

REPUBLIC OF ZAMBIA

THE HOME GUARD ACT

CHAPTER 122 OF THE LAWS OF ZAMBIA

CHAPTER 122 THE HOME GUARD ACT

THE HOME GUARD ACT

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CHAPTER 122

HOME GUARD

32 of 1971
13 of 1994

An Act to make provision for the establishment, maintenance, discipline and administration of the Home Guard; and to provide for matters incidental thereto or connected therewith.

[21st January, 1972]

PART I PRELIMINARYPART I

PRELIMINARY

1. This Act may be cited as the Home Guard Act. Short title
2. (1) In this Act, unless the context otherwise requires-
- "active service" shall have the meaning assigned thereto in section *three* of the Defence Act; Interpretation
Cap. 106
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- "Army" means the Regular Force of the Army referred to in subsection (1) of section *four* of the Defence Act;
- "citizen" means a citizen of Zambia;
- "Commander" means the Commander of the Home Guard;
- "commanding officer", in relation to a guardsman, means the officer for the time being commanding the unit, sub-unit, branch or detachment of the Home Guard to which the guardsman belongs or is attached;
- "date of attestation", in relation to any person, means the date on which he is attested in accordance with the provisions of this Act;
- "Defence Force" shall have the meaning assigned thereto in section *two* of the Defence Act;
- "guardsman" means a member of the Home Guard other than an officer;
- "member" means a guardsman or an officer;
- "officer" means an officer of the Home Guard appointed as such by the President;
- "serviceman" shall have the meaning assigned to it in section *two* of the Zambia National Service Act;
- "unit" means a body of the Home Guard declared to be a unit by the Commander, and "sub-unit", "branch" and "detachment" shall be construed accordingly.

- (2) For the purposes of this Act and the Defence Act as applied to the Home Guard- Cap. 106
- (a) a reference to being on duty shall be construed as a reference to being present for the purpose of performing any duty required in accordance with the provisions of this Act;
- (b) the period during which the whole or a part of the Home Guard is employed under order of the President under section *nineteen* shall be deemed to begin as soon as the order is made.

PART II ESTABLISHMENT OF THE HOME GUARD AND ITS COMMAND AND FUNCTIONS

ESTABLISHMENT OF THE HOME GUARD AND ITS COMMAND AND FUNCTIONS

3. There is hereby established a force to be known as the Home Guard (in this Act referred to as "the Home Guard"). Establishment of the Home Guard

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4. The supreme command of the Home Guard shall vest in the President and he shall hold the office of the Commander-in-Chief of the Home Guard. Supreme command of the Home Guard

5. (1) The President may appoint a suitable person as Commander of the Home Guard (hereinafter called "the Commander"). Command of the Home Guard

(2) The Commander shall, subject to the provisions of this Act and subject to the orders and directions of the Minister, have the command, superintendence, direction and control of the Home Guard.

(3) The Commander may, subject to the general instructions of the Minister and to the provisions of this Act, from time to time make standing orders for the general management of the members of the Home Guard in relation to their training, arms and accoutrement, clothing and equipment, places of residence, classification of duties, as well as their distribution and inspection, and such other orders and instructions as he may deem expedient for preventing neglect and for promoting efficiency, discipline and good management of the Home Guard.

(4) The Commander may delegate to any officer such duties, functions and powers (other than the power of delegation) as he may from time to time deem expedient.

6. The functions of the Home Guard shall be the defence of the Republic and the maintenance of public order and public safety. Functions of the Home Guard

7. Every member of the Home Guard shall-

- (a) perform such duties and carry out such training as may be directed by the officers senior to or placed in command over him;
- (b) obey and execute promptly all orders lawfully issued to him by the officers senior to or placed in command over him.

Duties of members of the Home Guard

PART III MEMBERS, ENLISTMENT, ATTESTATION, ETC.PART III

MEMBERS, ENLISTMENT, ATTESTATION, ETC.

8. (1) The Home Guard shall consist of such number of officers and guardsmen as may from time to time be determined by the President. Composition of the Home Guard

(2) All the officers and guardsmen shall be liable to serve in any part of Zambia and, in so far as is herein provided, elsewhere.

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9. Every member of the Home Guard shall, when on duty, and during any period when the President has ordered employment of the whole or any part of the Home Guard under the provisions of section *nineteen*, be subject to military law and shall be deemed, as far as may be, a member of the Defence Force-

Members of the Home Guard to be members of the Defence Force

- (a) if serving as an officer in the Home Guard, as an officer; and
- (b) otherwise as a soldier:

Provided that this section shall not render a member of the Home Guard liable to proceedings for an offence under section *seventy-three* of the Defence Act (which provides for the punishment under military law of civil offences).

