



MONTSERRAT

CHAPTER 15.21

WORKMEN'S COMPENSATION ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 15.21

WORKMEN'S COMPENSATION ACT

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CHAPTER 15.21**WORKMEN'S COMPENSATION ACT**

*(Acts 5 of 1957, 23 of 1961, 39 of 1961, 10 of 1977, 12 of 1987,
9 of 1989, 7 of 1997, 9 of 1997, 4 of 2003 and 9 of 2011)*

Commencement

[1 July 1957]

Short title

1. This Act may be cited as the Workmen's Compensation Act.

Interpretation

2. (1) In this Act—

“**adult**” and “**minor**” mean respectively a person who is not and a person who is under the age of seventeen years;

“**court**” means the appropriate Magistrate's Court determined in accordance with the provisions of section 38;

“**dependants**” means such of the members of a workman's family as were wholly or mainly dependent upon the wages of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of a child, leaves such a child so dependent upon his wages or, shall include such child and parent or grandparent respectively:

Provided that, a person shall not be deemed to be mainly dependent on the wages of another person unless he was dependent mainly on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position;

“**employer**” includes Her Majesty in Her Government of Montserrat and any person or body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall for the purposes of this Act, save as is provided in section 22(1), be deemed to continue to be the employer of the workman whilst he is working for that other person.

In relation to a person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a

contract of bailment (other than a hire purchase agreement) the person from whom the use of the vehicle or vessel is so obtained shall be deemed to be the employer.

In relation to a person, employed for the purposes of any game or recreation and engaged or paid by a club, the manager or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;

“Labour Commissioner” means the Labour Commissioner appointed under section 6 of the Labour Code; (*Inserted by Act 9 of 1989*)

“Labour Officer” means the Labour Officer appointed under section 6 of the Labour Code; (*Inserted by Act 9 of 1989*)

“manager”, in relation to a ship, means the ship’s husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

“medical practitioner” means a person registered to practise medicine and surgery under the Medical Act;

“medical referee” means a medical practitioner appointed under section 48 as a medical referee for the purposes of this Act;

“member of a family” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister and shall include any child or children, not specifically mentioned, living with the deceased at the time of his death and wholly or mainly dependent on his earnings; and such other person as was at the time of the injury living in the household of the worker and was wholly or mainly dependent on his earnings;

“partial incapacity” means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that, every injury specified in the Schedule shall be deemed to result in permanent partial incapacity;

“ship”, **“vessel”**, **“seaman”** and **“port”** shall have the same meaning as in the Merchant Shipping Act, 1894;

“total incapacity” means such incapacity whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such incapacity:

Provided that, permanent total incapacity shall be deemed to result from the permanent total loss of the sight of both eyes or from

any combination of injuries specified in the Schedule where the aggregate percentage of the loss of earning capacity, as specified in the Schedule against these injuries, amounts to 100%;

“**wages**” includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment, or remuneration for overtime remunerated at a special rate or not habitually performed;

“**workman**”, subject to the exceptions hereinafter mentioned, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing and whether the remuneration is calculated by time or by work done:

Provided that, the following persons shall be excepted from the definition of workman, that is to say—

(a) any person employed otherwise than by way of manual labour whose earnings exceed \$10,000 a year or such sum as may from time to time by order be fixed by the Governor acting on the advice of Cabinet;

(Amended by Act 10 of 1977 and 9 of 2011)

(b) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club;

(c) an outworker, that is to say, a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials;

(d) a member of the employer's family who works exclusively on his behalf and who lives in his house; *(Substituted by Act 12 of 1987)*

(e) members of the Police Force, including special and additional constables;

(f) a person in the civil employment of Her Majesty otherwise than in Her Government of Montserrat, who has been engaged in a place outside Montserrat;

(g) a person in the naval, military or air service of the Crown.

(2) Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

(3) If on any proceedings for the recovery of compensation under this Act it appears to the court by whom the claim to compensation is to be settled that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened, was illegal, the court may, if having regard to all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.

Compensation

Employers' liabilities for compensation

3. (1) If in any employment a workman suffers personal injury by accident arising out of and in the course of such employment his employer shall be liable to pay compensation in accordance with the provisions of this Act:

Provided that, the employer shall not be so liable under this Act for such compensation should—

- (a) the injury not result in the total or partial incapacity of the workman for a period exceeding three days;
- (b) the accident be proved to be attributable to the workman's own serious and wilful misconduct which shall include—
 - (i) his being under the influence of drugs or intoxicating drink; or
 - (ii) a contravention of any law, regulation or order, whether statutory or otherwise, expressly made for the purpose of ensuring the safety or health of workmen, or of preventing accidents to workmen, if the contravention was committed deliberately or with a reckless disregard of the terms of such law, regulation or order; or
 - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or
 - (iv) any other act or omission which the court may, having regard to all the circumstances of an accident, declare to be serious and wilful misconduct;

- (c) it be proved that the accident would not have occurred, or, in so far as it would the incapacity or death would not have been caused, but for a pre-existing diseased condition of the workman;
- (d) death or incapacity result from personal injury if the workman has at any time represented to the employer that he was not suffering from that or a similar injury, knowing that the representation was false.

(2) An accident resulting in the death or total and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment and the employer shall be liable to pay compensation notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business.

Accidents happening while meeting emergency

4. An accident happening to a workman in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business, shall be deemed to arise out of and in the course of his employment and the employer shall be liable to pay compensation, if the accident happens while he is taking steps on an actual or supposed emergency at these premises, to rescue, succour or protect persons who are, or are thought to be or may possibly be, injured or imperilled, or to avert or minimise serious damage to property.

Employers not liable in certain cases

5. Notwithstanding anything in this Act, no compensation shall be payable under this Act in respect of any injury directly or indirectly sustained as a result of war, invasion, act of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, mutiny, insurrection, rebellion, revolution, conspiracy or military or usurped power.

Liability of employer for expenses of conveyance to place of treatment and for other expenses of treatment

6. (1) In every case where injury arising out of and in the course of his employment has been sustained by a workman, the employer shall irrespective of whether the workman is disqualified for compensation under the provisions of section 3(1)(a) be liable to pay to the workman or to any other person advancing the same, the reasonable expenses of conveying, where necessary, the injured workman from the place of the accident to the place of treatment and thence to his residence.

(2) Where medical treatment or examination is immediately required as a result of bodily injury (including fatal injury) to a workman arising out of and in the course of his employment and the treatment or examination so required (in this section referred to as “**emergency treatment**”) is effected by a medical practitioner, the employer shall irrespective of whether the workman is disqualified for compensation under the provisions of section 3(1)(a) be liable to pay to the practitioner—

- (a) a fee prescribed by regulations made under this Act in respect of each workman in whose case the emergency treatment is effected by the practitioner, and
- (b) a sum in respect of any distance which the practitioner must cover in order to proceed from the place whence he is summoned to the place where the emergency treatment is carried out by him and to return to the first mentioned place, equal to the travelling allowance paid by Government to officers in the employment of Government:

Provided that, the minimum sum to which the medical practitioner shall be entitled shall not in any case be less than the amount to which the practitioner would be entitled had he travelled a distance of two miles.

(3) The employer shall, irrespective of whether the workman is disqualified for compensation under the provisions of section 3(1)(a), be liable to pay to the workman or to any other person providing the same the reasonable cost, charges and expenses (which shall include travelling expenses necessary as a result of periodic medical treatment prescribed by a medical practitioner, and also expenses incurred by the workman in establishing his claim to compensation, provided he does so successfully) in respect of any medical treatment given to the workman in consequence of any personal injury sustained by him and arising out of and in the course of the workman's employment by that employer, such cost, charges and expenses being adjusted to the workman's actual physical condition occasioned by the injury and not exceeding, in respect of medical treatment as an out-patient, \$300. (*Amended by Act 10 of 1977*)

(4) In every case where injury arising out of and in the course of his employment has been sustained by a workman the employer shall irrespective of whether the workman is disqualified for compensation under the provisions of section 3(1)(a) be liable to provide such workman at his expense necessary medical, surgical and pharmaceutical aid. (*Inserted by Act 9 of 1989*)

To whom compensation payable

7. (1) The compensation shall be payable to or for the benefit of the workman, or where death results from the injury, to or for the benefit of his dependants, as provided by this Act.

(2) Where there are both total and partial dependants nothing in this Act shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

Amount of compensation

8. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely—

- (a) where death results from the injury the actual cost of the burial of the deceased workman to an amount not exceeding \$500 and in addition—
 - (i) if the workman leaves a dependant or dependants wholly dependent upon his earnings, a sum equal to forty two months' wages or \$25,000 whichever is the less;
 - (ii) if the workman does not leave a dependent or dependants wholly dependent upon his earnings but leaves a dependant or dependants mainly so dependent, such sum not exceeding the amount of compensation payable under the preceding sub-paragraph as may be agreed upon, or in default of agreement as may be awarded by the court to be reasonable and proportionate to the injury to the said dependant or dependants;
- (b) where permanent total incapacity results from the injury—
 - (i) in the case of an adult, a sum equal to fifty four months' wages or \$30,000 whichever is the less;
 - (ii) in the case of a minor, a sum equal to 108 months' wages or \$30,000 whichever is the less;
- (c) where permanent partial incapacity results from the injury—
 - (i) in the case of an injury specified in the Schedule such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and
 - (ii) in the case of an injury not specified in the Schedule, such percentage of the compensation payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury:

Provided that, such compensation may be increased by such an amount as may be agreed upon or, in default of agreement, as may be awarded by the court, having regard to the nature of the injury sustained in relation to

the type of work and other circumstances of the workman.

Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated, but not so in any case as to exceed the amount which would have been payable if total incapacity had resulted from the injuries;

- (d) where temporary incapacity, whether total or partial, results from the injury—
- (i) in the case of a weekly paid workman a sum equal to the weekly wages of such workman payable on the eighth day from the date of the incapacity and thereafter weekly during the incapacity or during a period of five years, whichever period is the shorter;
 - (ii) in the case of a monthly paid workman a sum equal to half the monthly wages of such workman payable on the sixteenth day from the date of incapacity and thereafter half monthly during the incapacity or during a period of five years, whichever period is the shorter.

(2) The period of incapacity shall be deemed to commence on the day of the accident.

(3) In the event of permanent total or permanent partial incapacity following temporary incapacity no deduction shall be made from any lump sum payable in respect of such permanent total or permanent partial incapacity by reason of weekly or half-monthly payments having been made during temporary incapacity.

(4) On the ceasing of the incapacity before the date on which any weekly or half-monthly payment falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.

(Amended by Act 10 of 1977)

Additional compensation to injured workman to defray cost of assistance during temporary incapacity

9. (1) Where in the opinion of a medical practitioner a workman's incapacity, whether total or partial, is such that he requires the constant assistance of another person during his incapacity, additional compensation shall be paid to the workman during such incapacity at a rate being not more than 50% of the rate prescribed in section 8. *(Amended by Act 12 of 1987)*

(2) Before any person is employed to assist a workman under subsection (1) the opinion of a medical practitioner shall be sought as to the nature of the assistance required and the probable duration thereof.

Artificial limbs and apparatus

10. (1) An employer shall be liable to supply artificial eyes and dental appliances to a workman whenever the necessity for such artificial eyes or dental appliances is the result of an accident arising out of and in the course of the employment of the workman by that employer.

(2) Where an accident arising out of and in the course of his employment has caused the loss of a limb or other mutilation and the supply of artificial member or members and apparatus is considered necessary such artificial member or members and apparatus shall be provided at the expense of the employer and the rate of compensation payable shall be reduced in proportion to the improvement in earning capacity resulting from the use of the artificial member or members and apparatus. *(Amended by Act 12 of 1987)*

(3) The court may order an employer to pay for the replacement or repair of an artificial member or members and apparatus damaged as a result of an accident, arising out of and in the course of a workman's employment by that employer.

For the purpose of this section “**apparatus**” includes “**surgical appliances**”. *(Inserted by Act 9 of 1989)*

Method of calculating wages

11. (1) For the purposes of section 8 the wages of a workman shall be calculated as follows, namely—

(a) in the case of a weekly paid workman—

- (i)* where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the weekly wages of the workman shall be one fifty-second of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- (ii)* in other cases, the weekly wages shall be seven times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period;

(b) in the case of a monthly paid workman—

- (i)* where the workman has, during a continuous period of not less than twelve months immediately preceding the accident been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one twelfth of the total wages which have fallen

due for payment to him by the employer in the last twelve months of that period;

- (ii) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period:

Provided that—

- (A) where by reason of the shortness of the time during which the workman has been in the employment of an employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute a rate of remuneration which would be representative of the workman's average weekly or monthly earnings, regard may be had to the average weekly or monthly amount which, during the twelve months previous to the accident, was earned by a person of average diligence or ability in the same category employed at the same work by the same employer, or, if there is no such person who was so employed, by such a person in the same category employed in the same class of employment and in the same district;
- (B) where in any case it seems more equitable, compensation may be awarded, having regard to the earnings of the workman at the time of the accident.

(2) A period of service shall, for the purpose of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Review of payments

12. (1) Any weekly or half-monthly payment payable under this Act either under an agreement between the parties or under an order of a court may be reviewed by a court on the application either of the employer or of the workman if—

- (a) where the review takes place more than six months after the accident, it is claimed and proved that, had the workman remained uninjured and continued in the same class of employment as that in which he was employed at the date of the accident, his average weekly or monthly earnings during the twelve months immediately preceding the review would, as a result of fluctuations in rates of remuneration, have been greater or less by more than twenty per cent than his average weekly or monthly earnings during the twelve months

previous to the accident (or, if the weekly or half-monthly payment has been previously varied on a review, during the twelve months previous to that review or the last of such reviews), in which case the weekly or half-monthly payment shall be varied so as to make it such as it would have been if the rates of remuneration obtaining during the twelve months previous to the review had obtained during the twelve months previous to the accident;

- (b) there has been a change in the condition of the workman, in which case, subject to such exceptions as may be provided by regulations made under this Act, the application shall be accompanied by the certificate of a medical practitioner.

(2) Any weekly or half-monthly payment may, on review under this section, subject to the other provisions of this Act, be continued, increased, decreased or ended, or, if the incapacity is found to have resulted in permanent incapacity, be converted to the lump sum to which the workman is entitled.

