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**CHAPTER 350****NATIONAL INSURANCE**

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## CHAPTER 350

### NATIONAL INSURANCE

**An Act to establish a system of national insurance providing pecuniary payments in respect of sickness, invalidity, maternity, retirement, death, industrial injury and disablement and death from industrial injury, medical care, and of social assistance for insured and other persons not qualifying for such payments as of right and for purposes connected with or incidental to the matters aforesaid.**

*21 of 1972  
12 of 1974  
22 of 1975  
7 of 1981  
3 of 1984  
10 of 1986  
36 of 1998  
S.I. 36/2005  
2 of 2009*

*[Assent 12th December, 1972]  
[Commencement:<sup>1</sup> 7th October, 1974]*

### PART I PRELIMINARY

1. This Act may be cited as the National Insurance Act. Short title.
2. In this Act, unless the context otherwise requires — Interpretation.
- “this Act” includes any regulations;
- “actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries of Great Britain or a Fellow of the Society of Actuaries of the United States of America or a person who in the opinion of the Minister is qualified as an actuary;
- “appointed day”, in relation to any provision of this Act or to any class of insured person, means the day appointed under section 1 in respect of that provision or class;
- “assistance” means assistance payable under Part V;
- “award” means an award of benefit or assistance;
- “beneficiary” means a person entitled to benefit or, as the case may be, assistance;

<sup>1</sup> Provisions other than provisions relating to self employed persons: 7th October, 1974;  
provisions relating to self employed persons: 5th April, 1976

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- “benefit” means benefit which is payable under Part IV;
- “the Board” means the National Insurance Board established by section 3;
- “claimant” means a person claiming benefit or, as the case may be, assistance or whose right to be excepted from liability to pay, or to be credited with, a contribution is in question;
- “compulsory school age” has the same meaning as in subsection (1) of section 23 of the Education Act;
- “contract of service” means any contract of service or apprenticeship, whether written or oral, and whether expressed or implied;
- “contribution” means a contribution payable to the Fund pursuant to this Act;
- “contribution period” means the prescribed period in respect of which a contribution is payable;
- “declared day”<sup>1</sup> means the day declared under subsection (3) of section 21 for the purpose of bringing subsection (2) of that section into operation;
- “Director” means the Director appointed by the Board pursuant to section 40 and any person appointed to act in his place;
- “disease” includes personal injury not caused by accident and any condition which has resulted from a disease or personal injury;
- “employed person” means, subject to subsection (2) of section 12, any person in an employment specified in the First Schedule;
- “employer” includes
- (a) any managing agent of an employer;
  - (b) the personal representative of a deceased employer;
  - (c) in relation to a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under a contract of bailment (other than a hire-purchase agreement), the said owner;

First Schedule.

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<sup>1</sup> 1st November 1980, declared by S.I. 58/1980.

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- (d) in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or, where the club is managed by a committee, the members of the managing committee, of the club;
- “the Fund” means the National Insurance Fund established by section 44;
- “incapable of work” means incapable of engaging in gainful occupation by reason of some specific disease or bodily or mental disablement or deemed, in accordance with regulations, to be so incapable;
- “industrial benefit” means any benefit provided for in subsection (2) of section 21;
- “insured person” means a person insured under this Act for the benefits set out in subsection (1) of section 21;
- “loss of faculty” means the partial or total loss of the normal use of an organ or part of the body or the destruction or impairment of any bodily or mental function (including disfigurement whether or not accompanied by actual loss of function);
- “managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer;
- “mariner” means —
- (a) a master or member of the crew of a vessel; or
  - (b) a person employed in any other capacity on board a vessel whose employment on such vessel is that of an employed person under paragraph 2 of the First Schedule;
- “master”, when used in relation to a vessel, means any person except a pilot having charge or command of the vessel;
- “member of the crew”, in relation to a vessel or aircraft, means every person (except a master or pilot) employed or engaged in any capacity on board the vessel or aircraft;

First Schedule.

“Minister” means the Minister responsible for National Insurance;

“Part” means a Part of this Act;

“prescribed” means prescribed by regulations made under this Act;

*3 of 1984, s. 3.*

“prime rate” means —

- (a) the rate of interest set by commercial banks in conjunction with the Central Bank of The Bahamas for lending to its prime customers;
- (b) where there is no such rate set, the rate charged by the Royal Bank of Canada for lending to its prime customers;

“regulations” means regulations made under this Act;

“resources” means all property, whether of a capital nature or not, available to a claimant for assistance except such disregarded resources as may be prescribed;

*12 of 1974, s. 2.*

“self-employed person” means a person gainfully occupied in an occupation in The Bahamas who is not in respect of that occupation, an employed person;

“voluntarily insured person” means an insured person whose insurance under this Act is continued voluntarily pursuant to section 13;

“wages” includes salary or any other pecuniary remuneration as may be prescribed.

## PART II

### THE NATIONAL INSURANCE BOARD

Establishment  
and constitution  
of the National  
Insurance Board.

**3.** (1) There shall be established for the purposes of this Act a body to be called “the National Insurance Board” (in this Act referred to as “the Board”).

Second Schedule.

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

Incorporation.  
*7 of 1981, s. 2*

*3 of 1984, s. 4.*

**4.** (1) The Board shall be a body corporate having perpetual succession and a common seal and, subject to the approval of the Minister, capacity to acquire, lease and hold property and to make any disposal thereof.



(2) The Board may sue and be sued in its corporate name and may for all purposes be described by that name, and service upon the Board of any notice, order or other document of whatever kind shall be executed by delivering the same to, or sending it by registered post addressed to, the Director at the principal office of the Board.

5. (1) The seal of the Board shall be kept in the custody of the chairman or deputy chairman or such officer of the Board as the Board may approve, and may be affixed to instruments pursuant to a resolution of the Board and in the presence of the chairman or deputy chairman and one other member.

Affixing of seal and authentication of documents.

(2) The seal of the Board shall be authenticated by the signature of the chairman or deputy chairman and one other member, and such seal shall be officially and judicially noticed.

6. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Board may determine.

Meetings of the Board and procedure.

(2) The chairman or, in the event of his being absent from The Bahamas or for any reason whatsoever unable to act, the deputy chairman may at any time call a special meeting of the Board and shall call a special meeting within seven days of a requisition for that purpose addressed to him in writing by any four members.

(3) The chairman or, in his absence, the deputy chairman shall preside at all meetings of the Board.

(4) The chairman or, in his absence, the deputy chairman shall form a quorum together with six other members.

22 of 1975, s. 2.

(5) The decision of the Board shall be by a majority of votes and in addition to an original vote in any case in which the voting is equal the chairman or deputy chairman presiding at any meeting shall have a casting vote.

(6) Minutes in proper form of each meeting shall be kept by such officer of the Board as the Board may appoint for the purpose and shall be confirmed by the Board at the next meeting and signed by the chairman or deputy chairman, as the case may be.

(7) The Board may co-opt any one or more persons to attend any particular meeting of the Board for the purpose of assisting or advising the Board in any matter with which the Board is dealing, but no co-opted person shall have the right to vote.

Minister may give general and specific directions to Board.  
*12 of 1974, s. 3.*

**7.** The Minister, after consultation with the Board, may give to the Board such directions whether of a general or a specific character regarding the discharge of the Board's functions under this Act or any regulations as appear to the Minister to be requisite in the public interest, and the Board shall give effect to any such directions.

Power to appoint committees.

**8.** (1) Subject to the provisions of this Act, the Board may appoint such committees of the Board as it thinks fit:

Provided that any committee so appointed shall include not less than two members of the Board, and may include persons who are not members of the Board.

(2) Subject to the provisions of this Act, the constitution of a committee of the Board shall be determined by the Board.

Power to delegate.

**9.** (1) Subject to the provisions of this Act, the Board may in writing delegate to any member or committee or officer or employee of the Board the power to carry out on its behalf such functions as the Board may determine.

(2) Every delegation under this section shall be revocable by the Board and no delegation shall prevent the exercise by the Board of any function.

Remuneration of members, co-opted persons and committee members.

