

Serial Number 1951/160

**THE EMERGENCY FORCES OCCUPATIONAL
RE-ESTABLISHMENT REGULATIONS 1951**

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 18th day of
July, 1951

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to Part III of the Emergency Forces Act, 1950, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

1. These regulations may be cited as the Emergency Forces Occupational Re-establishment Regulations 1951.

2. In these regulations, unless the context otherwise requires,—

- “Apprentice” and “apprenticeship order” have the same meanings as in the Apprentices Act, 1948 :
- “Employer”, in relation to a serving employee, includes every person for the time being carrying on the undertaking in which the serving employee was last employed before the commencement of his military service or carrying on any undertaking with which that undertaking has at any time since the date on which the serving employee left his employment therein been amalgamated or in which that undertaking was on that date comprised :
- “Employment” means employment otherwise than on a casual or seasonal basis ; and “employer”, “employee”, and “to employ” have corresponding meanings :
- “Military service” means continuous whole time service in any of the naval, military, or air forces of New Zealand or any other part of the Commonwealth raised for fulfilling the obligations undertaken by New Zealand in the Charter of the United Nations :
- “Serving employee” means a person who upon leaving his civil employment or within one month thereafter has commenced to render military service at any time after the 23rd day of August, 1950, whether before or after the commencement of these regulations :
- “Undertaking” includes any business, whether carried on by way of trade or not, and the activities of any body of persons whether incorporated or not :

“Year”, in relation to the term of any apprenticeship where the contract of apprenticeship provides for a term expressed in hours, means two thousand hours.

CIVIL REINSTATEMENT

3. (1) Where a serving employee who has offered himself or has been called up for military service makes an application to his employer to be taken into his employment, the employer shall be under an obligation to take the applicant into his employment—

- (a) In the occupation in which the applicant was last employed by the employer before the beginning of his military service and on terms and conditions not less favourable to him than those which would have been applicable to him in that occupation had he not offered himself or been called up for military service; or
- (b) If it is not reasonable and practicable that the applicant should be taken into employment in that occupation and on those terms and conditions, in the most favourable occupation and on the most favourable terms and conditions which are reasonable and practicable in his case.

(2) The said obligation shall be an obligation to take the applicant into employment on such date as may be notified to the employer in accordance with regulation 5 hereof as the date on which the applicant will be available for employment or, if it is not reasonable and practicable for the employer to do so on that date (the burden of proving which shall be on him), then on some date not later than seven days after the date so notified: and accordingly, if the employer, after giving reasonable notice thereof to the applicant, makes such employment as aforesaid available to him as hereinbefore required, his obligation shall be deemed to be discharged.

(3) Any notice to be given under subclause (2) of this regulation by the employer to the applicant shall, without prejudice to any other mode for the giving thereof, be deemed to have been duly given if it is sent to the applicant addressed to him at such address as may be provided by him for the purpose or, if no such address is so provided, at his last known address.

4. (1) An application under regulation 3 hereof—

- (a) Shall be of no effect unless it is made in writing:
- (b) May be made either by the applicant or by some person acting with his authority.

(2) An application under the said regulation 3 hereof shall be of no effect unless it is made before the expiration of one month after the termination in New Zealand of the serving employee's military service, or before the expiration of six months after the termination overseas of his military service.

5. Where an application is made under regulation 3 hereof the applicant or some person acting with his authority shall, at or after the time of making the application, but not later than the expiration of the period of seven days from the latest date allowed by regulation 4 hereof for the making of the application, notify to the employer in writing a date, not later than the expiration of that period, on which the applicant will be available for employment.

6. Where an applicant has been taken into the employment of his former employer in pursuance of regulation 3 hereof, the employer shall be under an obligation to employ the applicant for the following twenty-six weeks or so much thereof as is reasonable and practicable—

- (a) In an occupation not less favourable to him than that in which, and on terms and conditions not less favourable to him than those on which, the applicant is so taken into employment; or
- (b) If, at any time during the period for which he has under this regulation to be employed, it ceases to be reasonable and practicable for the applicant to be employed in that occupation and on those terms and conditions, in the most favourable occupation and on the most favourable terms and conditions which are thereafter for the time being reasonable and practicable in his case.

