



LAWS OF KENYA

INDUSTRIAL TRAINING ACT

CHAPTER 237

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CHAPTER 237**INDUSTRIAL TRAINING ACT**
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SCHEDULE

CHAPTER 237
INDUSTRIAL TRAINING ACT

[Date of assent: 3rd November, 1959.]

[Date of commencement: 16th May, 1960.]

An Act of Parliament to make provision for the regulation of the training of persons engaged in industry

[Act No. 48 of 1959, L.N. 196/1960, L.N. 245/1963, L.N. 462/1963, L.N. 2/1964, L.N. 236/1964, Act No. 21 of 1966, Act No. 3 of 1971, Act No. 4 of 1974, Act No. 11 of 1975, Act No. 6 of 1976, Act No. 13 of 1978, Act No. 13 of 1980, L.N. 214/1980, Act No. 10 of 1981, Act No. 2 of 2002, Act No. 5 of 2007, Act No. 34 of 2011, Act No. 12 of 2012.]

1. Short title

This Act may be cited as the Industrial Training Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**apprentice**” means a person who is bound by a written contract to serve an employer for such period as the Board shall determine with a view to acquiring knowledge, including theory and practice, of a trade in which the employer is reciprocally bound to instruct that person;

“**Authority**” means the National Industrial Training Authority established under section 3;

“**Board**” means The National Industrial Training Board established under section 4;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to labour;

“**Committee**” means a Training Committee established under section 4A;

“**Council**” *deleted by Act No. 34 of 2011, s. 2;*

“**Director**” *deleted by Act No. 34 of 2011, s. 2;*

“**Director-General**” means the Director-General of the Authority appointed under section 4C;

“**employee**” means a person employed for wages or salary and includes an apprentice, indentured learner, temporary, seasonal and casual worker;

“**employer**” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any person, and includes—

an agent, foreman or manager; and

an heir, successor, assignee or transferee of that person, public body, firm, corporation or company;

“**indentured learner**” means a person, other than an apprentice, who is bound by a written contract to serve an employer for a determined period of not more than two years with a view to acquiring knowledge of a trade in which the employer is reciprocally bound to instruct that person;

“**industrial attachment**” means the placement of a person in a workplace for the purpose of gaining knowledge and practical skills;

“**industrial training**” means training for a specified industry;

“**industry**” means a trade, occupation, profession or an economic sector for which a training committee has been established for purposes of this Act;

“**inspector**” means an inspector appointed by the Minister under the provisions of section 23;

“**labour office**” *deleted by Act No. 34 of 2011, s. 2;*

“**minor**” means a person under the age of eighteen years;

“**scheme**” means a scheme made under section 21;

“**the minister**” means the minister for the time being responsible for matters relating to labour;

“**trade**” means a skilled occupation;

“**trainer**” means any person, firm, or institution registered under section 7C;

“**training levy order**” means an order made under subsection (1) of section 5B.

[Act No. 3 of 1971, s. 2 and 10, Act No. 34 of 2011, s. 2.]

3. Establishment of the Authority

(1) There is established an Authority to be known as the National Industrial Training Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts for the proper performance of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(4) The affixing of the common seal of the Authority shall be authenticated by the signatures of the chairman and the Director-General and in the absence of the chairman or the Director-General, by a member of the Board, authorized by the Board.

(5) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

[Act No. 3 of 1971, s. 3, Act No. 11 of 1975, s. 3, Act No. 34 of 2011, s. 3.]

3A. Powers and functions of the Authority

The Authority shall be responsible for—

- (a) industrial training;
- (b) assessing and collecting industrial training levy and fees;
- (c) regulating trainers registered under section 7C;
- (d) developing industrial training curricula;
- (e) integrating labour market information into skills development;
- (f) harmonizing curricula and certificates of competence;
- (g) assessing industrial training, testing occupational skills and awarding certificates including Government trade test certificates;
- (h) equating certificates;
- (i) accrediting institutions engaged in skills training for industry;
- (j) associating or collaborating with any other body or organization within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (k) charging for goods and services offered by the Authority; and
- (l) performing any other duties and functions as may be conferred on it by this Act or by any other written law.

[Act No. 34 of 2011, s. 3.]

3B. Headquarters

(1) The headquarters of the Authority shall be in Nairobi, or such other place as the Board may, with the approval of the Cabinet Secretary, determine.

(2) The Authority shall establish, manage and promote industrial training centres in the counties.

[Act No. 34 of 2011, s. 3.]

4. Establishment of National Industrial Training Board

(1) There shall be a Board to be known as the National Industrial Training Board which shall consist of—

- (a) a chairperson appointed by the Cabinet Secretary;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to labour or a representative duly appointed in writing;
- (c) the Principal Secretary of the Ministry for the time being responsible for matters relating to science and technology or a representative duly appointed in writing;

- (d) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or a representative duly appointed in writing;
- (e) members nominated as follows and appointed by the Cabinet Secretary—
 - (i) three persons nominated by the Federation of Kenya Employers; and
 - (ii) three persons nominated by the Central Organisation of Trade Unions; and
- (f) one other member appointed by the Cabinet Secretary.

(1A) A person shall not be eligible for appointment as the chairperson or member of the Board, other than an *ex-officio* member unless that person—

- (a) has at least five years experience in matters relating to technical education, industrial training, technology, finance, law, human resource management, financial management, public administration, public policy, advocacy or education administration; and
- (b) has a proven record of personal integrity, competency and accountability.

(1B) In appointing the members of the Board, the Cabinet Secretary shall ensure that not more than two thirds of the members are of one gender and at least one member represents persons with disabilities.

(2) A vice-chairman shall be appointed by the Minister from among the members.

(3) The Director-General shall be the secretary to the Board.

(4) The chairman, or in his absence the vice-chairman, shall preside at every meeting of the Board and where he does so thereat, he shall have all the powers of, and be deemed to be, the chairman of the Board under this Act.

