



## ANALYSIS

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1961, No. 116

An Act to make provision for compulsory military service, and for matters incidental thereto [1 December 1961]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the National Military Service Act 1961.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Army” means the New Zealand Army:

“Calling-up notice” means a notice under section 19 of this Act calling up a person for whole-time service:

“Certificate of registration” means a certificate of registration in the military service register issued under this Act; and includes a certificate of registration or provisional registration in the register of conscientious objectors:

“Enlistment notice” means a notice under section 17 of this Act of the enlistment of a person in the Army:

“Medical Board” means a Medical Board appointed under this Act:

“Minister” means the Minister of Labour:

“Objection Committee” means the Conscientious Objection Committee appointed under this Act:

“Postponement Committee” means a Military Service Postponement Committee appointed under this Act:

“Registered conscientious objector” means a person who is for the time being registered in the register of conscientious objectors, whether provisionally or unconditionally or otherwise:

“Secretary” means the Secretary of Labour appointed under the Labour Department Act 1954; and includes any person for the time being authorised to exercise or perform any of the Secretary’s powers or functions:

“Training notice” means a notice under section 20 of this Act summoning a person for training during his term of part-time service.

(2) For the purposes of this Act a person shall be deemed to have attained a given age at the commencement of the relevant anniversary of the day of his birth.

(3) For the purposes of this Act a person shall be deemed to be ordinarily resident in New Zealand if his home is in New Zealand.

(4) Every person who has arrived in New Zealand (whether before or after the commencement of this Act) with the intention of establishing his home in New Zealand or with the intention of remaining in New Zealand for an indefinite period shall be deemed for the purposes of this Act to be ordinarily resident in New Zealand from the date of his arrival.

(5) Without limiting the provisions of subsections (3) and (4) of this section, it is hereby declared that every person who (having arrived in New Zealand before or after the commencement of this Act) has remained or remains in New Zealand for a continuous period of not less than twelve months shall, unless and until he satisfies the Secretary to the contrary, be deemed for the purposes of this Act to be ordinarily resident in New Zealand. For the purposes of this subsection the continuous presence of any person in New Zealand shall not be deemed to have been interrupted by his absence from New Zealand for any period or periods if the period or periods do not exceed four months in any period of twelve months.

(6) Every person for the time being engaged under New Zealand articles in any ship shall be deemed for the purposes of this Act to be ordinarily resident in New Zealand unless he satisfies the Secretary that he is ordinarily resident in some other country.

## PART I

### COMPULSORY MILITARY SERVICE

#### *Liability for Service*

**3. Liability for service—**(1) For the purposes of this Act the Minister may from time to time, by notice in the *Gazette*, specify by reference to birth dates falling within a specified period, any age group comprising male persons above the age of eighteen years but not above the age of twenty-one years at the date of the notice as an age group liable to be called upon to serve in the Army.

(2) Subject to the provisions of this Part of this Act, while any such notice remains in force every male British subject ordinarily resident in New Zealand who belongs to the age group specified in that notice, and is not a person specified in section 5 of this Act, shall be liable to be called upon to serve in the Army for three terms of service, that is to say—

- (a) A term of whole-time service:
- (b) A term of part-time service:
- (c) A term of service in the Reserve:

Provided that the liability of every person for service under this Act shall cease on the day on which he attains the age of thirty years, unless it has previously terminated.

(3) Subject to the provisions of this Part of this Act, the term of whole-time service for which a person shall be liable

to be called up under this Part of this Act shall be a period or periods not exceeding in the aggregate fourteen weeks. Every such period shall begin with the day on which the person is required by a calling-up notice to present himself for service at a training camp:

Provided that the end of that term shall be determined in accordance with the provisions of section 6 of this Act.

(4) Subject to the provisions of this Part of this Act, the term of part-time service for which a person shall be liable under this Part of this Act shall be a period of three years beginning with the first day of such month (being not more than twelve months after the completion of his whole-time service) as may be prescribed by the Army Board:

Provided that the end of that term shall be determined in accordance with the provisions of section 7 of this Act.

(5) Subject to the provisions of this Act, the whole-time and part-time service of any person under this Part of this Act shall be in the Territorial Force of the Army.

(6) On the day next after that on which the term of a person's part-time service is completed he shall, subject to the provisions of section 4 of this Act, be deemed to be transferred to the Army Reserve for a term of three years.

**4. Voluntary service—**(1) If during the term of his whole-time service or while he is subject to registration any person performs whole-time service as a volunteer in the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force for any period, that voluntary service shall be deemed to be equivalent to whole-time service for the same period under this Part of this Act.

(2) If during any year of his part-time service any person performs whole-time service as a volunteer in the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force for any period, that voluntary service shall be deemed to be equivalent to training under this Part of this Act for the same period or for twenty days, whichever is the less.

(3) If during the term for which he is liable to serve in the Reserve any person performs whole-time or part-time service as a volunteer in the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force for any period, that voluntary service shall be deemed to be equivalent to service in the Reserve for the same period under this Part of this Act.

(4) If during the term for which he is liable to serve in the Reserve any person completes any such voluntary service as aforesaid, he shall on the next day be deemed to be transferred to the Army Reserve in accordance with subsection (6) of section 3 of this Act for the unexpired portion of the term for which he is liable to serve in the Reserve, or (as the case may be) for any longer term for which he is liable under his engagement.

**5. Persons not liable to be called up for service—**(1) The following persons shall not be liable for service under this Part of this Act:

- (a) A person employed in the service of the Government of any part of the Commonwealth other than New Zealand, being a person whose presence in New Zealand is occasioned solely by his employment in that service:
- (b) A regular minister of any religious denomination or a regular member of any religious order:
- (c) A person in respect of whom a reception order is in force under the Mental Health Act 1911 (whether or not he is in an institution under that Act), or who is for the time being in an institution under that Act, whether as a voluntary boarder or otherwise:
- (d) A person who is totally blind:
- (e) A person who is in receipt of an invalid's benefit under the Social Security Act 1938 (whether in respect of blindness or otherwise):
- (f) A person who has entered into a regular engagement with the Royal New Zealand Navy or the Army or the Royal New Zealand Air Force:

Provided that if any such person has been discharged from that engagement for any reason before the completion of one year's whole-time service he shall be liable for service under this Act.

(2) Any person selected for service (as hereinafter provided) may volunteer to serve in the Regular Force of the Army for a period of one year, and thereafter in the Army Reserve for a period of three years. Upon completion of the one year's service in the Regular Force of the Army any such person shall be deemed to have completed the terms of whole-time and part-time service for which he is liable under this Act.

*Whole-time Service*

**6. Length of whole-time service—**(1) In determining the end of the term of any person's whole-time service the following shall not count as service:

- (a) Any day before the day on which he presented himself in pursuance of the calling-up notice:
- (b) Any continuous period exceeding seven days during which he was absent, whether with or without leave or as a deserter:
- (c) Any continuous period exceeding seven days during which he was absent from duty by reason of a sentence of a Court of civil jurisdiction or of a Court Martial or of his commanding officer.

