

Serial Number 1942/5



**THE NATIONAL SERVICE EMERGENCY REGULATIONS 1940,
AMENDMENT NO. 8**

C. L. N. NEWALL, Governor-General.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this 10th day of
January, 1942.

Present :

THE RIGHT HON. P. FRASER PRESIDING IN COUNCIL.

PURSUANT to the Emergency Regulations Act, 1939, 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 National Service Emergency Regulations 1940, Amendment No. 8, and shall be read together with and deemed part of the National Service Emergency Regulations 1940* (hereinafter referred to as the principal regulations).

2. The principal regulations are hereby amended by inserting, after Regulation 1 thereof, the following regulation :—

“REGULATION 1A.—MILITARY OBLIGATIONS TO PREVAIL OVER CIVIL OBLIGATIONS IMPOSED BY THESE REGULATIONS.

“Where by or by virtue of these regulations any obligation is imposed on any person being a member of any armed force (including the armed force known as the Home Guard) his obligations as a member of such force shall, in case of conflicting obligations, prevail over any civil obligation imposed on him by or by virtue of these regulations.”

3. The principal regulations are hereby further amended by inserting, after Regulation 3A† thereof, the following regulation :—

“3B. DISTRICT MAN-POWER OFFICERS.

“(1) There shall from time to time be appointed for the purposes of these regulations, as officers of the Public Service, such number of District Man-power Officers as may be required. Every District Man-power Officer shall for the purposes of these regulations be subject to the control of the Minister and the Director.

* Statutory Regulations 1940, Serial number 1940/117, page 361.

Amendment No. 1: Statutory Regulations 1940, Serial number 1940/186, page 599.

Amendment No. 2: Statutory Regulations 1940, Serial number 1940/223, page 731.

Amendment No. 3: Statutory Regulations 1941, Serial number 1941/3, page 7.

Amendment No. 4: Statutory Regulations 1941, Serial number 1941/73, page 277.

Amendment No. 5: Statutory Regulations 1941, Serial number 1941/148, page 479.

Amendment No. 6: Statutory Regulations 1941, Serial number 1941/154, page 499.

Amendment No. 7: Statutory Regulations 1941, Serial number 1941/210, page 631.

† Statutory Regulations 1941, Serial number 1941/210, Regulation 3, page 631.

“(2) References in these regulations to a District Man-power Officer shall be deemed to include a reference to any person for the time being authorized by the Minister or the Director to exercise any of the powers or functions of a District Man-power Officer.

4. Regulation 8A of the principal regulations* is hereby amended by adding, as clause (2) thereof, the following provision :—

“(2) Whether or not the Minister has exercised with respect to any person or with respect to persons of any class the powers conferred on him by the foregoing provisions of this regulation, he may at any time direct any such person or all persons of any such class (with or without exception) to apply for enrolment as a member, or, as the case may be, to apply for enrolment as members, of the Emergency Reserve Corps or of any specified branch thereof.”

5. (1) Regulation 9 of the principal regulations is hereby revoked, and the following regulation is substituted therefor :—

“REGULATION 9.—MAINTENANCE OF ESSENTIAL INDUSTRIES AND ESSENTIAL UNDERTAKINGS.

“*Interpretation.*

“(1) For the purposes of this regulation the term ‘industry’ includes any trade, occupation, business, manufacture, works, or service of any kind whatsoever, and the term ‘undertaking’ means a unit or any specified part of a unit of any industry as herein defined.

“*Declaration of Essential Industries and Essential Undertakings.*

“(2) The Minister may at any time declare any industry to be an essential industry or any undertaking to be an essential undertaking for the purposes of these regulations. The declaration of any industry as an essential industry may be absolute, or may exempt any specified undertaking or any specified class of undertakings within that industry. Any such exemption may be included in the declaration or may be given at any time by public notice or by notice to the owners or persons in charge of the undertakings concerned. All undertakings within an essential industry that are not for the time being exempted as aforesaid shall be deemed to be essential undertakings within the meaning of these regulations.