(5) A quorum of the Board shall be the chairman or vice-chairman and five other members, and in the case of an equality of votes, the chairman or vice-chairman, as the case may be, shall have a casting vote.

(6) The chairman and members of the Board shall hold office for such period, not exceeding four years, as shall be specified at the time of their appointment, and a retiring member shall be eligible for reappointment.

(7) Every member of the Board shall have the power to appoint one other person approved by the Minister, other than a member of the Board, to act as an alternate member in his absence and may revoke the appointment of that alternate member; but no person shall act as an alternate member in place of more than one member at any one time.

(8) An alternate member as such shall be subject to the provisions of this Act and may exercise all the powers, except the power to appoint an alternate member, and perform all the duties of the member by whom he was appointed.

(9) The appointment of an alternate member shall determine if, for any reason the member by whom such appointment was made ceases to be a member of the Board.

- (10) No person shall be appointed as a member if he—
- (a) is insolvent or has conveyed or assigned his property or has made a composition or arrangement for the benefit of his creditors; or
 - (b) is of unsound mind; or
 - (c) has been sentenced by a court to imprisonment for a term of six months or more within the preceding five years.
- (11) If the Minister is satisfied that a member—
- (a) has become subject to any of the disqualifications specified in subsection (10) of this section; or
 - (b) is incapacitated by reason of physical or mental illness; or
 - (c) has been absent from three consecutive meetings of the Board without the leave of the Board; or
 - (ca) has ceased to be a representative of employers, employees or other interests as the case may be;
 - (d) is otherwise unable or unfit to discharge his functions as a member of the Board,

he may revoke the appointment of that member, and give notification thereof in such manner as he thinks fit, whereupon the office of that member shall become vacant.

(12) The Board may co-opt to serve on it for such length of time as it thinks fit any number of persons whose assistance or advice it may require, but a person so co-opted shall neither be entitled to vote at any meeting of the Board nor be counted as a member thereof for the purpose of forming a quorum.

(13) Subject to the provisions of this Act, the Board may regulate its own procedure.

[Act No. 3 of 1971, s. 4, Act No. 11 of 1975, s. 4, Act No. 13 of 1980, Sch., L.N. 214/1980, Act No. 10 of 1981, Sch., Act No. 34 of 2011, s. 4.]

4A. Powers of the Board

The Board shall exercise all powers necessary for the proper performance of its functions under this Act and in particular but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) control, supervise and administer the assets of the Authority in a manner that best promotes the purposes for which the Authority is established;
- (b) determine the provision to be made for capital and recurrent expenditure and for reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;
- (d) open a bank account or bank accounts for the funds of the Authority;
- (e) administer training levy funds;
- (f) invest any funds of the Authority not immediately required for the purposes of the Authority; and
- (g) set terms and conditions of service for employees of the Authority.

[Act No. 3 of 1971, s. 4, Act No. 10 of 1981, Sch., Act No. 34 of 2011, s. 6.]

4B. Remuneration of members

The Authority shall pay members of the Board such remuneration, fees, or allowances and other expenses as the Board may, with the approval of the Minister, determine.

[Act No. 34 of 2011, s. 6.]

4C. Director-General

(1) There shall be a Director-General of the Authority who shall be the chief executive of the Authority, and secretary to the Board and the Committees.

(2) The Director-General shall be appointed by the Board on such terms and conditions of service as the Board may determine.

(3) The Director-General shall hold office for one term of five years and shall be eligible for re-appointment for one further term of five years.

(4) A person shall not be appointed Director-General unless that person—

(a) is a holder of a degree in the field of engineering, technology, administration, finance, technical or industrial education, from a recognized university; and

(b) has at least fifteen years working experience in a related field, five of which shall be in matters relating to industrial training.

(5) The Director General shall subject to the directions of the Board, be responsible for the day to day management of the Authority.

[Act No. 34 of 2011, s. 6.]

4D. Staff of the Authority

(1) The Board shall appoint such directors as may be necessary for the purposes of this Act.

(2) A director appointed under subsection (1) shall, subject to the directions of the Director-General, perform any act or discharge any duty which may lawfully be performed or discharged by the Director-General under this Act.

(3) The Board shall appoint such other officers and staff as may be necessary for the purposes of this Act on such terms and conditions of service as the Board may determine.

[Act No. 34 of 2011, s. 6.]

4E. Protection from personal liability

No matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

[Act No. 34 of 2011, s. 6.]

4F. Liability of the Authority for damages

The provisions of section 4E shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or

any of his interests caused by the exercise of the powers conferred on the Board by this Act, or by any other written law, or by the failure, whether wholly or partially, of any contract.

[Act No. 34 of 2011, s. 6.]

4G. Funds of the Authority

(1) The funds of the Authority shall consist of—

- (a) moneys provided by Parliament;
- (b) training levy funds;
- (c) trade testing fees;
- (d) course and hostel fees;
- (e) grants from the Government;
- (f) such moneys as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
- (g) such grants, gifts, donations or endowments received by the Board on behalf of the Authority; and
- (h) any other funds that may be received by the Authority from any other source.

(2) The financial year of the Authority shall be the period of twelve months ending on the thirtieth June, in each year.

[Act No. 34 of 2011, s. 6.]

4H. Annual estimates

(1) The Board shall, not less than four months before the commencement of each financial year cause to be prepared estimates of the revenue and expenditure of the Authority for that financial year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment of the Authority;
- (e) the payment of expenses related to training and industrial attachment;
- (f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings; and
- (g) any other expenditure necessary for the Performance of the functions of the Authority.

(3) The annual estimates shall be approved by the Board and be submitted to the Minister for approval before the commencement of the financial year to which they relate.

(4) No expenditure shall be incurred for purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Minister

(5) Not more than thirty-five percent of the total annual levy collected under this Act may be used for administration of the Authority within that year.

[Act No. 34 of 2011, s. 6, Act No. 12 of 2012.]