(2) If at the time when the term of any person's whole-time service would otherwise be completed—

- (a) He has been charged with an offence against military law, that term shall not be completed until he has been tried or otherwise dealt with for that offence and has undergone any punishment awarded therefor; or
- (b) He has been awarded punishment for an offence against military law, that term shall not be completed until he has undergone that punishment.

(3) If leave of absence is granted to any person for a period including or immediately following the date on which his term of whole-time service would otherwise be completed under this section, the Army Board may postpone the completion of that term until a date not later than the expiry of his leave.

(4) The Army Board may direct that a person's whole-time service shall be treated as completed at any time earlier than it would otherwise be completed under this section.

*Part-time Service*

**7. Length of training and of part-time service—**(1) During his term of part-time service a person may be required to undergo training for any periods not exceeding in the aggregate—

- (a) Sixty days during the whole of his term of part-time service:
- (b) Thirty days in any year of that service.

(2) If any question arises as to what constitutes a day's training for the purposes of this Part of this Act, it shall be determined by reference to the regulations applicable to the

Army or, in default of any such regulations, by the Army Board.

(3) If any person has not completed sixty days' training at the end of the third year of his part-time service, the term of his part-time service shall not be completed until the end of the month in which he completes his sixty days' training.

(4) The Army Board may direct that a person's part-time service shall be treated as completed at any time earlier than it would otherwise be completed under this Act.

### *Registration and Selection for Service*

**8. Persons subject to registration**—(1) Every person to whom section 3 of this Act applies shall become subject to registration on the day following the date of the publication in the *Gazette* of any notice specified in subsection (1) of section 3 of this Act that applies to him or (if he is then out of New Zealand) on the date of his return to New Zealand.

(2) References in this Part of this Act to persons subject to registration shall be construed as references to all persons who become subject to registration by virtue of this section, including persons who have been registered in the military service register or in the register of conscientious objectors:

Provided that a person shall cease to be subject to registration by reason of any notice—

- (a) At the expiration of one year from the date of the publication in the *Gazette* of that notice; or
- (b) When he is sooner served with a calling-up notice, unless the notice is revoked before he presents himself for whole-time service.

**9. Registration in military service register**—(1) Every person who becomes subject to registration shall, within fourteen days thereafter, apply in accordance with this section for registration for service in the Army.

(2) Every application under this section shall be made in a form to be provided by the Minister and shall state the applicant's name, residential address, occupation, date of birth, and such other particulars as are specified in the form or required by the Secretary.

(3) Every such application shall be made by delivering it at or posting it by registered letter addressed to the district office of the Department of Labour nearest to the applicant's place of residence:

Provided that the Secretary may, in any case where the application is posted, require the applicant to attend at the district office to complete the application in person.

(4) The Secretary shall ensure—

(a) That upon application being duly made for registration under this section, the name and address of the applicant (together with particulars of the matters with respect to which information was given by the applicant) are entered in a military service register to be kept for the purposes of this Part of this Act; and

(b) That, upon the applicant being registered, a certificate of registration is issued to him in a form to be approved by the Minister.

(5) If at any time while a person registered in the military service register remains subject to registration any change occurs in his name or address he shall forthwith, unless the Secretary has in writing instructed him otherwise, send by post to the address specified thereon the certificate of registration issued to him, having first written on the back thereof his correct name and address for the time being.

(6) Upon the receipt of such a notification the Secretary shall cause the necessary corrections to be made in the register and shall either cause the certificate to be corrected and returned to the person registered or cause a fresh certificate to be issued to him.

**10. Selection for service—**(1) In any case where, under subsection (1) of section 3 of this Act, the Minister has, by notice in the *Gazette*, specified by reference to birth dates falling within a specified period any age group of male persons as an age group liable to be called upon to serve in the Army, he may, from time to time within one year from the date of the publication of that notice in the *Gazette*, cause to be selected by ballot from the total number of birth dates which could occur in the period specified in the notice such number of birth dates as he in his sole discretion thinks fit.

(2) The Minister shall, by notice in the *Gazette*, publish details of the birth dates so selected.

(3) References in this Part of this Act to persons selected for service shall be construed as meaning all male persons who are within an age group specified in a notice in the *Gazette* published by the Minister under subsection (1) of section 3 of this Act and whose birth dates are specified in a notice published by the Minister under subsection (2) of this section; and as including every male person who is within such an age group and who fails to apply for registration for service in the Army before the date of any ballot under sub-

section (1) of this section that is conducted more than fourteen days after the date of the publication in the *Gazette* of the notice under subsection (1) of section 3 of this Act in respect of that age group, unless he satisfies the Secretary that his failure to apply for such registration was unavoidable.

(4) Where any male person in an age group specified by a notice under subsection (1) of section 3 of this Act has applied for registration for service in the Army and has incorrectly specified in the application a date within the period specified in the notice as his birth date, this section shall apply to that person as if his birth date were the date which he specified in the application as his birth date.

(5) Any person who is subject to registration may, by notice in writing, volunteer to serve in the Army for the terms of service specified in subsection (2) of section 3 of this Act, and that person shall thereafter be deemed to be a person selected for service and shall be subject to the provisions of this Act accordingly, notwithstanding the date of his birth.

### *Medical Examination*

**11. Notice for medical examination**—The Secretary may from time to time cause to be served on any person who is selected for service a written notice requiring that person to submit himself to medical, X-ray, visual, or dental examination at such place and time as may be specified in the notice.

**12. Medical Committee**—(1) For the purposes of this Part of this Act the Minister shall appoint an advisory Committee to be called the Medical Committee.

(2) The Medical Committee shall consist of—

(a) The Director-General of Medical Services of the Army:

(b) A registered medical practitioner appointed by the Minister on the nomination of the Council of the New Zealand Branch of the British Medical Association:

(c) The Director-General of Health or a registered medical practitioner appointed by the Minister on the recommendation of the Minister of Health:

(d) The Secretary of Labour.

(3) The appointed members of the Medical Committee shall hold office during the pleasure of the Minister, and one of the members of the Committee shall be appointed by the Minister to be the Chairman thereof.

(4) The functions of the Medical Committee shall be to advise the Minister in the exercise of his functions under this

Act in relation to medical examination and in particular in relation to the grades or categories to be prescribed, and the appointment of Regional Medical Officers, and to advise the Secretary in the exercise of his functions in relation to the approval of registered medical practitioners for appointment to Medical Boards.

(5) In the exercise of their functions under this Act in relation to the matters referred to in subsection (4) of this section, the Minister and the Secretary shall have regard to the recommendations of the Medical Committee.

**13. Regional Medical Officers—**(1) For the purposes of this Part of this Act the Minister may appoint such number of Regional Medical Officers as he from time to time thinks necessary.

(2) Each Regional Medical Officer shall be a registered medical practitioner and shall hold office during the pleasure of the Minister.

(3) Each Regional Medical Officer shall exercise his functions in such region as may from time to time be specified in that behalf by the Minister.

**14. Medical Boards—**(1) For the purposes of this Part of this Act each Regional Medical Officer may from time to time appoint such number of Medical Boards as he thinks fit.