7. (1) It shall not be treated for the purposes of these regulations as reasonable and practicable for the employer to take the applicant into his employment, or to employ him, either at all or in any particular occupation or on particular terms and conditions, if it can be done only by discharging some other person who—

- (a) Was employed by the employer before the relevant date, and has been so employed continuously since the relevant date, except for any period during which his employment has been interrupted or ended by reason of his having offered himself or been called up for military service; and
- (b) Had been so employed before the relevant date for a longer period than the applicant; and
- (c) Was so employed in employment of a kind that was not less permanent in character than the applicant's employment,—

or by refusing to take into employment in accordance with regulation 3 hereof some such other person as aforesaid who has offered himself or been called up for military service and who has duly made an application under the said regulation.

(2) In this regulation the expression "relevant date" means the date of the beginning of the applicant's military service or, where the other person as well as the applicant is a person who has offered himself or been called up for military service, the date of the beginning of the applicant's military service or the beginning of the other person's military service, whichever is the earlier.

(3) It shall not be treated for the purposes of these regulations as otherwise than reasonable and practicable for the employer to take the applicant into his employment, or to employ him, either at all or in any particular occupation or on particular terms and conditions, by reason only that it can be done only by discharging some other person who is not such a person as is mentioned in paragraphs (a), (b), and (c), of subclause (1) of this regulation; and this subclause shall apply whether or not the other person has offered himself or been called up for military service and whether or not that other person has been taken into the employment of the employer in accordance with regulation 3 hereof.

8. (1) If any employer makes default in the discharge of his obligations under the foregoing provisions of these regulations in relation to the employment of any person (hereinafter referred to as the employee) he commits an offence, and shall be liable on summary conviction to a fine not exceeding £50, and the Court by which he is convicted may order him to pay to the employee, as compensation for any loss suffered or likely to be suffered by him by reason of the offence, a sum specified in the order, not exceeding in any event the amount of the remuneration which, in the opinion of the Court, the employee would have been entitled to receive from his former employer if the obligations had been complied with.

(2) In the case of any such default as aforesaid, the employee shall be entitled to recover from the employer, as compensation for any loss suffered or likely to be suffered by him by reason of the default, a sum not exceeding in any event the amount of the remuneration which, in the opinion of the Court, the employee would have been entitled to receive from his employer if the obligations had been complied with.

(3) The awarding of compensation under subclause (2) of this regulation shall not affect the liability of the employer to proceedings for an offence under subclause (1) of this regulation, and, except to the extent to which compensation has been paid, shall not affect the power of the Court to order the payment of compensation under the said subclause (1).

9. (1) The foregoing provisions of these regulations requiring a person who has offered himself or been called up for military service, as a condition of obtaining his rights thereunder, to make an application to his employer to be taken into employment and to notify a date on which he will be available for employment are for the protection of the employer, and accordingly can be waived or dispensed with by the employer, either in whole or in part and either expressly or by conduct.

(2) Where a person who has offered himself or been called up for military service—

(a) Has made an application under regulation 3 hereof to be taken into the employment of his former employer, and is taken into that employment: or

(b) Is taken into the employment of his former employer in such circumstances that such an application has been waived or dispensed with,—

and in either case the employment is not such as is specified in subclause (1) of regulation 3 hereof, the rights of that person against his former employer shall not be less than they would have been if the employment into which he is taken were such employment.

10. (1) The employer of any person commits an offence against this regulation if that person has volunteered or is liable to be called up for any military service and the employer terminates that person's employment without his consent before the beginning of that military service, and does so solely or mainly by reason of any duties or liabilities which that person is or may become liable to perform or discharge by reason of his being, or being liable to be, called up as aforesaid, or by reason of his having volunteered as aforesaid.

(2) If any employer commits an offence against this regulation he shall be liable on summary conviction to a fine not exceeding £50; and the Court by which he is convicted may order him to pay to the person whose employment has been terminated, as compensation for any loss suffered or likely to be suffered by him by reason of the termination, a sum not exceeding an amount equal to five weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(3) Where the employment of any person is terminated in contravention of subclause (1) of this regulation, he shall be entitled to recover from the employer, as compensation for any loss suffered or likely to be suffered by him by reason of the termination of his employment, a sum not exceeding an amount equal to five weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(4) The awarding of compensation under subclause (3) of this regulation shall not affect the liability of the employer to proceedings for an offence under subclause (2) of this regulation, and except to the extent to which compensation has been paid, shall not affect the power of the Court to order the payment of compensation under the said subclause (2).