4I. Records and Accounts

(1) The Board shall cause to be kept proper books and records of the income, expenditure, assets and liabilities of the Authority.

(2) The Board shall, within three months after the end of each financial year, submit to the Auditor-General or to an auditor appointed under subsection (4), the accounts of the Authority together with—

- (a) a balance sheet showing the assets and liabilities of the Authority as of the end of the financial year;
- (b) a statement of income and expenditure for that year;
- (c) a cash flow statement for the financial year; and
- (d) any other statements and accounts.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act No.12 of 2003.

(4) The accounts of the Authority shall be audited by the Auditor-General or by an auditor appointed by the Board with the approval of the Auditor-General in accordance with the Public Audit Act.

(5) The appointment of an auditor shall not be terminated by the Board without the prior written consent of the Auditor-General.

(6) The Auditor-General may give general or special directions to an auditor appointed under subsection (4) and the auditor shall comply with those directions.

(7) An auditor appointed under subsection (4) shall report directly to the Auditor-General on any matter relating to the directions given under subsection (6) of this section.

(8) Notwithstanding anything in this Act, the Auditor-General may submit to the Minister a special report on any matters incidental to his powers under this Act, and provisions of the Public Audit Act shall, *mutatis mutandis*, apply to any report made under this section.

(9) The Minister shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him.

(10) The fees for any audit carried out under this section shall be determined and paid by the Board.

[Act No. 34 of 2011, s. 6.]

4J. Training Committees

(1) The Board may establish training committees to exercise functions of the Board in relation to training in specified industries.

(2) A Committee shall consist of such number of persons appointed in writing as the Board may determine, to represent—

- (a) employers in the industry concerned;
- (b) employees in the industry concerned; and
- (c) other interests,

and the Board shall appoint a chairperson and vice-chairperson of such Committee from amongst the members.

(3) The chairman and other members of a Committee shall hold office for such period not exceeding three years as may be specified at the time of appointment, and a retiring member shall be eligible for reappointment.

(4) A quorum of a Committee shall be the chairman or vice-chairman and three other members, and in case of an equality of votes the chairman or vice-chairman, as the case may be, shall have a casting vote.

(5) The Director-General or his representative shall act as the secretary to any Committee.

(6) A Committee shall perform, on behalf of the Board, such functions of the Board as may be delegated to it by the Board and shall perform these functions in consultation with the Director-General.

(7) If a member of any Board has been absent from three consecutive meetings of the Committee in question without the leave of the chairman or vice-chairman his office may be declared by the Board to be vacant, and in that event he shall be notified of the fact by the Board and he shall forthwith relinquish his membership of that Committee whereupon the office shall become vacant.

(8) A Committee may co-opt to serve on it for such length of time as it thinks fit any number of persons whose assistance or advice it may require, but a person so co-opted shall neither be entitled to vote at any meeting of that Committee nor be counted as a member thereof for the purpose of forming a quorum.

[Act No. 3 of 1971, s. 4, Act No. 11 of 1975, s. 5, Act No. 13 of 1980, Sch., L.N. 214/1980, Act No. 10 of 1981, Sch., Act No. 34 of 2011, s. 5.]

5. Duties and functions of the Board

Without prejudice to the provisions of this Act, the Board shall perform the following duties and functions—

- (a) it shall secure the greatest possible improvement in the quality and efficiency of the training of personnel engaged in industry;
- (b) it shall ensure an adequate supply of properly trained manpower at all levels in industry;
- (c) it shall share the cost of all industrial training undertaken in pursuance of this Act as evenly as possible between employers;

- (d) it shall review and maintain a system or systems for the holding of tests in respect of trades and occupations generally or any particular trade or occupation, and grant certificates of proficiency and competency to, and keep a record in respect of each person who enrolls for the tests;
- (e) it shall investigate any dispute or other matter arising out of a contract of apprenticeship or indentured learnership referred to it by the Director-General, and shall endeavour to settle the dispute amicably;
- (f) it shall perform such duties and functions in regard to any other matter concerning apprenticeship or indentured learnership as may be prescribed;
- (g) it shall investigate any matters connected with this Act and take the necessary action.

[Act No. 3 of 1971, s. 5, Act No. 11 of 1975, s. 6, Act No. 34 of 2011, s. 7.]

5A. Duties and functions of Committees

(1) A Committee shall from time to time and whenever so directed by the Board submit to the Board proposals for the raising and collection of a training levy on employers.

(2) *Deleted by Act No. 34 of 2011, s. 8.*

(3) Where a Committee—

- (a) has failed to comply within a reasonable time with a direction of the Board under subsection (1) to submit proposals for the raising and collection of a levy; or
- (b) has submitted such proposals which appear to it unsatisfactory,

the Board may direct the Committee to submit those proposals or, as the case may be, fresh proposals, within a specified time, and if it directs the Committee to submit fresh proposals it shall specify in the direction in what respects the proposals already submitted appear to it unsatisfactory and if the Committee fails to comply with the direction or the proposals submitted in pursuance of which it appears to the Board unsatisfactory the Board may make an order declaring the Committee to be in default.

(4) On the making of an order under subsection (3) the members of the Committee shall forthwith vacate their office and the order may contain such provisions as seem to the Board expedient for authorizing any person to act in the place of the member of the Committee during such period, not exceeding six months, as may elapse before new members are appointed.

(5) If the proposals of a Committee, or of a person acting under subsection (4), are approved by the Board, the Board shall submit those proposals to the Minister.

[Act No. 3 of 1971, s. 6, Act No. 34 of 2011, s. 8.]

5B. Training levies

(1) The Minister may make a training levy order for the purpose of giving effect to proposals submitted by the Board and approved by him, and the order may provide for the amendment of a previous training levy order.

(2) A training levy order may contain provisions as to the evidence by which a person's liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by any person by way of the levy shall become due and the manner in which it shall be recoverable by the Director-General.