(2) Each Medical Board shall consist of such number of persons, being two or more, as the Regional Medical Officer thinks necessary, all of whom shall be registered medical practitioners for the time being approved by the Secretary for the purposes of this Part of this Act.

(3) The members of each Medical Board shall be appointed by the Regional Medical Officer to hold office during his pleasure. The same person may be appointed as a member of two or more Medical Boards.

(4) One member of each Medical Board shall be appointed as the Chairman thereof by the Regional Medical Officer.

(5) Every Medical Board shall exercise its functions in such localities, or in respect of such persons or classes of persons, as the Regional Medical Officer from time to time directs.

**15. Medical examination—**(1) Where a Medical Board is unable to complete a medical examination on one occasion it may direct the person examined to submit himself to a further medical examination by a Medical Board at a specified place and time.

(2) The Regional Medical Officer may direct a person examined to submit himself to examination by a consultant examiner.

(3) There shall be paid to persons submitting themselves to medical examination under this Act such travelling and other allowances, which may include compensation for loss of remunerative time, as may from time to time be directed or approved by the Minister of Finance or prescribed by regulations made under this Part of this Act.

**16. Report of Medical Board**—(1) Every person examined by a Medical Board shall be placed by the Board in one or other of such grades or categories as are for the time being prescribed by the Minister.

(2) The Medical Board may give the person examined such information as in its discretion it thinks fit as to the result of his examination and the nature of the report. The Regional Medical Officer shall give full particulars of the report to any registered medical practitioner upon application made with the consent of the person examined or of a parent or guardian of that person.

(3) Every report by a Medical Board shall be signed by the members of the Board, and every alteration, erasure, or interlineation shall be initialled by at least one of the members.

(4) If the members of any Medical Board are in doubt or unable to agree as to any question arising in relation to the examination of any person or as to their report thereon, the question shall be referred to the Regional Medical Officer, and his decision shall be final.

(5) The report of the Medical Board, after confirmation by the Regional Medical Officer, shall be forthwith transmitted to the district office of the Department of Labour nearest to the place of the medical examination.

### *Enlistment in the Army*

**17. Enlistment notice**—The Secretary shall cause to be served on every person selected for service who has been medically examined under this Part of this Act and graded fit for service, and is not provisionally registered in the register of conscientious objectors or unconditionally registered therein, an enlistment notice which shall state that he has been enlisted in the Army and is liable to be called up for service under this Part of this Act:

Provided that, where it is known to the Secretary that a person selected for service is a member of the Royal New Zealand Naval Volunteer Reserve and that he elects to perform the service for which he is liable under this Part of this Act in the New Zealand Naval Forces, the enlistment notice, instead of stating that he has been enlisted in the Army, shall state that he has been enlisted in the New Zealand Naval Forces.

**18. Enlistment in Army—**(1) On the day on which an enlistment notice is served on any person as aforesaid he shall be deemed to be enlisted in the Army:

Provided that, where a person selected for service is a member of the Royal New Zealand Naval Volunteer Reserve and he elects to perform the service for which he is liable under this Act in the New Zealand Naval Forces, he shall be deemed to be enlisted in the New Zealand Naval Forces; and thereafter the provisions of this Act and of any enlistment notice served on that person shall apply to him accordingly as if every reference to the Army were a reference to the New Zealand Naval Forces and every reference to the Army Board were a reference to the Naval Board.

(2) Every person who under this section is deemed to be enlisted in the Army shall, until he is lawfully discharged or transferred therefrom, belong to the Army in the same manner to all intents and purposes, subject, however, to the provisions of this Part of this Act, as if he had voluntarily enlisted therein:

Provided that nothing in this subsection shall entitle any such person to any rates of pay, gratuities, or privileges granted specially to persons who enlisted voluntarily:

Provided also that every such person who did not enlist voluntarily shall be entitled to be discharged when he has completed all service for which he is liable under this Part of this Act, or has ceased to be liable for any such service.

(3) If at any time while a person belongs to the Army by virtue of this Part of this Act any change occurs in his name or address, he shall forthwith notify the change to such person and in such manner as may be notified to him by orders issued by or under the authority of the Army Board.

*Calling Up for Whole-time Service*

**19. Calling-up notice—**(1) The Army Board may cause to be served on any person who for the time being is liable under this Part of this Act to be called up for service and has been enlisted in the Army a calling-up notice which shall state that he is called up for whole-time service and the period for which he is called up, and shall require him to present himself at such place and time, and to such authority, as may be specified in the notice:

Provided that a calling-up notice shall not require the person upon whom it is served to present himself on a day earlier than the fourteenth day after the date of service of the notice or before such earlier day as may be determined at his request.

(2) A calling-up notice shall not be served on any person while—

- (a) An application duly made under this Part of this Act for the postponement of his liability to be called up for service is pending; or
- (b) A period of postponement granted on any such application has not expired.

*Summoning for Training During Part-time Service*

**20. Training notices—**(1) The Army Board may cause to be served on any person before or during his term of part-time service a training notice which shall state that he is summoned for training and the period for which he is summoned, and shall require him to present himself at such place and time on such day during his term of part-time service, and to such authority, as may be specified in the notice.

(2) A training notice shall not require the person on whom it is served to present himself on a day earlier than the fourteenth day after the date of service of the notice.

*Postponement of Liability for Service*

**21. Right of person enlisted to apply for postponement of liability for service—**(1) Every person on whom an enlistment notice has been served may apply in accordance with this Part of this Act for postponement of his liability to be called up for service on the ground that his calling up for service will be a cause of undue hardship to himself or others.

(2) If the Secretary is satisfied that by reason of special circumstances it is desirable to do so, he may permit any person subject to registration to make an application under this section before an enlistment notice has been served on him.

**22. Applications by other persons—**(1) Any such application may be made by any other person in respect of any person on whom an enlistment notice has been served (who shall for the purposes of this Part of this Act be deemed to be the applicant) on the ground that the calling up of the applicant will be a cause of undue hardship to that other person.

(2) With respect to the hearing of any such application the provisions of this Part of this Act as to notices to the applicant and as to the right of the applicant to be heard and represented shall apply to the person making the application as well as to the applicant.

**23. Applications to be determined by Postponement Committees unless Secretary grants short postponement—**

(1) Where any application is for postponement for a period not exceeding twelve months, the Secretary may in his discretion grant the application.

(2) Every application that is not granted by the Secretary as aforesaid shall be referred to a Military Service Postponement Committee as hereinafter provided.

**24. Military Service Postponement Committees—**(1) For the purposes of this Part of this Act there shall be appointed such number of Military Service Postponement Committees as the Minister from time to time thinks necessary.

(2) Each Postponement Committee shall be distinguished by such distinctive name as the Minister thinks fit.

(3) Each Postponement Committee shall consist of three persons to be appointed by the Minister and to hold office during his pleasure.

(4) One member of each Postponement Committee shall be appointed by the Minister as the Chairman thereof.

(5) Each Postponement Committee shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908; and, subject to this Part of this Act and to any regulations made for the purposes thereof, the provisions of that Act shall apply accordingly.