Cases in which employer may alter weekly or half-monthly payment

13. (1) An employer shall not be entitled otherwise than in pursuance of an agreement to end or diminish a weekly or half-monthly payment except in the following cases—

- (a) where a workman in receipt of a weekly or half-monthly payment in respect of total incapacity has actually returned to work;
- (b) where the medical practitioner who has examined the workman under section 19 or, in his absence, any other medical practitioner has certified that the workman has wholly or partially recovered, or that the incapacity is no longer due in whole or in part to the accident, and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with notice of the intention of the employer from the date of the service of the notice to end the weekly or half-monthly payment, or to diminish it by such amount as is stated in the notice, has been served by the employer upon the workman:

Provided that—

- (i) in the last mentioned case, if before the expiration of ten clear days from the date of the service of the notice, the workman sends to the employer the report of another medical practitioner (which report shall set out the ground of his opinion) disagreeing with the certificate so served by the employer, the weekly or half-monthly payment shall not be ended or diminished except in

accordance with such report, or, if and so far as the employer disputes such report, except in accordance with the certificate given by a medical referee in pursuance of section 49; and

(ii) where an application has been made in pursuance of the said section 49 to refer the dispute to a medical referee it shall be lawful for the employer, pending the settlement of the dispute to pay into court—

(A) where the notice was a notice to end the weekly or half-monthly payment, the whole of each weekly or half-monthly payment becoming payable in the meantime;

(B) where the notice was a notice to diminish the weekly or half-monthly payment, so much of each weekly or half-monthly payment so payable as is in dispute,

and the sum so paid into court shall, on the settlement of the dispute, be paid to the employer or to the workman, according to the effect of the certificate of the medical referee, or, if the effect of that certificate is disputed, as, in default of agreement, may be determined by the court or, on appeal by a Judge of the High Court;

(2) Nothing in this section shall be construed as authorising an employer to end or diminish a weekly or half-monthly payment in any case in which, or to an extent to which, apart from this section he would not be entitled to do so.

Distribution of compensation

14. (1) Compensation payable where the death of a workman has resulted from an injury shall be paid into court, and any sum so paid in shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the court thinks fit, or may, in the discretion of the court be allotted to any one such dependant, and the sum apportioned among dependants or allotted to any dependant shall be paid in periodical payments; or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit. (*Amended by Act 12 of 1987*)

(2) Compensation payable where permanent incapacity has resulted from an injury shall be paid into court and any sum so paid shall be paid in periodical payments; the person entitled thereto or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit. (*Amended by Act 12 of 1987*)

(3) Any other compensation payable under this Act, shall be paid into court and, when so paid in, shall be paid by the court to the person entitled thereto.

(4) The receipt of the clerk of the court shall be sufficient discharge in respect of any amount paid in under the provisions of this Act.

(5) On the payment in of any money under subsection (1) the court may deduct therefrom the actual cost of the burial of the deceased workman, to an amount not exceeding \$500 and pay the same to the person by whom such expenses were incurred, and shall, if it thinks necessary, cause notice to be published, or to be served on each dependant in such manner as it thinks fit calling upon the dependants to appear before it on such date as it may fix for determining the distribution of the compensation. If the court is satisfied, after any inquiry which it may deem necessary, that no dependant exists, the court shall repay the balance of the money after deduction of hospital and other medical expenses incurred, to the employer by whom it was paid. The court shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(Amended by Act 10 of 1977)

(6) Where a weekly or half-monthly payment is payable under this Act to a workman under any legal disability, the court may, of its own motion or on application made to it in this behalf, order that such weekly or half-monthly payment be paid during the disability to any dependant of the workman or to any other person whom it thinks best fitted to provide for the welfare of the workman.

(7) Where, on application made to the court in this behalf or otherwise, the court is satisfied that, on account of neglect of children on the part of a parent, or on account of the variation of the circumstances of any dependant, or for any other sufficient cause, an order of the court as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order as it thinks just in the circumstances of the case:

Provided that, no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(8) The solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of such claim, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except in accordance with the order of a court made, subject to regulations made under this Act, on an application either by the person claiming compensation or by his solicitor or agent to determine the amount of the costs to be paid to the solicitor or agent.

(9) Any payment to be made in terms of subsection (1) or subsection (2) may be converted into a lump sum payment by the Court where the

Court is of the opinion that a lump sum payment is desirable in the circumstances and is satisfied that it will be properly utilized.

(Inserted by Act 12 of 1987)

Compensation not to be assigned, attached or charged

15. Save as provided by this Act, no lump sum or weekly or half-monthly payment payable under this Act shall be capable of being assigned, charged or attached or shall pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Conditions of Compensation

Requirements as to notice of accident and claim for compensation

16. (1) Proceedings for the recovery under this Act of compensation for any injury shall not be maintainable unless—

- (a) written or oral notice of the accident has been given as soon as practicable after the happening thereof;
- (b) written or oral notice of the accident has been given before the workman has voluntarily left the employment in which he was injured;
- (c) the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury;
- (d) in the case of death, the claim for compensation has been made within six months after the date of death or within six months after the date of the accident;
- (e) in the case of death occurring more than six months after the accident causing injury, a claim for compensation has been made by the workman within six months of the accident:

Provided that—

- (i) any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if an amended notice were then given and the hearing postponed, be prejudiced in his defence by the defect or inaccuracy or that such defect or inaccuracy was occasioned by mistake, absence from Montserrat or other reasonable cause;
- (ii) the failure to make a claim within the period specified shall not be a bar to the maintenance of such proceedings

if it is found that the failure was occasioned by absence from Montserrat or other reasonable cause;

- (iii) the failure to give such notice or make a claim within the period specified shall not be a bar to the maintenance of such proceedings if there be an acknowledgement in writing, signed by the employer or his authorised agent, that he waives compliance with the provisions of this section and the said provisions shall be deemed to be waived to the extent set out in such acknowledgement;
- (iv) if the employer or his authorised agent admits liability to pay compensation, it shall not be necessary for the workman to give any such notice, and the claim for compensation may be made within three months after the date of the admission of liability;
- (v) the want of a notice shall not be a bar to the maintenance of proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident.

(2) Notice in respect of an injury under this Act may be given to the employer (or, if there is more than one employer, to one of such employers) or to any foreman or other official under whose supervision the workman is employed, or to any person designated for the purpose by the employer, and shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened.

(3) The notice, if in writing, may be given by delivering the same at or sending it by the post in a registered letter addressed to, the residence or place of business of the person to whom it is to be given.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice, if in writing, may also be given by delivering it or by sending it by post in a registered letter addressed to the employer, at the office, or if there be more than one office, any one of the offices of such body.

(5) The workman shall, if required by his employer, supply to him such further particulars of the accident and of the injury as the employer may reasonably require.

(6) Any person making a false declaration, knowing it to be false, for the purpose of obtaining compensation shall be liable on summary conviction to a penalty of \$500. (*Amended by Act 10 of 1977*)

Requirement as to notice of accident by the workman

17. (1) Where an accident occurs for which a claim for compensation may be made under the provisions of this Act, the workman injured shall

report such accident to the Labour Commissioner or to the Labour Officer as soon as practicable.

(2) The Labour Commissioner or the Labour Officer shall record details of the accident as far as they could be ascertained and furnish a summary of it to the employer by way of a notice served on him of an impending claim.

(3) Where an accident has resulted in death or total incapacitation of a workman the employer shall report the same to the Labour Commissioner.

(Inserted by Act 9 of 1989)

Payments to cease on workman ceasing to reside in Montserrat

18. If a workman receiving a weekly or half-monthly payment ceases to reside in Montserrat, such weekly or half-monthly payments shall thereupon be redeemed by a lump sum to be determined by agreement between the parties and if the parties cannot agree, as may be determined by a court on the application of either party.

Medical examination after notice of accident

19. (1) Where a workman has given notice of an accident or where an accident has occurred in respect of which the necessity of giving notice under this Act is dispensed with, he shall, if so required by the employer or the Labour Commissioner submit himself for examination by a medical practitioner provided and paid by the employer. *(Amended by Act 9 of 1989)*

(2) The workman shall, when required, attend upon that medical practitioner at the time and place notified to the workman by the employer or the Labour Commissioner provided such time and place is reasonable.

(Amended by Act 9 of 1989)

(3) In the event of the workman being, in the opinion of any medical practitioner whatever, unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and the medical practitioner so named shall fix a time and place for a personal examination of the workman and shall send him notice accordingly.

(4) If the workman refuses or wilfully neglects to submit himself to such examination, or in any way wilfully obstructs or unnecessarily delays such examination, his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation, shall be suspended until such examination has taken place.

(5) The workman shall be entitled to have his own medical practitioner present at such examination, but at his own expense.

(6) Where the workman is not attended by a medical practitioner he shall, if so required by the employer, submit himself for medical treatment

by a medical practitioner selected by the employer without expense to the workman.

(7) If the workman has refused to submit himself to treatment by a medical practitioner when so required under the provisions of subsection (6), or having submitted himself to such treatment has disregarded the instructions of the medical practitioner, then if it is thereafter proved that the refusal or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had submitted himself to treatment by, and duly carried out the instructions of, the medical practitioner, and compensation, if any, shall be payable accordingly.

(8) Where a claim for compensation is made in respect of the death of a workman, then if the workman had refused or wilfully neglected to submit himself to examination by a medical practitioner when so required under the provisions of this section, or had wilfully obstructed or unnecessarily delayed the examination, or had refused to submit himself to treatment by a medical practitioner when so required under the provisions of this section, or, having submitted himself to treatment, had disregarded the instructions of the medical practitioner, and if it is thereafter proved that the refusal, neglect, obstruction, delay or disregard was unreasonable in the circumstances of the case and that death of the workman was caused thereby, the death shall not be deemed to have resulted from the injury and compensation, if any, shall be payable as if the workman had suffered injury and resulting incapacity of the same nature and duration as might reasonably have been expected to be if the workman had submitted himself to treatment by, and duly carried out the instructions of, the medical practitioner.

Medical examination of workman receiving payments

20. Any workman receiving weekly or half-monthly payments under this Act shall, if so required by the employer, from time to time but at reasonable intervals, submit himself for examination by a medical practitioner provided and paid by the employer and the provisions of section 19 shall apply to any such examination.

No compensation payable for period of suspension of right

21. Where under this Act a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

Agreements for payment of compensation

22. (1) The employer and the workman may, after the injury in respect of which the claim to compensation has arisen, agree in writing to—

- (a) the amount to be paid by the employer as compensation in respect of the incapacity of the workman resulting from that injury;
- (b) any other matter under this Act: and such agreements shall be forwarded to the Labour Commissioner who shall forward same to the court which may within three months cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances may be thought just if it is of the opinion that—
 - (i) the sum paid or to be paid was or is inadequate or excessive; or
 - (ii) the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means, as would in law be sufficient ground for avoiding an agreement; or
 - (iii) the agreement was entered into in ignorance of or under a mistake as to the true nature of the injury.

(Amended by Act 9 of 1989)

(2) Any such agreement may on application to the Magistrate be made a judgment of the court under this Act.

(3) Where it is desired to have an agreement made a judgment of the court, a memorandum thereof shall be sent by any interested party to the clerk of the court who shall, subject to the provisions hereinafter contained, on being satisfied as to its genuineness, record such memorandum in a special register, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the court:

Provided that—

- (a) no such memorandum shall be recorded before fourteen days after the despatch by the clerk by registered post, of notice to the parties interested; and
- (b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer proves by affidavit that the workman has in fact returned to work and is earning wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the court under the circumstances may think just.

Sub-contracting

23. (1) Where any person (in this section referred to as “**the principal**”) in the course of or for the purposes of his trade or business, contracts with

any other person (in this section referred to as “**the contractor**”) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall, provided the notice of the accident required under section 16 is given to him, be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then in the application of this Act references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, ploughing, or other agricultural work and the contractor provides and uses machinery driven by mechanical power for the purposes of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

Compensation for occupational diseases

24. (1) If a workman contracts any disease to which this section applies, and the disease is due to the nature of the employment, and the incapacity or death of the workman results from that disease, compensation shall be payable as if the disease was a personal injury by accident arising out of and in the course of that employment, and all the provisions of this Act shall apply accordingly, subject however to the provisions of this section.

(2) For the purposes of calculating the earnings of the workman in a claim for compensation under this section, the commencement of the incapacity of the workman, or the date of his death if there has been no previous period of incapacity, shall be treated as the date of the happening of the accident, if he is then employed in any employment to the nature of which the disease is due, by the employer from whom the compensation is claimed, and, if he is not then so employed, the last day on which he was so

employed shall for this purpose be treated as the date of the happening of the accident.

(3) For all other purposes of this Act, the commencement of the incapacity of the workman, or the date of his death if there has been no previous period of incapacity, shall be treated as the date of the happening of the accident.

(4) If the disease has been contracted by a gradual process, so that two or more employers are severally liable to pay compensation in respect thereof under this section, the aggregate amount of compensation recoverable shall not exceed the amount that would have been recoverable if those employers had been a single employer, and in any such case those employers shall, in default of agreement, be entitled as between themselves to such rights of contribution as the Magistrate thinks just, having regard to the circumstances of the case, in any action brought or application made by any of them for this purpose.

(5) The diseases to which this section applies shall be prescribed by order from time to time by the Governor acting on the advice of Cabinet. *(Amended by Act 9 of 2011)*

(6) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is contracted as a result of an injury in respect of which he is entitled to compensation under the other provisions of this Act.

Insurance

Compulsory insurance against workmen's compensation claims

25. (1) Subject to the provisions of this Act, it shall not be lawful for any person to employ another person as a workman, unless there is in force in relation to the employment of that workman a policy of insurance or other contract of indemnity in respect of the liability of the employer in case of the death of or bodily injury to the workman arising out of and in the course of such employment:

Provided that, this subsection shall apply only to the employments set out in subsection (4) unless the Governor acting on the advice of Cabinet by order published in the *Gazette* declares that it shall apply to any other employment mentioned in that order, and the Governor acting on the advice of Cabinet may at any time and from time to time make a new order applying this subsection to other employments and may alter, amend or revoke any such order:

(Amended by Act 9 of 2011)

Provided further that this subsection shall not apply where the workman is employed by or on behalf of the Crown or the Government of Montserrat.