(3) If any person fails to pay an amount payable by him by way of the training levy within the time prescribed by the training levy order a sum equal to five per cent of that amount shall be added to the amount for each month or part of a month thereafter that the amount due remains unpaid.

(4) A person who fails to comply with any provision of a training levy order shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings and if such failure continues after a conviction, such person shall be liable to a penalty not exceeding fifty thousand shillings for every month or part thereof during which such failure is continued;

(5) The court before which any person is convicted of an offence under subsection (4) may, without prejudice to any civil remedy, order such person to pay to the Fund the amount of any levy or any other sum due, together with any interest or penalty thereon, found to be due from such person to the Fund.

(6) Without prejudice to any other remedy, any training levy due under this Act plus the five percent penalty imposed by this section that remains unpaid shall be recoverable summarily by the Authority as a civil debt due to the Authority.

[Act No. 3 of 1971, s. 6, Act No. 11 of 1975, s. 7, Act No. 6 of 1976, Sch.,
Act No. 5 of 2007, s. 15, Act No. 34 of 2011, s. 9.]

6. Permission to employ apprentices

(1) No person shall employ an apprentice without having first obtained the written permission of the Director-General so to do; and the Director-General's permission shall specify the maximum number of apprentices who may be employed at any one time by the person to whom the permission is given.

(2) No permission shall be given under this section unless the person applying therefor satisfies the Director-General that his establishment offers reasonable opportunities for the proper training of the apprentice or the number of apprentices proposed to be employed by him.

(3) *Deleted by Act No. 34 of 2011, s. 11.*

(4) A person who—

- (a) employs an apprentice without having first obtained the written permission of the Director-General to employ apprentices; or
- (b) having obtained the written permission of the Director-General to employ apprentices, employs at any one time a number of apprentices in excess of the maximum number specified in that written permission,

shall be guilty of an offence.

[Act No. 3 of 1971, s. 10, Act No. 11 of 1975, s. 14, Act No. 34 of 2011, s. 11.]

7. Permission to employ indentured learners

(1) No person shall employ an indentured learner without having first obtained the written permission of the Director-General so to do; and the Director-General's permission shall specify the maximum number of indentured learners who may be employed at any one time by the person to whom the permission is given.

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(2) No permission shall be given under this section unless the person applying therefor satisfies the Director-General that his establishment offers reasonable opportunities for the proper training of the indentured learner or the number of indentured learners proposed to be employed by him.

(3) Deleted by Act No. 34 of 2011, s. 12.

(4) A person who—

- (a) employs an indentured learner without having first obtained the written permission of the Director-General to employ indentured learners; or
- (b) having obtained the written permission of the Director-General to employ indentured learners, employs at any one time a number of indentured learners in excess of the maximum number specified in such written permission,

shall be guilty of an offence.

[Act No. 3 of 1971, s. 10, Act No. 11 of 1975, s. 14, Act No. 34 of 2011, s. 12.]

7A. Permission to train

(1) An employer who wishes to carry out training under this Act shall first obtain the written permission of the Director-General to do so.

(2) No permission shall be granted under this section unless the trainer who is to carry out the training has been approved and registered for purposes of training under this Act.

[Act No. 34 of 2011, s. 13.]

7B. Industrial attachment

(1) A person who—

- (a) has attained the age of eighteen years;
- (b) is undergoing training in a programme requiring industrial attachment; and
- (c) has in the case of a trade or occupation in respect of which a scheme has been made, the qualifications prescribed under that scheme; or
- (d) is a lecturer or instructor in a training institution registered under this Act, or
- (e) has applied for industrial attachment and in the opinion of the Director-General may benefit from skills acquired in industry,

may be admitted for industrial attachment.

(2) A minor shall not be admitted for industrial attachment except with the consent of his parent or guardian or if there is no parent or guardian, with the consent of the Director-General.

(3) An employer who wishes to admit any person for industrial attachment under this Act shall first obtain the written permission of the Director-General.

(4) No permission shall be granted under subsection (3) unless the employer satisfies the Director-General that the establishment to be used for industrial attachment offers reasonable opportunity for the proper training of the person or number of persons proposed for industrial attachment.

(5) A person who purports to be—

- (a) on industrial attachment; or

- (b) an employer offering industrial attachment,

otherwise than as provided by this section, commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

[Act No. 34 of 2011, s. 13.]

7C. Registration of trainers

(1) A person who wishes to be registered as a trainer under this Act shall apply for registration to the Director-General in the prescribed form.

(2) No person shall be registered under subsection (1) unless the trainer satisfies the Director-General that he offers reasonable facilities and opportunities for proper training in the field specified in the application.

(3) For purposes of registration under this section, the Director-General may conduct such inspection or carry out such investigations as he may consider necessary.

(4) A person who—

- (a) having been registered as a trainer under this section contravenes any conditions subject to which the registration was granted;
- (b) uses any unqualified persons for purposes of training under this Act;
- (c) issues a certificate to any person who has not completed training under this Act; or
- (d) issues any receipt, invoice or other document in respect of any training under this Act which contains any false particulars,

shall be guilty of an offence.

(5) The Director-General may deregister a trainer who contravenes the provisions of this section.

[Act No. 34 of 2011, s. 13.]

8. Who may bind himself as an apprentice or indentured learner

(1) A person who—

- (a) has attained the apparent age of eighteen years; and
- (b) has completed any period of compulsory education required by law; and
- (c) has, in the case of a trade or occupation in respect of which a scheme has been made, the qualifications prescribed under that scheme; and
- (d) has been certified fit as provided in section 10,

may, subject to the provisions of subsection (3), bind himself as an apprentice or as an indentured learner in any trade or occupation.

(2) No person who does not qualify therefor under the provisions of subsection (1) shall so bind himself.

(3) A person who is a minor shall not so bind himself except with the consent of his parent or guardian or, if there is no parent or guardian, with the consent of a Director-General.

