

ACT No. XVIII OF 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the
9th April, 1940)

An Act to make certain provisions relating to service by European British subjects in the armed forces of, or in a civil capacity under, the Crown.

WHEREAS it is expedient to make certain provisions relating to service by European British subjects in the armed forces of, or in a civil capacity under, the Crown ;

It is hereby enacted as follows :—

1. (1) This Act may be called the National Service Short title,
extent and
commence-
ment.
(European British Subjects) Act, 1940.

(2) It extends to the whole of British India, and applies also to European British subjects in any part of India.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant Definitions.
in the subject or context,—

(a) “competent authority” means, with reference to any person liable under this Act to be called up for enquiry, the Officer Commanding the military district, or Independent Area, or Sind Area or Delhi Area, as the case may be, in which that person is for the time being resident ;

(b) “European British subject” means any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon ;

(c) “prescribed”

Price anna 1 or 1½d.

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(c) "prescribed" means prescribed by rules made under this Act;

(d) "national service" means service in the armed forces of the Crown or in any civilian capacity under the Crown.

Liability to be called up for enquiry.

3. (1) Every male European British subject for the time being in India, not being—

(a) a person in holy orders, or a regular minister of any religious denomination, or

(b) a member of His Majesty's regular Naval, Military or Air Forces, or a member of any Reserve of any such force who is liable under his terms of service in such Reserve to be called up for service at any time and not only on partial or general mobilisation, or

(c) a servant of the Crown, or

(d) a person not included in clause (c) who is serving in the service of a federal railway or an Indian State railway or a minor railway as defined in the Government of India Act, 1935,

shall be liable under this Act to be called up for enquiry into his availability and fitness for national service.

(2) A person liable to be called up for enquiry under this Act shall remain so liable until he has completed his fiftieth year and no longer.

Calling up for enquiry.

4. (1) The competent authority may, after consultation with the National Service Advisory Committee constituted under section 5, cause to be served on any person, for the time being liable under this Act to be called up for enquiry, a written notice (hereinafter referred to in this Act as a calling-up notice) stating that he is called up for enquiry into his fitness and availability for national service and requiring him to present himself to such person and at such place and at such time (not earlier than the seventh day after the date of the service of the notice) as may be specified in the notice, and to submit himself to examination by the National Service Advisory Committee constituted under section 5.

(2) Where

(2) Where a notice under sub-section (1) has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for enquiry, cancel the notice and cause to be served on him a further notice varying the original notice.

(3) A calling-up notice served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for enquiry.

(4) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with any notice under this section.

5. (1) The Central Government shall constitute for such areas and in such places as it thinks fit committees (in this Act referred to as National Service Advisory Committees) to exercise the functions assigned to such committees by this Act.

(2) Each National Service Advisory Committee shall consist of not less than four members of whom one shall be an officer of one of His Majesty's Forces in India appointed by the competent authority, and the others shall be European British subjects, not being servants of the Crown, appointed by the Central Government.

(3) The Chairman of the Committee shall be appointed by the Committee.

(4) A National Service Advisory Committee shall have power to co-opt as additional members for such time or purpose as it thinks fit any persons qualified for appointment to the Committee by the Central Government.

(5) A National Service Advisory Committee may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government or by the competent authority.

(6) A National Service Advisory Committee shall have the powers of a Civil Court for the purpose of receiving

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receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

V of 1898.

(7) A National Service Advisory Committee may order any person called up for enquiry under sub-section (1) of section 4 to submit himself to be examined by a medical officer of the armed forces, and if he questions the decision of that officer, to appear before a medical board convened under military regulations.

Functions of
National Service
Advisory
Committees.

6. The following shall be the functions of National Service Advisory Committees, namely:—

- (a) when consulted by the competent authority, to advise that authority on the exercise of that authority's powers under sub-section (1) of section 4;
- (b) to examine the case of any person ordered under section 4 to present himself for enquiry, and to report to the competent authority whether such person is available (*i.e.*, can be spared without detriment to the public interest from his existing employment) and is fit for national service;
- (c) when consulted by the Central Government, to advise the Central Government on any matter arising out of this Act which the Central Government may refer or is required by this Act to refer to the Committee.

Taking into
service on the
advice of a
National Service
Advisory
Committee.

7. (1) When a National Service Advisory Committee reports that a person is available and fit for national service, the competent authority shall require such person to state whether he is or is not willing to undertake such service, and such person shall state accordingly.

(2) If such person states that he is willing to undertake national service the competent authority may specify the capacity for which such person is suitable,

and

and if he serves in such capacity such person shall for the purposes of section 8 be deemed to be a person who has been taken into national service on the advice of a National Service Advisory Committee.

8. It shall be the duty of any employer by whom a person who has been taken into national service on the advice of a National Service Advisory Committee, or by whom a European British subject who has been called out for service in the Reserve of His Majesty's regular Naval, Military or Air Forces at any time after the 2nd day of September, 1939, and before the termination of hostilities, or by whom a person subject to this Act who with the consent of his employers was between the 2nd day of September, 1939, and the coming into force of this Act granted an emergency commission or enlisted in His Majesty's armed forces or accepted for training as a cadet at an officers' training school, was employed, to reinstate him in his employment at the termination of that service, in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been so taken into service as aforesaid :

Provided that if for any reason the reinstatement of such person or member is represented by the employer to be impracticable, either party may refer the matter to a tribunal constituted under section 9 and that tribunal shall after consideration pass an order either exempting the employer from the provisions of this section or requiring him to re-employ such person or member on such terms as it thinks suitable, or requiring him to pay to such person or member a sum in compensation for failure to re-employ not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer ; and if any employer fails to obey the order of the tribunal, he shall be punishable with a fine which may extend to one thousand rupees ; and the Court by which an employer is convicted under this section may order him (if he has not already been so required by the tribunal) to pay the person whom he

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has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so ordered by the Court to be paid shall be recoverable as if it were a fine imposed by such Court :

Provided further that in any proceedings under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within a period of two months from the termination of the national service into which he was taken on the advice of a National Service Advisory Committee.

Tribunals.

9. (1) The Central Government shall constitute for such areas and in such places as it thinks fit tribunals to hear and decide any matters referred to it under the proviso to section 8.

(2) Each tribunal shall consist of three members to be nominated by the Central Government, of whom one who shall be Chairman of the tribunal shall be a member of a Civil Service of the Crown not lower in status than a District and Sessions Judge, one shall be a military officer not below the rank of Brigadier, and one shall be a European British subject, not being a servant of the Crown.

(3) No person serving as a member of a National Service Advisory Committee constituted under section 5 shall while so serving be a member of a tribunal.

(4) A tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the competent authority.

(5) A tribunal shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

V of 1898.

10. (1) Whoever

10. (1) Whoever wilfully fails to comply with any notice issued under section 4 or with any order given under sub-section (7) of section 5, or sub-section (1) of section 7 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalties and
procedure.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

11. Any notice to be served on any person for the purposes of this Act may be sent by post addressed to that person at his last known address.

Service of
notices.

12. (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Act.

Power to make
rules.

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules prescribing the forms of the notices referred to in sub-section (1) of section 4, the amount and manner of payment of the allowances referred to in sub-section (4) of section 4 and the procedure to be followed in references to a tribunal under the proviso to section 8.

13. Nothing in this Act shall apply to any person—

Act not to
apply to cer-
tain persons.

(a) for the time being confined in a prison or a lunatic asylum, or

(b) who is under the age of eighteen or over the age of fifty.