**25. Applications for postponement**—(1) Every application for postponement shall be made in a form to be provided by the Minister for the purpose, and shall state the applicant's name, residential address, and occupation, the grounds of the application, and such other particulars as are specified in the form or required by the Secretary. Every such application may, if the applicant or other person making the application thinks fit, be accompanied by any documentary evidence or statement of facts in support of the application.

(2) Every such application shall be made by delivering it at or posting it by registered letter addressed to the district office of the Department of Labour from which the applicant's enlistment notice was issued.

(3) Every such application shall be so posted or delivered within fourteen days after the date of service of the enlistment notice on the applicant.

(4) Any such application may be amended by the Postponement Committee or by the Secretary on the application of the applicant or of any other person making the application at any time before the application is finally determined, and upon or subject to such conditions as the Committee or Secretary thinks fit.

**26. Hearing of applications**—(1) If in any case the Postponement Committee thinks fit after considering any documentary evidence or statement of facts supplied to the Committee, or any information otherwise obtained by the Committee, the Committee, without calling on the applicant or hearing evidence, may—

(a) Grant the application, if the period of postponement applied for does not exceed twelve months; or

(b) Adjourn the application under section 41 of this Act.

(2) Where an application is not granted or adjourned as aforesaid the Chairman of the Postponement Committee shall, as soon as may be after the receipt by him of the application, appoint a time and place for the hearing of the application, and shall by post, telegraph, or otherwise give reasonable notice thereof to the applicant by notice addressed to him at the postal address specified in his application; and the Committee shall thereafter proceed to determine the application accordingly, whether the applicant appears or not:

Provided that, if the application has not been posted or delivered within the time limited under subsection (3) of section 25 of this Act, the Committee shall dismiss the application without a hearing unless it is satisfied that the delay was occasioned by mistake or by any other reasonable cause.

**27. Determination of Postponement Committee**—(1) When the hearing of an application has been completed the Postponement Committee may reserve its determination, and may thereafter determine the application at any time and place, and either with or without previous notice to the applicant or the Crown representative.

(2) The Postponement Committee may either determine an application on its merits or, as the case may require, dismiss it for want of jurisdiction or for want of prosecution, or permit it to be withdrawn.

(3) In determining an application on its merits the Postponement Committee may—

- (a) Dismiss the application; or
- (b) Grant a postponement for a period not exceeding twelve months, ending with a specified date; or
- (c) Deal with the application by adjournment under section 41 of this Act.

### *Conscientious Objectors*

**28. Application for registration as conscientious objector**—

(1) If any person subject to registration claims that he conscientiously objects—

- (a) To serving with the Armed Forces; or
- (b) To performing combatant duties—

he may, instead of applying for registration for service in the Army, apply to be registered as a conscientious objector.

(2) Every application under this section shall be made in a form to be approved by the Minister for the purpose, and may if the applicant thinks fit be accompanied by any documentary evidence or statement of facts in support of the application.

(3) Every application under this section shall be made within the time and in the manner prescribed by this Part of this Act for applications for registration for service in the Army.

(4) A person who makes an application under this section shall not be required to apply for registration for service in the Army.

(5) Any person who has applied for registration for service in the Army, and is registered in the military service register accordingly, may at any time apply under this section to be registered as a conscientious objector. Upon the receipt of any such application, the Secretary, besides complying with section 29 of this Act, shall cause the registration of the applicant in the military service register to be cancelled.

(6) Any person who has applied to be registered in the register of conscientious objectors as a person liable to be called up for service but to be employed only in non-combatant duties, and is registered in the register of conscientious objectors accordingly, may at any time apply under this section to be unconditionally registered in the register of conscientious objectors. Upon the receipt of any such application the Secretary, besides complying with section 29 of this Act, shall cause the existing registration of the applicant in the register of conscientious objectors to be cancelled.

**29. Provisional registration in register of conscientious objectors**—(1) Where an application is made under section 28 of this Act for registration as a conscientious objector, the Secretary shall ensure—

- (a) That the applicant is provisionally registered in a register of conscientious objectors to be kept for the purposes of this Part of this Act, and that his name and address and such other particulars as may be necessary are entered in that register accordingly; and
- (b) That, upon the applicant being so registered, a certificate of provisional registration is issued to him in a form to be provided by the Minister; and
- (c) That the application for registration is referred to the Conscientious Objection Committee for determination as hereinafter provided.

(2) The Secretary may provisionally register in the register of conscientious objectors any person subject to registration, notwithstanding that he has refused or failed to make any application in that behalf, if in the Secretary's opinion there are reasonable grounds for thinking that he is a conscientious objector, and the Secretary may refer the case to the Conscientious Objection Committee; and thereupon the provisions of this Part of this Act shall apply in relation to that person as if he had duly applied for registration as a conscientious objector, and he shall accordingly for the purposes of this Part of this Act be deemed to be the applicant.

**30. Conscientious Objection Committee**—(1) For the purposes of this Part of this Act there shall be appointed a Committee to be called the Conscientious Objection Committee.

(2) The Objection Committee shall consist of three persons to be appointed by the Minister and to hold office during his pleasure.

(3) One member of the Objection Committee shall be appointed by the Minister as the Chairman thereof.

(4) The Objection Committee shall, within the scope of its jurisdiction, be deemed to be a Commission under the Commissions of Inquiry Act 1908, and, subject to this Part of this Act and to any regulations made for the purposes thereof, the provisions of that Act shall apply accordingly.

**31. Hearing of application**—Where any person who has applied for registration as a conscientious objector is selected for service, the Chairman of the Objection Committee shall, as soon as practicable thereafter, appoint a time and place for the hearing of the application, and shall by post, telegraph, or otherwise give reasonable notice thereof to the applicant by notice addressed to him at the postal address specified in his application; and the Committee shall thereafter proceed to determine the application accordingly, whether the applicant appears or not:

Provided that, if the application has not been posted or delivered within the time limited under subsection (3) of section 28 of this Act, and is not made under subsection (5) of that section, the Committee shall dismiss the application unless it is satisfied, having regard to the grounds on which the application is made, that the delay was occasioned by mistake or by any other reasonable cause.

**32. Determination of Objection Committee**—(1) When the hearing of an application has been completed, the Objection Committee may reserve its determination, and may thereafter determine the application at any time and place, and either with or without previous notice to the applicant or the Crown representative.

(2) The Objection Committee may either determine an application on its merits or, as the case may require, dismiss it for want of jurisdiction or for want of prosecution, or permit it to be withdrawn.

(3) In determining an application on its merits the Objection Committee, if it is not satisfied that the ground upon which the application is made is established, shall dismiss the application. If it is so satisfied it shall by order direct—

(a) That the applicant shall be unconditionally registered in the register of conscientious objectors; or

- (b) That he shall be registered in that register as a person liable to be called up for service but to be employed only in non-combatant duties.

**33. Dismissal of application**—Where the application of any person to be registered as a conscientious objector is dismissed, the Secretary shall cause the applicant to be registered in the military service register and shall cause his provisional registration in the register of conscientious objectors to be cancelled.