(4) A minor who, with consent under subsection (3), binds himself as an apprentice or indentured learner shall be bound by the contract of apprenticeship or indentured learnership, as the case may be, throughout its currency notwithstanding that he may have in the meantime attained his majority.

(5) A person who purports to be—

- (a) an apprentice or indentured learner; or
- (b) an employer of an apprentice or indentured learner,

otherwise than as provided for under this section shall be guilty of an offence and shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

[L.N. 236/1964, Sch., Act No. 3 of 1971, Sch., Act No. 34 of 2011, s. 14.]

9. Repealed by Act No. 3 of 1971, s. 7.

10. Medical examination of apprentices and indentured learners

Every person before entering into a contract of apprenticeship or indentured learnership shall be medically examined at the expense of the employer by a medical practitioner; and a medical certificate to the effect that the person is fit to be employed in the trade concerned shall be obtained by the employer.

11. Registration of contracts of apprenticeship or indentured learnership

(1) Every contract of apprenticeship or indentured learnership made after the commencement of this Act shall be in the prescribed form or, where no form has been prescribed, in a form approved by the Director-General.

(2) An employer who enters into a contract of apprenticeship or indentured learnership with any person shall, within thirty days thereafter, lodge, in the prescribed manner, with the Director-General for registration—

- (a) the contract of apprenticeship or indentured learnership;
- (b) a duplicate or copy thereof;
- (c) a further copy thereof for filing by the Director-General; and
- (d) the medical certificate obtained under section 10.

(3) An employer who fails to comply with the provisions of subsection (2) shall be guilty of an offence.

(4) No contract of apprenticeship or indentured learnership made after the commencement of this Act shall be binding until it has been registered by the Director-General.

(5) The Director-General may refuse to register a contract of apprenticeship or indentured learnership if in his opinion it is not in the interests of the person who is the apprentice or indentured learner thereunder, or if it is not made in accordance with the provisions of a scheme; and he may in coming to a decision under this subsection have regard, in addition to any other circumstances, to that person's prospects of obtaining employment at the expiration of the contract in the trade or occupation in which he seeks to bind himself as apprentice or indentured learner.

(6) *Deleted by Act No. 34 of 2011, s. 15.*

(7) In every case where the Director-General registers a contract under this Act, he shall—

- (a) endorse the particulars of registration thereon and on the duplicate or copy referred to in paragraph (b) of subsection (2) and return the contract and the duplicate or copy thereof to the employer; and
- (b) file the copy referred to in paragraph (c) of subsection (2).

(8) The employer shall deliver the duplicate or copy which has been endorsed to the apprentice or indentured learner for him to keep.

[Act No. 3 of 1971, s. 10, Sch., Act No. 11 of 1975, s. 14, Act No. 34 of 2011, s. 15.]

12. Transfer of contracts of apprenticeship or indentured learnership

(1) The rights and obligations of an employer under a contract of apprenticeship or indentured learnership may, with the consent of the apprentice or indentured learner thereunder and with the approval of the Director-General, be transferred to another employer.

(2) The Director-General may withhold his approval under this section if in his opinion the transfer is not in the interests of the apprentice or indentured learner.

(3) *Deleted by Act No. 34 of 2011, s. 16.*

(4) *Deleted by Act No. 34 of 2011, s. 16.*

(5) *Deleted by Act No. 34 of 2011, s. 16.*

[L.N. 462/1963, Sch., L.N. 245/1963, Sch., Act No. 3 of 1971, s. 10, Act No. 34 of 2011, s. 16.]

13. Termination and extension of contracts

(1) Without prejudice to the provisions of section 15, a contract of apprenticeship or indentured learnership may be terminated or extended—

- (a) by mutual agreement of the parties thereto, with, in the case of an apprentice or indentured learner who is a minor, the same consent as is requisite for binding himself as an apprentice or indentured learner; or
- (b) by the Director-General at the instance of any party thereto if he is satisfied that it is expedient so to do; or
- (c) by the Director-General at the instance of the Board.

(2) The employer shall give notice to the Director-General of the termination or extension of a contract under paragraph (a) of subsection (1), and an employer who fails to give notice within a period of one month after the date of termination or extension shall be guilty of an offence.

(3) The Director-General shall not exercise the powers conferred upon him by paragraph (b) of subsection (1) unless he has given both parties to the contract an opportunity to be heard by, or to make representations to him.

(4) The fact of termination or extension shall be endorsed by the Director-General upon the registered copy of the contract of apprenticeship or indentured learnership.

(5) *Deleted by Act No. 34 of 2011, s. 17.*

(6) *Deleted by Act No. 34 of 2011, s. 17.*

(7) Deleted by Act No. 34 of 2011, s. 17.

(8) A contract terminated under this section shall be terminated for all purposes but without prejudice to any right of action which may have accrued before the date of termination.

[Act No. 3 of 1971, s. 10, Act No. 11 of 1975, s. 9 and 14, Act No. 34 of 2011, s. 17.]

14. Repealed by Act No. 34 of 2011, s. 18.

15. Repealed by Act No. 34 of 2011, s. 19, Sch.

[Act No. 3 of 1971, s. 10, Sch., Act No. 34 of 2011, s. 19.]

16. Repealed by Act No. 34 of 2011, s. 20.

[Act No. 3 of 1971, s. 10, Act No. 34 of 2011, s. 20.]

17. Records to be kept by employers

(1) An employer who employs an apprentice or indentured learner shall keep in respect of every apprentice or indentured learner records of the remuneration paid to, and of the training expenses and the time worked by, every apprentice or indentured learner, and such other particulars as may be prescribed.

(2) The records shall be kept in such form and manner as may be prescribed; but the Director-General may, after consultation with the Board, in writing signed by him, authorize the keeping of records in some other form if the records so kept will in his opinion enable him to ascertain therefrom the required particulars.