(2) Subsection (1) shall not apply where—

- (a) there is in force regulations made pursuant to section 28 of the Social Security Act providing for the payment of benefits in case of injury to, or death of, a workman during the course of his employment; and
- (b) the employer of a workman makes contributions to the Social Security Fund in accordance with the Social Security (Contributions) Regulations in respect of the liability of that employer in case of injury to, or death of, that workman during the course of his employment.

(Inserted by Act 7 of 1997)

(3) The Governor or any person authorised by him in that behalf may call for and inspect any policy of insurance taken out under the provisions of this section.

(4) The employments to which subsection (1) applies are—

- (a) any employment connected with building construction and structural work in connection with buildings, if more than three workmen are engaged thereupon;
- (b) any employment connected with any woodworking machinery or sawmill, sugar factory, foundry, docks, wharves or quays and the loading and unloading of ships, thereat;
- (c) any employment connected with mining or forestry; and
- (d) any employment connected with any dangerous operation.

(5) The Governor acting on the advice of Cabinet may, if satisfied that a bond in such sum of money as he may fix entered into by an employer with sufficient sureties offers as good a security for the payment of compensation under this Act, direct that such bond may be accepted in *lieu* of the insurance or contract of indemnity required under subsection (1), and every such bond, made in favour of the Accountant General and deposited with the Registrar of the High Court shall, for the purposes of subsection (1), stand in *lieu* of, and have the same effect as such insurance or contract of indemnity. *(Amended by Act 9 of 2011)*

(6) The Accountant General shall, upon any employer failing to pay any sum of money agreed upon or adjudged by the court to be paid as compensation under this Act for the benefit of a workman or his dependants, enforce the bond in relation to that workman and the bond, if given to secure the payment of compensation in respect of other workmen, shall remain in force as regards the other workmen, notwithstanding such enforcement.

(7) Every person who acts in contravention of subsection (1) of this section shall be liable on summary conviction to a fine of \$1,000 or to imprisonment for a term of six months. (*Substituted by Act 10 of 1977*)

(8) Notwithstanding anything contained in any law prescribing the time within which proceedings may be brought under the Magistrate's Court Act, proceedings for an offence under this section may be brought within a period of six months from the date on which it first came to the knowledge of the prosecutor that the offence had been committed.

(9) In subsection (4), "**dangerous operation**" means an operation connected with any manufacturer, machinery, plant on process or any description of manual labour in factories, workshops or elsewhere which the Governor acting on the advice of Cabinet may, by notice published in the *Gazette*, declare to be dangerous to life or limb for the purposes of workmen's compensation.

(*Amended by Acts 7 of 1997 and 9 of 2011*)

Conditions under which liability for payment by insurer arises

26. (1) If, after insurance has been effected or other contract of indemnity entered into or a bond securing the payment of compensation given pursuant to section 25, an employer becomes liable to pay compensation to a workman or his dependants, then notwithstanding anything to the contrary in any policy of insurance, contract of indemnity or bond contained, the insurer or person liable to indemnify the employer or to secure the payment of compensation under a bond shall pay the compensation agreed upon or adjudged to be paid, including any sum payable in respect of costs, in the manner prescribed in section 14.

(2) No sum shall, under the provisions of this section, be payable by an insurer or person liable under a contract of indemnity or a bond given to secure payment of compensation—

- (a) unless, in the case of compensation agreed upon between an employer and a workman or his dependants, such insurer or other person liable as aforesaid consented to pay the sum agreed upon as compensation to the workman or his dependants; or
- (b) unless, in the case of compensation adjudged by the court to be paid to a workman or his dependants, the insurer or person liable as aforesaid had notice of the application to determine the compensation in time to enable him to apply to be added as a co-defendant, if he is so minded; or
- (c) in respect of any judgment to pay compensation, so long as execution thereon is stayed by the court or pending appeal.

(3) No sum shall, under the provisions of this section, be payable by an insurer in respect of a policy of insurance if before the happening of the

event which was the cause of death or personal injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein.

(4) On the application of an insurer, or other person liable under a contract of indemnity or bond to secure the payment of compensation, the court shall add the insurer or other such person as a co-defendant, and he shall have the same right to defend the proceedings as if he were the employer.

(5) Where any sum paid by the insurer or person liable to indemnify the employer or to secure the payment of compensation under a bond is covered by the policy of insurance, contract of indemnity or bond (as the case may be) by virtue only of this section, such sum shall be recoverable by the insurer or other person as aforesaid from the employer.

Registration of employers

27. (1) Every employer to whom section 25 applies shall—

- (a) within thirty days after the commencement of this Act in the case of an employer already in business; or
- (b) within thirty days after commencing business, make application for registration to the Labour Commissioner on the form by Regulations.

(2) The Labour Commissioner shall, upon the receipt by him of an application under subsection (1) containing the particulars specified in the prescribed form and on being satisfied that the particulars are correct forthwith register the employer and the particulars thereof to which the application relates and he shall issue to the applicant a certificate of registration on the prescribed form.

(3) Where any change takes place in any of the particulars registered under subsection (2), the employer shall, within thirty days after the date upon which the change takes place, make application to the Labour Commissioner who shall amend the register accordingly and issue to the applicant a certificate of registration of the change as aforesaid.

(4) The Labour Commissioner may take such steps as he may consider necessary to ascertain whether the particulars supplied by the employers who apply for registration are correct.

(5) Any person who fails to comply with the requirements of this section or who wilfully delays or obstructs the Labour Commissioner or the Labour Officer in the exercise of any power, duty or function under this section shall be liable for summary conviction to a penalty of \$500.

(Substituted by Act 9 of 1989 and amended by Act 4 of 2003)

*Alternative Remedies***Alternative remedies**

28. (1) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may at his option claim compensation under this Act, or take proceedings independently of this Act, but the employer shall not be liable to pay compensation under this Act and damages. Acceptance of compensation under this Act shall not operate as a bar to proceedings independent of this Act unless it is proved that the workman being fully aware of his right to take proceedings independent of this Act and of his rights under subsection (2) elected to accept compensation under this Act or unless in the opinion of the Court such bar would otherwise cause undue hardship to the workman.

(2) If, within the time limited in this Act for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by an accident, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried, or, if the determination is the determination on an appeal (by either party) by an appellate tribunal, that tribunal, shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act:

Provided that, the said court or appellate tribunal may, instead of itself assessing such compensation, remit the case to the Magistrate for the assessment of the compensation, and in such case may order the Magistrate to deduct from the amount of compensation assessed by him all or part of such costs as aforesaid.

(3) In any proceedings under subsection (2), when the court or appellate tribunal assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction of costs, and such certificate shall have the force and effect of, and shall be registered as, an agreement under this Act.

Remedies against employer and stranger

29. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

- (a) the workman may take proceedings both against that person to recover damages and against any person liable to pay

compensation under this Act but shall not be entitled to recover both damages and compensation; and

- (b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under section 23 (relating to liability in case of workmen employed by contractors), shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by the court.

Insolvency or Bankruptcy of Employer

Insolvency or bankruptcy of employer

30. (1) Where the employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming insolvent or bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver or manager of the company's business or undertaking having been duly appointed, or possession having been taken by or on behalf of the holders of debentures secured by a floating charge of any property comprised in or subject to the charge, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to insolvency or bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency or bankruptcy or liquidation, or, as the case may be, he may recover the balance from the receiver or manager.

(3) There shall be included among the debts which—

- (a) under the Bankruptcy Act are, in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts; and
- (b) under the Companies Act are in the winding up of a company to be paid in priority to all other debts, the amount due in respect of any compensation or liability for compensation accrued before the following date, that is to say—
- (i) in the first case the date of the receiving order; and

- (ii) in the second case the date of the commencement of the winding up of the company.

For the purposes of this provision where the compensation is a weekly or half-monthly payment, the amount due in respect thereof shall, failing agreement between the two parties, be a lump sum to be fixed by the court.

(4) The provisions of this section with respect to preferences and priorities shall not apply where the insolvent or bankrupt or the company has entered into such a contract with insurers as aforesaid.

(5) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Employer liable for compensation to disclose insurer

31. (1) If the employer becomes insolvent and is ordered to pay compensation under this Act, he shall, if requested, disclose whether he is insured against personal injury to or death of the workman employed by him and, if so insured, the name and address of the insurer and the amount for which he is insured.

(2) When the insurer indemnifies an employer against liability to pay compensation and has used or uses that employer's name or has acted on his behalf in any proceedings under this Act, that insurer shall be bound by the decision given upon those proceedings in the same manner and to the same extent as the employer and the insurer shall indemnify the employer accordingly:

Provided that, the liability of the insurer shall be limited by the terms and conditions of the policy of insurance subsisting between him and the employer.

Application to Special Classes of Persons

Application to workmen in the employment of the Crown

32. (1) The provisions of this Act shall apply to a workman in the employment of the Crown where in consequence of injury received by any such workman in the discharge of his duties either—

- (a) no pension or gratuity is payable to him or, in case of death, to his dependants, or
- (b) a pension or gratuity is so payable but is less than the compensation payable under this Act in which case the compensation under this Act shall be payable only to the extent of the difference between such pension or gratuity and the compensation otherwise payable under this Act.

(2) In this section the references to pension or gratuity shall be construed as meaning a pension or gratuity which is payable under any law relating to pensions in a case of injury received or death occurring in the discharge of duty in the service of the Government of Montserrat as defined in such law and which would not be payable if the injury were received or the death occurred otherwise.

Application to workmen in the employment of a local authority

33. (1) In the application of this Act to workmen in the employment of a local authority, the exercise and performance by it of its powers and duties conferred and imposed by law, or by-law or regulation shall be regarded as the trade, business or undertaking of that authority.

(2) The provisions of section 32 shall, *mutatis mutandis*, apply in respect of a workman in the employment of any local authority where provision exists by law or by-law or regulation for the grant of a pension or gratuity to such workman in the case of an injury received by him in the discharge of his duties, or to any other person in the event of the workman's death resulting from that injury.

Application to persons employed on ships

34. (1) This Act shall apply to masters, seamen, and apprentices to the sea service, provided that, such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in Montserrat, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in Montserrat, subject to the following modifications—

- (a) the notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident;
- (b) in the case of the death of the master, seaman or apprentice, the application for compensation shall be made within six months after news of the death has been received by the claimant;
- (c) where the injured master, seaman or apprentice is discharged or left behind in a United Kingdom Overseas Territory or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any Judge or Magistrate in the United Kingdom Overseas Territory, and by any British consular officer in the foreign country and if so taken shall be transmitted by the person by whom they

were taken to the Governor, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided in sections 691 and 695 of the Merchant Shipping Act, 1894, and those sections shall apply accordingly;

- (d) in the case of the death of a master, seaman or apprentice leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay expenses of burial;
- (e) the weekly or half-monthly payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in Montserrat relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman or apprentice;
- (f) any sum payable by way of compensation by the owner of the ship under this Act shall be paid in full notwithstanding anything in section 17 of the Merchant Shipping Act, 1979, (which relates to the limitations of liability), but the limitation of the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under section 28 (relating to remedies both against employer and stranger) as if the indemnity were damages for loss of life or personal injury;
- (g) any law that relates to the recovery of wages and seamen lost with their ship shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the application is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

(2) This Act shall also apply to any person not being a master, seaman or apprentice to the sea service, employed on board any such ship as is mentioned in this section, if he is so employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship, and if he is otherwise a workman within the meaning of this Act.

Detention of ships

35. (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port of Montserrat, or within three miles of the coast thereof, a Judge of the High Court may, upon its being shown to him by any person

applying in accordance with the rules of court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in Montserrat, issue an order directed to any officer of customs or other officer named by the Judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the Judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the Judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Where a complaint is made to the Governor that before an application can be made under this section the ship in respect of which the application is to be made will have departed from the limits within which she can be arrested, the ship shall, if the Governor so directs, be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention, if made in accordance with the directions of the Governor.

(4) Section 692 of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in Montserrat if it has an office in Montserrat at which service of writs can be effected.

(5) Where a ship has been demised to charterers, the provisions of this section shall apply to claims against the charterers of the ship as they apply to claims against the owners of a ship with the substitution of charterers for owners:

Provided that, no ship shall be detained on a claim against the charterers of the ship after the expiration of the term for which the ship is demised to them.

Application to employees in cases of increased risk

36. (1) Where it appears to the Governor acting on the advice of Cabinet that the conditions of employment of any class or category of employee involves an increased risk of injury or death, the Governor acting on the advice of Cabinet may by Order provide that the provisions of this Act shall apply to that category or class of employee as modified in the Order and an Order so made shall be effective to confer the right to compensation on such class or category of employee on such terms as may be specified in the Order. *(Amended by Act 9 of 2011)*

- (2) An Order under this section may—
- (a) modify the definition of “workman” as defined in this Act to include employees who, prior to the date of the Order, were not workmen within that definition;
 - (b) make provisions to prevent the duplication of compensation to a workman where additional compensation becomes due to that workman under the Social Security Scheme; and
 - (c) make such additional provisions as may be necessary to give effect to the provisions of this section.

(Inserted by Act 9 of 1997)

Procedure

Workman’s right to apply for compensation if no amount agreed in four weeks

37. If an employer on whom notice of the accident has been served as aforesaid does not within four weeks after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid, the workman or the Labour Commissioner acting on the written request of such workman as in this Act is provided for enforcing his claim to compensation.

(Amended by Act 9 of 1989)

All claims to be determined by Magistrate

38. (1) All claims for compensation under this Act and any matter arising out of proceedings thereunder shall be determined by the Magistrate’s Court. All such questions shall be determined upon application made to such Magistrate in manner provided by this Act.

(2) The court may, subject to regulations made under this Act, submit to a medical referee for report any matter of a medical character which seems material to any question arising in the course of the proceedings before the court.

(3) When the court has decided to refer a matter to a medical referee by virtue of the provisions of subsection (2), the court shall fix the time within which the parties may come to an agreement as to the choice of a medical referee, and failing such agreement, the court shall refer the matter to a medical referee chosen by the court.

(4) A medical referee to whom any such reference is made shall, in accordance with regulations made under this Act, give a certificate of his findings and such certificate shall be conclusive evidence as to the matters so certified.