“(3) Every declaration made under the last preceding clause shall be in writing under the hand of the Minister or of a person for the time being authorized in accordance with the principal regulations to act for the Minister in that behalf.

“(4) Where any declaration as aforesaid is made in respect of any specified undertaking, notice in writing shall be given to the owner, or manager, or person in charge or appearing to be in charge of the undertaking and in such other manner, if any, as the Minister thinks fit. Except in the case of specified undertakings as aforesaid, notice of all declarations made under this regulation shall be published in the *Gazette* and may also be published in such other manner, if any, as the Minister thinks fit.

* Statutory Regulations 1940, Serial number 1940/223, Regulation 6, page 732.

“(5) Any declaration or exemption made or given under the foregoing provisions of this regulation may be at any time in like manner amended or revoked.

“*Certificates of Essential Undertakings.*”

“(6) The Minister may issue or cause to be issued, in respect of any essential undertaking, a certificate to the effect that it has been declared an essential undertaking within the meaning of these regulations. The said certificate shall be served on the owner or manager or person in charge of the undertaking, and it shall be the duty of the person on whom it is served to display the certificate or a copy or notice thereof in a conspicuous part of the premises wherein the undertaking is carried on or, as the case may require, in every separate branch or department where workers are employed, and to keep it so displayed while the certificate remains in force. If in any case the certificate or a copy or notice thereof cannot be displayed as aforesaid, it shall be displayed in some place where it is likely to be observed by the workers employed in the undertaking.

“*Conditions of Employment in Essential Undertakings.*”

“(7) With respect to employment in any essential undertaking (whether or not a certificate in respect of the undertaking has been issued under the foregoing provisions of this regulation) the following special provisions shall apply, namely :—

“(a) Except with the permission in writing of the District Manpower Officer, the employer shall not terminate (except for serious misconduct) the employment in the undertaking of any person for the time being employed therein or, without terminating such employment, cause or permit him to give his services in any other undertaking (whether an essential undertaking or not) except in case of emergency, and then only for a period not exceeding fourteen days at any one time and not exceeding twenty-one days within any period of three months :

“(b) Except with the permission in writing of the District Manpower Officer, no person for the time being employed in the undertaking shall leave his employment :

“(c) Not less than seven days' notice of intention to terminate any employment in accordance with paragraph (a) or paragraph (b) hereof shall be given by or on behalf of the employer to the worker or by the worker to the employer or his representative, as the case may be ; if any such notice is given before the permission of the District Manpower Officer has been obtained, it shall have no effect on the contract of employment unless and until such permission is duly obtained :

“(d) Where the employment of any person is terminated on the ground of serious misconduct, notice in writing of the termination of the employment, with particulars of the alleged misconduct, shall be forthwith given by the employer or person in charge of the undertaking to the

District Man-power Officer, who, if he is not satisfied as to the sufficiency of the cause, may, subject to appeal under Regulation 9D hereof, require the employer to reinstate the worker in the undertaking (but not necessarily in the same position), and may require the worker to accept reinstatement in the position offered to him. If any person whose reinstatement is directed by the District Man-power Officer is, with the concurrence of that Officer, employed in a position for which a lower rate of wages is payable, his wages may, notwithstanding anything to the contrary in paragraph (e) or paragraph (f) hereof, be reduced, but shall not be reduced below the rate appropriate to his new position :

- “(e) Every person who is employed in any essential undertaking when the declaration of its being an essential undertaking comes into force shall, so long as he is available for work, and subject to the provisions of paragraph (g) hereof, be entitled to full-time wages and allowances at the rate fixed by any award or industrial agreement or otherwise in respect of the work in which he was last regularly employed prior to the coming into force of the declaration :

“Provided that if any such person is at any time engaged on any work for which a higher rate of wages and allowances is payable he shall, while so engaged, be entitled to the rate fixed in respect of such work :

“Provided also that for the purposes of this paragraph a worker shall not be deemed to have been available for work during any period when he was not actually working if he would not be entitled to payment for that period if the undertaking in which he is employed had not been declared to be an essential undertaking :