**10.** There shall be paid out of the Fund —

- (a) to each member, in respect of his office as such, such remuneration and allowances (if any) as the Minister may determine and to the chairman and to the deputy chairman in respect of their offices as such, such remuneration and allowances (if any), in addition to any remuneration or allowances to which they may be entitled in respect of their offices as members, as may be so determined;
- (b) to any person co-opted under subsection (7) of section 6 and to any person not being a member of the Board serving on a committee appointed under section 8 such remuneration and allowances (if any) as the Board may by resolution declare.

**11.** No act done or proceedings taken under this Act shall be questioned on the ground of any omission, defect or irregularity not affecting the merits of the case.

Protection of Board and its members.

### PART III INSURED PERSONS AND CONTRIBUTIONS

**12.** (1) For the purposes of this Act, insured persons shall consist of the following three classes, namely —

Description of classes of insured persons.

- (a) employed persons;
- (b) self employed persons;
- (c) voluntarily insured persons.

(2) Regulations may modify the class of any insured person or may exclude any person from any class where it appears to the Minister desirable to make a regulation for that purpose by reason of the nature of that person's employment or occupation or otherwise.

**13.** Subject to the provisions of this Act —

Insurance of persons.

- (a) every person who on or after the appointed day is above the upper limit of compulsory school age and is either —
  - (i) an employed person; or
  - (ii) a self employed person,
 shall be insured under this Act; and
- (b) every person who on or after the appointed day, having been insured under this Act by virtue of paragraph (a) of this subsection, ceases to be so insured, may become insured as a voluntarily insured person under this Act.

**14.** (1) Every person who operates a business shall —

Duty of register  
*36 of 1998, s. 3.*

- (a) register that business with the Board within ten working days of commencing operations; and
- (b) insure all persons employed in that business.

(2) For the purposes of this section, “business” includes a profession, calling, vocation, occupation, trade, manufacture or undertaking of any kind whatever, an adventure or concern in the nature of trade.

**15.** (1) For the purposes of this Act, contributions shall, subject to the provisions of this Act, be payable by insured persons and by employers.

Source of funds.

(2) Regulations shall provide for fixing, from time to time, the rates of contribution to be paid by such different categories of insured persons and employers as may be prescribed.

(3) For the purposes of Part V of this Act, there shall be an annual grant to the Fund out of the Consolidated Fund as provided in subsection (3) of section 45.

Exceptions from liability for, and crediting of, contributions.

**16.** Regulations may provide for —

- (a) excepting insured persons from liability to pay contributions for such periods as may be prescribed or, without prejudice to the generality of the foregoing, for periods —
  - (i) of incapacity for work; of
  - (ii) of full-time unpaid apprenticeship;
- (b) crediting contributions to insured persons for periods for which such persons are excepted from liability to pay contributions under paragraph (a) of this section.

Voluntary contributions.

**17.** A voluntarily insured person may pay within such time and in such manner as may be prescribed, a prescribed rate of contribution for any period in which he is not liable to pay a contribution as an employed or a self employed person.

Contributions of employed persons and employers.

**18.** (1) Except where regulations otherwise provide, an employer liable to pay a contribution in respect of a person employed by him shall in the first instance be liable to pay also on behalf of and to the exclusion of such person any contribution payable by such person for the same contribution period, and, for the purposes of this Act, contributions so paid by an employer on behalf of such person shall be deemed to be contributions paid by such person.

(2) Notwithstanding any contract to the contrary, an employer shall not be entitled to deduct from the wages of a person employed by him or otherwise to recover from such person the contribution of the employer in respect of such person.

(3) An employer shall be entitled, subject to and in accordance with regulations, to recover from a person employed by him the amount of any contribution paid or

to be paid by him on behalf of such person, and, notwithstanding anything in any enactment, such regulations may authorise such recovery to be made by deductions from the wages of such person.

**19.** Regulations may provide —

- (a) for the payment and collection of contributions;
- (b) for treating, for the purposes of any right to benefit, contributions paid after the due dates as paid on such dates or on such later dates as may be prescribed, or as not having been paid;
- (c) for treating, for the purposes of any right to benefit, contributions payable by an employer on behalf of an employed person but not paid as paid where the failure to pay is shown not to have been with the consent or connivance of, or attributable to any negligence on the part of, such person;
- (d) for treating contributions of the wrong class or at the wrong rate as paid on account of the contributions properly payable;
- (e) for the return of contributions paid in error.

General provisions as to the payment and collection of contributions.  
*3 of 1984, s. 5.*

**20.** In relation to any person who —

- (a) is employed by more than one employer in any contribution period; or
- (b) works under the general control or management of some person other than his immediate employer,

Persons to be treated as employers.

and in relation to any other cases for which it appears to the Minister that special provision is needed, regulations may provide that for the purposes of this Act the prescribed person shall be treated as the employer of the person in question, and such regulations may further provide for adjusting the rights between themselves of the person prescribed as the employer, the immediate employer and the person employed.

## PART IV BENEFITS

**21.** (1) Subject to subsections (2) and (3), benefits shall be of the following kinds only —

- (a) retirement benefit, that is to say, periodical payments to an insured person who has reached sixty-five years of age and retired from gainful

Description of benefits.

occupation in such circumstances as may be prescribed;

- (b) invalidity benefit, that is to say, periodical payments to an insured person who is rendered permanently incapable of work otherwise than as a result of employment injury;
- (c) survivor’s benefit, that is to say, a payment or periodical payments made to a survivor in respect of the death of an insured person who immediately before his death was receiving retirement benefit or invalidity benefit, or in respect of the death of an insured person who dies otherwise than as a result of employment injury;
- (d) sickness benefit, that is to say, periodical payments to an insured person who is rendered temporarily incapable of work otherwise than as a result of employment injury;
- (e) maternity benefit, that is to say, periodical payments to an insured woman in the case of her pregnancy or confinement;
- (f) funeral benefit, that is to say, a payment on the death of an insured person or of a person in such a relationship to an insured person as may be prescribed;
- (g) medical benefit, that is to say, medical care and attention to an insured person and his dependants in such circumstances, manner and subject to such conditions as may be prescribed;
- (h) unemployment benefit, that is to say, periodical payments to an employed person who has lost his job or is working on reduced time during a designated period;

*3 of 1984, s. 6.*

*2 of 2009, s. 2.*

*25 of 1943*

In this subsection and in subsection (1) of section 33, the expression “employment injury” means such injury as before the declared day attracts compensation under the Workmen’s Compensation Act<sup>3</sup> or on or after that day attracts industrial benefit under this Act.

(2) Subject to subsection (3), there shall be, in addition to the benefits specified in subsection (1), industrial benefit, which shall comprise —

<sup>3</sup> See Fourth Schedule.

- (a) injury benefit, that is to say, in addition to such free medical care and attention as may be prescribed, periodical payments to an employed person or such self employed person as may be prescribed, who suffers personal injury which is caused by an accident arising out of and in the course of his employment as an employed person or a self employed person as aforesaid, or develops any disease due to the nature of such employment; *3 of 1984, s. 6.*
- (b) disablement benefit, that is to say, in addition to such free medical care and attention as may be prescribed, a payment or periodical payments to an employed person or such self-employed person as may be prescribed, who, as a result of an injury or disease such as is referred to in paragraph (a) of this subsection, suffers loss of faculty;
- (c) death benefit, that is to say, a payment or periodical payments in respect of an employed or such self employed person as may be prescribed, who dies as a result of such injury or disease as is referred to in paragraph (a) aforesaid:

Provided that, subject to the provisions of sections 58 and 59, industrial benefit shall not be payable in respect of an accident happening or a prescribed disease developing while the employed person or such self-employed person as aforesaid is outside The Bahamas.

(3) The provisions of subsection (2) shall come into operation on such date<sup>3</sup> not being earlier than three months after the first appointed day for the purposes of the Act, as may be declared by the Minister by notice in the *Gazette*.

**22.** (1) Subject to subsection (6) and notwithstanding anything to the contrary contained in any other law or contract of service, or any agreement with the employees, every employer is entitled to —

- (a) modify in such manner as may be prescribed, the rate of contributions and benefits payable under any pension scheme instituted by him for the benefit of his employees (hereinafter called the

Integration of statutory benefits with contractual benefits.  
*10 of 1986, s. 2.*

<sup>3</sup> 1st November 1980, declared by S.I. 58/1980.