(5) Regulations may be made by the Governor acting on the advice of Cabinet for prescribing the duties of the medical referee in cases of reference made under this subsection and the forms to be used. *(Amended by Act 9 of 2011)*

(6) No application for the settlement of any matter by the court shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(7) Notwithstanding anything in any other provision in this Act the Labour Commissioner is hereby empowered to act as an Arbitrator between the employer and the workman with a view to bring a settlement between them as to the amount of compensation or any matter arising out of the accident. *(Inserted by Act 9 of 1989)*

Application for compensation to be lodged with clerk of court accompanied by particulars

39. (1) A workman, an employer, or the Labour Commissioner (hereinafter called “**the applicant**”) who desires the determination of any question arising out of an accident in which compensation is or might be claimed shall lodge with the clerk of the Magistrate’s Court a written application in the prescribed form accompanied by particulars containing—

- (a) a concise statement of the circumstances under which the application is made and the relief or order which the applicant claims, or the question which he desires to have determined;
- (b) the full name and address of the applicant and of his attorney or agent and the name and address of the respondent.

(Amended by Act 9 of 1989)

(2) If the application be made by an employer it shall be accompanied by a statement whether he admits his liability to pay compensation, or denies such liability and whether the admission or denial is total or partial, and if he admits or denies liability partially, a statement of the extent to which he admits or denies liability. In the case of a denial of liability the grounds shall be stated.

(3) If the clerk of the court be satisfied that the applicant is, owing to illiteracy, blindness or any other physical cause, unable to furnish the information required, he shall himself fill in the application and particulars on the prescribed form.

Copy of application and particulars to be served on respondent

40. (1) As soon as an application together with the accompanying particulars and statement herein prescribed, has been lodged, the clerk of the court shall forthwith cause a copy thereof to be served upon the respondent together with a notice requiring the respondent to lodge with the

clerk of the court such answer as is prescribed in subsection (2) within the period therein prescribed and that in default of his complying with that or of his appearing at a time and place fixed in the notice, such order may be made under this Act as the Magistrate thinks just and expedient. Except with the written consent of the respondent communicated to the clerk of the court, not less than fourteen clear days shall elapse between the date of the service of the notice upon the respondent and the date fixed for hearing the application.

(2) If the respondent intends to oppose an application he shall, within seven days after service of notice, or within such extended period as the Magistrate may upon special request allow, lodge with the clerk of the court a written answer containing a concise statement of the extent and grounds of his opposition.

(3) The Magistrate may, at any time before the determination of the question in dispute and upon such terms as to adjournment or as to costs as he deems just allow an application, or any particulars or statement accompanying the same, or any answer thereto to be amended. Any such amendment shall be lodged with the clerk of the court who shall forthwith cause it to be served upon the opposite party.

Magistrate to have power and jurisdiction of Magistrate's Court

41. Save as is specially provided in this Act a Magistrate's Court shall, upon or in connection with any question to be determined thereunder, have all the powers and jurisdictions exercisable and be subject to all the duties and obligations to be performed by a Magistrate's Court of the district in or in connection with civil actions in such court, and the law, rules and practice in such civil actions shall *mutatis mutandis* apply; and any order made by a Magistrate under this Act may be enforced as if it were a judgment or order of the court.

Magistrate may adjourn hearing for twelve months where there is doubt as to degree of incapacity

42. (1) If the workman at the hearing of an application be incapacitated by reason of the injury in respect of which the application is made and if further it be uncertain whether the incapacity is temporary or permanent, or if permanent, whether it is partial or total, the Magistrate may, if he is satisfied that the workman is entitled to compensation in the event of the incapacity being permanent, adjourn the hearing for a period or periods not exceeding twelve months in all, reckoned from the date of the accident causing the injury and may make an interim order that the employer shall, in the meantime, pay such compensation to the workman as is provided by this Act in the case of temporary incapacity for work or permanent partial incapacity for work, as the case may be.

(2) If the workman at the hearing of an application be not incapacitated but there is reason to believe that the injury sustained by him

may ultimately result in his permanent or total incapacity for work or in his death, the Magistrate may adjourn the hearing for a period or periods not exceeding twelve months in all, reckoned from the date of the accident causing the injury so that the workman may retain his right to recover compensation in the case of permanent incapacity, partial or total, resulting ultimately from the injury, or the dependants retain their right to recover compensation in the event of the workman's death.

Power of Magistrate to submit questions of law

43. The Magistrate may, in his discretion, on the application of either party to any proceedings before him, or of his own motion without any application, submit any question of law in the form of a special case for the ruling of the Court of Appeal and if he does so, he shall decide the question in conformity with such ruling.

Appeals to Court of Appeal

44. (1) An appeal shall lie to the Court of Appeal from any order of a Magistrate where—

- (a) a question of law is involved;
- (b) the decision was one which the Magistrate viewing the evidence reasonably could not properly make:

Provided that, from the following orders of a Magistrate, namely—

- (i) an order awarding as compensation a lump sum, or disallowing a claim in full or in part for a lump sum;
- (ii) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such a dependant;
- (iii) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of section 21(2); or
- (iv) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions,

no appeal shall lie against any such order unless the amount in dispute in the appeal is more than \$240.

(2) Notwithstanding anything herein contained, no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Magistrate, or in which the order of the Magistrate gives effect to an agreement come to by the parties.

Provisions of Magistrate's Court Act to apply to special cases and appeals

45. Save as provided in section 44 the provisions of the Magistrate's Court Act for the time being in force relating to special cases and to appeals in civil proceedings from a Magistrate to the Court of Appeal shall apply to and govern any special case submitted to the Court of Appeal under section 43, and, subject to the provisions of section 44(1) and (2), any appeal to the Court of Appeal under this Act.

Decisions of Court of Appeal final

46. The decision of the Court of Appeal in any special case submitted to it or in any appeal under this Act shall be final.

Miscellaneous

No right to contract out of Act

47. Any provision in a contract of employment existing at the commencement of this Act, or thereafter entered into, whereby a workman or his dependants relinquish any right to compensation under this Act or to damages independently of this Act for personal injury arising out of or in the course of his employment, whether for the workman or for any dependants shall be null and void.

Appointment and remuneration of medical referee

48. (1) The Governor may appoint any medical practitioner to be a medical referee for the purposes of this Act and may revoke any such appointment at any time.

(2) Any appointment made under the preceding subsection, or any revocation of any such appointment, shall take effect on the date of its publication in the *Gazette*.

(3) The remuneration of, and other expenses incurred by medical referees under this Act shall, subject to regulations made under this Act and except so far as they are defrayed by fees received from the parties under this Act, be paid out of moneys provided by the Legislative Assembly.
(Amended by Act 9 of 2011)

(4) Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(5) The number of medical referees appointed by the Governor shall be at least three at any time:

Provided that, the reduction, below three, of the number of medical referees shall not invalidate any reference to, or any certificate given by, a medical referee.

Application for reference to medical referee

49. (1) Where a workman has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, a Magistrate, on application being made to him by one or both parties, may refer the matter to a medical referee.

(2) In the case of an application made by both parties under the provisions of the preceding subsection, the Magistrate shall refer the matter to a medical referee chosen by both parties, but, if such parties cannot agree on the choice of a medical referee within such time as may be fixed by the Magistrate, the Magistrate shall refer the matter to a medical referee chosen by him.

(3) The medical referee to whom the matter is so referred shall, in accordance with regulations made under this Act, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

(4) Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this section shall, subject to any regulations made under this Act, apply as if the question were a question as to the condition of the workman.

(5) If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly or half-monthly payment under this Act, his right to that weekly or half-monthly payment shall be suspended until such examination has taken place.

Employers to make returns of injuries

50. Every employer in any industry to which the Governor may direct that this section shall apply and every insurance company shall, on or before such day in every year as the Governor may direct, send to the Labour Commissioner a correct return specifying the number of injuries in

respect of which compensation has been paid by such employer or insurance company, as the case may be, under this Act during the previous year, and the amount of such compensation together with such other particulars as to the compensation as the Governor may direct and in default of complying with this section any such employer or insurance company shall be liable on summary conviction to a penalty of \$1,000.

(Amended by Acts 10 of 1977, 9 of 1989 and 4 of 2003)

Display of notice

51. (1) There shall be displayed at or near every mine, quarry, factory or workshop a notice containing such abstract of this Act and the regulations made thereunder as may be prescribed by the Governor.

(2) Any person who fails to comply with the requirements of subsection (1) shall be liable on summary conviction to a penalty of \$200.

(Amended by Acts 10 of 1977 and 4 of 2003)

Regulations

52. The Governor acting on the advice of Cabinet shall have power to make regulations for—

- (a)* prescribing the procedure and forms in respect of matters to be done under this Act;
- (b)* matters which are specifically mentioned in this Act as being matters which may be prescribed by regulation; and
- (c)* generally for carrying out the objects and provisions of this Act.

(Amended by Act 9 of 2011)

Enforcement

53. The Labour Commissioner may institute or cause to be instituted any prosecution for the purpose of enforcing any of the provisions of sections 27, 50 and 51 and any officer appointed for the purpose by the Labour Commissioner may appear as prosecutor on his behalf.

(Amended by Act 9 of 1989)

SCHEDULE*(Section 8(1)(c)(i))*

<i>Injury</i>	<i>Degree of Disablement %</i>
Loss of two limbs	} 100
Loss of both hands or of all fingers and thumbs	
Total loss of sight	
Total paralysis	
Injuries resulting in being bedridden permanently	
Any other injury causing permanent total disablement	
Loss of remaining eye by one-eyed workman	
Loss of remaining arm by one-armed workman	
Loss of remaining leg by one-legged workman	
Loss of arm at shoulder	80
Loss of arm above elbow	70
Loss of arm below elbow	60
Loss of hand at wrist	60
Loss of four fingers and thumb on one hand	60
Loss of four fingers	45
Loss of thumb—both phalanges	35
one phalanx	15
Loss of index finger—three phalanges	15
two phalanges	10
one phalanx	8
Loss of middle finger—three phalanges	8
two phalanges	4
one phalanx	2
Loss of ring finger—three phalanges	8
two phalanges	4
one phalanx	2

Loss of little finger—three phalanges	5
two phalanges	3
one phalanx	2
Loss of metacarpals—first or second (additional)	5
third, fourth or fifth (do.)	5
Loss of leg—at hip joint	75
above knee	70
at knee	70
below knee	60
at ankle	40
Loss of foot—at ankle	40
above the junction of the foot with toes	35
Loss of toes—all	35
great, both phalanges	15
great, one phalanx	15
other than great, if more than one toe lost, each	3
Loss of eye—eye out	40
sight of	40
lens of	30
sight of, except perception of light	40
Loss of hearing—both ears	70
one ear	20

Total permanent loss of use of member shall be treated as loss of member.

The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100% of the incapacity for loss of the use of that member, according to whether the joint is ankylosed in a favourable or unfavourable position.

In the case of a right-handed workman, an injury to the left arm or hand and, in the case of a left-handed workman, to the right arm or hand shall be rated at ninety per centum of the above percentages.

Where there is a loss of two or more parts of the hand, the percentage of incapacity shall not be more than for the whole hand.

A one-eyed workman who on entering employment has failed to disclose that fact to his employer shall, if he loses his remaining eye, be entitled to compensation in respect of a degree of disablement of 40% only.

For the purposes of this Schedule, a one-eyed workman means a workman who has lost the sight of one eye.

PRESCRIBED DISEASES ORDER – SECTION 24

(S.R.O. 22/1964)

Commencement

[10 September 1964]

Short title

1. This Order may be cited as the Prescribed Diseases Order.

Interpretation

2. For the purposes of this Order, “Act” means the Workmen’s Compensation Act.

Prescription of diseases

3. The diseases set out in the Schedule hereto are hereby prescribed as diseases to which section 24 of the Act applies.

Sequelae or resulting conditions

4. Where a person is suffering from a condition which, in his case, has resulted from a prescribed disease, the provisions of section 24 of the Act shall apply to him as if he were suffering from that disease, whether or not the condition from which he is suffering is itself a prescribed disease.

SCHEDULE

1. Anthrax.
2. Arsenical poisoning.
3. Chrome ulceration, that is to say, ulceration due to chromic acid or bichromate of potassium, sodium or ammonium or any preparation of those substances.
4. Inflammation or ulceration of the skin produced by dust, liquid or vapour (including the condition known as Chlor-acne but excluding chrome ulceration).
5. Epitheliomatons ulceration due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of those substances.

6. Lead poisoning.
 7. Toxic jaundice, that is to say, jaundice due to tetrachlorethane or nitro-or amido-derivatives or benzene or other poisonous substance.
 8. Glanders.
 9. Telegraphist's cramp.
 10. Ulceration of the corneal surface of the eye.
 11. Cataract caused by exposure to the glare or rays from molten glass or molten or red-hot metal.
 12. Respiratory infections as a result of exposure to high or low temperatures.
 13. Tuberculosis resulting from close and frequent contact with a source or sources of tuberculosis infection by reason of employment—
 - (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis, or in a service ancillary to such treatment or nursing;
 - (b) in attendance upon a person or persons suffering from tuberculosis where the need for such attendance arises by reason of physical or mental infirmity.
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WORKMEN'S COMPENSATION ORDER – SECTION 36

*(S.R.O. 3/1998)***Commencement***[26 January 1998]***Short title**

1. This Order may be cited as the Workmen's Compensation Order.

Interpretation

2. In this Order—

“**Act**” means the Workmen's Compensation Act;

“**Schedule**” means the Schedule to the Act;

“**volcano**” means the Soufriere Hills Volcano and references to “**volcanic activity**” shall be construed accordingly;

“**workman**” means a person employed by the government on a permanent and pensionable basis, or on a contract basis or on a casual non-established wage-earning basis but does not include—

- (a) a person employed under a contract for services; or
- (b) a person who is a member of the Social Security Fund.

Application

3. (1) The provisions of the Act shall apply as modified by this Order to a workman in respect of death or injury to that workman where—

- (a) at the time of the death or injury the workman was, on the instructions of the employer, working in Montserrat; and
- (b) the injury or death resulted from volcanic activity.