(5) If in any proceedings under this regulation the Court is of opinion that there is reasonable cause to believe that the duties or liabilities aforesaid caused or contributed to the termination of the employment, the employment shall be deemed to have been terminated solely or mainly by reason of those duties or liabilities unless the employer proves that the termination was for a reason unconnected therewith.

11. (1) Subject to the provisions of this regulation,—

(a) There shall be included among the debts which, under section 120 of the Bankruptcy Act, 1908, are to be paid in the third priority in the distribution of the property of a bankrupt any sum ordered or adjudged to be paid under regulation 8 or regulation 10 hereof as compensation where the default or contravention by reason of which the order or judgment for compensation was made or given occurred before the date of the filing of a debtor's petition, or the filing of a creditor's petition on which an order of adjudication is made, whether or not the order or judgment for compensation was made or given before that date:

(b) There shall be included among the debts which under section 258 of the Companies Act, 1933, are to be paid in priority to all other debts in the winding up of a company any sum ordered or adjudged to be paid under regulation 8 or regulation 10 hereof as compensation where the default or contravention by reason of which the order or judgment for compensation was made or given occurred before the relevant date within the meaning of that section, whether or not the order or judgment for compensation was made or given before that date.

(2) The sum to which priority is to be given under this regulation shall not in the case of any one claimant against any one bankrupt or company exceed £100.

12. Where the rate of remuneration of any serving employee is computed by reference to the length of the time served by him in any occupation, and the time so served by him is interrupted by any military service for which he has offered himself or is called up, the time so lost by him shall for the purpose of computing the rate of his remuneration be deemed to be time served by him in that occupation.

13. Where the employment of a serving employee in any occupation is interrupted by any military service for which he has offered himself or is called up, the time so lost by him shall for the purpose of ascertaining his rights to seniority and promotion be deemed to be time served by him in that occupation.

14. (1) Where a contract of service is in force between an employer and a serving employee when or immediately before the employee commences to render military service, the following provisions of this regulation shall apply.

(2) If an arrangement has been or is entered into between the parties to the contract, or if the contract makes provision, for any of the following purposes, that is to say—

- (a) For dealing with all or any of the obligations of the parties thereunder in respect of the period of military service ; or
- (b) For the reckoning of the period of contractual service in relation to the period of military service ; or
- (c) For the adaptation of the terms of the contract in relation to any extension of the period of contractual service,—

the provisions contained in subclause (3) hereof shall apply only in so far as they are not inconsistent with the arrangement or provision so made as aforesaid, but any such arrangement or provision shall be void so far as it conflicts with regulation 3 hereof.

(3) If no such arrangement has been or is entered into and no such provision is made by the contract, or to the extent that any such arrangement or provision does not deal with the obligations hereinafter specified or with the reckoning or the adaptation referred to in paragraphs (b) and (c) of subclause (2) of this regulation, then, subject always to regulation 3 hereof,—

- (a) The parties to the contract shall in respect of the period of military service be relieved of all their obligations under the contract which relate to the following matters—that is to say, the payment of remuneration, the performance of work, or the provision of work, maintenance (including medical or surgical treatment), or instruction :
- (b) The said obligations shall (unless otherwise dealt with by any arrangement or provision as aforesaid) be of full effect as from the date upon which the employee resumes his work and, where the contract is for a period specified in it or ascertainable from it, the contract shall continue for a period equal to the period of the contract unexpired at the date of the commencement of the military service :
- (c) The period for which the contract so continues shall be treated as beginning immediately on the resumption of work, and shall be treated as the concluding period of the contract, and the terms of the contract shall apply to that period accordingly.

15. For the purpose of ascertaining the rights of any serving employee to annual or periodical holidays or leave with pay, and the obligations of his employer in relation thereto, whether under the Annual Holidays Act, 1944, or otherwise, where the time served by the serving employee in the employment of that employer is interrupted by military service for which he has offered himself or is called up, the time so lost by him shall not be deemed to be time served in that employment.

APPRENTICES

16. If any apprentice during the currency of the term of his apprenticeship has commenced any period of military service after the 23rd day of August, 1950, whether before or after the commencement of these regulations, his contract of apprenticeship shall be deemed to be suspended during the period of military service and for twenty-six weeks thereafter, and shall thereupon lapse and be determined unless previously revived in accordance with regulation 17 hereof.