- “(f) Every person who becomes employed in any essential undertaking after it has been declared to be an essential undertaking shall, so long as he is available for work and subject to the provisions of paragraph (g) hereof, be entitled to full-time wages and allowances at the rate fixed by any award or industrial agreement or otherwise in respect of the work in which he is first regularly employed in the undertaking :

“Provided that if any such person is at any time engaged on any work for which a higher rate of wages and allowances is payable he shall, while so engaged, be entitled to the rate fixed for such work :

“Provided also that for the purposes of this paragraph a worker shall not be deemed to have been available for work during any period when he was not actually working if he would not be entitled to payment for that period if the undertaking in which he is employed had not been declared to be an essential undertaking :

- “(g) It shall be the duty of every person who is for the time being employed in any essential undertaking, if at any time during his normal working hours sufficient work is not

available for him in his usual occupation, to undertake any other work in or in connection with the same undertaking that he may reasonably be required to undertake, and if he refuses or fails to do so he shall not be entitled to claim any special privileges as to wages and allowances conferred by paragraph (e) or paragraph (f) hereof:

“(h) If any person employed in an essential undertaking fails to comply with the obligations imposed on him by the last preceding paragraph, or absents himself from work without leave or without reasonable excuse, or is habitually or persistently late in presenting himself for work, or fails to perform his work with due diligence, or wilfully or negligently fails to exercise proper skill and care in the performance of his work, he shall be deemed to have committed an offence against these regulations and shall be liable accordingly to the penalties prescribed by Regulation 56 hereof:

“Provided that no proceedings shall be taken for any such offence except by or with the consent of the District Man-power Officer:

“(i) Nothing in the foregoing provisions of this clause shall be construed as an authority to reduce any rate of wages or allowances that may have been agreed upon by the parties concerned:

“(j) Nothing in this clause shall apply with respect to any worker whose employment in any essential undertaking has not been continuous for a period of at least seven days.

“(8) All applications made to the District Man-power Officer for the purposes of the last preceding clause shall be in writing, and shall contain all such particulars as may be reasonably necessary to enable that Officer to arrive at a proper decision. The decision of the District Man-power Officer shall be communicated in writing to the person by whom the application was made.

“ Appeals from Decisions of District Man-power Officers.

“(9) All decisions of a District Man-power Officer given for the purposes of the foregoing provisions of this regulation (not being a decision in relation to an alleged offence under paragraph (h) of clause (7)) shall be subject to an appeal to a Man-power Committee in accordance with the provisions in that behalf of Regulation 9D hereof.

“ Application of this Regulation to Government Undertakings.

“(10) Any undertaking for the time being carried on by any Department of State may be declared to be an essential undertaking for the purposes of these regulations, and the foregoing provisions of this regulation shall bind the Crown in respect of that undertaking, but shall not bind the Crown in respect of any other undertaking.”

(2) Regulation 12 of the principal regulations is hereby consequentially amended by revoking paragraph (d) of clause (1) thereof.

6. Regulation 9A of the principal regulations* is hereby revoked and the following regulation substituted therefor :—

“REGULATION 9A.—MINISTER MAY REQUIRE EMPLOYERS TO OBTAIN CONSENT OF DISTRICT MAN-POWER OFFICER BEFORE ENGAGING WORKERS.

“The Minister may from time to time, by direction given to employers generally or to any specified employer or employers, or to employers of any specified class, direct that no employer to whom such direction is given shall, except with the consent of a District Man-power Officer, engage or attempt to engage any worker whomsoever, or engage or attempt to engage any worker in any specified industry, trade, or occupation, or engage or attempt to engage any worker who is normally or usually engaged in any specified industry, trade, or occupation.”

7. The principal regulations are hereby further amended by inserting, after Regulation 9B,* the following regulations :—

“REGULATION 9C.—REGISTRATION OF PERSONS AVAILABLE FOR EMPLOYMENT AND COMPULSORY EMPLOYMENT OF REGISTERED PERSONS.