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“Occupational Pension Scheme”) for the purpose of eliminating overlapping benefits and contributions and for ensuring that the aggregate of the pension receivable under that scheme by an employee upon his retirement from the service of the employer or upon attainment of the prescribed retirement age or by reason of his invalidity and the amount of the retirement or invalidity benefit receivable by the employee under this Act does not exceed the salary payable to him immediately prior to such retirement or invalidity:

Provided that no such modification shall have effect of reducing the amount of pension payable under the Occupational Pension Scheme below the level of the accrued occupational pension as may be actuarially determined under the scheme on the date on which the modification takes effect.

- (b) modify the terms and conditions of the contract of service relating to the payment of wages to an employee during sick leave or maternity leave by withholding the payment of any wages or any part thereof for the purpose of ensuring that the aggregate of the wages and any sickness, injury or maternity benefit payable or paid to the employee during such leave or any part thereof does not exceed the amount of wages which would normally be payable during the same period by the employer to the employee but for such sick leave or maternity leave.

(2) For the avoidance of doubt any modification as that mentioned in subsection (1)(b) and taken pursuant to regulations made under this Act prior to the enactment of that subsection shall be deemed to have been taken as if that subsection had been in force.

(3) No employer shall make any modification pursuant to subsection (1)(a) without obtaining the prior written approval of the Minister and for which purpose he shall submit a copy of the relevant Occupational Pension Scheme together with such particulars and information as may be required by the Minister.

(4) Any person who is in breach of subsection (3) or fails to comply with any lawful request thereunder shall be

*36 of 1998, s. 4.*



guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(5) The National Insurance Board shall comply with reasonable requests from an employer to be furnished with information of the benefits payable to any of his employees under the National Insurance Act for the purpose of giving effect to subsections (1) and (2).

- (6) Nothing in subsections (1) and (2) shall affect —
- (a) the grant and payment under any law to a person of an award to which Article 122 of the Constitution applies;
  - (b) the continuity of existing payments of a sum to any person who is at the coming into force of this section in receipt of that sum or to whom the right to such payments has accrued.

**23.** Regulations shall provide for —

Rates of benefits.

- (a) the rates or amounts of benefit and the variation of such rates or amounts in different or special circumstances;
- (b) the conditions subject to which and the periods for which benefit may be granted; and
- (c) the date as from which benefit is provided.

**24.** Regulations may provide —

Regulations with regard to payment of benefits and as respects persons abroad, or in prison, persons unable to act and deceased persons.

- (a) for the time and manner of paying benefit and as to the information and evidence to be furnished by persons when applying for payment and, without prejudice to the generality of the foregoing and notwithstanding anything in this Act, for adjusting the commencement and termination of benefit so that payments may be made in respect of periods less than a contribution period or at different rates for different parts of a contribution period, and for extinguishing the right to any sum payable by way of benefit where payment thereof is not obtained within six months or such shorter period as may be prescribed from the time at which such sum is receivable in accordance with the regulations;

*3 of 1984, s. 7.*

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- (b) for the prevention of the receipt for the same period of two amounts of benefit or assistance and the adjustment of benefit or assistance in the case of any special circumstances;
  - (c) for the circumstances in which and the time for which a person shall be disqualified for or disentitled to receipt of benefit, or benefit may be forfeited or suspended and, without prejudice to the generality of the foregoing, for the suspension of payment of benefit to or in respect of any person during any period when he is —
    - (i) absent from The Bahamas; or
    - (ii) undergoing imprisonment or detention in legal custody,and for the circumstances in which and the manner in which payment of the whole or any part of any benefit may, instead of being so suspended, be made during any such period to or for the maintenance of such persons as may be specified in the regulations, being persons nominated by the person entitled to the benefit or who in the opinion of the Director are dependants of that person;
  - (d) for enabling a person to be appointed to exercise, on behalf of a claimant or beneficiary who is a minor or who may be or become unable for the time being to act, any right or power which the claimant or beneficiary may be entitled to exercise under this Act, and for authorising a person so appointed to receive and deal with any sum payable by way of benefit on behalf of the claimant or beneficiary;
  - (e) in connection with the death of any person, for enabling a claim for benefit to be made or proceeded with in his name, for authorising payment or distribution of benefit to or amongst persons claiming as his personal representatives, legatees, next-of-kin or creditors (or, in a case where the deceased person was illegitimate, to or amongst others) and for dispensing with strict proof of the title of persons so claiming; and
  - (f) for such other matters as may be necessary for the proper administration of benefits, including the obligations of persons claiming any benefit, beneficiaries and employers.

- 25.** For the purposes of this Act an accident —
- (a) arising out of employment of an employed person shall be presumed, unless the contrary is shown, to have occurred in the course of the employment and, where the accident occurred in the course of the employment, it shall be presumed, unless the contrary is shown, to have arisen out of the employment;
  - (b) shall be deemed to arise out of and in the course of the employment of an employed person, notwithstanding that he is at the time of the accident acting in contravention of any statutory or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if the act is done for the purpose of and in connection with the trade or business of the employer;
  - (c) happening while an employed person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle, ship, vessel or aircraft to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by such vehicle, ship, vessel or aircraft, be deemed to arise out of and in the course of his employment, if —
    - (i) the accident would have been deemed so to have arisen had he been under such an obligation; and
    - (ii) at the time of the accident, the vehicle, ship, vessel or aircraft is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer and is not being operated in the ordinary course of a public transport service;
  - (d) happening to an employed person in or about any premises at which he is for the time employed for the purposes of the trade or business of his employer shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps, in an actual or supposed emergency at those premises, to rescue,

Presumptions and general provisions relating to accidents.

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succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

Prescription of diseases.

**26.** A disease may be prescribed for the purposes of this Act in relation to any employed person if the Minister is satisfied that —

- (a) it ought to be so prescribed having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
- (b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty,

and regulations prescribing any such disease may provide that a person who developed the disease on or at any time after a date specified in the regulations, being a date before the regulations come into force but not before the declared day, shall be treated for the purposes of this Act, subject to any prescribed modifications, as if the regulations had been in force when he developed the disease.

Regulations relating to diseases and medical officers and boards.

**27.** Regulations may provide for —

- (a) determining the time at which a person is to be treated for the purposes of this Act as having developed any prescribed disease and the circumstances in which any such disease is, where the person in question has previously suffered therefrom, to be treated as having recrudesced or having been developed afresh;
- (b) presuming any prescribed disease —
  - (i) to be due, unless the contrary is proved, to the nature of the employment of any person where he was employed in any prescribed occupation at the time when, or within a prescribed length of time (whether continuous or not) before, he developed the disease;
  - (ii) not to be due to the nature of the employment of any person unless he was employed in some prescribed occupation at the time when, or within a prescribed length of time

(whether continuous or not) before, he developed the disease;

- (c) the appointment of medical officers and medical referees and the establishment of medical boards for the purposes of this Act; and
- (d) such matters as appear to the Minister to be incidental to or consequential on provisions included in regulations by virtue of the foregoing provisions of this section.

**28.** There shall be paid out of the Fund to a medical officer or a medical referee appointed under regulations made under paragraph (c) of section 27 and to a member of a medical board established in accordance with such regulations, such remuneration and allowances, if any, and any such officer, referee or member shall be reimbursed out of the Fund such amounts in respect of expenses incurred in connection with his work as such, as the Board with the prior approval of the Minister may determine.

Payment of medical officers, medical referees and boards.

**29.** (1) Regulations may prescribe the circumstances in which a relevant employment shall, in relation to any claim for industrial benefit in respect of any accident or prescribed disease, be treated as employment as an employed person notwithstanding that by reason of a contravention of or non-compliance with some provision contained in or having effect under the Immigration Act, or any enactment passed for the protection of persons in employment or any class of such persons, the contract purporting to govern the employment was void or the person employed was not lawfully employed therein at the time when or in the place where the accident happened or the disease developed.

Accidents and diseases in course of illegal employment.

Ch. 191.

(2) In this section the expression “relevant employment” means, in relation to an accident, the employment out of and in the course of which the accident arises and, in relation to a prescribed disease, the employment to the nature of which the disease is due.

**30.** Nothing in section 26, 27 or 29 shall affect the right of any person to benefit in respect of a disease which is not a prescribed disease, except that a person shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment.

Benefit where disease is personal injury by accident.

Repayment of benefit improperly received.