(3) A person who employs or has employed an apprentice or indentured learner shall retain a record made in accordance with this section for a period of three years after the date of the last entry in the record.

(4) An employer who fails to keep the required records in the proper form and manner and an employer and former employer who fails to retain a record made in accordance with this section for the required period shall be guilty of an offence.

[Act No. 3 of 1971, s. 10, Act No. 34 of 2011, s. 21.]

18. Limitations in regard to method of payment and overtime

(1) Notwithstanding the provisions of any other law for the time being in force, any term of a contract of apprenticeship or indentured learnership or any condition of apprenticeship or indentured learnership which—

- (a) provides that the whole or any part of the wages of an apprentice or indentured learner shall be based upon the quantity of work done; or
- (b) requires an apprentice or indentured learner under eighteen years of age to work overtime;
- (c) Deleted by Act No. 3 of 1971, Sch.

shall be void.

(2) Any term of a contract of industrial attachment, or any condition which requires a person under eighteen years of age who is on industrial attachment to work overtime shall be void.

[Act No. 3 of 1971, Sch., Act No. 34 of 2011, s. 22.]

19. Certificate of apprenticeship and indentured learnership

(1) An employer of an apprentice or an indentured learner or an employer who has accepted a person on industrial attachment shall, on the satisfactory completion of the contract of apprenticeship, indentured learnership or industrial attachment, submit a certificate of completion in the prescribed form, to the Director-General and issue a copy of the certificate to the apprentice, indentured learner or person on industrial attachment.

(2) If an employer fails to give a certificate of completion, then without prejudice to any penalty to which the employer may be liable in respect of failure so to do, the Director-General, having first made such inquiries as may be necessary and possible may give the certificate himself.

(3) A person who contravenes any of the provisions of subsection (1) shall be guilty of an offence.

(4) A person who knowingly gives to an apprentice or indentured learner or a person on industrial attachment a certificate of completion under this section which is untrue in any material particular shall be guilty of an offence.

(5) The Director-General shall upon receiving a certificate of completion under subsection (1), issue to the apprentice, indentured learner or person on industrial attachment a certificate of apprenticeship, indentured learnership or industrial attachment as the case may be.

[Act No. 3 of 1971, s. 10, Act No. 34 of 2011, s. 23.]

20. Miscellaneous powers of Director-General

(1) If a person undergoing training is absent from work for a period of thirty days or more, or for a number of periods amounting in the aggregate to thirty days or more the Director-General may, if he considers it expedient, order that the term of his contract of training be extended by the number of days on which he is absent and the contract shall stand extended accordingly.

(2) Where it is proved to the satisfaction of the Board that a person has undergone previous technical training relevant to the trade or occupation in which he desires to be apprenticed, the Board may authorize the Director-General to reduce the period of training to be served by that person to such lesser period as it shall determine.

(3) The Director-General shall have all the powers of an inspector under this Act.

[Act No. 3 of 1971, s. 8 and 10, Sch., Act No. 34 of 2011, s. 24.]

21. Training schemes

(1) The Director-General may, after consultation with the Board and subject to the provisions of section 22, make a scheme or schemes for regulating the training of persons undergoing training:

Provided that no scheme shall revoke or any term of any contract of training registered before the date of making of the scheme.

(2) A scheme may in respect of any trade or occupation which it relates specify

- (a) the qualifications, including age and educational standard, required for the scheme;
- (b) *deleted by Act No. 34 of 2011, s.25;*
- (c) the practical training which employers shall provide for persons undergoing training;
- (d) the theoretical training in that scheme which shall be provided by or at the expense of the employers of persons undergoing training, and the manner in which training shall be provided or undergone;
- (e) the proficiency tests or examinations which persons undergoing training in that scheme shall be required to undergo from time to time;
- (f) the maximum number of hours which persons undergoing training in that scheme may be required or permitted to work during any week or on any day;
- (g) the maximum period of overtime which persons undergoing training may be required or permitted to work on any day or during any specified period;
- (h) the minimum number of paid holidays to be allowed to a person undergoing training in that scheme during any year of training;
- (i) the type and mode of certification to be issued to a person who completes training under the scheme;
- (j) any other matter which in the opinion of the Director-General, after consultation with the Board, is necessary for the effective operation of the scheme.

(3) The Director-General may, in any scheme, provide that the conditions of training specified therein, or any of them, shall apply in respect of persons undergoing training either generally or in any particular area.

(4) Different conditions of training may be specified under this section in respect of different classes of employers or persons undergoing training; and in prescribing different conditions the Director-General may apply any method of differentiation he may deem advisable.

(5) A scheme may be amended by a subsequent scheme or by an order made by the Director-General on the advice of the Board.

[Act No. 3 of 1971, s. 10, Sch., Act No. 11 of 1975, s. 14, Act No. 34 of 2011, s. 25.]

22. Making of schemes – procedure

(1) Before making a scheme the Director-General shall publish once in the *Gazette* and twice, with an interval of at least seven but not more than fourteen days between each publication, in a newspaper published and circulating in Kenya, a notice of his intention to make a scheme, specifying a place where copies of a draft thereof may be inspected and a time, which shall not be less than thirty days from the first date of publication, within which any objection to the draft scheme shall be sent to the Director-General.

- (2) An objection shall be in writing and shall state—
- (a) the specific grounds of objection; and
 - (b) the deletions from, or additions or modifications to, the scheme requested by the objector,

and the Director-General shall consider the objection made by or on behalf of a person appearing to him to be affected, if the objection has been sent to him within the time specified, and he may, but shall not be bound to consider any other objection.

(3) At the expiration of the time specified for the making of objections, the Director-General may, after consideration and consultation with the Board of all objections which he is required by subsection (2) to consider—

- (a) withdraw the draft scheme; or
- (b) make the scheme under section 21 in the terms of the draft of the scheme published under subsection (1); or
- (c) make the scheme under section 21 subject to such deletions from, or additions or modifications to, the draft of the scheme published under subsection (1) as he thinks necessary:

Provided that no deletion from, or addition or modification to, any scheme shall be made under paragraph (c) of this subsection if in the opinion of the Director-General the deletion, addition or modification effects important alterations in the character of the draft of the scheme published under subsection (1).

