

TONGA DEFENCE SERVICES ACT 1992

(Section 141)

TONGA DEFENCE SERVICES PENSIONS REGULATIONS 1994

In exercise of the powers conferred by section 141 of the Tonga Defence Services Act 1992, His Majesty hereby makes the following Regulations:

PART I - GENERAL

1. These Regulations may be cited as the Tonga Defence Services Pensions Regulations 1994.

2. (1) In these Regulations unless the contrary appears:

"a benefit" means invalidity pay, gratuity, pension, terminal grant of pay, disability pension, disability gratuity, or relief granted or awarded by the Defence Board under these Regulations;

"public claim" means a debt owing to the Government of the Kingdom including an overpayment of pay, allowances, pension or other payment of money made in error;

"rank" in relation to a member of the Services means substantive rank;

"retirement" means retirement as a member of the Tonga Defence Services rendering continuous full time defence service and include discharge from the Services, and "retire" has a corresponding meaning;

"service" means service as a member of the Services;

"service claim" means a debt due to a service mess, club or other service institution;

"the Act" means Tonga Defence Services Act 1992.

(2) Other expressions in these Regulations have the same meaning as if these Regulations formed part of the Act.

3. (1) Subject to this regulation the following service shall be included as effective service for the grant or award of a benefit:

- (a) service as an officer in the Regular Force;
- (b) service as a soldier in the Regular Force;
- (c) continuous full time defence service exceeding 28 days as an officer in the Territorial Force or Reserve.
- (d) continuous full time defence service exceeding 28 days as a soldier in the Territorial Force or the Reserve.

(2) Where a period of service referred to in sub-regulation (1) precedes another period of service referred to in that sub-regulation by a period of 5 or more years the first-mentioned period shall not be included as effective service unless it is approved by the Board as effective service at the time the second-mentioned period of service commences.

1st. (3) The following service shall not be included as effective service:

(a) a period of service exceeding 28 consecutive days during which a member has been:

- (i) a deserter;
- (ii) absent without leave;
- (iii) on leave without pay;
- (iv) awaiting or undergoing trial by a Defence Services Judge on a charge of which he was afterwards convicted; or
- (v) undergoing imprisonment or detention; or

(b) period in respect of which the pay of a member has been forfeited under the provisions of section 99 (2) of the Act.

(4) For the purposes of sub-regulation (1), in the case of a commissioned warrant officer or commissioned other rank below a warrant officer effective service years shall include the period as a commissioned officer, the period as a warrant officer and half the period in the other ranks.

(5) Any remaining period of effective service of 11 months and over for purposes of sub-regulation (1), shall be deemed to be effective service for a full year.

4. A member of the Service shall not have an absolute right to the grant or award by the Board of a benefit under Part II or Part III of these Regulations.

5. Deductions may be made from a benefit to meet a public or service claim.

6. The grant or award by the Board of a benefit may be made provisionally and subject to such terms and for such period or periods as the Board may approve.

7. (1) The payment of a benefit may be made:

- (a) by periodic payments, monthly or quarterly in arrears; or
- (b) by a lump sum.

8. (1) Where the Board is satisfied that the grant or award of a benefit was made in ignorance of the true facts, the Board may withhold or reduce the benefit.

(2) Where:

(a) a person to whom or in respect of whom a benefit has been granted or awarded is sentenced by a court in or outside the Kingdom to death or imprisonment; or

(b) the Board is of the opinion that a person to whom a benefit has been granted or awarded is unworthy to receive the benefit,

the Board may withhold or reduce the benefit.

(3) Where a benefit has been withheld or reduced under this regulation the Board may, if it considers it just or equitable to do so, restore the whole or part of the benefit.

9. (1) Subject to this regulation a benefit shall not be granted or awarded to a person who is an undischarged bankrupt.

(2) If a person who has been granted or awarded a benefit becomes bankrupt or insolvent the further payment of the benefit to that person shall cease.

(3) The Board may, if it considers it just or equitable to do so, apply in such proportions as the Board may think proper the benefit or a part of the benefit which might otherwise have been granted or awarded to a person had he not been an undischarged bankrupt or become bankrupt or insolvent:

- (a) to the maintenance and personal support of the person;
- (b) to the maintenance and support of the wife and children (if any) of the person; or
- (c) to the discharge of the debt of the person.

(4) Where a person who was not granted or awarded a benefit because he was an undischarged bankrupt obtains a discharge from his bankruptcy, the benefit may be granted or awarded to the person with effect from the date of his discharge.

(5) Where a person to whom the payment of a benefit has ceased because the person has become bankrupt or insolvent, obtains a discharge from his bankruptcy or insolvency the payment of the benefit to the person may be restored with effect from the date of his discharge.