**31.** (1) If it is found that any person by reason of the non-disclosure or misrepresentation by him of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) has received any sum by way of benefit while he was not entitled to that benefit, he shall be liable to repay the sum so received by him.

(2) Where any person is liable to repay any sum received by him by way of benefit, that sum may be recovered, without prejudice to any other remedy, by means of deductions from any benefit or assistance to which he thereafter becomes entitled.

Benefits to be inalienable.

**32.** Every assignment of or charge on benefit and every agreement to assign or charge benefit shall be void and on the bankruptcy of a beneficiary the benefit shall not pass to any trustee or other person acting on behalf of the creditors.

## PART V ASSISTANCE

Description of assistance and persons entitled.

**33.** (1) Subject to the provisions of subsection (2), assistance to be awarded under this Act shall be of the following kinds only —

- (a) old age non-contributory pension, that is to say, periodical payments to a person who has reached the age of sixty-five years and retired from gainful occupation in such circumstances as may be prescribed;
- (b) invalidity assistance, that is to say, periodical payments to a person who is rendered permanently incapable of work otherwise than as a result of employment injury;
- (c) survivor's assistance, that is to say, periodical payments made to a survivor in respect of the death of a person who immediately before his death was receiving old age non-contributory pension or invalidity assistance, or in respect of the death of a person who dies otherwise than as a result of employment injury;
- (d) sickness assistance, that is to say, periodical payments to a person who is rendered temporarily incapable of work otherwise than as a result of employment injury.

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(2) Assistance of the kinds set out in subsection (1) may be awarded subject to a prescribed test of resources and only to such persons as may be prescribed who are within the following classes of persons —

- (a) a person who immediately before the date determined by the Minister under subsection (3) of this section was in receipt of an old age pension under the Old Age Pension Act; *51 of 1957.*
- (b) a person who immediately before that date was in receipt of pecuniary assistance from the Social Welfare Department of the Ministry of Labour and Welfare either as an invalid permanently incapable of work or as a survivor of a deceased person or persons;
- (c) an insured person, or, in the case of survivor's assistance, the survivor of an insured person, who on account of insufficient contributions fails to qualify for benefit;
- (d) a person over the age of sixteen years who is resident in The Bahamas at the date of his claim for assistance whether an insured person or not, and who —
  - (i) is a citizen of The Bahamas or had been ordinarily resident therein as an employed or self-employed person for a period of not less than twelve months without interruption within the fifteen years immediately preceding that date; and
  - (ii) fails to qualify for benefit;*22 of 1975, s. 3.*
- (e) a person who, in the case of survivor's assistance, is the survivor of a person who at the date of his death was a person such as is referred to in paragraph (d); *22 of 1975, s. 3.*
- (f) a person over the age of sixteen years, whether an insured person or not, who —
  - (i) is the dependant of an insured person or of a person such as is referred to in subparagraph (i) of paragraph (d) of this subsection; and
  - (ii) is permanently incapable of work; and
  - (iii) fails to qualify for benefit.

(3) Assistance under the provisions of this section shall be payable out of the Fund from such date as the Minister with the concurrence of the Minister of Finance may determine.

Assistance  
payments to  
persons  
ordinarily  
resident.  
*36 of 1998, s. 5.*

**34.** Assistance payments shall only be payable in respect of persons who are ordinarily resident in The Bahamas.

Absence from  
The Bahamas.  
*36 of 1998, s. 5.*

**35.** (1) Where a person who is in receipt of assistance under the Act is desirous of leaving The Bahamas for a period in excess of three months, he shall advise the Director in writing before leaving The Bahamas.

(2) The Director may in exceptional circumstances authorise the payments of an assistance to a person who is absent from The Bahamas in excess of 3 months.

Rates of  
assistance.

**36.** Regulations shall provide for —

- (a) the rates or amounts of assistance and the variation of such rates in different or special circumstances;
- (b) the conditions subject to which and the periods for which assistance may be granted; and
- (c) the date as from which assistance may be provided.

Regulations with  
regard to  
payments of  
assistance.

**37.** Regulations may provide for any of the matters set out in section 24 as if, except where the context otherwise requires, references to benefit therein other than to injury benefit were references to assistance.

Repayment of  
assistance  
improperly  
received.

**38.** (1) If it is found that any person by reason of non-disclosure or misrepresentation by him of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) has received any sum by way of assistance while he was not entitled to that assistance, he shall be liable to repay the sum so received by him.

(2) Where any person is liable to repay any sum received by him by way of assistance, that sum may be recovered without prejudice to any other remedy by means of deductions from any benefit or assistance to which he thereafter becomes entitled.



**39.** Every assignment of or charge on assistance and every agreement to assign or charge assistance shall be void and on the bankruptcy of the beneficiary the assistance shall not pass to any trustee or other person acting on behalf of the creditors.

Assistance to be inalienable.

**PART VI  
ADMINISTRATION, FINANCE AND LEGAL  
PROCEEDINGS**

**40.** (1) The Board shall employ a Director (who shall be the chief executive officer of the Board) and may employ such other officers and employees at such remuneration and on such terms and conditions as it considers necessary or appropriate for the proper conduct of its business:

Officers and employees of the Board.

Provided that the Board shall not without the prior approval of the Minister —

- (a) assign to any post a salary, which is above the highest level of that governed by any industrial agreement to which the Board is a party;
- (b) make an appointment to any post to which a salary mentioned in paragraph (a) of this proviso is attached;
- (c) make any appointment of a legal adviser to, or medical officer of, the Board;
- (d) terminate the employment of any person who holds such a post; or
- (e) make any provision for the payment of any pensions or gratuities or other like benefits to any officers or other employees of the Board by reference to their service.

*36 of 1998, s. 6.*

*12 of 1974, s. 4.*

(2) Subject to the provisions of this Act, the Director may delegate to any committee or officer or employee of the Board any such function as the Director may determine:

*36 of 1998, s. 6.*

Provided that every delegation under this subsection shall be revocable by the Director and no delegation shall prevent the exercise by the Director of any function so delegated.

Designation and powers of inspectors.

41. (1) The Board may designate such officers in its service as it thinks fit to be inspectors for the purpose of giving effect to the provisions of this Act.

(2) An inspector shall, for the purposes of the execution of this Act, have power to do all or any of the following things, that is to say —

- (a) to enter at all reasonable times any premises or place liable to inspection under this section;
- (b) to make such examination and enquiry as may be necessary for ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place;
- (c) to examine either alone or in the presence of any other person as he thinks fit; with respect to any matters under this Act on which he may reasonably require information, every person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an insured person, and to require every such person to be so examined;
- (d) to take possession of such documents and records which are, in the opinion of the Inspector, necessary for the purpose of ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place;
- (e) to exercise such other powers as may be necessary for the administration of this Act.

*3 of 1984, s. 8.*

*3 of 1984, s. 8.*

(3) Subject to subsection (4), the occupier of any premises or place liable to inspection under this section and any person who is or has been employing any person, and the servants and agents of any such occupier or other person, and any insured person, shall furnish to an inspector all such information and produce for inspection all such documents as the inspector may reasonably require for the purpose of ascertaining whether contributions are or have been payable, or have been duly paid, by or in respect of any person, or whether benefit or assistance is or was payable to or in respect of any person.

(4) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purposes of this Act shall, if so required, produce the said certificate.

(5) The premises and places liable to inspection under this section are any premises or places where an inspector has reasonable grounds for supposing that any persons are employed except that they do not include any private dwelling house not used by or by permission of the occupier for the purposes of a trade or business.

(6) No person shall be required under this section to answer any questions or to give any evidence tending to incriminate himself.

**42.** Every employer and self-employed person shall at all times keep and maintain in his business premises or place the following records —

Maintenance of records.  
*3 of 1984, s. 9.*

(a) evidence of registration pursuant to section 14;

*36 of 1998, s. 7.*

(b) payroll and other records connected therewith which would serve to prove the correctness of the entries on the contributions made; and

*36 of 1998, s. 7.*

(c) the records relating to the payment of such contributions to the Board.

**43.** Subject to the provisions of any other enactment, in any action or other legal proceedings brought against any officer or employee of the Board in respect of any act done in pursuance or execution or intended execution of this Act, the plaintiff shall not recover unless he alleges in his pleading and proves at the trial that such act was done either maliciously or without reasonable and probable cause.