- (2) Death or injury results from volcanic activity if it occurs—

- (a) directly from emissions or deposits from the volcano;
- (b) directly from earth tremors or vibrations or the movement of land or physical structures, water or other substances caused by activity within the volcano; or
- (c) in consequence of a retreat from, or an attempt to escape from, what reasonably appeared to the workman to be an immediate threat or harm from volcanic activity.

- (3) For the purpose of this paragraph, “**injury**” includes a disease or other illness acquired or developed as a result of volcanic activity.

Modification of Act

4. Notwithstanding section 8 of the Act, the amount of compensation payable to a workman to whom this Order applies shall be—

- (a) where death results from the injury, the sum of \$400,000;
- (b) where permanent total incapacity results from the injury, a sum of \$200,000;
- (c) where permanent partial incapacity results from the injury—
 - (i) in the case of an injury specified in the Schedule, the sum represented by the following formula—
$$\text{percentage disablement} \times \$200,000;$$
 - (ii) in the case of an injury not specified in the Schedule, such percentage of \$200,000 as is proportionate to the loss of earning capacity permanently caused by the injury;
- (d) where temporary incapacity, whether total or partial results from the injury, compensation shall be in accordance with section 8(1)(d) of the Act:

Provided that, such compensation may be increased by such amount as may be agreed upon or, in default of agreement, as may be awarded by the court, having regard to the nature of the injury sustained in relation to the type of work and other circumstances of the workman.

WORKMEN'S COMPENSATION REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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2. Interpretation

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WORKMEN'S COMPENSATION REGULATIONS – SECTION 52

(S.R.O. 35/1958 and Act 9 of 2011)

Commencement

[1 July 1957]

Short title

1. These Regulations may be cited as the Workmen's Compensation Regulations.

Interpretation

2. In these Regulations—

“**Act**” means the Workmen's Compensation Act;

“**clerk**” means the clerk of the court;

“**court**” means a Magistrate's Court having jurisdiction in any matter under the Act;

“**Schedule**” means Schedule to these Regulations;

“**section**” means a section of the Act.

PART 1

PROCEDURE ON APPLICATION FOR COMPENSATION

Applications under section 39(1) of the Act

3. Any application of the nature referred to in section 39(1) of the Act shall be filed with the clerk and shall unless the court otherwise directs be made in Form 1 or Form 2 in Schedule A, as the case may require, and shall be signed by the applicant.

Application by employer under section 39(1) of the Act

4. (1) Where the employer on whom a claim for compensation has been made desires to make an application under section 39(1) of the Act, he shall file an application in accordance with regulation 3 to which the workman or his legal personal representative, if any, and the persons claiming or who may be entitled to claim to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made, shall be respondents.

(2) The application shall have appended or annexed thereto the following particulars—

- (a) a concise statement of the circumstances under which the application is made;
- (b) a statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in

- the latter case) a statement of the grounds on and extent to which he denies liability;
- (c) a statement of the matters which the applicant desires to have settled by the application; and
 - (d) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor.

Masters, seamen, apprentices

5. In the application of the Act and these Regulations in the case of masters, seamen, and apprentices to the sea service who are workmen within the meaning of the Act, and who are members of the crew of any such ship as in section 34 of the Act mentioned, and to any person not being a master, seaman, or apprentice to the sea service employed on board any such ship as in section 34 of the Act mentioned, if he is so employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship who are workmen within the meaning of the Act, the following paragraphs shall have effect—

- (a) in the case of the death of a master, seaman, or apprentice, the claim for compensation shall state the date at which news of the death was received by the claimant;
- (b) the claim for compensation on behalf of dependants of a master, seaman, or apprentice lost with his ship, and the particulars appended or annexed to the application for compensation, shall state the date at which the ship was lost or is deemed to have been lost;
- (c) an application for compensation under section 34 of the Act shall be according to Form 3 or Form 4 in Schedule A as shall be applicable to the case, with such modifications as the nature of the case shall require;
- (d) in any document, notice or proceeding it shall be sufficient to describe the owners of the ship as “**the owners of the ship**”; and the provisions of the Rules of the High Court as to disclosure of the names of partners shall with the necessary modifications apply to the disclosure of the names of such owners;
- (e) subject to the provisions of section 34(1)(a) of the Act as to service of notice of accident and the claim for compensation, any document, notice, or proceeding to be served on the owners of a ship shall be deemed to be sufficiently served if served on the managing owner, or manager for the time being of the ship or (except where the master is claiming compensation) on the master of the ship; and section 696(1) of the Merchant Shipping Act, 1894, shall apply to service on the master of the ship, and where the master is claiming compensation, and there is no managing owner of the ship, service may be effected in accordance with paragraph (c) of the said subsection.

Notice to respondent

6. The clerk shall cause to be served on the respondent a copy of the application and shall call upon the respondent within seven days from the service of the copy of such notice to file a written answer containing a concise statement of the extent and grounds of opposition, if any, to the claim.

Answer by respondent

7. The respondent shall, within seven days from the service of the copy of such notice or such further time as the court may allow, file with the clerk a written answer containing a concise statement of the extent and grounds of opposition, if any, to the claim raised in the application, and any such answer shall form part of the record.

Procedure when indemnity claimed under section 26(2) of the Act

8. Where the respondent claims that if compensation is recovered against him he will be entitled under section 26(2) of the Act to be indemnified by a person not being a party to the case (hereinafter referred to as “**the third party**”) he shall, within seven days after being served with the copy of the application, file a notice of such claim with the clerk, and the clerk shall thereupon cause a copy of the notice of such claim in Form 5 in Schedule A to be served upon the third party and the third party shall file a written answer dealing with the matters raised in the application or with the claim for indemnity or both within seven days from the service of the copy of the notice thereof or such further time as the court may allow.

Procedure where claim admitted

9. If the respondent or the third party admits the claim, he may at any time before the first hearing—

- (a) where the application is made by an injured workman—
 - (i) file with the clerk a notice that he submits to an order for the payment of a weekly sum, to be specified in such notice; or
 - (ii) file with the clerk a notice that he submits to an order for the payment of a lump sum, to be specified in the notice, and pay such sum into court;
- (b) where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and the burial of a deceased workman who leaves no dependants, file with the clerk a notice that he admits liability, and pay into court such sum of money as he considers sufficient to cover his liability in the circumstances of the case.

Failure of respondent or third party to file statement

10. If the respondent or the third party fails to file a written answer dealing with the claim within the prescribed time or within the time fixed by the court on an application to enlarge the time, he shall be taken to admit the claim.

Date and place of hearing

11. (1) Where it is necessary to proceed to a hearing the court shall fix a date and place for disposing of the application under regulation 3 or regulation 5, or of the claim for indemnity, if any, under regulation 8; and shall cause a notice of hearing in Form 6 in Schedule A to be served on the different parties calling upon them to produce any evidence which they may wish to tender.

(2) The date of hearing of an application under regulation 3 or 5 shall be so fixed as to permit not less than fourteen clear days to elapse between the service of the application on the respondent and the hearing of the said application.

Non-appearance of applicant

12. If, on the day of hearing of any application or at any adjournment thereof, the applicant does not appear, the application shall be dismissed, unless the court, having received a reasonable excuse for the non-appearance of the applicant or for other sufficient reason, thinks fit to adjourn the hearing to some future day upon such terms as to costs as the court may think just.

Absence of respondent or third party

13. If, on the day of hearing of any application or at any adjournment thereof, the respondent or third party does not appear, the court may proceed to hear the case in his absence unless the court, having received a reasonable excuse for his absence, or for other sufficient reason, thinks fit to adjourn the hearing to some future day upon such terms as to costs as the court may think fit.

Record of proceedings

14. There shall be recorded in every proceeding a note of the steps taken on the application.

Orders

15. (1) A Magistrate, in making orders, shall record concisely his findings and his reasons for such findings.

(2) The Magistrate, at the time of signing and dating his order, shall pronounce his decision, and thereafter no addition or alteration shall be made to the order other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission.

(3) An order shall be in such one of Forms 7, 8 or 9 in Schedule A as shall be appropriate to the circumstances of the case, with any necessary variation.

Right of entry for local inspection

16. A Magistrate before whom any proceeding relating to an injury by accident is pending may at any time enter the place where the workman was injured, or where the workman ordinarily performed his work, for the purpose of making a local inspection

or of examining any persons likely to be able to give information relevant to the proceedings:

Provided that, the Magistrate shall not enter any premises of any industrial establishment except during the ordinary working hours of that establishment, save with the permission of the employer or of some person directly responsible to him for the management of the establishment.

Procedure in connection with local inspection

17. (1) If the Magistrate proposes to conduct a local inspection with a view to examining on the spot the circumstances in which an accident took place, he shall give the parties or their representatives notice of his intention to conduct such inspection, unless in his opinion the urgency of the case renders the giving of such notice impracticable.

(2) Such notice may be given orally or in writing, and, in the case of an employer may be given to any person upon whom notice of a claim can be served under section 16(2) of the Act or to the representative of any such person.

(3) Any party or the representative of any party, may accompany the Magistrate at a local inspection.

Procedure in connected cases

18. Where two or more cases pending before a Magistrate arise out of the same accident, and any issue involved in common to two or more such cases, such case may, so far as the evidence bearing on such issue is concerned, be taken together.

Summoning of witnesses

19. If an application is presented by any party to the proceedings for the citation of witnesses, the clerk shall, on payment of the prescribed expenses and fees, issue summonses for the appearance of such witnesses, unless the Magistrate considers that their appearance is not necessary for the just decision of the case.

Exemption from payment of fees

20. If the Magistrate is satisfied that the applicant is unable, by reason of poverty, to pay the prescribed fees, he may remit any or all of such fees. If the case is decided in favour of the applicant, the prescribed fees which, had they not been remitted, would have been due to be paid, may be added to the costs of the case and recovered in such manner as the Magistrate in his order regarding costs may direct.

Filing and service of documents

21. (1) Where any document is to be filed with the clerk under these regulations, that document may be so filed by delivering it at the office of the clerk or by sending it by registered post to the clerk at his office.

(2) Where any document is to be filed, there shall be filed with the original document as many copies of the document as there are persons on whom copies of the document are to be served, and in addition a copy for the use of the Magistrate.

(3) Where any document is under these regulations to be served upon any person, such document may be served—

- (a) upon the Crown, by service upon the Head of the Department in which the applicant was employed at the time of the accident, or by leaving it at the office of such Head of Department;
- (b) upon an individual, by service upon him personally or by leaving it at his last known place of abode or business;
- (c) upon a Town or Village Council or Board by service on the Secretary of such Council or Board as the case may be, or by leaving it at his office;
- (d) upon a corporate body, by service on the secretary or by leaving it at the registered office of such corporate body;
- (e) upon a club, by service on the secretary or any member of the managing committee;
- (f) upon the master of a ship or a person belonging to a ship, by service on such master or person by leaving the document for such master or person on board the ship with the person being or appearing to be in command or charge of the ship, or where no such person can be found, by affixing a copy of the document to the mast of the ship.

Apportionment of compensation between dependants

22. The provisions of this Part of these Regulations shall as far as may be, apply in the case of any proceedings relating to the apportionment of compensation among dependants of a deceased workman.

Application for detention of ships

23. (1) An application for the detention of a ship under section 35 of the Act shall be made in accordance with the provisions of the succeeding paragraphs of this regulation.

(2) The application may, subject to the provisions of paragraph 8 be made *ex parte* either in or out of the High Court, according to Form 10 in Schedule A, and shall be supported by affidavit or other evidence showing to the satisfaction of the judge, the grounds on which the application is made.

(3) The judge may, before granting the application, require the applicant to give or procure an undertaking in Form 11 in Schedule A or such other form as the judge may require, to the satisfaction of the judge, to abide by any order as to damages and costs which may be thereafter made, in case any person affected by the order for detention shall sustain any damages by reason of the order which the applicant ought to pay.

(4) An order for detention shall specify the amount for which security shall be given, and shall be according to Form 12 in Schedule A, and shall be issued in triplicate; one copy shall be delivered to the applicant, and the other two copies to the officer named by the judge; and one of such last-mentioned copies shall be delivered by the officer to the person who is at the time of execution of the order apparently in charge of the ship, or shall be nailed or affixed on the main mast or on the single mast of the ship; and the other copy shall be retained by the officer.

(5) The judge may at any time on good cause shown rescind any order for detention made by him.

(6) The provisions of the Rules of the High Court as to security shall, with the necessary modifications, apply to the giving of security; and the approval by the judge of any security shall be signified in writing signed by him. Where security is given by bond, such bond shall be according to Form 13 in Schedule A.

(7) If the judge rescinds any order for detention, or is satisfied that satisfaction has been made, or when security has been given and approved, or in any other case if the applicant so requires, the judge shall deliver to the party applying for the same an order according to Form 14 in Schedule A, directed to the officer named in the order for detention, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the ship, to release it forthwith.

(8) With respect to notices of applications for orders for detention, and to undertakings to give security, the following provisions shall have effect—

- (a) notwithstanding anything in this regulation contained, a person intending to apply for an order for detention shall, if the name and address of an agent in Montserrat for the owner of the ship, or of a solicitor in Montserrat authorised to act for the owners, agent, master, or consignee of the ship, are known to him, give to such agent or solicitor by post or otherwise, such notice of the time and place at which the application for an order for detention is intended to be made as may be practicable in the circumstances of the case;
- (b) if a solicitor in Montserrat represents that he is authorised to act for the owners, agent, master, or consignee of the ship, and signs an undertaking according to Form 15 in Schedule A to put in or give security for an amount agreed on between the parties or fixed by the judge, then, on such undertaking being filed in the High Court, the judge may, in his discretion refuse to make an order for detention, or if an order for detention has been made, but not executed, the judge may rescind it, or if an order for detention has been made and executed, the judge may deliver to the party applying for the same an order of release in accordance with paragraph (7);
- (c) a solicitor who fails to put in or give security in pursuance of his undertaking to do so shall be liable to attachment.

(9) Where proceedings for the recovery of compensation are taken against the persons giving security, the application for compensation and particulars shall state

concisely the circumstances under which the persons giving security are made respondents. The application shall be in Form 16 in Schedule A.

(10) The costs incurred by any party in relation to an application for an order of detention and any proceedings consequent thereon may in any subsequent proceedings for compensation be allowed as costs in the application for compensation.