10. (1) Where a person who has become entitled to the payment of a benefit or a part of a benefit dies before the payment is made, and the amount of the payment does not exceed \$1000.00 the amount may be:

- (a) paid to the personal representatives of the deceased person without grant of probate or other order; or
- (b) paid to or distributed among the person or persons appearing to the Board to be beneficially entitled to the estate of the deceased person.

(2) In determining the proportions in which the amount of the payment shall be paid or distributed the Board may have regard to any payment made or expense incurred by a person for or on account of the funeral of the deceased person.

11. Where a person who has been granted or awarded a benefit:

- (a) enters the military service of a foreign power without the consent of the Board; or
- (b) continues in the military service of a foreign power after the consent of the Board is withdrawn,

the board may withhold or suspend the payment or further payment of the benefit.

PART II - OFFICERS OF THE REGULAR FORCE

12. For the purposes of this Part an officer of the Regular Force retires:

- (a) when he reaches the compulsory age for retirement for an officer of his rank prescribed in the Tonga Defence Services Regulations;
- (b) where the Board has approved that an officer be retained beyond that age, the age approved by the Board for the retirement of the officer;
- (c) when the resignation of his appointment as an officer of the Services becomes effective; or
- (d) when he is transferred to the Territorial Force or to the Reserve.

13. (1) Subject to this regulation an officer of the Regular Force who retires from the Services may be granted a pension.

(2) Subject to sub-regulation (4) the rate of pension payable in respect of an officer of the Regular Force who retires on reaching the age for compulsory retirement applicable to his rank is an amount per annum that is equal to the percentage his rate of pay on the date of retirement opposite the number of complete years of effective service shown in the following table:

Number of complete years of effective service	Percentage of Annual Sum
15	40.00%
16	41.50%
17	43.00%
18	44.50%
19	46.00%
20	47.50%
21	49.00%
22	50.50%
23	52.00%
24	53.50%
25	55.00%
26	56.50%
27	58.00%
28	59.50%
29 or more	61.00%

(3) The rate of pension payable to an officer of the Regular Force who:

(a) retires before reaching the age for compulsory retirement applicable to his rank; and

(b) has completed at least 22 years of effective service,

shall be ascertained by reducing the percentage in the table set out in sub-regulation (2) opposite the number of complete years of service applicable to the officer by 1.25% for every year falling short of the prescribed age for compulsory retirement.

(4) The rate of pension applicable to an officer of the Regular Force who:

(a) retires on reaching the age of compulsory retirement; and

(b) has completed at least 15 years but less than 22 years of effective service,

shall be ascertained by reducing the percentage in the table in sub-regulation (2) opposite the number of complete years of service applicable to the officer by 1.25% for each complete year of effective service less than 22 years.

14. Where an officer who has completed at least 22 years of effective service:

(a) is sentenced to dismissal with disgrace; or

(b) has his appointment as an officer terminated for misconduct,

the Board may, as an act of grace, approve the granting of a pension to the officer at a rate not exceeding 90 per centum of the rate to which he would otherwise be entitled if he had retired at the date his dismissal from the Services or the termination of his appointment took effect.

15. (1) Subject to this regulation an officer of the Regular Force who retires as unfit for military service on medical grounds may be awarded invalidity pay.

(2) The rate of invalidity pay payable to an officer of the Regular Force who retires as unfit for military service on medical grounds after completing at least 20 years effective service shall be the rate applicable under regulation 13(2) to an officer who retires on reaching the compulsory age of retirement for that rank with that amount of effective service.

(3) The rate of invalidity pay payable to an officer of the Regular Force who retires as unfit for military service on medical grounds after completing at least 10 years but less than 20 years of effective service is set out in the following table:

Number of complete years of effective service	Percentage of Annual Sum
10	30.00%
11	31.50%
12	33.00%

13	34.50%
14	36.00%
15	37.50%
16	39.00%
17	40.50%
18	42.00%
19	43.50%

(4) An officer who is entitled to a disability pension under the provisions of Part IV of these Regulations shall not be granted invalidity pay under this regulation.

16. (1) Subject to this regulation where an officer of the Regular Force who is not entitled under these Regulations to a pension or invalidity pay retires:

- (a) before reaching the compulsory age for retirement and has completed at least 10 years but less than 22 years; or
- (b) on reaching the compulsory age for retirement and has completed at least 10 years but less than 15 years,

the officer may be granted a gratuity.