Proceedings against officers and employees of the Board under this Act.

**44.** (1) For the purposes of this Act, there shall be established under the control and management of the Board a fund called “the National Insurance Fund”.

Establishment of National Insurance Fund.

(2) There shall be paid into the Fund —

(a) all contributions;

(b) any grant out of the Consolidated Fund under subsection (3) of section 45;

(c) all rent, interest on investments or other income derived from the assets of the Fund;

(d) all sums recovered for the Fund under this Act;

(e) all sums properly accruing to the Fund under this Act including, without prejudice to the generality of the foregoing, the repayment of benefit or assistance; and

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(f) such other sums as may from time to time be provided by the Legislature for any of the purposes of this Act or as may from time to time be received and accepted by the Board on behalf of the Fund.

(3) There shall be paid or met out of the Fund —

(a) all claims for benefits or assistance;

(b) all refunds of contributions paid in error;

(c) all expenses properly incurred in the administration of this Act, including disbursements by way of remuneration, allowances and expenses payable under sections 10, 28, 40 and 51.

(4) Regulations shall provide for the form and conduct of the accounts of the Fund and, in particular, for —

(a) the establishment and maintenance of different branches of such accounts; and

(b) the establishment and maintenance within the Fund of different reserves,

for different purposes; and an auditor appointed by the Minister shall examine and certify every such account.

(5) Any moneys forming part of the Fund may from time to time be invested by the Board in accordance with the provisions of the Third Schedule and, subject to those provisions, of any regulations made pursuant to paragraph (b) of subsection (4) establishing criteria for the investment of reserves.

Third Schedule.

7 of 1981, s. 3.

(6) Notwithstanding the provisions of subsection (5) the Board may from time to time invest any moneys forming part of the Fund in such manner and in such investments as the Minister acting after consultation with the Minister responsible for Finance may direct.

10 of 1986, s. 2.

(7) Without prejudice to the provisions of subsection (6) the Board may, with the approval of the Minister —

(a) utilise any moneys of the Fund standing to the credit of the Medical Benefit Branch by way of investment in or the promotion of the development of health infrastructure facilities, including any facilities ancillary thereto, in The Bahamas having regard to the needs of the insured persons;

- (b) enter into arrangements (including leases) on such terms as are agreed with persons for the operation of those health facilities acquired on ownership or on lease for a period of ninety-nine years by the Board pursuant to paragraph (a).

**45.** (1) Any temporary insufficiency in the Fund to meet the liabilities of the Fund under this Act shall be met from moneys provided by Parliament.

Temporary  
insufficiency of  
Fund.

(2) Any moneys provided by Parliament pursuant to subsection (1) shall be repaid to the Consolidated Fund out of the Fund as soon as may be practicable.

(3) There shall be paid annually into the Fund out of the Consolidated Fund such round sum as the Minister of Finance may certify as the approximate expenditure for the year ended on the thirty-first day of December 1971, on the public assistance services (including administration) —

- (a) in respect of non-contributory pensioners under the Old Age Pension Act<sup>6</sup>; and
- (b) in respect of other persons granted public assistance administratively.

51 of 1957.

**46.** There shall be paid out of the Fund into the Consolidated Fund at such times and in such manner as the Minister of Finance may direct, such sums as he, after consultation with the Minister and the Board, may estimate to be the amount of the expenses of the Post Office in the administration of this Act.

Expenses of Post  
Office.

**47.** (1) The Board shall —

- (a) after the end of each year prepare a report on its activities during the last preceding year and shall furnish such report to the Minister not later than the thirtieth day of June;
- (b) submit to the Minister every account certified by the auditor pursuant to subsection (4) of section 44, together with the report of the auditor thereon within one month of such certification; and
- (c) submit annually to the Minister an account of the securities in which moneys forming part of the Fund are for the time being invested in accordance with the Third Schedule.

Report and  
accounts to be  
submitted to  
Minister.

Third Schedule.

<sup>6</sup> See Fourth Schedule.

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(2) The Minister shall cause a copy of every report or account submitted to him pursuant to this section to be laid before both chambers of Parliament.

Review of  
operation of Act.

**48.** (1) The Board shall, with the assistance of an actuary approved by the Minister, review the operation of this Act forthwith upon the expiration of the period ending on the thirty-first day of December 1977, and of the period ending on that date in every fifth year thereafter, and on such review make a report to the Minister on the financial condition of the Fund and the adequacy or otherwise of contributions to support benefits and assistance having regard to the other liabilities of the Fund under this Act:

Provided that the Minister may at any time direct that the period to be covered by a review and report under this subsection shall be reduced and that, while the direction is in force, the making of that review and the consequent report and subsequent reviews and reports under this subsection shall be accelerated accordingly.

(2) The Minister shall cause a copy of every report made to him under this section to be laid before both chambers of Parliament.

Determination of  
claims and  
questions.

**49.** (1) Regulations may provide for the determination by the Board or by a person or tribunal appointed or constituted in accordance with the regulations of any question arising under or in connection with this Act including any claim to benefit or assistance and, subject to the provisions of the regulations, the decision in accordance therewith on any such question except a question of law shall be final.

(2) Without prejudice to the generality of subsection (1), regulations made thereunder may in relation to the determination of questions in accordance with the regulations, include provision —

- (a) as to the procedure which is to be followed, the form which is to be used for any document, the evidence which is to be required and the circumstances in which any official record or certificate is to be sufficient or conclusive evidence;
- (b) as to the time to be allowed for making any claim or appeal, for raising any question with a view to the review of any decision or for producing any evidence;

- (c) for summoning persons to attend and give evidence or produce documents and for authorising the administration of oaths to witnesses;
- (d) as to the representation of one person at any hearing of a case by another person whether having professional qualifications or not, and, except so far as it may be applied by regulations under this section, the Arbitration Act shall not apply to any proceedings under those regulations.

Ch. 181.

(3) Regulations under subsection (1) may provide for the reference to the Supreme Court for decision of any question of law arising in connection with the determination of any question under the regulations and for appeals to the Supreme Court from the decision of the Board or of a person or tribunal on any such question.

(4) Provision shall be made by rules of court made under section 76 of the Supreme Court Act for regulating references and appeals to the Supreme Court under this subsection and for limiting the time within which appeals may be brought thereunder.

Ch. 53.

(5) Notwithstanding anything in any enactment, the decision of the Supreme Court on a reference or appeal under this subsection shall be final, and on any such reference or appeal the Court may order the Board to pay the costs of any other person, whether or not the decision is in favour of the Board and whether or not the Board appears on the reference or appeal.

**50.** (1) Regulations may make provision for matters arising —

Interim payments, arrears and repayments.

- (a) pending the determination under this Act (whether in the first instance or on appeal or reference, and whether originally or on review) of any claim for benefit or assistance or of any question affecting the right of any person to benefit or assistance or to the receipt thereof or of the liability of any person for contributions; or
- (b) out of the revision on appeal or review of any decision under this Act on any claim or question.

(2) Without prejudice to the generality of subsection (1), regulations thereunder may include provision —

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- (a) for the suspension of benefit or assistance where it appears to the Director that there is or may be a question whether the conditions for receipt thereof in accordance with an award are or were fulfilled or whether the award ought to be reviewed;
  - (b) as to the date from which any decision on a review is to have effect or be deemed to have had effect;
  - (c) for treating any benefit or assistance paid to any person under an award or by virtue of any provision of the regulations which it is subsequently decided was not payable, as properly paid or as paid on account of any other benefit or assistance which it is decided was payable to him, or for the repayment of any such benefit or assistance and the recovery thereof by deduction from other benefit or assistance or otherwise;
  - (d) for treating benefit or assistance paid to one person in respect of another as being a child of the family, or the wife or husband or an adult dependant, of the first mentioned person, as having been properly paid for any period, notwithstanding that under regulations relating to benefits or assistance it is not payable for that period by reason of a subsequent decision either —
    - (i) that such other person is himself entitled to benefit or assistance for that period; or
    - (ii) that a third person is entitled to benefit or assistance for that period in respect of such other person in priority to the first mentioned person, and for reducing or withholding accordingly any arrears payable for that period by virtue of the subsequent decision.

Payment of persons and tribunals appointed or constituted under section 49.