(11) This regulation shall apply to claims against charterers under section 35(5) of the Act, “**charterers**” being substituted for “owners” in these cases.

PART 2

PROCEDURE WITH REGARD TO AGREEMENTS

Form of memorandum of agreement

24. (1) A memorandum of agreement sent to the court under section 22(1) of the Act shall, unless the court otherwise directs, be in duplicate, and shall be in as close conformity as the circumstances of the case permit with one of the Forms 17 and 18 in Schedule A as the case may require.

(2) Every such memorandum shall contain the like particulars as would have been required if the memorandum had been an application for compensation under these regulations.

Application to have agreement made a judgment of the court

25. Where an application is made to have an agreement made a judgment of the court, a memorandum thereof shall be sent by any interested party to the clerk who shall, on being satisfied as to its genuineness, record such memorandum in a special register to be kept for that purpose:

Provided however that, no such memorandum shall be recorded before fourteen days after the despatch by the clerk, by registered post, of a notice in Form 19 in Schedule A to the parties interested.

Registration of memorandum accepted for record

26. In recording a memorandum of agreement, the Magistrate shall cause the same to be entered in the special register, and shall cause an endorsement to be made under his signature on a copy of the memorandum to be filed in the following terms, namely—

“This memorandum of agreement bearing Serial No.
of 20..... in the register of agreements has been
recorded this day of

(Signature)
Magistrate.”

PART 3

REVIEW ON REDEMPTION OF WEEKLY OR HALF-MONTHLY PAYMENTS

When application may be made without medical certificate

27. Any application for review of a weekly or half-monthly payment under section 12 of the Act shall be in Form 20 in Schedule A and may be made without a medical certificate—

- (a) by the employer, on the ground that since the right to compensation was determined the workman's wages have increased;
- (b) by the workman, on the ground that since the right to compensation was determined his wages have diminished;
- (c) by the workman, on the ground that the employer, having commenced to pay compensation, has ceased to pay the same notwithstanding the fact that there has been no change in the workman's condition such as to warrant such cessation;
- (d) by the workman, on the ground that he has ceased, since the right to compensation was determined, to be a minor;
- (e) either by the employer or by the workman, on the ground that the determination of the rate of compensation for the time being in force was obtained by fraud or undue influence or other improper means.

Procedure on application for review

28. If on examining an application for review by an employer in which the reduction or discontinuance of weekly or half-monthly payments is sought, it appears to the Magistrate that there is reasonable ground for believing that the employer has a right to such reduction or discontinuance, he may at any time issue an order withholding the weekly or half-monthly payments in whole or in part pending his decision on the application.

Procedure on application for redemption

29. (1) Any application for redemption of a right to receive weekly or half-monthly payments by the payment of a lump sum shall be in Form 20 in Schedule A.

(2) Where application is made to the court under section 12(2) of the Act for the redemption of a right to receive weekly or half-monthly payments by the payment of a lump sum, the court shall form an estimate of the probable duration of the disablement, and shall award a sum equivalent to the total of the weekly or half-monthly payments which would be payable for the period during which he estimates that the disablement will continue, less ½% of that total for each month comprised in that period.

(3) When, in any case to which paragraph (2) applies, the Magistrate is unable to form an appropriate estimate of the probable duration of the disablement he may

from time to time postpone a decision on the application for a period not exceeding 2 months at any one time.

Application for order when workman under disability

30. An application under section 14(6) of the Act for an order that a weekly or half-monthly payment payable to a workman under any legal disability shall during the disability be paid to any dependant or other person may be made either by the person liable to make such payment or by or on behalf of the workman entitled to such payment. The application shall be made in Form 21 in Schedule A and shall be served on every interested party.

Application for variation of order

31. An application for the variation of an order of the court under section 14(7) of the Act may be made by or on behalf of any person interested. The application shall be made in Form 22 in Schedule A stating the circumstances under which the application is made and the relief or order which the applicant claims, and shall be served on every other interested party.

PART 4

DEPOSIT OF COMPENSATION

Deposit of compensation generally

32. Compensation shall be deposited with the clerk—

- (a) under an order of the court directing a specific sum to be paid in as compensation; or
- (b) under an agreement between an employer or other person liable to pay compensation and a workman or the dependants of a workman according to the tenor thereof; or
- (c) pursuant to a claim for compensation or to an application for compensation, against an employer or other person liable to pay the same who admits liability, or denies liability but is willing to pay an amount in settlement of the claim.

Deposit under section 14(1) of the Act

33. (1) An employer depositing compensation under section 14(1) of the Act shall furnish therewith a statement in Form 23 in Schedule A.

(2) If, in the statement above referred to, the employer indicates that he desires to be made a party to the distribution proceedings, the Magistrate shall, before allotting the sum deposited as compensation, afford to the employer an opportunity of establishing that the person to whom he proposes to allot such sum is not a dependant of the deceased workman or, as the case may be, that no one of such persons is a dependant.

(3) Any dependant, whether notice under section 14(5) of the Act has been published or not, may apply to the Magistrate for the payment out or distribution of any sum so deposited.

(4) The statement of disbursements to be furnished on application by the employer under section 14(5) of the Act shall be in the Form 24 in Schedule A.

Deposits

34. An employer depositing compensation in accordance with section 14 (2) or (3) of the Act shall furnish therewith a statement in Form 25 in Schedule A.

PART 5

MEDICAL REFEREES

Reference by court to medical referee for report under section 38(2) of the Act

35. (1) Before making any reference to a medical referee under section 38(2) of the Act, the court shall be satisfied, after hearing all the medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the proceedings, and that it is desirable to obtain a report from the medical referee on such matter.

(2) Every such reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the question arising in the proceedings to which such matter seems to be material. Such reference shall be in accordance with Form 26 in Schedule A or as near thereto as may be.

(3) The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties.

(4) On making a reference to the medical referee the court shall make an order in Form 27 in Schedule A directing the workman to submit himself for examination by the medical referee and the medical referee shall on receipt of the reference appoint a time and place for the examination of the workman and send him notice accordingly.

(5) Before making an order as required by paragraph (4), the court shall inquire whether the workman is in a fit condition to travel for the purpose of the examination, and if the court is satisfied that he is in a fit condition it shall by the same order direct him to attend at such time and place as the medical referee may fix and it shall be the duty of the workman to obey any such order.

(6) If the court is satisfied that the workman is not in a fit condition to travel this fact shall be stated in the reference.

(7) The medical referee shall give his report in writing and shall forward it to the Magistrate from whom he received his reference.

Reference to a medical referee under section 49(2) of the Act

36. (1) Where a Magistrate refers a matter to a medical referee under section 49(2) of the Act, he shall issue a reference to the medical referee in Form 28 in

Schedule A and the medical referee shall forthwith on receipt of such reference fix a time and place for the examination of the workman and shall send notice accordingly to the workman and the employer.

(2) Before giving the certificate required by the reference the medical referee shall personally examine the workman and shall consider any statement that may be made or submitted by either party.

(3) The certificate given by the medical referee shall be according to Form 29 in Schedule A and shall be forwarded by him to the Magistrate from whom he received his reference.

References to medical referee to be signed

37. Every reference to a medical referee under regulation 35 or regulation 36 shall be signed by the Magistrate by whom it is issued.

Notices to be issued by medical referee

38. The notice to be issued by a medical referee to—

- (a) a workman as required by regulation 35(4);
- (b) a workman as required by regulation 36(1);
- (c) an employer as required by regulation 36(1),

shall be in Forms 30, 31 and 32 respectively in Schedule A.

Remuneration and expenses of medical referee

39. The remuneration of and other expenses incurred by a medical referee which are required to be paid under section 48(3) of the Act shall be as set out in Part I of Schedule B.

PART 6

SUPPLEMENTAL PROVISIONS

Statement of wages to be furnished by employer

40. Where any proceeding is taken or is about to be taken for the determination of any question arising out of an accident in which compensation is or might be claimed, the employer shall, if required by the workman, furnish the workman, within seven days from the date of requisition, with a statement showing—

- (a) the total wages which have fallen due for payment to the workman by the employer in the last twelve months, where the workman has been employed during a continuous period of not less than twelve months immediately preceding the accident; or
- (b) the total wages earned in respect of the last continuous period of service, where that service is of less than twelve months duration immediately preceding the accident.

Registration of employers

41. (1) The form of application for registration required by section 27(1) of the Act for employers to whom section 25 of the Act applies shall be according to Form 1 in Part 2 of Schedule B.

(2) The Labour Commissioner shall, upon receipt of an application made under paragraph (1) of this regulation and on being satisfied that the particulars contained in the application are correct, issue to the employer a certificate of registration as in Form 2 in Part 2 of the said Schedule B.

Solicitors' costs and allowances to parties and witnesses

42. (1) Any costs of or incident to any proceedings for the determination of any question arising out of an accident to a workman shall be awarded in accordance with the scale of costs for solicitors and allowances for parties and witnesses in Part 3 of Schedule B.

(2) The fees allowable under the said scale of costs shall include and cover all costs whatsoever incident to the proceedings, except fees of court and necessary disbursements.

Medical practitioners' fees

43. The fees required to be paid under section 6(2)(a) of the Act to a medical practitioner who renders emergency treatment to an injured workman shall be as specified in Part 4 in Schedule B.

Court fees

44. The fees of court specified in Part 5 in Schedule B shall be paid in respect of proceedings brought under the Act.

Modifications of forms

45. Where the forms in Schedule A are not applicable, forms of the like character, with such variations as the circumstances may require, may be used in proceedings under the Act.

SCHEDULE A*(Regulation 3)***FORM 1****APPLICATION FOR COMPENSATION BY WORKMAN OR BY EMPLOYER**

Montserrat.

In the Magistrate's Court, District

*In the Matter of the Workmen's Compensation Act**and**In the Matter of an Application by a Workman for Compensation.*

Between

A.B. residing at Applicant

and

C.D. residing at Respondent

The applicant, a workman employed by (a contractor with) the respondent (or, the applicant is the employer of the abovenamed respondent, a workman who) sustained personal injury by accident arising out of and in the course of his employment on the day of at and applies herein for the determination of the questions hereinafter stated under the provisions of the Workmen's Compensation Act.

PARTICULARS

1. Place of business and nature of business of respondent.
2. Nature of employment of workman at time of accident, and whether employed under opposite party or under a contractor with him. (If employed under a contractor who is not a respondent, name and place of business of contractor to be stated).
3. Date and place of accident, nature of work on which workman was then engaged, and nature of accident, and cause of injury.
4. Nature of injury.
5. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

- 6. Monthly wages during the twelve months previous to the injury, if applicant has been so long employed under the employer by whom he was immediately employed or, if not, during any less period during which he has been so employed.
- 7. Monthly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.
- 8. Payment, allowance or benefit received from employer during the period of incapacity.
- 9. Amount claimed as compensation.
- 10. Date of service of statutory notice of accident on employer, and whether given before workman voluntarily left the employment in which he was injured. (A copy of the notice to be annexed.)
- 11. If notice not served, reason for omission to serve same.
- 12. (a) The names and addresses of the applicant and his attorney or agent are:
of the applicant;
of his attorney or agent.
(b) The name and address of the respondent to be served with this application are:
- 13. Date of claim for compensation.

Questions for the determination of the Court—

- (a) whether the applicant is a workman within the meaning of the Act;
- (b) whether the accident arose out of and in the course of the work-man's employment;
- (c) whether the amount of compensation claimed is due, or any part of that amount;
- (d) whether the respondent is liable to pay such compensation as is due;
- (e)(as required)

Dated this day of, 20..... .

Applicant

*or (Attorney or agent for Applicant
residing at).*

(If application is made by an employer append or annex here statement required by section 39(2) of the Act.)

NOTICE

To of

You are hereby required if you intend to oppose the above application to lodge with me the undersigned clerk within seven days after the service of this notice upon you (or within such extended period as the Magistrate may allow) a written answer to the application containing a concise statement of the extent and grounds of your opposition thereto.

The above application will be heard at the Magistrate's Court, District at on the day of at o'clock in the noon and you are hereby notified that if you fail to lodge such answer within the time herein prescribed, or to appear at the time and place herein stated for the hearing of the application such order may be made against you as may be just and expedient.

.....
Clerk.

Magistrate's Court, District

FORM 2

(Regulation 3)

APPLICATION FOR COMPENSATION BY DEPENDANTS OR BY EMPLOYER

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Application for Compensation by Dependants

Between

A.B. residing at Applicant

and

C.D. residing at Respondent

The applicant is the legal personal representative (or the dependant) of a workman employed by (a contractor with) the respondent (or, The applicant was the employer of a workman) who sustained personal injury by accident arising out of and in the course of his employment on the day of at resulting in his death, and applies herein for the determination of the questions hereinafter stated under the provisions of the Workmen's Compensation Act.

PARTICULARS

1. Name and late address of deceased workman.
2. Place of business and nature of business of employer from whom compensation is claimed.
3. Nature of employment of deceased at the time of accident, and whether employed under the alleged employer or under a contractor with him. (If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.)
4. Date and place of accident, nature of work on which deceased was then engaged, nature of accident and cause of injury, and age of deceased at time of death.

5. Nature of injury to deceased, and date of death.

6. Monthly wages during the twelve months previous to the injury, if the applicant has been so long employed under the employer by whom he was immediately employed, or if not, during any less period during which he has been so employed.

7. Amount of weekly or half-monthly payments (if any) made to the deceased under the Act and of any lump sum paid in redemption thereof.

8. Character in which applicant applies for compensation, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant particulars showing how he is so.

9. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses and descriptions and occupations (if any) and their relationship to the deceased, and if infants their respective ages and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

10. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses and descriptions and occupations (if any).

11. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

12. Date of service of statutory notice of accident on employer and whether given before deceased voluntarily left the employment in which he was injured. (A copy of the notice to be annexed.)

13. If notice not served, reason for omission to serve same.

14. (a) The names and addresses of the applicant and his attorney or agent are:

of the applicant.

of his attorney or agent.

(b) The name and address of the respondent to be served with this application are:

Questions for the determination of the Court—

(a) whether the deceased was a workman within the meaning of the Act;

(b) whether the accident arose out of and in the course of the work-man's employment;

(c) whether the amount of compensation claimed is due, or any part of that amount;

(d) whether the respondent is liable to pay such compensation as is due;

- (e) whether the applicant(s) is a/are dependant(s) of the deceased;
- (f) how the compensation when deposited, should be distributed;
- (g) (as required).