(2) The amount of the gratuity which may be granted to an officer referred to in sub-regulation (1) is an amount obtained by multiplying the amount of forty-two days pay at the rate of pay on issue to the officer on the date of retirement by the number of his complete years of effective service.

(3) The amount of gratuity which may be granted to an officer who retires as unfit for military service on medical grounds with less than 10 years effective service is the amount obtained by multiplying the amount of sixty-three days pay at the rate of pay on issue to the officer on the date of retirement by the number of his complete years of effective service.

(4) An officer who is entitled to a gratuity under Part IV of these Regulations shall not be granted a gratuity under this regulation.

17. (1) Subject to this regulation, where an officer of the Regular Force:

- (a) is sentenced to dismissal with disgrace; or
- (b) has his appointment as an officer terminated for misconduct,

the Board may approve the granting to the officer a gratuity not exceeding 90 per centum of the gratuity to which he would otherwise have been entitled had he retired at his own request.

(2) An officer who is entitled to a gratuity under Part IV of these Regulations shall not be granted a gratuity under this regulation.

18. (1) Subject to this regulation, when an officer is granted a pension the Board may in addition approve the award of a terminal grant of pay equal to the amount of pension for one year.

- (2) A terminal grant of pay shall not be awarded to an officer who:
- (a) is sentenced to dismissal with disgrace; or
 - (b) has his appointment terminated on the ground of misconduct.
19. An officer of the Regular Force whose service is required in the interests of the Services after:

- (a) he has reached the age of compulsory retirement with 29 years or more effective service, or
- (b) he has retired and is receiving pension or has been paid a gratuity on retirement.

the Board may approve the payment of a further gratuity of 45 days pay for each additional year of extended service on discharge.

PART III - SOLDIERS OF THE REGULAR FORCE

20. For the purposes of this Part a soldier of the Regular Force retires:
- (a) when he reaches the compulsory age for retirement prescribed in regulation 26(1) of the Tonga Defence Services Regulations;
 - (b) where the Board has approved that a soldier be retained beyond that age, the age approved by the Board for the retirement of the soldier;
 - (c) when he is discharged from the Regular force for a reason other than misconduct; or
 - (d) when he is transferred to the Territorial Force or to the Reserve.
21. (1) A soldier of the Regular Force who retires on reaching the compulsory retiring age after completing 22 or more years effective service may be granted a pension.

(2) The rate of pension payable in respect of a soldier is an amount per calendar month that is equal to the percentage of 4 times the rate of pay for 7 days on issue to the soldier on the date of retirement opposite the number of complete years of effective service shown in the following table:

Number of complete years of effective service	Percentage of four weekly pay
22	40.00%
23	42.50%
24	45.00%
25	47.50%
26	50.00%
27	52.50%
28	55.00%
29 or more	57.50%

(3) The rate of pension payable to a soldier who retires before reaching the age of compulsory retirement who has completed at least 22 years or more effective service, shall be ascertained by reducing the percentage in the table in sub-regulation (2) opposite the number of complete years service applicable to the soldier by 1.25% for every year short of 47 years of age.

(4) Subject to this sub-regulation invalidity pay payable to a soldier of the Regular Force who retires as unfit for military service on medical grounds after completing at least 18 years effective service shall be at the rate applicable under regulation 21(2) to a soldier who retires on reaching the compulsory age of retirement for that rank with that amount of effective service with a reduction of 2.5% for each year less than 22 years.

(5) A soldier who is entitled to a disability pension under Part IV of these Regulations shall not be awarded a pension under this regulation.

22. (1) Subject to this regulation a gratuity may be awarded to a soldier of the Regular Force who is not eligible for award of a pension under this Part.

(2) The gratuity payable to a soldier referred to in sub-regulation (1) who retires (other than having been discharged from the Services as unfit for service on medical grounds) after completing at least 12 years but less than 22 years effective service is the amount obtained by multiplying the amount of the soldier's pay for 28 days at the rate on issue to the soldier on the date of his discharge by the number of his complete years of effective service.

(3) The gratuity payable to a soldier referred to in sub-regulation (1) who retires (having been discharged from the Services as unfit for service on medical grounds) after completing less than 22 years effective service is the amount obtained by multiplying the amount of the soldier's pay for 42 days at the rate on issue to the soldier on the date of his discharge by the number of his complete years of effective service.

(4) Where the circumstances leading to the discharge of a soldier from the Services as unfit for service on medical grounds are due to the fault of the soldier or to causes which were within his control, the Board may determine an amount not exceeding the amount to which he would otherwise have been entitled under sub-regulation (3) which may be awarded to the soldier as a gratuity.

(5) A soldier who is entitled to a gratuity under Part IV of these Regulations shall not be awarded a gratuity under this regulation.