**34. Effect of registration in register of conscientious objectors**—(1) Any person provisionally registered in the register of conscientious objectors, or unconditionally registered therein, shall not, so long as he is so registered, be liable for any service under this Part of this Act, or be required without his consent to submit himself to medical examination.

(2) The Army Board shall make arrangements for securing that, where a person registered in the register of conscientious objectors as a person liable to be called up for service but to be employed only in non-combatant duties is called up for service under this Part of this Act, he shall, during the period for which he serves by virtue of being so called up, be employed only in such duties.

(3) If, while a person is registered in the register of conscientious objectors, whether provisionally or unconditionally or otherwise, any change occurs in the particulars about him registered in that register, he shall forthwith send by post to the address specified therein the certificate of registration issued to him, having first written on the back thereof the correct particulars for the time being.

(4) Upon the receipt of such a notification the Secretary shall cause the necessary corrections to be made in the register and shall either cause the certificate to be corrected and returned to the person registered or cause a fresh certificate to be issued to him.

**35. Changes in register of conscientious objectors**—(1) A registered conscientious objector may at any time apply to the Secretary in writing—

- (a) For the removal of his name from the register of conscientious objectors and for his registration in the military service register; or

(b) For his registration in the register of conscientious objectors as a person liable to be called up for service but to be employed only in non-combatant duties.

(2) A person registered in the register of conscientious objectors as a person liable to be called up for service but to be employed only in non-combatant duties may, at any time before the day specified in a calling-up notice served on him as the day on which he is thereby required to present himself, apply to the Secretary in writing for the removal of his name from that register and for his registration in the military service register.

(3) A person registered in the register of conscientious objectors as a person liable to be called up for service but to be employed only in non-combatant duties may, at any time on or after the day mentioned in subsection (2) of this section, apply to the Army Board to be employed in combatant duties; and, where such an application is granted, the applicant may be employed in combatant duties.

(4) Where an application made under this section is granted the Secretary shall cause the register or registers to be amended accordingly.

### **36. Financial position of conscientious objectors—**

(1) Where any person—

(a) Is unconditionally registered in the register of conscientious objectors; or

(b) Is registered in that register as a person liable to be called up for service but to be employed only in non-combatant duties, and has not been called up for service,—

the Objection Committee may from time to time make such orders against or give such directions to that conscientious objector or any other person or class of persons as may appear to the Committee to be necessary for the purpose of ensuring that for the period of one hundred and fifty-eight days the financial position of the conscientious objector shall be no better than it would be if he were serving as a private on the basic rate of pay for privates under twenty-one years of age in the Territorial Force of the Army.

(2) Without limiting the generality of the foregoing provisions, it is hereby declared that any orders or directions made or given under this section may require the payment of any money into the Public Account to the credit of the Social Security Fund, at such times and in such manner as may be

specified in the orders or directions. All money so ordered or directed to be paid shall be deemed to be a debt due to the Crown by the conscientious objector and by any other person who may be ordered or directed to pay it.

(3) In determining the amount of any payment to be required under this section where that payment is related to income derived by a conscientious objector or other person the Objection Committee shall have regard to the amount of that income remaining after taking into account the taxation payable thereon and the amount of service pay which would be payable to the conscientious objector or person after deduction therefrom of tax at the rate which would apply to that conscientious objector or person.

(4) Where the Objection Committee proposes to consider whether it should make any order against any person or give any directions to any person under this section the following provisions shall apply:

(a) The Committee may summon that person to attend before it, and to produce to it any books, papers, writings, or documents:

(b) That person commits an offence against this Part of this Act if, without lawful excuse, he refuses or fails to comply in any respect with any such summons, or if he attends before the Committee (whether pursuant to a summons or otherwise) and, without lawful excuse, refuses or fails to be sworn or give evidence, or to make answer to such questions as may be put to him by the Committee.

(5) Any summons, order, or direction issued, made, or given by the Objection Committee may be at any time revoked or from time to time varied or added to by the Committee.

(6) All summonses, orders, and directions issued, made, or given by the Objection Committee shall be in writing signed by the Chairman. In all Courts and in all proceedings—

(a) The production of a document that purports to be a copy of any such summons, order, or direction and to include a copy of the signature thereto of the Chairman of the Committee shall, in the absence of proof to the contrary, be sufficient evidence of that summons, order, or direction:

(b) Judicial notice shall be taken of the appointment and signature of the Chairman and every member of the Objection Committee.

*Procedure of Committees*

**37. Deputy members of Postponement Committees and Objection Committee—**(1) The Minister may from time to time appoint a Deputy Chairman of any Postponement Committee or of the Objection Committee, and such deputy members thereof as he thinks fit, to hold office during his pleasure.

(2) On the occurrence from any cause of a vacancy in the office of Chairman or member of any such Committee, and in the case of the absence of the Chairman or any member (from whatever cause arising) and as long as the vacancy continues, the powers and functions of the Chairman or member may be exercised and performed by the Deputy Chairman or by a deputy member, as the case may be.

(3) No act done by any such Committee sitting with a Deputy Chairman or a deputy member, or done by any such Deputy Chairman or deputy member, shall be questioned on the ground that the occasion for the deputy's acting had not arisen or had ceased.

**38. Transmission of applications—**(1) Except as otherwise provided in this Part of this Act, every application for postponement shall be transmitted by the Secretary to the Postponement Committee sitting in the district in which the applicant resides.

(2) Any Postponement Committee may at any time transmit any application to another Postponement Committee.

(3) Any Committee to which any application is transmitted may hear or rehear the application or continue or adjourn the hearing thereof or otherwise exercise jurisdiction in respect of the application notwithstanding that the application may have been previously heard, adjourned, or otherwise dealt with by any other Committee.

**39. Procedure of Committees—**(1) The procedure of every Postponement Committee or of the Objection Committee shall, subject to this Part of this Act and to any regulations made for the purposes thereof, be such as the Committee thinks fit.

(2) Any such Committee may admit and accept such evidence as it thinks fit, whether admissible in a Court of law or not.

(3) Every such Committee shall sit at such times and places as may be determined by the Chairman.

(4) No sitting of any such Committee shall take place unless all the members are present, but the decision of the majority of the members shall be the decision of the Committee.

**40. Hearing of applications—**(1) On the hearing of any application by a Postponement Committee or by the Objection Committee, the applicant may be represented by a barrister or solicitor or, with the leave of the Committee, by any other person.

(2) On the hearing of applications the Crown may be represented by any person appointed by the Minister in that behalf either generally or with respect to any class of applications or with respect to any particular application.

(3) The Crown representative at the hearing of an application shall have a right to be heard in opposition thereto or in support thereof, to produce documents and call witnesses, and to cross-examine witnesses.

(4) All applications shall be heard in public, unless the Committee in any particular case, due regard being had to the interests of the applicant and of all other persons concerned and to the public interest, considers that the hearing or any part thereof should take place in private.

**41. Adjournments—**The hearing of an application may from time to time be adjourned by a Postponement Committee or by the Objection Committee to any time or place or *sine die*; but if it is adjourned *sine die* reasonable notice of the time and place of the continuance thereof shall be given by post, telegraph, or otherwise to the applicant or his representative and to the Crown representative.