17. (1) If any apprentice before the expiration of twenty-six weeks after being discharged or otherwise released from military service gives to his employer notice in writing that he desires the contract of apprenticeship to be revived or enters into a mutual arrangement with the employer to revive the contract of apprenticeship, the contract of apprenticeship shall thereupon be deemed to be revived and shall continue, subject to subclause (2) of this regulation, for the term of his apprenticeship unexpired at the date of suspension (calculated on the basis of an apprenticeship term of not more than five years) or for a period of three years, whichever is the shorter period :

Provided that in the case of an apprenticeship with a term under the contract of more than five years of which the apprentice has served not less than four and a half years, the contract shall be deemed to be revived and shall continue for a period of half a year or for the term of his apprenticeship unexpired at the date of suspension, whichever is the shorter period.

(2) Where an apprentice revives his contract of apprenticeship as aforesaid the following provisions shall apply (irrespective of any grants that may be made by the Rehabilitation Board) :—

(a) If the apprentice has attained the age of twenty-one years and has rendered military service in New Zealand for not less than fifty-two weeks or has rendered military service overseas, or if the term of the apprenticeship (calculated on the basis of an apprenticeship term of not more than five years) has expired, the wages payable to him by his employer shall be at not less than the rate payable under the contract for the last period of the apprenticeship term or the tenth period of the apprenticeship term, whichever is the earlier period :

Provided that in the case of an apprentice under an apprenticeship with an apprenticeship term of more than five years of which not less than four and a half years had been served at the date of suspension, the wages payable to him by his employer shall be not less than the rate payable under the contract for the last period of the apprenticeship term :

- (b) In any other case the wages payable to the apprentice shall be at not less than the relevant rate or rates payable under the contract up to the date on which the provisions of paragraph (a) hereof would apply and thereafter in accordance with paragraph (a) hereof, but for the purpose of determining the relevant rate or rates every period of military service shall be deemed to be time served under the contract of apprenticeship :
- (c) Notice in writing of the revival of the contract of apprenticeship shall be given forthwith to the District Commissioner of Apprenticeship by the employer.
- (3) If pursuant to the Economic Stabilization Regulations 1950* any order or amendment has been made, whether before or after the commencement of these regulations, which affects the rates of wages payable under any contracts of apprenticeship of the same kind as the apprenticeship under a contract revived under these regulations, the order or amendment shall apply and be deemed to have applied to the revived contract of apprenticeship as from the date on which the order or amendment took effect or as from the date of the revival of the contract, whichever is the later, and for the purposes of sub-clause (2) of this regulation the rate of wages payable for the last period of the apprenticeship term, or for the tenth period of the apprenticeship term, or for any other part of the apprenticeship term, as the case may be, shall be deemed to be and always to have been the appropriate rate under the revived contract of apprenticeship amended as provided by the order or amendment hereinbefore referred to.

(4) Any limitation in any Act, award, apprenticeship order, or agreement as to the age of any apprentice, or as to the term of any apprenticeship, or as to the number of apprentices, or as to the proportion of apprentices to journeymen, shall not apply with respect to any apprentice serving under a contract of apprenticeship revived as aforesaid.

(5) Where by reason of the death of the employer or for any other cause the apprentice is unable to revive his contract of apprenticeship, any other employer may undertake the obligations of the original employer and, in that case, that other employer shall be deemed to be the original employer.

(6) These regulations shall, with the necessary modifications, apply to any contract of apprenticeship that may have been cancelled or suspended before the commencement of these regulations by reason of the fact that the apprentice has rendered or had intended to render military service.

18. Where a contract of apprenticeship is suspended under these regulations and the engagement of another apprentice in substitution for the apprentice whose contract is suspended would infringe an apprenticeship order in force under the Apprentices Act, 1948, fixing the proportion of apprentices to journeymen, the New Zealand Apprenticeship Committee for the industry in which the apprentice was engaged shall have power in its discretion to authorize the engagement of another apprentice, and any engagement entered into under any such

* Statutory Regulations 1950, Serial number 1950/52, page 180.

Amendment No. 1 : Statutory Regulations 1950, Serial number 1950/70, page 223.

authorization shall be lawful in all respects, notwithstanding any provision of the Apprentices Act, 1948, or any apprenticeship order in force thereunder :

Provided that any such authorization may require the engagement of the other apprentice to include such period of probation as the New Zealand Apprenticeship Committee may think fit to require.