23. When a soldier who has been awarded a pension under this Part, the Board may in addition approve the award of a terminal grant of pay equal to 150 days pay at the rate on issue to the soldier on the date of retirement.

24. A soldier of the Regular Force whose service is required in the interests of the Services after:

- (a) he has reached the age of compulsory retirement with 29 years or more effective service, or

- (b) he has retired and is receiving a pension or has been paid a gratuity on retirement.

may subject to the approval of the Board be paid a further gratuity of 42 days pay for each year of additional extended service on discharge.

PART IV PENSION FOLLOWING DEATH OR INJURY

25. For the purposes of this part:

- (a) "medical officer" means a qualified medical practitioner appointed by the Board to examine members of the Services, and
- (b) "wounds" or "injuries" include (but are not limited to) the effects of exposure to atomic radiation, gas or other toxic chemical or substance.

26. (1) Subject to this regulation a member of the Services who:

- (a) suffers wounds or injuries on or in the course of operations against an enemy; or
- (b) is otherwise injured in the course of his duties as a member of the Services,

shall be entitled to:

- (i) a disability pension; or
- (ii) a disability gratuity.

(2) Where as a result of:

- (a) wounds or injuries suffered on or in the course of operations against an enemy; or
- (b) injuries received in the course of his duties as a member of the Services,
- (i) a member is certified by a medical officer to be at least 60% disabled for civil employment the member shall be entitled to a disability pension at the rate of 75% of the rate of pay on issue to the member on the date of his retirement from the Services;
- (ii) a member is certified by a medical officer to be at least 30% but less than 60% disabled for civil employment the member shall be entitled to a disability pension at the rate of 37% of the rate of pay on issue to the member on the date of his retirement from the Services;
- (iii) a member is certified by a medical officer to be less than 30% disabled for civil employment the member shall be entitled to a disability gratuity of an amount obtained by multiplying the amount of 21 days pay at the rate on issue to the member on the date of his retirement or discharge from the Services by the number of complete years of effective service;

(3) The rate of disability pension which is paid to a member shall be reviewed each year by the Board and on such review the Board may increase or reduce the rate of pension.

27. (1) Subject to this regulation the widow and dependent children of a member of the Services who:

- (a) is killed on operations against the enemy;
- (b) dies of wounds or injuries suffered on or in the course of operations against an enemy;
- (c) dies from disease or illness contracted as a direct result of being involved in operations against an enemy;
- (d) is otherwise killed in the course of his duties as a member of the Services;
- (e) dies as a result of injuries received in the course of his duties as a member of the Service; or
- (f) dies from disease or illness otherwise contracted as a direct result of the duties performed by him as a member of the Services,

shall be entitled to a pension.

(2) The amount of pension payable under this regulation shall be:

- (a) in the case of a widow without dependent children 55% of the average rate of pay on issue to the member on the date of his death;
- (b) in the case of a widow with dependent children 50% of the rate of pay plus 7.50% of the rate of pay for the first of such dependent children and 3.50% of the pay for each successive child to a maximum of 78.50% of the rate of pay on issue to the member on the date of his death; and
- (c) in the case of dependent children who are orphans 10% of the rate of pay for the first child and 3.50% of the rate of pay for each successive child to a maximum of 34.50% of the rate of pay on issue to the member on the date of his death.

(3) The amount of pension which is paid to a widow and dependent children shall be reviewed each year by the Board and upon such review the Board may:

- (a) increase the rate of pension;
 - (b) reduce the rate of pension; or
 - (c) terminate the payment of the pension.
- (4) The pension payable under this regulation shall cease to be paid:
- (a) in respect of a widow when she re-marries; and
 - (b) in respect of a dependent child when the child attains the age of 16 years.

(5) Where the dependent children of a widow who is in receipt of a pension under this regulation have all attained the age of 16 years, the rate

of pension payable to the widow shall be increased from 50% of the rate to 55% of the rate from the date the last child attained the age of 16 years.

28. (1) Subject to this regulation where a member of the Services who is on operational services against an enemy or who is absent from the Kingdom in the course of his duty as a member of the Services, leaves a wife or a wife and dependent children who are without means of support, the Board may grant relief as follows:

- (a) in the case of a wife without dependent children up to 25% of the pay of the member;
- (b) in the case of a wife with dependent children up to an amount made up of 20% of the pay of the member for the wife plus 6% of the pay for the first child and 1.50% for each successive child but not exceeding in all 32% of the pay of the member.

(2) Where the Board grants relief under sub-regulation (1) the board shall deduct the amount of such relief from the pay due or becoming due to the member.