Cap. 106

10. (1) A citizen aged between eighteen and forty-five years may enlist in the Home Guard.

Eligibility for enlistment

(2) A citizen to whom the provisions of subsection (5) of section *five* of the Zambia National Service Act apply shall enlist in the Home Guard.

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11. Any person authorised in that behalf by the Commander (hereinafter referred to as "a recruiting officer") may enlist recruits in the Home Guard in the prescribed manner.

Recruiting officer

12. (1) A person offering to enlist in the Home Guard shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating such other things as may be prescribed, and a recruiting officer shall not enlist any person in the Home Guard unless satisfied by that person that he has been given such a notice, understands it, and wishes to be enlisted.

Enlistment

(2) A person on joining the Home Guard shall make the declaration set out in the Schedule.

(3) The term for which a person may be enlisted in the Home Guard shall be such term commencing with the date of his attestation as may be prescribed.

13. (1) When a person has made the declaration set out in the Schedule upon his attestation-

Validity of attestation and enlistment

- (a) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;

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- (b) after the expiration of a period of three months from the date on which he made the said declaration, he shall be deemed to have been validly enlisted, notwithstanding any non-compliance with the requirements of this Act or any regulations made thereunder as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper), and he shall be deemed to be a member of the Home Guard until his discharge.

(2) Where a person has received any allowance, including transport fares, without having previously made the declaration set out in the Schedule-

- (a) he shall be deemed to be a member of the Home Guard until discharged;
- (b) he may claim his discharge at any time, and, if he makes such claim, the claim shall be submitted as soon as may be to the competent authority in the Home Guard who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in the foregoing provisions of this section shall be construed as prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

14. (1) If a person appearing before a recruiting officer for the purposes of being enlisted in the Home Guard knowingly makes a false answer to any question contained in the attestation paper and put to him by, or by the direction of, the recruiting officer, he shall commit an offence against this section and shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

False answers in attestation papers

(As amended by Act No. 13 of 1994)

(2) For the avoidance of doubt, it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to military law under this Act or the Defence Act.

Cap. 106

15. (1) A person who is not a citizen shall not enlist or serve in the Home Guard.

Prohibition of non-citizens from enlisting or serving in the Home Guard

(2) If a person who is not a citizen enlists or serves in the Home Guard, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

(As amended by Act No. 13 of 1994)

PART IV HOME GUARD PROBING COMMITTEE PART IV

HOME GUARD PROBING COMMITTEE

16. (1) There is hereby established a Home Guard Probing Committee (hereinafter referred to as "the Probing Committee").

Home Guard Probing
Committee

(2) The Probing Committee shall consist of a chairman and four other members who shall all be appointed by the Minister.

(3) A member of the Probing Committee shall be appointed for a period of two years.

(4) The functions of the Probing Committee shall be-

(a) to consider the cases of hardship to individual persons resulting from their liability to join, enlist or continue in the Home Guard; and

(b) such other functions as the Minister may prescribe.

(5) Notwithstanding anything to the contrary contained in this Act or any other written law, the Probing Committee may exempt any person or class of persons from liability to join, enlist or continue in the Home Guard.

PART V ALLOWANCE, TRAINING, DISCHARGE, ETC. PART V

ALLOWANCE, TRAINING, DISCHARGE, ETC.

17. (1) A member of the Home Guard shall not be entitled to any pay for his service in the Home Guard, but he may be given such allowance as the Minister may prescribe in respect of performance of duty during the period when the President has ordered the employment of the whole or a part of the Home Guard under section *nineteen*.

Allowance

(2) Different amounts of allowance may be prescribed in respect of different ranks of members of the Home Guard.

18. (1) Subject to the provisions of this section, every member of the Home Guard shall attend for training at such place or places and for such periods as may be determined by the Commander and shall fulfil such conditions relating to training as may be prescribed.

Training

(2) The requirements of subsection (1) may be dispensed with in whole or in part with respect to any unit, sub-unit, branch or detachment by the Commander, and with respect to any individual member of the Home Guard by his commanding officer, subject to any general directions of the Commander.

19. (1) Whenever it appears to the President necessary or desirable in the public interest, he may- Embodiment

- (a) order the employment of the whole or any part of the Home Guard; and
- (b) order the employment of any member of the Home Guard for service within or, with his consent, outside Zambia.

(2) Any member of the Home Guard employed in terms of subsection (1) by reason of an order issued by the President shall remain so employed until released by the President.