**42. Determination of Committees—**(1) The determination of any Postponement Committee or of the Objection Committee on any application shall be in writing signed by the Chairman and at least one other member of the Committee.

(2) The determination so signed shall be transmitted by the Chairman to the Secretary or to such District Officer of the Department of Labour as the Secretary directs. The Chairman shall also notify the applicant of the result of the application.

(3) Every such determination shall, for the purposes of this Part of this Act, be final and conclusive:

Provided that on the application of the Secretary any Postponement Committee or the Objection Committee, as the case may be, may, if it has reason to suppose that the determination may have been procured by fraud, or that new and material evidence is available, rehear the application, and cancel, vary, or confirm the previous determination, and make such order as it thinks fit.

#### *Miscellaneous*

**43. Members of Boards and Committees not to be deemed to be public servants**—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason of his being a member of the Medical Committee or Objection Committee or of a Medical Board or Postponement Committee, or a Regional Medical Officer.

**44. Remuneration and travelling expenses**—(1) The Medical Committee and the Objection Committee are hereby declared to be statutory Boards within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid out of money appropriated by Parliament for the purpose to the members of the Medical Committee or the Objection Committee and of every Medical Board or Postponement Committee and to every Regional Medical Officer remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if all such persons (as well as the Medical Committee or the Objection Committee) were members of a statutory Board within the meaning of that Act.

**45. Proceedings not to be questioned for want of form, or appealed against**—(1) Proceedings before any Medical Board or Postponement Committee or the Objection Committee shall not be held bad for want of form.

(2) No appeal shall lie from any order or direction or requirement or decision given or issued in any such proceedings or by the Minister or the Secretary or any Regional Medical Officer; and, except on the ground of lack of jurisdiction, no proceedings, order, direction, requirement, or decision as aforesaid shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

**46. Exercise of Secretary's functions—**(1) In the exercise of his administrative functions under this Act the Secretary shall be subject to the control of the Minister.

(2) On the occurrence from any cause of a vacancy in the office of Secretary, and in case of the absence from duty of the Secretary (from whatever cause arising), and so long as the vacancy or absence continues, the powers and functions of the Secretary may be exercised and performed by any person authorised in that behalf by the Minister.

(3) The fact that any person exercises or performs any power or function of the Secretary with the concurrence of the Minister shall be conclusive evidence of his authority to do so.

**47. Delegation of powers by Secretary—**(1) The Secretary may from time to time, either generally or in respect of any particular area or in respect of any particular class of activity, delegate to any person any of his powers and functions under this Act, including the power of delegation conferred by this section, but not including the powers conferred on the Secretary by subsections (5) and (6) of section 2 of this Act.

(2) Subject to any general or special directions given or conditions attached by the Secretary, the person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Secretary or by any other person making the delegation.

(6) Every delegation made under this section by the Secretary or by any other person holding any office shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the Secretary or other officer by whom it was made may have ceased to hold office, and shall continue to have effect as if made by his successor in office.

**48. Service of notices—**(1) Where the Secretary or any other person gives any direction or issues any requirement under this Part of this Act he may cause notice of the direction or requirement to be served on any person, and every person on whom the notice is served shall be bound thereby.

(2) Except where otherwise specially provided, any notice required to be served on any person for the purposes of this Part of this Act may be served by causing it to be delivered to that person, or to be left at the address specified by him in any application, notice, or other document received from him or at his usual or last known place of residence or business, or to be posted in a letter addressed to him at that place of abode or business or at that address.

(3) If any such notice is sent to any person by registered letter it shall be deemed to have been served on him when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

(4) Any notice served under this Part of this Act may be at any time varied or revoked by a subsequent notice.

**49. Lost certificates of registration—**If, while any person remains subject to registration, a certificate of registration issued to that person is lost, destroyed, or defaced, that person shall forthwith report the fact to a district office of the Department of Labour, and in a case where the certificate is defaced shall at the same time lodge the certificate at or send it to the district office; and the Secretary, on being satisfied that the facts reported are correct, shall, where the certificate has been lost or destroyed or so far defaced as to make it desirable to do so, issue a fresh certificate of registration; and the certificate so issued may be marked in any manner that the Secretary may consider suitable for the purpose of indicating that it has been issued under this section.

**50. Power of police to question persons liable for service—**

(1) Any constable may question any person who may reasonably be supposed to be subject to registration or liable for any service under this Part of this Act as to all or any of the following matters—namely, his name, occupation, and residential address, the date and place of his birth, his registration in the military service register or in the register of conscientious objectors, or his membership of any Armed Force.

(2) Every person who fails or refuses to answer forthwith any question so put to him, or who answers any such question in a false or wilfully misleading manner, commits an offence against this Part of this Act.

**51. Production of certificate of registration and other documents**—Any constable may require any person who may reasonably be supposed to be subject to registration or liable for any service under this Part of this Act to produce his certificate of registration (if any) or any documents relating to any of the matters specified in subsection (1) of section 50 of this Act forthwith if he has the same in his possession, or to produce at any specified place within a specified time any such certificate or document that he has under his control or may be able to obtain.

**52. Failure to render service**—(1) Every person who belongs to the Army by virtue of this Part of this Act shall be deemed to have failed to render the service required of him under this Part of this Act if and as often as he fails to be present at any camp, course of instruction, parade, or drill, or on any other lawful occasion of service or training, with his prescribed arms, uniform, and equipment, at the place prescribed, and at and during the time prescribed, and there and then to perform and undergo with due diligence and subordination all service and training lawfully required of him.

(2) For the purposes of this section the expression “prescribed” means prescribed by any orders lawfully given in that behalf.

(3) Nothing in this section shall be so construed or shall so operate as to take away or restrict the liability of any person for any offence, whether under military law or otherwise, but no person shall be punished twice for the same offence.

**53. Employers not to employ persons who fail to register**—Every person who at any time employs or retains in his service for more than seven days any person subject to registration who has not applied for registration under this Part of this Act commits an offence against this Act, unless he proves that he believed on reasonable grounds that the person so employed or retained in his service was not subject to registration or that he had duly applied for registration.

**54. Employers not to employ deserters**—Every person who knowingly employs or retains in his service any person who has deserted or is absent without leave from the Army commits an offence against this Act.

**55. Persons liable for service to obtain permission before leaving New Zealand**—Every person commits an offence against this Part of this Act, who, being a person subject to registration or a person who has been served with a calling-up notice, leaves or attempts to leave New Zealand at any time before the term of his part-time service is completed, without having first obtained permission from the Secretary to leave New Zealand.

**56. Offences**—(1) Every person commits an offence against this Part of this Act who—

- (a) Resists, obstructs, or deceives, or attempts to resist, obstruct, or deceive any Medical Board or Postponement Committee, or the Objection Committee, or the Secretary, or any person who is exercising or attempting to exercise any power or function under this Part of this Act:
- (b) With intent to deceive, makes any false or misleading statement in or any material omission from any communication with or application to the Minister, the Secretary, or any other person (whether in writing or otherwise) for the purposes of this Part of this Act:
- (c) With intent to deceive, forges or uses, or lends to or allows to be used by any other person, any certificate issued under this Part of this Act; or, with intent to deceive, makes, or has in his possession, any document so closely resembling any certificate so issued as to be calculated to deceive:
- (d) Being a person who is subject to registration or who has been selected for service, without lawful excuse acts in contravention of or fails to comply in any respect with any provision of this Part of this Act or any direction, requirement, order, summons, restriction, or condition given, issued, or imposed under this Part of this Act.