**51.** There shall be paid out of the Fund to a person appointed under regulations made under subsection (1) of section 49 and to a member of a tribunal constituted in accordance with such regulations, such remuneration and allowances, if any, and any such amounts in respect of expenses incurred in connection with his work as such, as the Board with the prior approval of the Minister may determine.



**52.** (1) Any insured person or any employer who fails to pay at or within the time prescribed for the purpose, any contribution which he is liable to pay pursuant to this Act, shall for each such failure be liable on summary conviction to a fine not exceeding five hundred dollars. *Offences and penalties. 36 of 1998, s. 8.*

(2) Any person who wilfully delays or obstructs an inspector in the exercise of any power under section 41, shall be liable on summary conviction to a fine not exceeding five hundred dollars in the case of a first offence and not exceeding one thousand dollars in the case of a second or subsequent offence. *3 of 1984, s. 10. 36 of 1998, s. 8.*

(3) Any person who — *3 of 1984, s. 10.*

(a) refuses or neglects without reasonable cause to answer any question or to furnish any information or to produce any documents when required so to do under section 41;

(b) fails to keep or maintain the records in accordance with section 42; *36 of 1998, s. 8.*

(c) fails to register with the Board in accordance with section 14, *36 of 1998, s. 8.*

shall be liable on summary conviction to a fine not exceeding five hundred dollars and if the offence of which he is convicted is continued after the conviction he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding two hundred dollars for each day on which the offence is so continued.

(4) Any employer who deducts or attempts to deduct or otherwise recovers or attempts to recover the whole or any part of the contribution of the employer in respect of any person from the wages of such person shall be liable on summary conviction to a fine not exceeding five hundred dollars. *36 of 1998, s. 8.*

(5) Any person who — *36 of 1998, s. 8.*

(a) furnishes information to the Board with respect to contributions; and

(b) for the purpose of obtaining any benefit or assistance or other payment under this Act, whether for himself or some other person, or for any purpose connected with this Act —

(i) knowingly makes any false statement or false representation; or

- (ii) produces or furnishes or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

shall be liable on summary conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding twelve months or both.

*36 of 1998, s. 8.*

- (6) Any employer who —
  - (a) dismisses an employee;
  - (b) threatens to dismiss or adversely affect the employment of a employee; or
  - (c) alters the position of an employee to his prejudice, by reason of the circumstances that the employee —
    - (i) has co-operated with any officer or inspector of the Board in furnishing information required for the administration of this Act;
    - (ii) has made application for or enquired about any entitlements or obligations under this Act pertaining either to the payment of contributions or the entitlement to a benefit or assistance payment; or
    - (iii) has appeared as a witness or has given evidence in any proceeding under this Act,

shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or both.

*36 of 1998, s. 8.*

- (7) Notwithstanding anything to the contrary contained in any other law, the question whether an offence has been committed under subsection (6) shall —
  - (a) be decided by the court on a balance of probabilities; and
  - (b) require that the burden of proof be placed on the employer to disprove that the adverse action was not a consequence of the circumstances referred to in that subsection.

General provisions as to prosecutions under Act.  
*3 of 1984, s. 11.*

**53.** (1) Subject to the provisions of Article 78 of the Constitution, proceedings for an offence under this Act shall not be instituted except by or with the consent of the Board or by an inspector or other officer authorised in that behalf by special or general directions of the Board.

(2) Any such inspector or other officer may, although not a counsel and attorney, prosecute or conduct before a court of summary jurisdiction any such proceedings as aforesaid.

(3) Notwithstanding any provision in any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence under this Act may be commenced at any time within the period of three months from the date on which evidence sufficient, in the opinion of the Board, to justify a prosecution for the offence comes to its knowledge or within the period of twelve months after the commission of the offence, whichever period last expires; and for the purposes of this subsection a certificate purporting to be signed on behalf of the Board as to the date on which such evidence came to the knowledge of the Board shall be conclusive evidence thereof.

(4) In any proceedings for an offence under this Act, the wife or husband of the accused shall be competent to give evidence, whether for or against the accused:

Provided that the wife or husband shall not be compellable either to give evidence or in giving evidence to disclose any communication made to her or him by the accused during the marriage.

(5) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**54.** (1) In any case where any person has been convicted of the offence under subsection (1) of section 52 of failing to pay a contribution he shall be liable to pay to the Fund a sum equal to the amount which he failed to pay.

Recovery of contributions on prosecutions under Act.

(2) In any case where any person is convicted of an offence under subsection (5) of section 52, such person shall pay to the Fund a sum equal to the amount of the contributions, benefit or assistance with interest, as certified by the Director, in respect of which the false statement or representation was made.

36 of 1998, s. 9.

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(3) On such conviction as is mentioned in subsection (1) or (2) of this section, if notice of intention to do so has been served with the summons or warrant, evidence may be given —

- (a) of the failure on the part of the convicted person to pay at or within the time prescribed for the purpose on behalf or in respect of the same insured person other contributions under this Act during the two years immediately preceding the date of the offence; and
- (b) in the case of any such conviction as is mentioned in the said subsection (1), of the failure on the part of the said person so to pay on behalf or in respect of any other person employed by him any contributions under this Act on that date or during those two years,

and, on proof of such failure, the convicted person shall be liable to pay to the Fund a sum equal to the total of all the contributions under this Act which he is so proved to have failed to pay and which remain unpaid at the date of the conviction.

(4) Where the person charged with such an offence as is mentioned in subsection (1) or (2) of this section is convicted of that offence in his absence pursuant to sections 115 and 196 of the Criminal Procedure Code Act, then if —

- (a) it is proved to the satisfaction of the court, on oath or in the prescribed manner, that such a notice as is mentioned in subsection (3) of this section has been duly served specifying the other contributions in respect of which the prosecutor intends to give evidence; and
- (b) the clerk of the court has received a statement in writing purporting to be made by the accused or by a counsel and attorney acting on his behalf to the effect that if the accused is convicted in his absence of the offence charged he desires to admit failing to pay the other contributions so specified or any of them,

the said subsection (3) shall have effect as if the evidence had been given and the failure so admitted had been proved, and the court shall proceed accordingly.

Ch. 91.

(5) Where any person is charged with any such offence as is mentioned in subsection (1) or (2) and a probation order is made under section 124 of the Penal Code, the foregoing provisions of this section shall apply as if the making of the order were a conviction.

Ch. 84.

(6) Any sum ordered to be paid to the Fund under this section shall be recoverable as a penalty.

(7) Any sum paid by an employer under the provisions of this section shall be treated as a payment in satisfaction of the unpaid contributions, and the insured person's portion of those contributions shall not be recoverable by the employer from the insured person.

(8) If an employer, being a body corporate, fails to pay to the Fund any sum which the employer has been ordered to pay under this section, such sum or such part thereof as remains unpaid shall be a debt due to the Fund jointly and severally from any directors of the body corporate who knew or could reasonably be expected to have known of the failure to pay the contribution or contributions in question.

(9) Nothing in this section shall be construed as preventing the Board from recovering any sums due to the Fund by means of civil proceedings.

**55.** (1) All sums due to the Fund by way of contribution, unless regulations otherwise provide, shall bear interest compounded annually at prime rate per annum or such other rate and as from such date as may be prescribed, and shall be recovered as debts due to the Fund and, without prejudice to any other remedy, may be recovered as a civil debt on behalf of the Fund up to fifty thousand dollars, summarily.

Civil proceedings to recover sums due to the Fund. 36 of 1998, s. 10.

(2) Proceedings for summary recovery of any sum due to the Fund may, notwithstanding anything in any enactment to the contrary, be brought at any time within six years from the time when the matter complained of arose.

36 of 1998, s. 10.

(3) Proceedings for the summary recovery as a civil debt of any sum due to the Fund may be instituted by an inspector or other officer authorised in that behalf by special or general directions of the Board, and any such inspector or officer may, although not a counsel and attorney, conduct such proceedings.

Proceedings  
against employer  
for benefit lost by  
employer's  
default.