Dated the day of, 20..... .

.....
Applicant

*or (Attorney or agent for Applicant
residing at*

(If application is made by an employer append or annex here statement required by section 39(2) of the Act.)

NOTICE

To of

You are hereby required if you intend to oppose the above application to lodge with me the undersigned clerk within sevendays after the service of this notice upon you (or within such extended period as the Magistrate may allow) a written answer to the application containing a concise statement of the extent and grounds of your opposition thereto.

The above application will be heard at the Magistrate's Court, District at on the day of at o'clock in the noon and you are hereby notified that if you fail to lodge such answer within the time herein prescribed, or to appear at the time and place herein stated for the hearing of the application such order may be made against you as may be just and expedient.

.....
Clerk

Magistrate's Court, District

FORM 3

*(Regulation 5(c))***APPLICATION FOR COMPENSATION BY
AN INJURED MASTER, SEAMAN OR APPRENTICE**

Montserrat.

In the Magistrate's Court, District

*In the Matter of the Workmen's Compensation Act**and**In the Matter of an Application by an Injured Master,
Seaman or Apprentice for Compensation.*

Between

A.B.

Applicant

and

The owners of the ship "....."

Respondents

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B., the master of the ship ".....". (or a seaman, or an apprentice to the sea service) and a member of the crew of the ship ".....".

2. A question has (or questions have) arisen (here state the questions, specifying only those which have arisen; *e.g.*)—

(a) as to whether the said A.B. is a workman within the meaning of the abovementioned Act; or

(b) as to the liability of the owners of the said ship to pay compensation under the abovementioned Act in respect of the said injury; or

(c) as to the amount (or duration) of the compensation payable by the owners of the said ship to the said A. B. under the abovementioned Act in respect of the said injury;

(or as the case may be).

3. An inquiry under the abovementioned Act is hereby requested between the said A.B. and the owners of the said ship for the settlement of the said question (or questions).

4. Particulars are hereto appended (or annexed).

PARTICULARS

1. Name and address of applicant.

2. Name of ship of which applicant was master (or of the crew of which applicant was a member) at the time of accident, and port of registry.

3. Such other particulars as are contained in paragraphs 2 to 11 in Form 1 of this Schedule as may be applicable.

The names and addresses of the applicant and his solicitor are:

Of the applicant,

Of the solicitor,

The name and address of the person to be served with this application as representing the owners of the ship are (state name and address of managing owner or manager, or of master of ship. See regulation 5(e)).

Dated the day of, 20..... .

.....
Applicant
(or *Applicant's Solicitor*)

NOTICE

To of

You are hereby required if you intend to oppose the above application to lodge with me the undersigned clerk within seven days after the service of this notice upon you (or within such extended period as the Magistrate may allow) a written answer to the application containing a concise statement of the extent and grounds of your opposition thereto.

The above application will be heard at the Magistrate's Court, District
 at on
 day of at o'clock in the noon
 and you are hereby notified that if you fail to lodge such answer within the time
 herein prescribed, or to appear at the time and place herein stated for the hearing of
 the application such order may be made against you as may be just and expedient.

.....
Clerk

Magistrate's Court, District

FORM 4

(Regulation 5(b))

**APPLICATION FOR COMPENSATION BY OR ON BEHALF OF
DEPENDANTS OF DECEASED MASTER, SEAMAN OR APPRENTICE**

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

*In the Matter of an Application by or on
behalf of Dependants of Deceased Master, Seaman or Apprentice.*

Between

E.F.

Applicant

and

The owners of the ship "....."

Respondents

and

G.B

(or as the case may be. See regulation 4).

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B., late of, deceased, the master of the ship "....." (or a seaman or an apprentice to the sea service) and a member of the crew of the ship "....." and on the day of the death of the said A.B. resulted from the injury.

OR

1. The ship "....." which left the port of on or about the day of was lost with all hands on or about the day of (or was last heard of on or about the day of, and is believed to have been lost with all hands).

2. A question has (or questions have) arisen (here state the questions, specifying only those which have arisen; *e.g.*)—

- (a) as to whether the said A.B. was a workman within the meaning of the abovementioned Act; or
- (b) as to the liability of the owners of the said ship to pay compensation under the abovementioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.; or
- (c) as to the amount of compensation payable by the owner of the said ship to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B.; or
- (d) as to who are dependants of the said A.B. within the meaning of the abovementioned Act; or
- (e) as to the apportionment and application of the compensation payable by the owners of the said ship to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.; (or as the case may be).

3. An inquiry under the abovementioned Act is hereby requested between E.F., the legal personal representative of the said A.B. (or between E.F., a dependant of the said A.B.) and the owners of the said ship, and G.B. who claims or may be entitled to claim as a dependant of the said A.B.

4. Particulars are hereto appended (or annexed).

PARTICULARS

1. Name and address of master, seaman or apprentice.
2. Name of ship of which deceased was master (or of the crew of which deceased was a member) at time of accident or loss of ship, and port of registry.
3. Such other particulars as are contained in paragraphs 3 to 13 in Form 2 of this Schedule as may be applicable.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of the solicitor,

The name and addresses of the respondents to be served with this application are
as representing the owners of the ship. (state name and address of managing owner or manager, or of master of ship and G.B. See regulation 5(e)).

Dated the day of, 20..... .

.....
Applicant
(or *Applicant's Solicitor*)

NOTICE

To of

You are hereby required if you intend to oppose the above application to lodge with me the undersigned clerk within seven days after the service of this notice upon you (or within such extended period as the Magistrate may allow) a written answer to the application containing a concise statement of the extent and grounds of your opposition thereto.

The above application will be heard at the Magistrate's Court, District
..... at on the
day of at o'clock in the noon and
you are hereby notified that if you fail to lodge such answer within the time herein prescribed, or to appear at the time and place herein stated for the hearing of the application such order may be made against you as may be just and expedient.

Clerk.

Magistrate's Court, District

FORM 5

*(Regulation 8)***NOTICE OF CLAIM**

Montserrat.

In the Magistrate's Court, District

*In the Matter of the Workmen's Compensation Act**and**In the Matter of an Application by or on behalf of
Dependants for Compensation.*

Between

A.B.

Applicant

and

C.D.

Respondents

Whereas a claim for compensation has been made to the Magistrate by applicant, against and the said has claimed that you are liable under section 26(2) of the Act to indemnify him against any compensation which he may be liable to pay in respect of the aforesaid claim, you are hereby informed that you may appear before the Magistrate at o'clock on the day of, 20..... at and contest the claim for compensation made by the said applicant or the claim for indemnity made by the respondent. In default of your appearance you will be deemed to admit the validity of any award made against the respondent and your liability to indemnify the respondent for any compensation recovered from him.

I hereby require you to file with me the undersigned clerk a written statement dealing with the claim against you in the above application within ten days after the service thereof on you.

And further take notice that if you fail to forward such statement in writing, an order may be made against you in default.

Dated the day of, 20..... .

.....
Clerk

Magistrate's Court, District

FORM 6

(Regulation 11)

NOTICE OF HEARING

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Application by a Workman for Compensation.

Between

A.B.

Applicant

and

C.D.

Respondent

Take notice that the Magistrate, District will proceed with the hearing of the application in this matter at on the day of, 20..... at the hour of o'clock in the noon.

Dated the day of, 20..... .

.....

Clerk.

Magistrate's Court, District

Notice of Hearing to be sent to Respondent

Take notice that the Magistrate will proceed with the hearing of the application in this matter at on the day of, 20..... at the hour of o'clock in the noon, and that if you do not attend at the time and place abovementioned such order will be made and proceedings taken as the Magistrate may think just and expedient.

Dated the day of, 20..... .

.....
Clerk

Magistrate's Court, District

FORM 7

(Regulation 15(3))

ORDER

IN CASE OF APPLICATION FOR WEEKLY OR
HALF-MONTHLY PAYMENT OF COMPENSATION

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Application by a Workman for Compensation.

Between

A.B. Applicant

and

C.D. Respondents

Upon the application of and upon hearing (here insert any other introductory recital of findings on which the order is made which the Magistrate may think fit).

It is ordered as follows—

1. That the respondent C.D. do pay to the applicant A.B. the weekly (or half-monthly) sum of \$ as compensation for personal injuries caused to the said A.B. on the day of by injury arising out of and in the course of his employment as a workman employed by the said respondent, such weekly (or half-monthly) payment to commence as from the day of and, to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased or redeemed in accordance with the provisions of the Act.

2. And that the said C.D. do forthwith pay to the said A.B. the sum of \$ being the amount of such weekly (or half-monthly) payments calculated from the day of until the day of and do thereafter pay the said sum of \$ to the said A.B. on the and days of each month.

3. And that the said C.D. do pay to the applicant his costs of and incidental to this application fixed at the sum of \$ (or to be taxed in accordance with the proper scale).

Dated the day of, 20..... .

.....

Magistrate, District

FORM 8

(Regulation 15(3))

ORDER

IN THE CASE OF APPLICATION BY DEPENDANTS

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Application by Dependants.

Between

A.B.

Applicant

and

C.D.

Respondent

Upon the application of and upon hearing (here insert any other introductory recital of findings on which the order is made which the Magistrate may think fit).

It is ordered as follows—

1. That the respondent C.D. do pay the sum of \$ to the dependants of A.B. late of, deceased, as compensation for the injury resulting to such dependants from the death of the said A.B. which took place on the day of from the injury caused to the said A.B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said respondent.

2. And it is declared that the persons hereinafter named are entitled to share in such compensation as dependants of the said A.B., that is to say J.B. widow of the said A.B. and (name the other persons).

3. (Add if so found) And it is declared that G.H. the of the said A.B. is not entitled to share in such compensation as a dependant of the said A.B.

And it is further ordered—

4. That the said sum of \$ be apportioned between the said J.B. and in the proportions following, that is to say—

The sum of \$ to and for the benefit of the said J.B. and the sum of \$ to and for the benefit of the said

5. That the said C.D. do pay the said sum of \$ within fourteen days from the date of this order.

6. That the said J.B. and the said or any of them be at liberty to apply to the Magistrate from time to time for any further or other order as to the application of any of the said sums which may be ordered to be invested and the accruing interest thereof.

7. That the said C.D. do pay to the applicants their costs of and incidental to this application fixed at the sum of \$ (or to be taxed in accordance with the proper scale).

Dated the day of, 20.....

.....

Magistrate, District

FORM 9

(Regulation 15(3))

ORDER

IN THE CASE OF APPLICATION BY PERSONS TO WHOM EXPENSES OF
MEDICAL ATTENDANCE AND BURIAL ARE DUE.

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

*In the Matter of an Application by persons to whom
expenses of medical attendance and burial are due.*

Between

A.B. Applicant

and

C.D. Respondent

Upon the application of and upon hearing (here
insert any other introductory recital of findings on which the order is made which the
Magistrate may think fit).

It is ordered as follows—

1. That the respondent C.D. do pay the sum of \$ for or
towards the expenses of medical attention and burial of A.B., late of
deceased, who died on the day of
from injury caused on the day of by
accident arising out of and in the course of the employment of the said A.B. as a
workman employed by the said C.D.

2. And it is declared that the persons hereinafter named are entitled to share in
such compensation, that is to say—

The applicant E.F. in respect of charges amounting to \$ due to (or
payable by) him for medical attendance and burial of the said A.B.

Dated the day of, 20..... .

.....

Magistrate, District

FORM 10

(Regulation 23(2))

APPLICATION FOR ORDER FOR DETENTION OF SHIP

In the High Court, Montserrat Circuit.

In the Matter of the Workmen's Compensation Act

The Ship ".....".

Application is hereby made on behalf of
of who alleges that the owners of the ship "....."
which has been found in the port of (or within three miles of
the coast of Montserrat), are liable as such owners to pay compensation under the
abovementioned Act, in respect of personal injury by accident arising out of and in the
course of his employment caused to of
on the day of in the port (or harbour)
of, and who claims compensation in respect of such injury,
and alleges that none of the owners of the said ship reside in Montserrat for an order
directed to an officer of Customs or other officer named by the Judge, requiring him
to detain the said ship until such time as to the owners, agent, master, or consignee
thereof have paid such compensation, or have given security, to be approved by the
judge, to abide the event of any proceedings that may be instituted to recover such
compensation, and to pay such compensation and costs as may be awarded thereon, or
until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit
of filed herewith (or will be given in evidence on the
hearing of the application).

Dated the day of, 20..... .

(Name and address of Applicant or Applicant's Solicitor.)

FORM 11

*(Regulation 23(3))***UNDERTAKING AS TO DAMAGES**

In the High Court, Montserrat Circuit.

In the Matter of the Workmen's Compensation Act

The Ship ".....".

I, the undersigned, of, hereby undertake to abide by any order which may hereafter be made as to damages, in case any person affected by the order to be made on my application for the detention of the ship "....." shall sustain any damages by reason of such order which I ought to pay.

Dated the day of, 20..... .

*(Signature and address of Applicant.)**(To be altered as required if the undertaking is given by any person other than the Applicant.)*

FORM 12

*(Regulation 23(4))***ORDER FOR DETENTION OF SHIP**

In the High Court, Montserrat Circuit.

In the Matter of the Workmen's Compensation Act

The Ship ".....".

Whereas it is alleged that the owners of the ship "....." are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port (or harbour) of

And that the said ship has been found in the port of
(or within three miles of the coast of Montserrat):

And whereas it has been shown to me, on the application of
of, who claims compensation in respect of such injury, that the
owners of the said ship are probably liable as such to pay such compensation, and that
none of the owners reside in Montserrat:

(And whereas the said has filed an undertaking to
abide by any order which may hereafter be made as to damages, in case any person
affected by this order shall sustain any damages by reason of this order which the
said ought to pay:)

Now I do hereby issue this order directed to you, the Comptroller of Customs
at (or other officer named by the Judge), requiring you
to detain the said ship until such time as the owners, agent, master, or consignee
thereof have paid compensation in respect of the said injury, or have given security in
the sum of \$, to be approved by the judge, to abide the event of any
proceedings that may be instituted to recover such compensation, and to pay such
compensation and costs as may be awarded thereon, or until the said ship shall be
otherwise released by due course of law.