(2) Every person commits an offence, and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred pounds, who offers any bribe or other unlawful or

improper inducement to any person with intent to influence him in the exercise of any powers, duties, or functions under or for the purposes of this Part of this Act, or who accepts any such bribe or inducement.

(3) Every person who commits an offence against this Part of this Act for which no other penalty is prescribed by this Part of this Act shall be liable on summary conviction—

(a) In the case of an individual to a fine not exceeding fifty pounds:

(b) In the case of a company or other corporation, to a fine not exceeding two hundred pounds.

(4) Where any person who is subject to registration or liable for any service under this Part of this Act is convicted before a Magistrate of any offence against this Part of this Act, the Magistrate, if in the circumstances of the case he thinks fit to do so, may, in addition to or instead of imposing any other lawful penalty, direct:

(a) That he shall, for any specified period not exceeding one year, undertake such work of a civil nature and under civil control as may from time to time be required by the Secretary; and

(b) That he shall pay into the Public Account to the credit of the Social Security Fund such sums, at such times and in such manner as may be required by the Secretary for the purpose of ensuring that for the period referred to in paragraph (a) of this subsection the financial position of the offender shall be no better than it would be if he were serving as a private on the basic rate of pay for privates under twenty-one years of age in the Territorial Force of the Army.

(5) In determining the amount of any payment to be made by any person under paragraph (b) of subsection (4) of this section where that payment is related to income derived by that person regard shall be had to the amount of that income remaining after taking into account the taxation payable thereon and the amount of service pay which would be payable to the person after deduction therefrom of tax at the rate which would apply to that person.

(6) Where any person commits an offence by being guilty of any contravention or non-compliance referred to in paragraph (d) of subsection (1) of this section, he shall be deemed to commit a further offence on every day after the first during which the contravention or non-compliance continues, whether or not (in the case of a non-compliance) a specified date has been fixed for compliance.

**57. Evidence and procedure—**(1) Where in any prosecution for an offence against this Part of this Act any question arises as to whether the defendant has received any discharge, exemption, or permission, or has made any application or fulfilled any obligation required from or imposed on him by this Part of this Act, the negative shall be presumed until the contrary is proved:

Provided that, if it appears to the Court that there are special circumstances giving rise to doubt as to any of the matters aforesaid, the Court may require the matter to be proved by the prosecution.

(2) Any certificate of registration purporting to be issued under this Part of this Act shall, in the absence of proof to the contrary, be sufficient evidence of the registration in the military service register or in the register of conscientious objectors, as the case may be, of the person to whom the certificate relates.

(3) A copy purporting to be certified by or on behalf of the Secretary of any entry in the military service register or in the register of conscientious objectors shall, in the absence of proof to the contrary, be sufficient evidence of the entry.

(4) A certificate purporting to be signed by or on behalf of the Secretary of the absence of an entry in the military service register or in the register of conscientious objectors shall, in the absence of proof to the contrary, be sufficient evidence of the facts stated in the certificate.

(5) The absence of an entry in the military service register and in the register of conscientious objectors relating to any person shall, in the absence of proof to the contrary, be sufficient evidence that no application for registration under this Act has been made by that person.

(6) For the purposes of any prosecution for an offence against this Part of this Act a certificate purporting to be signed by the Chairman of a Medical Board, and stating that a person bearing the name in which the defendant is charged was examined by that Board on a date specified in the certificate, shall be evidence that the defendant was so examined on that date:

Provided that, if it appears to the Court that there are special circumstances giving rise to doubt as to any matter stated in any such certificate, or as to the relation of any such certificate to the defendant, the Court may require the prosecution to prove that matter, or that the certificate relates to the defendant, as the case may be.

(7) Every information for an offence against this Part of this Act shall be laid within five years from the time when the matter of the information arose.

**58. Regulations—**(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the travelling allowances and other allowances, including compensation for loss of remunerative time, that may be paid to persons submitting themselves to medical examination under this Act:
- (b) Regulating the practice and procedure of Military Service Postponement Committees and the Objection Committee:
- (c) Prescribing forms for use in the administration of this Act:
- (d) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before Parliament.

## PART II

### SAFEGUARDING OF EMPLOYMENT

**59. Interpretation—**(1) In this Part of this Act, unless the context otherwise requires,—

“Apprentice” means an apprentice within the meaning of the Apprentices Act 1948, and includes any person employed in any employment the time served in which is part of a qualifying period prescribed by or under any Act for any trade, profession, or calling; and “contract of apprenticeship” has a corresponding meaning:

“Armed Force” means the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, as the case may require:

“Inspector of Factories” means an Inspector of Factories appointed under the Factories Act 1946:

“Minister” means the Minister of Labour:

“Protected service or training” means—

(a) Voluntary service or training in any Armed Force or Armed Forces for any period or periods not exceeding in the aggregate three weeks in any calendar year:

(b) Service in the New Zealand Army as a volunteer under subsection (5) of section 10 of this Act for the terms specified in subsection (2) of section 3 of this Act:

(c) Service in the New Zealand Army by a person selected for service under section 10 of this Act for the terms specified in subsection (2) of section 3 of this Act:

“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:

“Worker” means any person who is employed by any employer.

(2) Where any worker employed in any undertaking has been called up or summoned for any protected service or training, and any change takes place in the person carrying on that undertaking or that undertaking becomes comprised in any other undertaking, references in this Part of this Act to the employer of that worker shall be construed as references to the person for the time being carrying on that undertaking or that other undertaking, as the case may be:

Provided that where the worker was employed in a branch or part of an undertaking which becomes, or becomes part of, some other undertaking, and either—

(a) He has as a consequence become employed in that other undertaking; or

(b) It is reasonable to suppose that he would as a consequence have been employed in that other undertaking if his employment had not been interrupted by his service or training—

this subsection shall have effect as if that branch or part were itself an undertaking.

### *Leave of Absence for Period of Protected Service or Training*

**60. Worker deemed to have leave of absence from employment—**(1) Where any person who is employed by any employer performs or undergoes any protected service or training for any period or periods, his employer shall be deemed to have granted him leave of absence for that period or those periods and the time spent in travelling to and from any training camp that he is required to attend:

Provided that, in the case of the worker's whole-time service, the leave of absence shall be deemed to extend for such further period from the end of that service, not exceeding seven days, as the worker may require:

Provided also that, where in any case the worker is prevented by his sickness or by any other reasonable cause from resuming his employment at the end of any period or extended period of leave of absence hereinbefore provided for, the leave of absence shall be deemed to have been extended for such further period as may be reasonable.

(2) Subject to the provisions of this Part of this Act as to holidays, the employer of any such worker shall not be obliged to pay him any remuneration for the period of leave of absence provided for by this section.