19. (1) If any apprentice during his military service at any time after the 23rd day of August, 1950, whether before or after the commencement of these regulations, has performed trade work of the same class as that to which he is apprenticed or of a class related thereto, he may, on production to a New Zealand Apprenticeship Committee within twenty-six weeks after the termination of his military service of a certificate in the form hereinafter prescribed covering that trade work, be credited under his contract of apprenticeship with the period during which he was engaged on that work, or such shorter period as the Committee may decide, and the Committee shall communicate its decision to the District Commissioner of Apprenticeship at the place where the apprentice's contract was originally registered.

(2) The certificate to be issued to an apprentice covering trade work performed during his military service shall be issued on the application of the apprentice, and shall be in the following form :—

STATEMENT OF SERVICE OF APPRENTICE WITH ARMED FORCES

THIS is to certify that commenced military service on the day of 19.., as a [*Insert name of trade*] in the [*Insert arm of service*], and that he ceased this service on, 19..

The following are particulars of the class of work in which he was engaged and the period thereof:.....

Dated at, this day of, 19..

....., Authorized Officer.

..... Branch of Armed Forces.

(3) Where by these regulations any powers are conferred on an Apprenticeship Committee and there is no Apprenticeship Committee in or in connection with or in respect of the industry concerned, those powers may be exercised by the Commissioner of Apprenticeship.

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

[*This note is not part of the regulations, but is intended to indicate their general effect.*]

These regulations safeguard the rights of a worker in relation to his civil employment in the event of his serving as a member of an emergency force raised in New Zealand or elsewhere in the Commonwealth in connection with a United Nations emergency.

Regulation 3 requires the former employer of a person who has volunteered or been called up for service to reinstate him in his former employment on the completion of his service. Regulation 2 defines "employer" to include the present owner in certain cases where a business has changed hands.

Under regulation 4 the employee must apply in writing for reinstatement within one month after the termination in New Zealand of his military service, or within six months if he is discharged overseas, and regulation 5 requires him to notify the employer of the date on which he will be available for employment, being a date within the time allowed for his application.

Regulation 6 requires the former employer to employ the reinstated employee on the same terms and conditions as formerly, or on the most favourable terms and conditions that are reasonable and practicable, for not less than twenty-six weeks or so much thereof as is reasonable and practicable.

Regulation 7 excuses the former employer from reinstating the employee where it can be done only by discharging or refusing to reinstate another employee who has been employed from an earlier date than the applicant. But under subclause (3) the fact that any other person who is not so entitled to priority has to be discharged is not to prevent the reinstatement of the applicant.

Under regulation 8 the reinstatement of an employee may be enforced by a fine not exceeding £50, and the former employer may be ordered to pay compensation to the employee for not reinstating him, up to the amount of wages lost. Such an order may be made in addition to or instead of a fine, or in civil proceedings.

Regulation 9 protects the rights of the employee where the former employer waives any of the formalities required by the regulation or, by arrangement, reinstates the employee on terms and conditions less favourable than those of his former employment.

Regulation 10 prohibits the dismissal of an employee by reason of his military service before that service commences. Subclauses (2) and (3) make an employer who commits an offence against this regulation liable to a fine not exceeding £50 and to compensation up to five weeks' wages.

Regulation 11 provides that where the employer becomes bankrupt or, in the case of a company, goes into liquidation, any compensation awarded under regulation 8 or regulation 10 will have the same priority as wages, up to £100 in any case.

Under regulation 12 an employee is to be entitled to increments in his pay as if time lost by reason of his service were time served in his employment. Regulation 13 makes similar provision as to his rights to seniority and promotion.

Regulation 14 provides that where there is a contract of service, unless the parties otherwise agree (either in the contract or subsequently), the obligations of employer and employee under the contract are suspended during the absence of the employee by reason of his military service, and if the contract is for a fixed term that term is to be extended by a period equal to the period of suspension.

Under regulation 15 the period of an employee's military service is not to be counted in determining his rights to annual holidays or holiday pay.

Regulation 16 provides that contracts of apprenticeship are to be suspended during the period of military service and for twenty-six weeks thereafter, and are then to lapse unless revived under regulation 17.

Under regulation 17 a contract of apprenticeship may be revived by notice from the apprentice or by mutual arrangement for a period equal to the unexpired term of the apprenticeship, but not exceeding three years or less than six months.

Regulation 18 authorizes the engagement of additional apprentices where rendered necessary by the regulations.

Regulation 19 provides for the counting of trade work done by an apprentice during his military service being counted as time served under his apprenticeship.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette*: 19th day of July, 1951.

These regulations are administered in the Department of Labour and Employment.