

Under Regulation 11.03.291(a) of the Civil Aviation Regulations, the Chairperson of the Regulations Committee hereby publishes, for comment, the proposed Amendments to the Civil Aviation Regulations, 1997, as set out in the Schedules. Any comments or representations on these proposed amendments should be lodged in writing with the Chairperson of the Regulations Committee, for attention of Mr George Uriesi, Private Bag X193, Pretoria, 0001, Fax number (012) 323-7007 or E-mail at: **uriesig@ndot.pwv.gov.za**, before or on 20 September 1999.

CIVIL AVIATION REGULATIONS

SCHEDULE 1

PROPOSAL FOR THE AMENDMENT OF REGULATION 21.08.3(2)

PROPOSER

Civil Aviation Authority
Private Bag x08
Waterkloof
0145

Proposed amendment
21.08.3(2)

Addition of sub-paragraph (f)

"(f) an aircraft that is required to be issued/re-issued with a certificate of airworthiness or if such certificate of airworthiness is required to be rendered effective -

(i) may be test flown with the written permission of the owner or operator and providing the aircraft has been issued with or is in possession of a valid South African certificate of registration and the application form, as laid down in SA-CATS-AR, requesting the issue of a certificate of airworthiness has been lodged with the Commissioner and the application is accompanied by the fee prescribed in Part 187 of these regulations for the issue of the aforementioned certificate. In the case where the certificate of airworthiness has expired due to an imposed calendar limit and such certificate needs to be re-issued, the requirements pertaining to the currency fee prescribed in the aforementioned regulation are to be met;

(ii) is to be certified safe for the intended flight in the airframe logbook, prior to flight by the holder of a valid suitably rated aircraft maintenance engineer's licence issued in terms of Part 66, or such person who is the holder of valid certification, on type, issued in terms of Part 145 of these regulations; and

(iii) makes its first landing at the point of departure."

Current regulation
21.08.3(2)

"The applicant shall, in addition to the provisions of sub-regulation (1), provide the Commissioner with proof that:

(a) the aircraft conforms to an appropriate type certificate or type acceptance certificate;
(b) any modification to the aircraft conforms to the design changes approved for the type;
(c) the aircraft complies with the appropriate airworthiness directives issued in terms of regulation 21.01.4;
(d) the aircraft is issued with the appropriate flight manual, and any logbooks, repair and alteration forms, and documents, which the Commissioner may require; and
(e) the aircraft is in a condition for safe operation.

Motivation

Provision was not made in the Civil Aviation Regulations, 1997, as amended, for carrying out test flights on imported, used or aircraft crated and reassembled in South Africa and where such test flights are required after maintenance as laid down in SA-CATS-GMR. As the regulation read at the moment this authority is only extended to applicants who apply for the issue of a type certificate in terms of 21.02.07(3).

SCHEDULE 2

PROPOSAL FOR THE AMENDMENT OF REGULATION 67.00.6

PROPOSER

Institute of Aviation Medicine
Private Bag x3
Centurion
0140

Proposed amendment
67.00.9

"The holder of a medical certificate shall-

(b) not under any circumstances act as a pilot-in-command, or in any other capacity as a flight crew member, an air traffic service personnel member or a cabin crew member, as the case may be-

(iii) if the holder has entered the thirtieth week of pregnancy."

Current regulation
67.00.9

"Duties of holder of medical certificate

The holder of a medical certificate shall –

(b) not act as a pilot-in-command, or in any other capacity as a flight crew member, an air service, personnel member or cabin crew member, as the case may be-

(iii) if the holder has entered the thirtieth week of pregnancy, unless-

(aa) the medical certificate is issued in respect of an air traffic service licence, or

(bb) a suitable medical practitioner and a designated aviation medical examiner certify that such holder who has entered the twenty-ninth week of pregnancy, is fit to continue to act as a pilot-in-command, or in any other capacity as a flight crew member or a cabin crew member, for a further period, which period shall not exceed six weeks from the date on which such holder has entered the thirtieth week of pregnancy.