(4) The Director-General may amend a draft scheme otherwise than as permitted under paragraph (c) of subsection (3), but in that case all the provisions of this section, shall apply to the amended draft scheme as if it were an original draft scheme.

(5) Where the Director-General makes a scheme, he shall publish notice thereof in the same manner as is provided in subsection (1) for the publication of a notice of intention to make a scheme specifying a place where copies of the scheme may be inspected.

[Act No. 3 of 1971, Sch., Act No. 11 of 1975, s. 14, Act No. 34 of 2011, s. 26.]

22A. Supervision of persons undergoing training

(1) Every employer carrying out training under this Act shall appoint by name, from among his employees—

- (a) a person responsible for supervising generally the training of persons undergoing training under the provisions of this Act and of any relevant scheme; and
- (b) at every premises or worksite where persons are undergoing training for a period of not less than three months, the employer shall appoint a training master who shall be responsible for the day to day guidance of the persons undergoing training in matters concerning their trade or occupation.

(2) The Director-General may, by notice to an employer in writing disapprove the appointment of a training master deemed by him not to be competent for the purpose of this Act, and that notice may specify the nature of the training which the Director-General requires the training master to undertake before his appointment may be re-approved.

(3) Where twenty-five or more persons are undergoing training in any one premises or worksite, the training master shall devote the whole of his time during normal working hours to the guidance of the persons undergoing training; and where the number of those undergoing training is less than twenty-five, the training master shall devote that proportion of his time to the guidance of the persons undergoing training as that number bears to twenty-five.

(4) An employer who fails to make an appointment required by subsection (1), or who fails to ensure that the provisions of subsection (3) are observed, shall be guilty of an offence.

(5) No contract of apprenticeship or indentured learnership shall be registered unless the employer has complied with subsection (1).

(6) The provisions of subsections (1), (2), (3) and (4) shall apply to contracts of industrial attachment.

(7) Where the Director-General is satisfied that an employer has a human resource, personnel or training department capable of satisfactory supervision of persons undergoing training within the organisation, the Director-General may exempt the employer from the provisions of subsection (1).

[Act No. 3 of 1971, s. 9, Act No. 34 of 2011, s. 27.]

23. Appointment of inspectors

(1) The Minister may on the advice of the Board, by notice in the *Gazette* appoint an employee of the Authority to be an inspector for the purposes of enforcing this Act.

(2) An inspector appointed under subsection (1) shall be issued with a certificate of appointment signed by the Director-General.

(3) A person who ceases to be an inspector shall surrender the certificate of appointment issued under subsection (2) to the Director-General.

(4) Any person who fails to surrender the certificate of appointment or who uses or purports to use the certificate of appointment after ceasing to be an inspector shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months or to both.

(5) A person who, not being an inspector presents himself as such shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding twelve months or to both.

[Act No. 11 of 1975, s. 10, Act No. 34 of 2011, s. 28.]

24. Powers of inspectors

(1) An inspector may—

(a) at any reasonable time enter premises of an employer—

- (i) in which he has reasonable cause to believe that a person is undergoing or has undergone training under this Act;
- (ii) to establish whether there is any training in the premises; or
- (iii) for purposes of levy collection under this Act;

(b) examine, with respect to matters under this Act, any person whom he finds on premises entered under the provisions of paragraph (a)

- (c) require any employer or a person undergoing training to appear before him at a time and place fixed by the inspector and then and there question that employer or a person undergoing training;
 - (d) require the production or delivery of any of the records required to be kept under this Act or any rules made thereunder, and of any document relating thereto or relating, with respect to matters under this Act, to the business of any person whom the inspector has reasonable cause to believe is an employer or trainer;
 - (e) examine and make extracts from and copies of any such documents produced or delivered.
- (2) A person who—
- (a) refuses or fails to comply to the best of his ability with a requirement made by an inspector under this section; or
 - (b) hinders an inspector in the exercise of his powers under this section shall be guilty of an offence:

Provided that no one shall be required under this section to answer a question or to give information tending to incriminate himself.

(3) An inspector exercising or seeking to exercise any of the powers specified in subsection (1) shall, on being required to do so, produce written evidence of his appointment.

(4) An inspector may prosecute an offence under this Act.

[Act No. 34 of 2011, s. 29.]

25. Disclosure of information an offence

(1) A member of the Board or a public officer who discloses to any person, except for the purposes of the performance of his duties or the exercise of his powers under this Act, information in relation to the financial affairs or plant or equipment of any person, which information was acquired in the performance of his duties or the exercise of his powers under this Act, shall be guilty of an offence.

(2) Nothing in this section shall apply to the disclosure of information made for the purposes of criminal proceedings which may be taken whether by virtue of this Act or otherwise or for the purposes of a report of any such proceedings.

[Act No. 3 of 1971, s. 10, Act No. 34 of 2011, s. 30.]

26. Repealed by Act No. 34 of 2011, s. 31

27. Bankruptcy

Where, under the provisions of subsection (1) of section 39 of the Bankruptcy Act (Cap. 53), a contract of apprenticeship or indentured learnership is discharged by the apprentice or indentured learner giving notice in writing to the trustee in bankruptcy to that effect, the trustee shall, within a period of one month of receiving the notice, notify the Director-General thereof, and failure so to notify the Director-General shall be an offence, without prejudice however to the complete discharge of the contract.

[Act No. 3 of 1971, s. 10, Act No. 34 of 2011, s. 32.]