“(1) The Minister may, by notice given in such manner as he thinks fit, direct all persons of any specified class or of specified classes, whether normally engaged in any occupation or not, to register for employment with the nearest District Man-power Officer or with any other specified official. Where any such notice is given in respect of any person who, having been called up for service with the armed forces, is for the time being on leave of absence because he has been classified as medically unfit for service or because his obligation to serve has been postponed by an Appeal Board or by a Man-power Committee, he shall be deemed to have registered under this regulation, and it shall not be necessary for him to fill in any form of application for registration or to take any other steps towards his registration unless he is expressly required so to do by further notice given by the Minister or by notice given by a District Man-power Officer.

“(2) Any person, not being a person to whom a notice under the last preceding clause applies, may, by leave of the District Man-power Officer, voluntarily register in accordance with this regulation as if he were required to register by the terms of a notice under this regulation.

“(3) Every person registered under this regulation shall, as required by the District Man-power Officer, undertake such employment or training for employment as that Officer may direct, and shall continue in such employment or training for such period as the said Officer may require.

“(4) The provisions of clauses (2) and (3) of Regulation 8 hereof (as to the rates of remuneration and the conditions of service of persons employed under that regulation) shall, so far as applicable, apply with respect to persons for the time being employed or being trained for employment in accordance with this regulation.

“(5) The provisions of the Occupational Re-establishment Emergency Regulations 1940† and of the Suspension of Apprenticeship Emergency Regulations 1939‡ shall apply with respect to persons for

* Statutory Regulations 1941, Serial number 1941/73, Regulation 6, page 277.

† Statutory Regulations 1940, Serial number 1940/291, page 1006.

‡ Statutory Regulations 1940, Serial number 1939/154, page 693.

the time being employed or being trained for employment in accordance with this regulation in the same manner in all respects as if those persons had been called up for service with the armed forces.

“(6) In the event of a change of the residential or other postal address or of the occupation or employment of any person for the time being registered under this regulation, he shall forthwith give notice in writing to the District Man-power Officer of his new address, occupation, or employment, as the case may be. Any such notice may be delivered at the office of the District Man-power Officer, and if not so delivered shall be sent by registered letter addressed to that Officer at his office.

“(7) It shall not be lawful for any employer to terminate the employment of any person employed by him on the ground that such person has been registered or is required to be registered in accordance with this regulation.

“(8) Forms of application for registration under this regulation shall be made available at such places as the Minister may from time to time determine, and the Minister shall from time to time as occasion requires give all necessary directions as to the particulars to be registered and as to the procedure to be followed in effecting registration.

“REGULATION 9D.—APPEALS TO MAN-POWER COMMITTEE FROM DECISIONS OR DIRECTIONS OF DISTRICT MAN-POWER OFFICERS.

“(1) If any person who is directly concerned with any decision or direction of a District Man-power Officer given or made for the purpose of Regulation 9, or of Regulation 9A, or of Regulation 9C hereof is aggrieved by such decision or direction, he may, within seven days after the decision or direction has been delivered to him, appeal therefrom by giving notice in writing to the Officer concerned requiring the matter to be referred to a Man-power Committee for consideration.

“(2) Forthwith upon receipt of any such notice the District Man-power Officer shall refer the matter to a Man-power Committee for consideration, and the Committee, on the completion of its consideration, shall give in writing such directions thereon as it thinks fit, and such directions shall be final.

“(3) The Chairman of the Man-power Committee shall cause a copy of the directions of the Committee to be given to the District Man-power Officer whose decision or direction is appealed from, who shall forthwith notify all persons directly concerned, and shall, if required so to do, give to any such person a copy of the directions received by him from the Committee.

“(4) On the hearing of any appeal under this regulation the Man-power Committee shall have all the powers conferred on it by virtue of Regulation 33A of these regulations. Except so far as the Committee otherwise determines the provisions of Regulation 27 shall not apply to appeals under this regulation, and at the hearing of any such appeal the Committee shall determine its own procedure.”

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

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 13th day of January, 1942.

These regulations are administered in the National Service Department.