SCHEDULE 3

PROPOSAL FOR THE AMENDMENT OF REGULATION 92.00.8

PROPOSER

Cor Beek
PO Box 71582
Die Wilgers
0041

Proposed amendment
92.00.8

Amend sub-regulation 92.00.8(1)(b) to read:

"(b) operator of an aircraft used-

(i) in a commercial air transportation operation in terms of Part 121, 127, or 135 of these Regulations; or

(ii) in a service as defined in sub-section (b) of the definition of 'air service' in section 1 of the Air Services Licensing Act, 1990 (Act No. 119 of 1990 or

(iii) in a service as defined in sub-section (b) of the definition of 'air service' in section 1 of the International Air Services Act, 1993 (Act No 60 of 1993).

Current Regulation
92.00.8

"Any ....operator..... shall ensure that {flight crew member} in his, or her or its employ successfully complete initial dangerous goods training and refresher dangerous goods training....."
Motivation

The onus is placed on the operator to provide the necessary training for his, her or its flight crew employees. There rests no onus on flight crew members to undergo such training on their own accord.

The problem rests with the definition of 'operator'. In Part 1, 'operator' has been defined as 'a person. organisation or enterprise engaged in or offering to engage in an aircraft operation'/

The Reader's Digest Universal Dictionary defines an operator as 'a person who operates a mechanical device' (which could be an aircraft?) The old ANR translated 'operator' in Afrikaans as 'eksploitant'. The HAT explains an 'eksploitant' to mean 'iemand wat iets onderneem', a person who undertakes something, e.g. an entrepreneur.

In Part 1, furthermore, the definition of 'owner' – for the purposes of Part 91 – includes an operation of an aircraft engaged in non-commercial operations. This suggests that an operator is not only a person who operates a commercial operation but can also be a person who operates a non-commercial operation. Although 'operation' or 'aircraft operation' has not been defined in either the Aviation Act or the CAR, we may assume that the reference is to commercial and non-commercial air transport operation. A commercial air transport operation has been defined as to mean '*an air service as defined in section 1 of the Air Services Licensing Act of 1990, including: (a) the classes of air service referred to in our*

services referred to in Regulation 2 of the International Air Services Regulations of 1994'. All other air transport operations would be non-commercial. Any person operating such an operation would be an operator, and some of such operators may have flight crew in their employ.

The question is: which category of employed flight crew needs to receive training in dangerous goods. Only those engaged in commercial air transport operations, e.g. those engaged in Part 121, Part 127 and Part 135 operations? Or, because the expression 'in his, her or its employ' is used, all flight crew in someone else's employ, e.g. in corporate aviation or in a 'personal pilot' capacity.

Apparently ICAO refers to flight crew engaged in commercial air transportation operations only. The UK expects such training to be provided also to flight crew engaged in corporate aviation. Clarity is required in respect of the local situation.

SCHEDULE 4

PROPOSAL FOR THE AMENDMENT OF REGULATION 98.00.01

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
Isando
Private Bag X15
Johannesburg International Airport
1627

Proposed amendment
98.00.1 (new regulation)

"Flight Criteria

(1) All powered paraglider operations shall be conducted·

(a) outside of controlled airspace unless specific approvals are obtained from the Commissioner for display purposes, and

(b) by day; and

(c) beneath any cloud ceiling.

(2) No powered paraglider operation shall be conducted –

(a) over any densely populated area of a city, town or settlement; or

(b) Less than 3 nautical miles from the controlled airspace boundary of an aerodrome licenced in terms of Part 139.

Delete regulation 98.03.5 Conditions for flight. No person shall fly a powered paraglider by night.

No Current Regulation exists

Motivation

The amendment is essential in order that all operations in this part conform to the same standard and that it is clear and unambiguous. All operations should be accompanied by flight criteria.

SCHEDULE 5

PROPOSAL FOR THE AMENDMENT OF REGULATION 100.03.3

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
Isando
Private Bag X15
Johannesburg International Airport
1627

Proposed amendment
100.03.3(2)(b)

"Less than 3 nautical miles from the controlled airspace boundary of an aerodrome licensed in terms Part 139.

Current regulation
100.03.3(2)(b)

"Less than 3 nautical from the boundary of an aerodrome licensed in terms of Part 139.

Motivation

This amendment is essential in order that all reference to boundary be qualified by the addition of controlled airspace so that it is clear and unambiguous.

SCHEDULE 6

PROPOSAL FOR THE AMENDMENT OF REGULATION 101.00.2

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
Isando
Private Bag X15
Johannesburg International Airport
1627

Proposed amendment
101.00.2

Delete the current regulation and replace with:

"Flight Criteria

(1) All kite and remotely piloted aircraft operations shall be conducted:

(a) by day; and

(b) beneath any cloud ceiling.