27A. False statements

A person who—

- (a) makes, causes to be made or knowingly allows to be made an entry in a register, record, book or other document whatsoever, required by this Act to be kept which he knows to be false in a material particular; or
- (c) produces, furnishes, causes or allows to be produced or furnished to an officer of the Authority, a register, record, book or other document which is false in a material particular;

shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

[Act No. 34 of 2011, s. 33.]

28. Penalties

A person who commits an offence under this Act in respect of which no penalty is specially provided shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding six months, or to both.

[Act No. 10 of 1981, Sch., Act No. 34 of 2011, s. 34.]

29. Rules

(1) The Minister may on the advice of the Board make rules generally for carrying into effect the provisions of this Act and, in particular, may make rules prescribing—

- (a) the form of a contract of training under this Act and the matters for which provision shall be made in the contract;
- (b) the manner in which educational standards or birth may be proved;
- (c) the nature of returns which employers may from time to time be required to furnish to the Director-General and the period within which those returns shall be so furnished;
- (d) the procedure for the registration and transfer of contracts under this Act and for the notification of the expiration or termination of those contracts;
- (e) the form and manner in which certificates of completion are to be issued by employers;
- (f) the form and manner in which tests to assess the occupational skills of persons (other than apprentices and indentured learners) in any particular trade or occupation, or trades and occupations generally, shall be conducted;
- (g) the form of certificates, reports and other documentary evidence to be granted or issued, after the completion of those tests, in respect thereof;
- (h) all or any matters which by this Act are required or permitted to be prescribed.

(2) Different rules may be made under subsection (1) in respect of different classes of employers or persons undergoing training under this Act.

[Act No. 3 of 1971, s. 10, Act No. 11 of 1975, s. 11, Act no. 34 of 2011, s. 35.]

29A. Regulation

The Minister may make regulations generally for the better carrying into effect of the provisions of this Act.

[Act No. 34 of 2011, s. 36.]

30. Exemptions

(1) The Director-General, with the approval of the Board, may in the case of a particular contract, exempt any person from any provision of this Act or of any rule made thereunder or from a condition of training contained in any scheme.

(2) Any such exemption may at any time be withdrawn by the Director-General with the approval of the Board.

[Act No. 3 of 1971, s. 10, Act No. 11 of 1975, s. 14, Act No. 34 of 2011, s. 37.]

31. Institution of proceedings

The Director-General may institute proceedings in respect of an offence under this Act or any rules made thereunder and may appear and prosecute in those proceedings.

[Act No. 11 of 1975, s. 12, Act No. 34 of 2011, s. 38.]

32. Application to Government

This Act shall bind the Government.

[L.N. 236/1964, Act No. 21 of 1966, Sch., Act No. 4 of 1974, Sch., Act No. 11 of 1975, s. 13, Act No. 13 of 1978, Sch.]

33. Transitional and saving provisions

(1) In this section, "Directorate of Industrial Training" means the Government Department by that name existing immediately before the commencement of this Act.

(2) All property, which immediately before the commencement of this Act was vested in the Directorate of Industrial Training shall on the commencement of this Act, vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(3) All contracts, debts, obligations and liabilities of the Directorate of Industrial Training before the commencement of this Act shall be vested in the Authority and may be enforced by or against the Authority.

(4) All legal proceedings pending in Kenya by or against the Directorate of Industrial Training in respect of any property, liabilities or contracts of the Directorate of Industrial Training shall be deemed to continue or be continued by or against the Authority.

(5) All directions, orders, rules, authorizations and other things published, made, given or done by the Directorate of Industrial Training, under the Act, subsisting at the commencement of this Act, shall on that day be deemed to have been published, given, made or done by the Authority.

[Act No. 34 of 2011, s. 39.]

34. Staff of the Directorate of Industrial Training

Any person who was a member of staff of the Directorate of Industrial Training shall, upon the commencement of this Act, be deemed to be an employee of the Authority in accordance with the Schedule.

[Act No. 34 of 2011, s. 39.]

35. Chairman, vice-chairman and members of the Council

Any person who at the commencement of this Act was a chairman, vice-chairman or member of the Council shall, on the commencement date, be deemed to be the chairman, vice-chairman or member of the Board respectively until a new Board is constituted under this Act.

[Act No. 34 of 2011, s. 39.]

SCHEDULE

[Section 34, Act No. 34 of 2011, s. 40.]

1. Interpretation

In this schedule “vesting day” means the date of commencement of this Act.

2. Staff

Any person who, at the commencement of this Act, is a member of staff of the former Directorate of Industrial Training, shall on the vesting day become a member of staff of the Authority on the same or improved terms and conditions of service as may be specified by the Minister:

Provided—

- (a) a member of staff of the former Directorate of the Industrial Training may retire on the basis of abolition of office in accordance with the existing regulations; and,
- (b) a member of staff of the former Directorate of Industrial Training may remain in the civil service with mutual consent of any such member of staff and the Government.

3. Where on the vesting day—

- (a) any disciplinary proceedings against any member of staff of the former Directorate of Industrial Training, are in the course of being heard or instituted, or have been heard or investigated by the former Directorate of Industrial Training but no order or decision has been made thereon; or
- (b) any such member of staff is interdicted or suspended, the Authority shall—
 - (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
 - (ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him, including the completion of disciplinary proceedings that have been commenced by the Authority.

4. Where on the vesting day, any penalty, other than dismissal, has been imposed on any member of staff of the former Directorate of Industrial Training pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be, serviced by such member of staff, he shall on his transfer to the Authority, under paragraph (2) serve or continue to serve such penalty to its full as if it had been imposed by the Authority.

5. Pensions

(1) A member of staff of the Directorate of Industrial Training who becomes a member of staff of the Authority shall continue to be governed by the existing Government pension scheme.

(2) Where any person whose services are transferred to the Authority is on the vesting day a member of any statutory voluntary pension scheme or provident fund, he shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if he had not been so transferred, and for purposes of the regulations governing those schemes or funds service with the Authority shall be deemed to be service in the former Directorate of Industrial Training.