- 56.** (1) Where an employer has failed or neglected —
- (a) to pay any contributions which under this Act he is liable to pay in respect of or on behalf of any insured person in his employment; or
  - (b) to comply, in relation to any such person, with the requirements of this Act relating to the payment and collection of contributions,

and by reason thereof that person or any other person to whom benefit or assistance under this Act may have been payable has lost in whole or in part the benefit or assistance to which he would have been entitled, that person or that other person, as the case may be, shall be entitled to recover summarily in a magistrate's court from the employer as a civil debt a sum equal to the amount of the benefit or assistance so lost, irrespective of the amount.

(2) Proceedings may be taken under this section notwithstanding that proceedings have been taken under any other section of this Act in respect of the same failure or neglect.

(3) Proceedings under this section may, notwithstanding any enactment to the contrary, be brought at any time within three years after the date on which the employed person but for the failure or neglect of the employer would have been entitled to receive the benefit or assistance lost.

## PART VII MISCELLANEOUS

Application of  
Act to certain  
categories of  
persons.

**57.** (1) This Act shall apply to persons employed by or under the Crown in right of the Government of The Bahamas in like manner as if the Crown were a private person, with such modifications as may be made therein by regulations for the purpose of adapting the provisions of this Act to the case of such persons:

Provided that regulations may provide that any such person or any class of such persons shall be exempted from the operation of this Act.

(2) Nothing in this Act shall operate to require any person to pay any contribution under this Act if such person is entitled to exemption from payment thereof —

- (a) under any enactment; or

- (b) by virtue of any provision in any agreement entered into by or on behalf of the Government under authority especially enacted for the purposes of that agreement by Parliament.
- (3) Notwithstanding anything contained in subsection (2), any person —
  - (a) falling within that subsection on the appointed day; or
  - (b) who after the appointed day becomes entitled to claim exemption as mentioned in that subsection,

may by a declaration in the prescribed form waive that exemption for the purposes of this Act.

(4) Where a person makes a declaration under subsection (3), the provisions of this Act shall apply to him *mutatis mutandis*, and he shall accordingly be liable to pay contributions under this Act, with effect from the relevant day.

(5) In subsection (4) the expression “relevant day” means —

- (a) in relation to a person referred to in paragraph (a) of subsection (3), the appointed day;
- (b) in relation to a person referred to in paragraph (b) of the said subsection (3), the day on which he becomes entitled to claim the exemption referred to in that paragraph.

**58.** (1) Without prejudice to the generality of any other power to make regulations, the Minister may make regulations modifying in such manner as he thinks proper the provisions of this Act in their application in relation to persons who are or have been employed on board any ship, vessel or aircraft.

Persons employed on board ships, vessels or aircraft.

(2) Without prejudice to the generality of subsection (1), regulations made thereunder may in particular provide —

- (a) for the classification under this Act of persons who are or have been employed on or after the appointed day or the declared day on board ships, vessels or aircraft;
- (b) for excepting from insurance under this Act or from liability to pay contributions as employed persons any persons employed as aforesaid who neither are domiciled nor have a place of residence in The Bahamas;

- (c) for the taking of evidence for the purpose of any claim to benefit or assistance in any place outside The Bahamas;
- (d) for enabling persons employed on board ships, vessels or aircraft to authorise the payment of the whole or any part of any benefit or assistance to which they are or may become entitled to such of their dependants as may be prescribed;
- (e) for the payment of industrial benefit to or in respect of mariners and airmen in respect of accidents happening and prescribed diseases developed while they are outside The Bahamas;
- (f) for treating as accidents arising out of and in the course of the employment of mariners or airmen, accidents happening while they are proceeding to or from their ship, vessel or aircraft or in any other prescribed circumstances; and
- (g) for withholding any benefit or assistance that may be payable to a mariner for any period during which the owner of his ship or vessel is under an obligation to pay him wages.

Insured persons outside The Bahamas.

**59.** (1) Without prejudice to the generality of any other power to make regulations, the Minister may, subject to subsection (2), make regulations modifying in such manner as he thinks proper the provisions of this Act in their application in relation to persons who are or have been outside The Bahamas while insured under this Act.

(2) Regulations under this section shall provide that where any insured person is throughout any contribution period outside The Bahamas and is not in that period an employed person he shall not be liable to pay any contribution as an insured person for that period.

Reciprocal agreements with other parts of the Commonwealth or with foreign countries.

**60.** (1) For the purpose of giving effect to any agreement with the government of any other part of the Commonwealth or the government of any foreign country, being an agreement which provides for reciprocity as respects the making of social provision of a kind afforded by Parts IV and V, it shall be lawful for the Minister, by order, to make provision for modifying or adapting this Act in its application to cases affected by the agreement.

(2) The modifications of this Act which may be made by virtue of subsection (1) shall include provision —



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- (a) for securing that acts, omissions and events having any effect for the purposes of the law of the country in respect of which the agreement is made shall have a corresponding effect for the purposes of this Act (but not so far as to confer a right to double benefit or assistance);
  - (b) for determining in cases where rights accrue both under this Act and under the law of the said country which of these rights shall be available to the person concerned;
  - (c) for making provision as to administration and enforcement contained in this Act applicable also for the law of the said country;
  - (d) for making any necessary financial adjustments by payments into or out of the Fund.

**61.** Stamp duty shall not be chargeable upon any draft or order or receipt in respect of benefit or assistance or upon any receipt given in respect of any other payment out of the Fund pursuant to subsection (3) of section 44 or upon any receipt given by an officer of the Board for or in respect of any sum payable into the Fund.

Exemption from stamp duty.

**62.** (1) The Minister may make regulations required by this Act to be made or for the purpose of modifying or affecting the operation of any provision of this Act, or as the Minister may consider necessary or desirable generally for the better administration of this Act.

Power to make regulations, etc.

(2) Without prejudice to the generality of subsection (1), the Minister may by such regulations —

- (a) prescribe any matter which may be or is required to be prescribed under the provisions of this Act;
- (b) require any employer —
  - (i) to submit returns of persons employed by him at such intervals and in such manner as may be prescribed;
  - (ii) to take reasonable steps to investigate the circumstances of every accident or disease of which notice is given to him;
  - (iii) to give the Board such notices or returns as may be thereby required of any accident or disease whether fatal or not which has occurred in his place of employment;

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- (c) except such categories of insured persons as may be specified therein from liability to pay contributions for such periods as may be prescribed;
  - (d) provide for determining the circumstances in which a person is or is not to be deemed for the purposes of this Act to be a dependant of another person;
  - (e) provide for different provisions of any regulations to come into operation on different days.

(3) Regulations may provide for the recovery on summary conviction of monetary penalties in respect of any offence under this Act being a contravention of or failure to comply with regulations, so, however, that such penalties shall not exceed one hundred dollars for each offence or, where the offence consists of continuing any such contravention or failure after conviction thereof, one hundred dollars together with a further one hundred dollars for each day on which it is so continued.

(4) Any power conferred by this Act to make regulations or orders may be exercised —

- (a) either in relation to all cases to which the power extends or in relation to all such cases subject to specified exceptions or in relation to any specified cases or classes of case; and
- (b) so as to make, as respects the cases in relation to which it is exercised —
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases in relation to which the power is exercised or different provision for different cases or classes of case or different provision as respects the same case or class of case for different purposes of this Act;
  - (iii) any such provision either unconditionally or subject to any specified condition.

(5) Without prejudice to any specific provision in this Act, any regulations or orders may contain such incidental or supplementary provisions as appear to the Minister to be expedient for the purposes of those regulations or orders.

**63.** (1) The provisions of sections 31 and 32 of the Interpretation and General Clauses Act shall not apply in relation to any regulations or orders made by the Minister under this Act, but instead all such regulations or orders shall be subject to affirmative resolution of both chambers of Parliament.

Regulations and orders to be approved.

Ch. 2.

(2) In subsection (1) the expression “subject to affirmative resolution of both chambers of Parliament” in relation to regulations or orders means that any such regulations or orders are not to come into operation unless and until approved by a resolution of each of those chambers.

**64.** (1) On and after the declared day, in any action for damages for personal injuries brought by an employed person against his employer (including any such action arising out of a contract) there shall in assessing such damages be taken into account, against any loss of wages or profits which has accrued or probably will accrue to the employed person from the injuries, one-half of the value of any rights which have accrued or probably will accrue to him therefrom in respect of injury benefit or disablement benefit for the five years beginning with the time when the cause of action accrued; but this subsection shall not be taken as requiring both the gross amount of the damages before taking into account such rights and the net amount after taking them into account to be found separately.