(2) No kite and remotely piloted aircraft operation shall be conducted-

(a) over any densely populated area of a city, town or settlement; or

(b) take place higher than 150 feet above the surface; or

(c) commence or be carried out above a public road; or

(d) less than 3 nautical miles from the controlled airspace boundary of an aerodrome licensed in terms of Part 139."

Current regulation
101.00.2

"Except with the prior written approval of the Commissioner and subject to such conditions as the Commissioner may impose, the operation of kites and remotely piloted aircraft shall not-

(a) take place higher than 150 feet above the surface;

(b) take place closer than five nautical miles from the boundary of an aerodrome; or

(c) commence or be carried out above a public road."

Motivation

This amendment is essential in order that all reference to boundary be qualified by the addition of controlled airspace so that it is clear and unambiguous and that the same criteria apply to all the various operations in the interests of promoting flight safety.

SCHEDULE 7

PROPOSAL FOR THE AMENDMENT OF REGULATION 101.00.3

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
Isando
Private Bag X15
Johannesburg International Airport
1627

Proposed amendment
101.00.3

Add the following:

"Flight Criteria

(1) All captive balloon and unmanned free balloon operations shall be conducted:

(a) by day; and

(b) beneath any cloud ceiling in the case of captive balloons.

(2) No captive balloon operation shall be conducted-

(i) higher than 150 feet above the surface; or
(ii) commence or be carried out above a public road.

(3) No free balloon operation shall be conducted-

Less than 3 nautical miles from the controlled airspace boundary of an aerodrome licensed in terms of Part 139 and all reasonable precautions should be taken to ensure that the unmanned free balloons do not enter controlled airspace.

Current regulation
101.00.3

No flight criteria

Motivation

This amendment is essential in order that all reference to boundary be qualified by the addition of controlled airspace so that it is clear and unambiguous and that the same criteria apply to all the various operations in the interests of promoting flight safety.

SCHEDULE 8

PROPOSAL FOR THE AMENDMENT OF REGULATION 102.03.3

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
Isando
Private Bag x15
Johannesburg International Airport
1627

Proposed amendment
102.03.3

"The title at the top of the page is incorrect as this regulation does not pertain to airships and should read "operation of free balloons" and amend current regulation 102.03(2)(b) to read:

Less than 3 nautical miles from the controlled airspace boundary of an aerodrome licensed in terms of Part 139.

Current regulation
102.03.3(2)(b)

"Less than 3 nautical miles from the boundary of an aerodrome licensed in terms of Part 139."

Motivation

This amendment is essential in order that all reference to boundary be qualified by the addition of controlled airspace so that it is clear and unambiguous and that the same criteria apply to all the various operations in the interests of promoting flight safety.

SCHEDULE 9

PROPOSED FOR THE AMENDMENT TO THE REGULATION 103.03.3

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
Isando
Private Bag X15
Johannesburg International Airport
1627

Proposed amendment
103.03.3 (2)(b)

"Less than 3 nautical miles from the controlled airspace boundary, including the controlled airspace of an aerodrome licenced in terms of Part 139."

Current regulation
103.03.3 (2)(b)

"Less than 3 nautical miles from the boundary of an aerodrome licenced in terms of Part 139."

Motivation

This amendment is essential in order that all reference to boundary be qualified by the addition of controlled airspace so that it is clear and unambiguous and that the same criteria apply to all the various operations in the interests of promoting flight safety.

SCHEDULE 10

PROPOSAL FOR THE AMENDMENT OF REGULATION 104.03.3

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
Isando
Private Bag X15
Johannesburg International Airport
1627

Proposed amendment
104.03.3 (2)(b)

"Less than 3 nautical miles from the controlled airspace boundary, including the controlled airspace of an aerodrome licenced in terms of Part 139."

Current regulation
104.03.3 (2)(b)

"Less than 3 nautical miles from the boundary of an aerodrome licensed in terms of Part 139."

Motivation

This amendment is essential in order that all reference to boundary be qualified by the addition of controlled airspace so that it is clear and unambiguous and that the same criteria apply to all the various operations in the interests of promoting flight safety.