(3) Every member of the Home Guard may, when undergoing training under section *eighteen*, or when employed in terms of subsection (1), be posted or attached to any unit of the Regular Force, any unit, sub-unit, branch or detachment of the Home Guard or the Zambia Combined Cadet Force established under section *three* of the Combined Cadet Force Act. Cap. 118

20. (1) Subject to the provisions of this Act, a member of the Home Guard upon becoming entitled to be discharged shall be discharged with all convenient speed, but until discharge shall remain a member of the Home Guard. Discharge

(2) Except in pursuance of the order of a court-martial, a member of the Home Guard shall not be discharged unless his discharge has been authorised by order of the competent authority in the Home Guard.

(3) Subject to the provisions of this Act, a member of the Home Guard shall be entitled to be discharged at any time on complying with the following conditions:

- (a) giving to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged and stating his reasons therefor; and
- (b) delivering up in good order, fair wear and tear only excepted, all arms, clothing and appointments, being public property issued to him or, in cases where for any good or sufficient cause the delivery of the property aforesaid is impossible, paying the value thereof:

Provided that it shall be lawful for the commanding officer, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with all or any of the provisions of this section.

(4) If the commanding officer is of the opinion that the reasons for requesting a discharge given in a notice under paragraph (a) of subsection (3) are frivolous, he shall transmit the notice together with the grounds upon which he formed his opinion to a committee appointed for this purpose by the Minister and-

- (a) if the committee by a majority vote agrees with the opinion of the commanding officer that the reasons given in the notice are frivolous, the member of the Home Guard shall be so informed and, upon communication of such information to the member of the Home Guard, the notice shall not be deemed to be a notice complying with the requirements of paragraph (a) of subsection (3);
- (b) if the committee by a majority vote disagrees with the opinion of the commanding officer, the reasons given in the notice shall not be considered as frivolous, and the commanding officer shall be so informed and such decision shall be binding on the commanding officer.

(5) Subject to the approval of the Commander, a member of the Home Guard may be discharged by his commanding officer-

- (a) for disobedience to lawful orders while doing any military duty or for neglect of such duty, or for misconduct by him as a guardsman or for other sufficient cause;
- (b) within one year of the date of his enlistment if, in the opinion of his commanding officer, he is considered either-
 - (i) unlikely to make an efficient member of the Home Guard; or
 - (ii) likely to bring discredit upon the Home Guard.

21. Where the time at which a member of the Home Guard would otherwise be entitled to be discharged occurs at a time when the Home Guard or any part thereof is employed in terms of section *nineteen*, he may be required to prolong his service for such further term as the President may order.

Postponement of discharge

PART VI DISCIPLINEPART VI

DISCIPLINE

22. (1) Any member of the Home Guard who, except with leave lawfully granted or on account of such sickness or such other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembly on embodiment in accordance with the directions given under section *nineteen* shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction by court-martial shall be punishable as for an offence under section *forty-two* or, as the case may be, section *forty-three* of the Defence Act.

Failure to attend on
embodiment
Cap. 106

(2) Sections *one hundred and seventy-three* and *one hundred and seventy-four* of the Defence Act shall apply to a deserter or absentee without leave contrary to subsection (1).

Cap. 106

(3) Any person who, knowing any guardsman to be a deserter within the meaning of this Act or the Defence Act, employs or continues to employ the guardsman shall be deemed to aid him in concealing himself and shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Cap. 106

(4) Where a guardsman deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account for the purpose of discharge.

(As amended by Act No. 13 of 1994)

23. Where a member of the Home Guard, except with leave lawfully granted or on account of such sickness or such other reasonable cause as may be allowed in the prescribed manner, fails to appear at the time and place appointed for his initial or periodical training, or fails to attend the number of drills or instructional parades or to fulfil any other conditions relating to his initial or periodical training which may be prescribed, he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred penalty units.

Failure to fulfil training
obligation

(As amended by Act No. 13 of 1994)

24. Any person who-

- (a) causes or attempts to cause or does any act calculated to cause disaffection amongst the members of the Home Guard; or
- (b) induces or attempts to induce, or does any act calculated to induce, any member of the Home Guard to desert or to commit any breach of discipline;

Person causing
disaffection amongst
members of the Home
Guard

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(As amended by Act No. 13 of 1994)

PART VII MISCELLANEOUSPART VII

MISCELLANEOUS

The Laws of Zambia

25. A person shall not, by reason of his membership of the Home Guard, be rendered incapable of being elected or of sitting and voting as a member of the National Assembly.