Measure of damages where industrial benefit applies.

(2) The reference in subsection (1) to assessing the damages for personal injuries shall, in cases where damages otherwise recoverable are subject to reduction under section 3 of the Contributory Negligence Act, or are limited by or under any other enactment or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.

Ch. 75.

(3) In assessing damages in respect of the death of a person in any action under the Fatal Accidents Act, or the Carriage by Air Act, 1961 and the Carriage by Air (Supplementary Provisions) Act, 1962, of the United Kingdom as extended to The Bahamas there shall not be taken into account any right to death benefit under this Act resulting from the death of such person.

Ch. 71;  
9 & 10 Eliz. 2 c  
27.; 10 & 11 Eliz.  
2 c. 43.

(4) For the purposes of this section —

(a) the expression “personal injury” includes any disease and any impairment of the physical or

- 
- mental condition of a person, and the expression “injured” shall be construed accordingly;
- (b) any payment on account of disablement benefit shall be treated as benefit for the period taken into account by the assessment of the extent of the disablement in respect of which it is payable.

### **FIRST SCHEDULE (Section 2)**

#### **EMPLOYMENT AS AN EMPLOYED PERSON**

1. Employment in The Bahamas under any contract of service.

2. Employment whether within or without The Bahamas of a person domiciled or having a place of residence therein as master or a member of the crew of any ship or vessel, or as pilot, commander, navigator or a member of the crew of any aircraft, being a ship, vessel or aircraft of which the owner (or the managing owner, if there is more than one owner) or the manager, resides or has his principal place of business in The Bahamas, or in any other capacity on board such a ship, vessel or aircraft:

Provided that the employment in that other capacity is for the purposes of the ship, vessel or aircraft, or of the crew thereof, or of any passenger or cargo or mails carried thereby.

3. Employment in plying for hire with any vehicle, the use of which is obtained from the owner thereof under a contract of bailment (other than a hire purchase agreement), the owner of the vehicle being regarded as the employer.

4. Employment outside The Bahamas of a person domiciled or having a place of residence therein —

- (a) as a member of the diplomatic or consular service of The Bahamas;
- (b) as a domestic worker employed by a person specified in subparagraph (a) of this paragraph.

5. Every employment, service or occupation prescribed by the Minister.

*3 of 1984, s. 14.*

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**SECOND SCHEDULE (Section 3(2))****CONSTITUTION OF NATIONAL INSURANCE BOARD.**

1. The Board shall consist of eleven members, of whom —
- (a) five shall be persons appointed by the Minister in his discretion;
  - (b) three shall be persons appointed by the Minister in accordance with paragraph 2 of this Schedule to represent employers; and
  - (c) the remaining three shall be persons appointed by the Minister in accordance with paragraph 3 of this Schedule to represent insured persons.

2. The members representing employers shall be appointed only after consultation with a confederation, being, in the opinion of the Minister, a confederation representative of employers and associations of employers generally or, in the absence of such a confederation, only after consultation with such employers and associations of employers as, in the opinion of the Minister, are so representative.

3. The members representing insured persons shall be appointed only after consultation with an association of registered trade unions, being an association, in the opinion of the Minister, representative of insured persons generally or, in the absence of such an association, only after consultation with such registered trade unions as, in the opinion of the Minister, are so representative.

4. The Director shall be entitled to attend any meeting of the Board, to take part in discussion of any matter other than such as may concern him personally, but shall not be entitled to vote.

5. A member shall, subject to the provisions of this Schedule, hold office for such period not exceeding three years as the Minister may direct in the instrument appointing him.

6. The Minister may grant leave of absence to any member.

7. A member may at any time resign his office as such by instrument in writing addressed to the chairman, who shall forthwith cause the same to be forwarded to the Minister, and upon the date of the receipt by the chairman of such instrument such member shall cease to be a member.

8. The Minister shall appoint two members to be respectively chairman and deputy chairman.

9. Subject to the provisions of this Schedule, the chairman and the deputy chairman shall hold and vacate office as such in accordance with the terms of the instrument by which they were respectively appointed.

10. Where the chairman or the deputy chairman or any other member is absent or unable to act, the Minister may appoint any person to act temporarily in his place.

11. The chairman or the deputy chairman may at any time resign his office as such by instrument in writing addressed to the Minister, and such resignation shall take effect upon the date of the receipt of such instrument by the Minister.

12. If the chairman or the deputy chairman ceases to be a member, he shall also cease to be chairman or deputy chairman, as the case may be.

13. The Minister may by instrument in writing at any time revoke the appointment of the chairman, deputy chairman or any other member if he thinks it desirable or expedient so to do.

14. A member who ceases to be a member or ceases to be chairman or deputy chairman shall be eligible for re-appointment.

15. The appointment, removal, death or resignation of a chairman, deputy chairman or member shall be notified in the *Gazette*.

### **THIRD SCHEDULE (Section 44(5))**

#### **POWERS OF BOARD TO INVEST**

Interpretation.

1. In this Schedule, unless the context otherwise requires —

“debenture” includes debenture stock and bonds, whether constituting a charge on assets or not, and loan stock or notes;

“market price” of any securities which are quoted both at prices at which sellers are willing to sell and buyers are willing to buy means the price which is mid-way between those prices; and “market value” and “value”, in relation to securities, shall be construed accordingly;

“paragraph” means a paragraph of this Schedule;

“recognised stock exchange” means any body of person conducting a market for securities declared by an order of the Minister for the time being in force to be a recognised stock exchange for the purposes of this Schedule;

Ch. 363.

“securities” has the same meaning as in the Securities Industry Act;

“share” includes stock.

Investment of property.

2. The Board may invest any moneys forming part of the National Insurance Fund, whether in a state of investment or not, either temporarily or permanently in accordance with the provisions of this Schedule:

Provided that the Board shall not invest in property or securities outside The Bahamas without the general or special

directions of the Minister after he has obtained the concurrence of the Minister of Finance.

3. Subject to paragraph 2, the Board shall have power to invest, on terms not less favourable than are available to other investors generally, in any securities which are investments authorised by the Trustee Act for the investment of trust funds.

Investment in trustee securities.

Ch. 176.

4. Subject to paragraph 2, the Board shall have power to invest in property or securities other than those mentioned in paragraph 3:

Investment in other securities.

Provided that such securities are not —

- (a) securities in which the holder can be required to accept repayment of the principal, or the payment of any interest, otherwise than in the currency of The Bahamas or any other currency declared by the Minister by order to be an internationally recognised reserve currency for the purposes of this subparagraph; or
- (b) securities the price of which is not quoted on a recognised stock exchange; or
- (c) shares or debenture stock not fully paid up (except shares or debenture stock which by the terms of issue are required to be fully paid up within, nine months of the date of issue); or
- (d) shares or debentures of any company of which the total issued and paid up share capital is less than one million dollars; or
- (e) share or debentures of any company which has not in each of the five years immediately preceding the year in which the investment is made paid a dividend on all the shares issued by the company, excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for dividend for that year; and for the purposes of this subparagraph a company formed —
  - (i) to take over the business of another company or other companies; or
  - (ii) to acquire the securities of, or control of, another company or companies,
 or for either of those purposes and for other purposes, shall be deemed to have paid a dividend as mentioned in this subparagraph in any year in which such a dividend has been paid by the other company or all the other companies, as the case may be; or
- (f) further securities in any one company which, at the market price ruling at the date of the proposed increase in the investment, would bring the total investment in that company to more than five per centum of the total

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investments of the Fund as valued at the thirty-first day of December immediately preceding the date of the proposed investment.

And further provided that such property and securities —

- (g) do not bring the investments in property and securities authorised by this paragraph in excess of such proportion of the total investments of the Fund as may from time to time be fixed by the Minister with the concurrence of the Minister of Finance; and for the purposes of this subparagraph —

“total investments of the Fund” means the total investments thereof as valued on the thirty-first day of December immediately preceding the date of the proposed investment; and

“investments in property and securities authorised by this paragraph” means investments in property and securities authorised as aforesaid (as valued on the thirty-first day of December immediately preceding the date of the proposed investment) less any such investment sold since that date (as valued at its price of sale) plus any such investment made since that date (as valued at its purchase price) including the investment proposed to be made.