SCHEDULE 11

PROPOSAL FOR THE AMENDMENT OF REGULATION 121.01.1 (1)(c)

PROPOSER

Cor Beek
PO Box 71582
Die Wilgers
0041

Proposed amendment
121.01.1(1)(c)

"(c) persons acting as flight crew member of the aeroplanes referred to in sub-regulation (b) above; and "

Current regulation
121.01.1(1)(c)

"(1) Subject to the provisions of sub-regulation (2), this part shall apply to ..

(c) persons acting as flight crew members of aircraft registered in the Republic"

Motivation

The impression is given that the respective Parts apply to ALL persons acting as flight crew members of aircraft registered in the Republic.

From the context, it may be concluded that this was not the intention of the regulator, but that the provisions of the particular Part apply only to persons acting as flight crew members of the aircraft registered in the Republic to which the Part applies, in fact: those aircraft referred to in the respective sub-regulations (b).

SCHEDULE 12

PROPOSAL FOR THE AMENDMENT OF REGULATION 121.08.1

PROPOSER

Single Engine Aircraft Operators Committee
C/o PO Box 42
Lanseria
1748

Proposed amendment
121.08.1

Insert:

"(2) (c) a Class D aeroplane is operated in accordance with the performance operating limitations prescribed in Division Four".

Current Regulation
121.08.1(2)(c)

"(2) The operator of a large commercial air transport aeroplane shall ensure that-

(a) a Class A aeroplane is operated in accordance with the performance operating limitations prescribed in Division One; and

(b) a Class C aeroplane is operated in accordance with the performance operating limitations prescribed in Division Three: Provisions that a Class C aeroplane which does not comply with the requirements prescribed in Division Three for take-off and landing, shall be operated in accordance with the performance operating limitations prescribed in Division Two for a Class B aeroplane."

Motivation

The new regulations are more stricter than the previous requirements in South Africa.

Keeping in mind that South Africa is a developing country compliance with the requirements of First World countries with adverse weather conditions is too big a step forward for local operators. The committee has reviewed these concerns, taking full cognisance of international safety regulations, prevailing regional weather and has advocated relaxation of certain provisions of Part 121 and 135.

SCHEDULE 13

PROPOSAL FOR THE AMENDMENT OF REGULATION 121.08.27

PROPOSER

Single Engine Aircraft Operators Committee
C/o PO Box 42
Lanseria
1748

Proposed amendment
121.08.27

"(1) The operator of a Class D aeroplane shall not operate the aeroplane –

(a) by night; or
(b) in IMC, except:-

(i) under special VFR;
(ii) in accordance with the requirements of sub-regulation (2) or
(iii) conducting cargo-only flights.

(2) Not withstanding the requirements of sub-regulation (1), single engine aircraft may conduct operations in IMC conditions and/or without visual reference to the ground in the public transport category with a maximum of twelve passengers, provided they meet the requirements in SA-CATS OPS 121.08.1".

Current Regulation
New regulation

Motivation

The new regulations are more stricter than the previous requirements in South Africa.

Keeping in mind that South Africa is a developing country compliance with the requirements of First World countries with adverse weather conditions is too big a step forward for local operators. The committee has reviewed these concerns, taking full cognisance of international safety regulations, prevailing regional weather and has advocated relaxation of certain provisions of Part 121 and 135.

SCHEDULE 14

PROPOSAL FOR THE AMENDMENT OF REGULATIONS 127.01.1 (1)(c)

PROPOSER

Cor Beek
PO Box 71582
Die Wilgers
0041
Proposed amendment
127.01.1(1)(c)

"(c) persons acting as flight crew members of the aeroplanes referred to in sub-regulation (b) above; and"

Current regulation
127.01.1(1)(c)

"(1) Subject to the provisions of sub-regulations (2), this part shall apply to

...

(c) persons acting as flight crew members of aircraft registered in the Republic".

Motivation

The impression is given that the respective Parts apply to ALL persons acting as flight crew members of aircraft registered in the Republic.

From the context, it may be concluded that this was not the intention of the regulator, but that the provisions of the particular Part apply only to persons acting as flight crew members of the aircraft registered in the Republic to which the Part applies, in fact: those aircraft referred to in the respective sub-regulations (b).