**61. Resumption of employment after leave of absence—**Where any worker presents himself to his employer at or before the end of any period of leave of absence to which he is entitled under section 60 of this Act, the employer shall forthwith resume the employment of the worker in the occupation in which he was last employed before the leave of absence and on terms and conditions not less favourable to him than those that would have been applicable to him if he had not been called up or summoned for the protected service or training:

Provided that in the case of employment of a temporary, seasonal, or casual nature this section shall not apply if, having regard to the general conditions applicable to the industry concerned, the employment of the worker would not normally have continued until the end of the period of leave of absence.

*Prohibition of Dismissal of Workers*

**62. Workers not to be dismissed by reason of liability for service—**(1) The employer of any worker commits an offence against this section—

- (a) If the employment of the worker is terminated by the employer without the worker's consent solely or mainly by reason of any duties or liabilities which he is or may become liable to perform or discharge by reason of his volunteering or becoming liable for protected service or training as aforesaid:

(b) If the employment of the worker is terminated by the employer without the worker's consent during any period of leave of absence to which the worker is entitled under section 60 of this Act, or within thirteen weeks after the end of the period of leave of absence for his whole-time service under this Act, solely or mainly by reason of any duties or liabilities which the worker is or may have become liable to perform or discharge by reason of his volunteering or becoming liable for protected service or training as aforesaid.

(2) If any employer commits an offence against this section he shall be liable on summary conviction to a fine not exceeding one hundred pounds; and the Court by which he is convicted may order him to pay to the worker 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 thirteen weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(3) Where the employment of any worker is terminated in contravention of subsection (1) of this section, 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 thirteen weeks' remuneration at the rate at which his remuneration was last payable to him by the employer.

(4) The awarding of compensation under subsection (3) of this section shall not affect the liability of the employer to proceedings for an offence under subsection (2) of this section, 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 subsection (2).

(5) If in any proceedings under this section 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.

*Rates of Remuneration*

**63. Workers' rates of remuneration to be computed as if period of service were time served**—Where the rate of the remuneration of any worker 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 protected service or training, the period of leave of absence to which he is entitled under section 60 of this Act shall for the purpose of computing the rate of his remuneration be deemed to be time served by him in that occupation.

*Holidays*

**64. Annual holidays**—(1) For the purpose of ascertaining the rights of any worker 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 worker in the employment of that employer is interrupted by the worker's protected service or training, the period of the leave of absence to which he is entitled under section 60 of this Act in respect of that service or training shall not, unless the employer otherwise agrees, be deemed to be time served in that employment.

(2) Where an employer is required to allow annual or periodical holidays or leave to any worker, the holidays or leave shall not, except at the request of the worker, be allowed at times comprised within any period of protected service or training.

**65. Other holidays**—Where any worker who is employed by any employer performs or undergoes any protected service or training, the rights of the worker to be allowed any day as a holiday on full pay during the period of that service or training, and the obligations of his employer in relation thereto, shall be ascertained as if the worker had ceased to be employed by the employer at the beginning of that service or training.

*Apprentices*

**66. Apprentices**—(1) Where the time served by any apprentice under his contract of apprenticeship is interrupted by any protected service or training, his contract of apprenticeship shall be deemed to be suspended during the period of the leave of absence to which he is entitled under section 60 of

this Act in respect of that service or training (in this section referred to as the period of leave), and the succeeding provisions of this section shall apply.

(2) Subject to the provisions of this Act as to holidays, the employer of any such apprentice shall not be obliged to pay him any remuneration for the period of leave, but the period of leave shall be deemed to be time served under the contract of apprenticeship for the purpose of computing the period of apprenticeship and the rate of wages of the apprentice.

(3) In the case of any contract of apprenticeship under which the period of apprenticeship is fixed by reference to a number of working hours, the period of leave for the purposes of this section shall be deemed to be the number of hours that the apprentice would normally have worked under the contract of apprenticeship during the period of leave if he had continued to work under the contract during that period.

(4) Sections 64 and 65 of this Act shall apply to apprentices as well as to other workers.

### *Miscellaneous*

**67. Workers to notify employers before commencing service or training—**(1) Where any worker is called up or summoned for any protected service or training which will necessitate his absence from work, he shall forthwith notify his employer thereof.

(2) Every person who fails to comply in any respect with the foregoing provisions of this section commits an offence, and is liable on summary conviction to a fine not exceeding twenty pounds.

**68. Proceedings may be taken by Inspector of Factories—**Without limiting the powers or remedies of any other person, it is hereby declared that—

(a) Civil proceedings for the recovery of compensation from any employer under section 62 of this Act may be taken by any Inspector of Factories in the name and on behalf of the person entitled to payment in any case where the Inspector is satisfied that compensation is recoverable:

(b) No Court fees shall be payable by the Inspector of Factories in any such proceedings, but the Court may in any case, if it thinks fit, order that the Court fees shall be paid by the defendant:

- (c) Where any such civil proceedings or any proceedings for an offence against this Part of this Act have been instituted by any Inspector of Factories they may be continued and conducted by the same or any other Inspector of Factories.

**69. Evidence—**(1) A certificate of an authorised officer as to the duration of a person's protected service or training shall be conclusive for the purposes of any proceedings under or for the purposes of this Part of this Act.

(2) Every document purporting to be such a certificate as aforesaid or any other certificate authorised by this Part of this Act and to be signed by an authorised officer shall be received in evidence and shall, in the absence of proof to the contrary, be deemed to be such a certificate of an authorised officer; and in any proceedings under or for the purposes of this Part of this Act the production of a document purporting to be certified by or on behalf of an authorised officer to be a true copy of any such certificate as is mentioned in this subsection shall, in the absence of proof to the contrary, be sufficient evidence of the certificate.

(3) In this section the term "authorised officer" means an officer of any Armed Force nominated as an authorised officer for the purposes of this Part of this Act by the appropriate Service Board.

**70. Priority in bankruptcy or winding up of compensation ordered to be paid by employer—**(1) Subject to the provisions of this section,—

- (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 section 62 of this Act 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 308 of the Companies Act 1955 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 section 62 of this Act 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 paragraph (a) or paragraph (b) of subsection (1) of this section, as the case may be, shall not in the case of any one claimant exceed one hundred pounds.

**71. Saving of existing liability for service**—Where under section 26 of the National Service Registration Act 1958 any person remained a member of any Reserve immediately before the commencement of this Act, that person shall remain a member of that Reserve for the balance of the period of six years during which he would have remained a member of that Reserve if that section had continued in force; and if at any time during that period any change occurs in his name or address he shall forthwith notify the change to such person and in such manner as may be notified to him by orders issued by or under the authority of the Minister of Defence.

**72. Repeals and amendment**—(1) The National Service Registration Act 1958 and the Volunteers Employment Protection Act 1959 are hereby repealed.

(2) The Labour Department Act 1954 (as amended by subsection (2) of section 27 of the National Service Registration Act 1958) is hereby further amended by omitting from the First Schedule the words “The National Service Registration Act 1958 (No. 32)”, and substituting the words “The National Military Service Act 1961”.

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This Act is administered in the Department of Labour.

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