Membership of the Home Guard not a disqualification for membership of the National Assembly

26. The units raised, established and the persons enlisted or appointed, and acts and things done, before the commencement of this Act, by the Government for the purpose of an organisation named the Home Guard shall, from the commencement of this Act, be deemed to have been raised, established, enlisted, appointed or done under this Act.

Transitional provisions

27. The expenditure incurred in consequence of the coming into operation of this Act shall be charged on the general revenues of the Republic.

Expenditure

28. Nothing in this Act shall exempt any person from being prosecuted under any other law in respect of any offence made punishable by this Act:

Power to prosecute under other law not affected

Provided that no person shall be punished twice for the same offence on account of the same facts.

PART VIII EMPLOYER'S OBLIGATIONPART VIII

EMPLOYER'S OBLIGATION

29. (1) Any person who, having power to give reasonable facilities to an employee for enabling him to join, or to do any duty or training in, the Home Guard, refuses to give such reasonable facilities shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Employer's obligation

(2) Any employer, manager or person in charge of an employee who by words, conduct or otherwise compels, induces or prevails upon such employee to refrain from joining, or doing any service or training in, the Home Guard, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

PART IX REGULATIONSPART IX

REGULATIONS

30. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act and for the good administration and organisation of the Home Guard. Regulations

(2) Without prejudice to the generality of subsection (1), such regulations may make provisions with respect to all or any of the following matters, that is to say:

- (a) prescribing anything which under this Act may or is to be prescribed;
- (b) the constitution, administration, powers, duties and functions of the Home Guard;
- (c) the recruitment and enlistment of persons into, and the discharge of persons from, the Home Guard;
- (d) the allowances to be paid to the members of the Home Guard;
- (e) the calling out of the members of the Home Guard on service in accordance with section *nineteen*;
- (f) the training, including the manner in which notification of the places and times appointed for training is to be given;
- (g) the description, supply, use and disposal of arms, ammunition, accoutrements, uniforms, emblems and badges of rank;
- (h) requiring members of the Home Guard to report themselves from time to time;
- (i) the formation, maintenance, control and administration of units, sub-units, branches and detachments of the Home Guard;
- (j) the appointments which may be held by members of the Home Guard;
- (k) the granting of certificates or other awards to the members of the Home Guard who reach such standards of proficiency in training as may be prescribed;
- (l) the grant of medals and decorations to members of the Home Guard;

- (m) the preservation of property of the Government issued to the Home Guard or any part thereof, the determining of responsibility for loss or damage caused to such property and the recovery of compensation for such loss or damage;
- (n) generally for the good order and management of the Home Guard.

PART X APPLICATION OF THE DEFENCE ACT TO THE HOME GUARDPART X

APPLICATION OF THE DEFENCE ACT TO THE HOME GUARD

31. (1) Notwithstanding anything contained in the Defence Act, the provisions of Parts I, II, III, V, VI, VII, VIII and XI of that Act shall apply to the Home Guard and to the members of the Home Guard-

Application of the
Defence Act.
Cap. 106

- (a) when the President has ordered the employment of the whole or any part of the Home Guard under section *nineteen*; or
- (b) when on duty pursuant to any other provisions of this Act.

(2) For the purpose of the application of the Defence Act to the Home Guard and to the members thereof-

Cap. 106

- (a) a guardsman shall be deemed a soldier of the Regular Force of the Army;
- (b) an officer in the Home Guard shall be deemed an officer in the Regular Force of the Army; and
- (c) ranks of officers in the Home Guard shall correspond to such ranks of officers in the Regular Force of the Army as the Minister may prescribe.

(3) Where there is a conflict, in relation to the Home Guard or members thereof, between the provisions of this Act and the provisions of the Defence Act, the provisions of this Act shall prevail.

Cap. 106

32. (*Had its effect*)

33. The Territorial Force constituted under the provisions of the Defence Act is hereby dissolved and shall cease to exist as from the commencement of this Act.

Dissolution of the
Territorial Force.
Cap. 106

The Laws of Zambia

SCHEDULE

(Sections 12 and 13)

THE HOME GUARD ACT

DECLARATION

I,, *do swear by Almighty God/do solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to the President of the Republic of Zambia, that during my service with the Home Guard I will preserve, protect and defend the Constitution of Zambia, as by law established, and will obey all lawful orders of the President and of all officers placed over me and will subject myself to all written law relating to the Home Guard.

.....
*Signature or Thumbprint of the member
of the Home Guard*

*Sworn or Declared and Affirmed at this
..... day of 19.....

Before me

.....
Commanding Officer, the Home Guard

*Delete whichever is inapplicable