SCHEDULE 15

PROPOSAL FOR THE AMENDMENT OF REGULATION 135.01.1

PROPOSER

Cor Beek
PO Box 71582
Die Wilgers
0041

Proposed amendment
135.01.1(1)(c)

"(c) persons acting as flight crew members of the aeroplanes referred to in sub-regulation (b) above; and"

Current regulation
135.01.1(1)(c)

"(1) Subject to the provisions of sub-regulations (2), this part shall apply to

...

(c) persons acting as flight crew members of aircraft registered in the Republic".

Motivation

The impression is given that the respective Parts apply to ALL persons acting as flight crew members of aircraft registered in the Republic.

From the context, it may be concluded that this was not the intention of the regulator, but that the provisions of the particular Part apply only to persons acting as flight crew members of the aircraft registered in the Republic to which the Part applies, in fact: those aircraft referred to in the respective sub-regulations (b).

SCHEDULE 16

PROPOSAL FOR THE AMENDMENT OF REGULATION 135.08.17

PROPOSER

Single Engine Aircraft Operators Committee
C/o PO Box 42
Lanseria
1748

Proposed amendment
135.08.17

"(1) The operator of a Class D aeroplane shall not operate the aeroplane-

(a) by night; or
(b) in IMC, except :-

(i) under special VFR;
(ii) in accordance with the requirements of sub-regulation (2); or
(iii) when conducting a cargo-only flight.

(2) Notwithstanding the requirements of sub-regulation (1), single engine aircraft may conduct operations in IMC conditions and/or without visual reference to the ground in the public transport category with a maximum of nine passengers, provided they meet the requirements in SA-CATS OPS 135.08.17.

Current regulation
135.08.17

"The operator of a Class D aeroplane shall not operate the aeroplane –

(a) by night; or
(b) in IMC except under special VFR or under special conditions as approved by the Commissioner."

Motivation

The new regulations are more stricter than the previous requirements in South Africa.

Keeping in mind that South Africa is a developing country compliance with the requirements of First World countries with adverse weather conditions is too big a step forward for local operators. The committee has reviewed these concerns, taking full cognisance of international safety regulations, prevailing regional weather and has advocated relaxation of certain provisions of Part 121 and 135.

SCHEDULE 17

PROPOSAL FOR THE AMENDMENT OF REGULATION 139.01.1(4)

PROPOSER

Air Traffic and Navigation Services Company
Old Mutual Business Park
ISANDO
Private Bag x15
Johannesburg International Airport
1627

Proposed amendment
139.01.1(4)

Add to the current regulation:

"and further more within a distance of 22 km from the aerodrome reference point of an aerodrome where an air traffic control service is provided shall be used for the landing and departure of aircraft in order to enhance safe air navigation".

Current regulation
139.01.1(4)

"No area on any land, water or building shall be used for the landing or take-off of aircraft if the air traffic in such area will in any way interfere with the existing established procedures regarding controlled airspace".

Motivation

Due to the varying sizes of controlled airspace it is required that the distance of 22km be adhered to in order to protect aerodrome traffic at both sites at establishment and for the future inevitable expansion. The distance of 22km is a distance that has been proven over the years and appears to give adequate separation.

SCHEDULE 18

PROPOSAL FOR THE AMENDMENT OF REGULATION 139.01.24

PROPOSER

Southern African Aviation Safety Council
Dangerous Goods Committee
PO Box 7159
Halfway House
1685

Proposed amendment
139.01.24

Delete the following regulation: CAR 139.02.24 Loading or unloading of dangerous cargo in or from aircraft.

"(1) the operator of an aircraft in which dangerous cargo is to be loaded or from which dangerous cargo is to be unloaded, as the case may be, on the apron, shall before loading or unloading such dangerous cargo inform the aerodrome operator of the nature of such dangerous cargo and the proposed time and method of its loading or unloading.

(2) If the operator of an aircraft has in terms of subregulation (1), informed the aerodrome operator of the proposed loading or unloading and the aerodrome operator considers that persons or property on the licensed aerodrome will be endangered by the proposed loading or unloading the aerodrome operator may

(a) Permit such loading or unloading subject to such conditions as the aerodrome operator may deem necessary to impose with a view to safeguarding persons or property on the aerodrome; or
(b) Prohibit such loading or unloading; or
(c) Direct that such loading or unloading be undertaken at another time or by another method or both at another time and by another method and the aerodrome operator may, in addition, impose any condition which the aerodrome operator may deem necessary for the purpose of safeguarding persons or property on the aerodrome.

(3) If dangerous cargo has been loaded in or unloaded from an aircraft without the permission of the aerodrome operator, the aerodrome operator may direct such dangerous cargo be unloaded from or reloaded in such aircraft or give such other directions or impose such conditions as the aerodrome operator may deem necessary with a view to safeguarding persons or property on the aerodrome.

(4) The operator of an aircraft which is carrying dangerous cargo on an aerodrome shall, if directed to do so by the aerodrome operator, move such aircraft to another place on the aerodrome and keep such aircraft in that place until the aerodrome operator grant permission for such aircraft to be moved.

(5) If the operator of an aircraft in which dangerous cargo is carried refuses or fails or is not present to comply forthwith with any prohibition made by the aerodrome operator in terms of sub-regulation (2) or with any direction given by the aerodrome operator in terms of sub-regulation (2) or (4) or refuses or fails or is not present to comply forthwith with a condition imposed by the aerodrome operator in terms of sub-regulation (2) or (3), the aerodrome operator may take all steps necessary to ensure that any such prohibition, direction or condition is complied with as expeditiously and safely as possible and may recover from the operator of such aircraft the costs incurred in ensuring compliance with such prohibition, direction or condition and any such action by the aerodrome operator shall not exempt such operator from a prosecution in respect of such refusal or failure.

Motivation

This regulation was adapted from the former State Airport Regulations which were written before the Regulations for the conveyance of dangerous goods by air 1986. The term **dangerous cargo** is meaningless either being in place to prevent **subversive activities** (now regulated by Civil Aviation Offences Act and the Aviation Safety Regulations deal with this issue) or it refers to **dangerous goods** (CAR 92 deals with dangerous goods. The responsibility of the airport in terms of the Dangerous Goods Regulations is limited to the requirement for airport security screening staff to be provided with relevant training in awareness of the dangerous goods regulations. The operator (and not the holder of an

aerodrome licence) is responsible for acceptance, storage, loading, inspection of dangerous goods.

SCHEDULE 19

PROPOSAL FOR THE AMENDMENT OF REGULATION 139.01.33

PROPOSER

Civil Aviation Authority
Private Bag x08
Waterkloof
0145

Proposed amendment
139.01.33

Add the following:

"(4) To prevent the presence of a structure from becoming illegal, an annual renewal shall be confirmed for all structures approved and registered as obstacles with the Civil Aviation Authority. Such renewal shall be made in writing, stating the geographical co-ordinates, name or other identifying description and height above sea level of the obstacle and shall be accompanied by the appropriate renewal fee as prescribed in Regulation 187.00.15 of Part 187".

Regulation 187.00.15

"(2)(f) An annual renewal fee of R80 shall be payable upon application for confirmation of registration for each obstacle."

Current regulation
139.01.33

"(1) No buildings or structure higher than 45 metres above the mean level of the landing area, or, in the cases of a water aerodrome or heliport, the normal level of water, shall without approval of the Commissioner be erected within a distance of 8km measured from the nearest point on the boundary of an aerodrome or heliport which has been licensed under this Part.

(2) No building, structure or other obstruction which projects above a slope of 1 in 20 and which is within 3000 metres measure from the nearest point on the boundary of a licensed aerodrome or heliport shall, without the prior approval of the Commissioner, be erected or be allowed to come into existence.

(3) No building, structure or other obstruction which will project above the approach, transitional or horizontal surfaces of a licensed aerodrome or heliport shall, without the prior approval of the Commissioner be erected or allowed to come into existence."

Motivation

During the past couple of years it was realized that organizations, individuals, etc. that are no longer in existence are occupying limited resources. One of these resources happens to be airspace.

Once an obstacle (cellular mast, tall building, etc.) is approved by the Commissioner and registered as such, the CAA has no way of confirming the continued existence of such obstacles. This lack of control allows for non-existent obstacles to be indicated on aeronautical charts and for approach- departure- and flying procedures to remain adapted to accommodate such non-existent obstacles.

The scheer number (2000) of cellular phone masts alone precludes physical verification of all obstacles by the CAA. Cost for verification will be a minimum if the owners of obstacles were to do it along the proposed route of application for renewal.

A compulsory annual renewal of obstacles will enable the CAA to keep track of those obstacles that fall into disuse and are demolished. This will enable the CAA to update aeronautical charts more accurately.

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