Dated this day of, 20..... .

.....
Judge

To the Comptroller of Customs at
(or other officer named by the judge).

FORM 13

(Regulation 23(6))

BOND BY WAY OF SECURITY

In the High Court, Montserrat Circuit.

In the Matter of the Workmen's Compensation Act

The Ship ".....".

Whereas it is alleged that the owners of the ship "....." are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port (or harbour) of

And whereas the judge of this Court has issued an order directed to the Comptroller of Customs at (or other officer named by the Judge), requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of \$....., to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law:

Now, therefore, we (state names, addresses, and descriptions of sureties) jointly and severally submit ourselves to the jurisdiction of this Court, or of any other competent Court in Montserrat in which any proceedings may be instituted in respect of the said injury, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding dollars.

..... (Signatures of Sureties.)

This bail bond was signed by the said and the sureties, the day of

Before me,

..... Registrar of the High Court

FORM 14

(Regulation 23(7))

ORDER OF RELEASE

In the High Court, Montserrat Circuit.

In the Matter of the Workmen's Compensation Act

The Ship ".....".

You are hereby authorised and directed to release the ship "....."
now under detention by virtue of an order made on the day
of upon the payment of all costs, charges and expenses
attending the custody thereof.

Dated this day of, 20..... .

.....
Judge

To the Comptroller of Customs at

(or other officer named in the order for detention).

FORM 15

*(Regulation 23(8)(b))***SOLICITOR'S UNDERTAKING TO GIVE SECURITY**

In the High Court, Montserrat Circuit.

In the Matter of the Workmen's Compensation Act

The Ship ".....".

Whereas it is alleged that the owners of the ship "....." are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port (or harbour) of

Now, therefore, I, L.M. of solicitor for the owners (agent, master or consignee) of the said ship, hereby undertake within days from the date hereof to give security in the sum of \$....., to be approved by the Judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon.

Dated this day of, 20..... .

.....
(Signed) L.M.

FORM 16

(Regulation 23(9))

**APPLICATION FOR COMPENSATION WHERE SECURITY HAS BEEN GIVEN ON
BEHALF OF THE OWNERS OF A SHIP UNDER SECTION 34 OF THE ACT**

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

*In the Matter of an Application for Compensation where
Security has been given on behalf of the Owners of a ship under section 34 of the Act*

Between

A.B.

Applicant

and

(names and address of persons
giving security)

Respondents

1. On the day of
personal injury by accident arising out of and in the course of his employment was
caused to A.B. of, and the said
A.B. claims that the owners of the ship "....."
are liable under the above-mentioned Act to pay compensation in respect of the said
injury.

2. The respondents have given security to abide the event of any proceedings
that may be instituted in respect of the said injury, and to pay such compensation and
costs as may be awarded thereon.

3. A question has (or questions have) arisen (here state the question,
specifying only those which have arisen; e.g.)—

- (a) as to whether the said A.B. is a workman to whom the
abovementioned Act applies; or
- (b) as to the liability of the owners of the said ship to pay compensation
under the abovementioned Act in respect of the said injury; or

(c) as to the amount (or duration) of the compensation payable to the said A.B. under the abovementioned Act in respect of the said injury (or as the case may be).

4. An inquiry under the abovementioned Act is hereby requested between the said A.B. and the respondents for the settlement of the said question (or questions).

5. Particulars are hereto appended (or annexed).

PARTICULARS

(Here insert particulars of circumstances under which the application is made and of the relief or order which the applicant claims, adapting the particulars to the circumstances of the case.)

The names and addresses, etc. (as in Form 2)

Note: This form to be adapted as required to an application for compensation as between the dependants of a deceased workman and the persons giving security.

FORM 17

(Regulation 24)

**MEMORANDUM OF AGREEMENT IN CASE OF A
NON-FATAL INJURY TO WORKMAN BY ACCIDENT**

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Agreement

Between

A.B. Applicant

and

C.D. Respondent

1. Be it remembered, that on the day of, 20..... personal injury was caused at to the above-named, a workman under no legal disability (or a minor of the age of years) by accident arising out of and in the course of his employment.

2. (Here insert the like particulars as in Form 1.)

3. And that on the day of, 20....., the following agreement was come to by and between the said and the said that is to say: (here set out terms of agreement).

4. (If a medical referee has been appointed to report, add)—

A copy of the report of Mr, a medical referee appointed to report in the abovementioned matter, is hereunto annexed.

5. You are hereby requested to record this memorandum, pursuant to section 22 of the abovementioned Act.

Dated

Signature of Employer

Witness

Signature of Workman

Witness

NOTE: An application to record an agreement can be presented under the signature of one party only, provided that, the other party has agreed to the terms.

Both signatures should be appended, whenever possible.

To the Clerk,

Magistrate's Court, District

FORM 18

(Regulation 24)

**MEMORANDUM OF AGREEMENT WHERE DEATH RESULTED
FROM THE INJURY TO THE WORKMAN**

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Agreement

Between

A.B.

Applicant

and

C.D.

Respondent

1. Be it remembered, that on the day of,
20..... personal injury was caused at
to late of deceased, by accident
arising out of and in the course of his employment, and that on the
day of, 20....., the said died as
the result of such injury.

2. (Here insert the like particulars as in Form 2.)

3. And that on the day of,
20....., the following agreement was come to by and between
the dependants of the said within the meaning of the
abovementioned Act, and the said that is to say: (here
set out terms of agreement).

4. (If a medical referee has been appointed to report, add)—

A copy of the report of Mr, a medical referee
appointed to report in the abovementioned matter, is hereunto annexed.

5. You are hereby requested to record this memorandum, pursuant to section 22 of the abovementioned Act.

Dated

Signature of Employer

Witness

Signature of Dependants

Witness

NOTE: An application to record an agreement can be presented under the signature of one party only, provided that, the other party has agreed to the terms.

Both signatures should be appended, whenever possible.

To the Clerk,

Magistrate's Court, District

FORM 19

(Regulation 25)

NOTICE TO PARTIES BEFORE MEMORANDUM OF AGREEMENT IS RECORDED

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Application to record Memorandum of Agreement

Between

A.B. Applicant

and

C.D. Respondent

Whereas agreement to pay compensation is said to have been reached between and

And whereas has/have applied to the Magistrate for registration of the agreement under section 22(2) of the Act notice is hereby given that the said agreement will be taken into consideration by the Magistrate at o'clock on the day of 20..... at and that any objection to the registration of the said agreement should be made on the date and at the place aforesaid. In the absence of valid objections it is the Magistrate's intention to proceed to the registration of the agreement.

Dated this day of, 20..... .

.....
Clerk

Magistrate's Court, District

FORM 20

*(Regulations 27 and 29)***APPLICATION FOR REVIEW OR REDEMPTION OF WEEKLY
OR HALF-MONTHLY PAYMENTS**

Montserrat.

In the Magistrate's Court, District

*In the Matter of the Workmen's Compensation Act**and**In the Matter of an Application for review or
redemption of weekly or half-monthly payments*

Between

A.B.

Applicant

and

C.D.

Respondent

Application is hereby made for the review (termination, diminution, increase or redemption, as the case may be) of the weekly (or half-monthly) payment payable to the said in respect of personal injury caused to him by accident arising out of and in the course of his employment, on at in Montserrat.

Particulars are hereto appended—

PARTICULARS

1. Name and address of injured workman
2. Name and place of business of employer by whom compensation is payable.
3. Date and nature of accident.
4. Amount of weekly (or half-monthly) payment, and date from which it commenced.
5. Relief sought by applicant, whether termination, diminution, increase or redemption.

6. Grounds of application.

Dated this day of, 20..... .

.....
Applicant

Magistrate's Court, District

FORM 21

(Regulation 30)

**APPLICATION FOR ORDER FOR PAYMENT TO DEPENDANT
OR OTHER PERSON OF WEEKLY (OR HALF-MONTHLY) PAYMENT
PAYABLE TO PERSON UNDER DISABILITY**

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

*In the Matter of an Application for Order for payment to the dependant or other
person of weekly or half-monthly payment payable to person under disability*

Between

A.B.

Applicant

and

C.D.

Respondent

Take notice that I (name and address of applicant) intend to apply to the Magistrate, District on the day of for an order that the weekly (or half-monthly) payment payable in the abovementioned matter to a person under legal disability (or to me) be during his (or my) disability be paid to (name) a dependant or to any other person best fitted to provide for the welfare of the said (name of workman under disability) and for consequential directions.

Dated this day of, 20..... .

.....

Applicant.

To the Clerk, Magistrate's Court, District

and to (names of all parties interested).

FORM 22

(Regulation 31)

APPLICATION FOR VARIATION OF ORDER

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of an Application for Variation of Order.

Between

A.B.

Applicant

and

C.D.

Respondent

Take notice that I (name and address of applicant) intend to apply to the Magistrate, District on the day of, for an order that the order of the Magistrate made in the abovementioned matter on the day of as to the distribution of the sum paid as compensation among the dependants of deceased (or as to the manner in which the sum payable to a dependant of deceased, should be applied or otherwise dealt with) may be varied by directing (here state variation sought by applicant) and for consequential directions.

And further take notice that the circumstances in which the application is made are (state particulars)—

Dated this day of, 20..... .

.....
Applicant

To the Clerk, Magistrate's Court, District
and to (names of all persons interested).

FORM 23

(Regulation 33)

DEPOSIT OF COMPENSATION FOR FATAL ACCIDENT

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of a Deposit of Compensation for Fatal Accident.

Compensation amounting to \$ is hereby presented for deposit in respect of injuries resulting in the death of residing at which occurred on at

His monthly wages are estimated at He was over/under 17 years at the time of his death.

The said workman had, prior to the date of his death, received the following payments, namely—

Dated this day of, 20..... .

.....
Employer

(To be added if desired.) I desire to be made a party to the proceedings for the distribution of the aforesaid compensation.

.....
Employer

(State names and addresses of dependants so far as known.)

FORM 24

(Regulation 33(4))

STATEMENT OF DISBURSEMENTS

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of a Statement of Disbursements.

Depositor

Amount deposited

Date

\$ c.

	Funeral expenses paid		
	Compensation paid to the following dependants—		
	Name	Relationship	
		Total	

Dated this day of, 20..... .

.....
Magistrate

FORM 25

(Regulation 34)

DEPOSIT OF COMPENSATION FOR NON-FATAL ACCIDENTS

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of a Deposit of Compensation for non-fatal Accidents.

Compensation amounting to \$ is hereby presented for deposit
in respect of permanent/temporary injuries sustained by
residing at which occurred on, 20..... .

Dated this day of, 20..... .

.....
Employer

FORM 26

(Regulation 35(2))

REFERENCE TO MEDICAL REFEREE UNDER SECTION 38(2) OF THE ACT

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of a Reference to a Medical Referee.

Between

A.B. Applicant

and

C.D. Respondent

I, Magistrate, District, having heard the evidence tendered by both parties, hereby certify that in my opinion the medical evidence given before me is conflicting (or insufficient) on a matter which seems to me to be material to a question arising in the abovementioned application, and that it is desirable to obtain a report from a medical referee on such matter, as follows—

(A) On the day of personal injury was (or is alleged to have been) caused to (I) by accident arising out of and in the course of his employment, under the following circumstances—

(2)

OR in the case of an occupational disease to which the Act applies—

(A) On the day of the said (I) was, under section 24 of the Act, certified to be disabled by or suspended from his usual employment on account of his having contracted a disease to which the said section applies, namely—

(3)

(B) The matter on which I am satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following question arising in the application, viz—

I therefore appoint (4)..... one of the medical referees appointed by the Governor for the purposes of the above-named Act to examine the said (1) on the matter specified above, and to report to me.

A statement of the medical evidence given before me is appended.

I am satisfied that the said (1) who is now at is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as shall be fixed by the referee; or (does not appear to be in a fit condition to travel for the purpose of being examined).

The referee is requested to forward his report to the Magistrate, District at on or before the day of

Dated this day of, 20..... .

.....
Magistrate, District

A previous reference was made to a medical referee in this case on the day of, and a copy of the report thereupon given is attached.

-
- (1) *Insert name of injured workman.*
 - (2) *Here state the facts of the accident as ascertained from the evidence.*
 - (3) *Name disease to which the section applies.*
 - (4) *Here insert name of medical referee.*
-

FORM 27

(Regulation 35(4))

**ORDER ON INJURED WORKMAN TO SUBMIT HIMSELF FOR
EXAMINATION BY MEDICAL REFEREE**

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

*In the Matter of an Order on Injured Workman to submit himself for examination by
Medical Referee.*

To of

TAKE NOTICE that Dr. of
one of the medical referees under the Workmen's Compensation Act, has been
appointed to examine you for the purposes of the abovementioned matter and to report
(or issue his certificate).

You are hereby required to submit yourself for examination by such referee*,
and to attend for that purpose at such time and place as may be fixed by him.

Dated this day of, 20..... .

.....

Magistrate, District

* *strike out from "and to attend" when injured workman does not appear to be in a fit
condition to travel.*

FORM 28

*(Regulation 36(1))***ORDER OF REFERENCE TO MEDICAL REFEREE UNDER SECTION 49 OF THE ACT**

Montserrat.

In the Magistrate's Court, District

*In the Matter of the Workmen's Compensation Act**and**In the Matter of a Reference to a Medical Referee.*

Between

A.B.

Applicant

and

C.D.

Respondent

On the application of A.B. of
and C.D. & Co. Limited, of (a copy of which is hereto
annexed), I hereby appoint Dr. of
one of the medical referees appointed by the Governor for the purposes of the
Workmen's Compensation Act, to examine the said and
to give his certificate as to the condition of the said
and his fitness for employment, stating whether the said
has wholly or partially recovered from the injury (or occupational disease) and
specifying if necessary the kind of employment for which he is fit [or his certificate
whether (or to what extent) the incapacity of the said
is due to the accident] [or his certificate as to the condition of the
said and his fitness for employment, stating whether
the said has wholly or partially recovered from the
injury (or occupational disease) and specifying if necessary the kind of employment
for which he is fit, and as to whether (or to what extent) the incapacity of the said
..... is due to the accident].

Copies of the reports of the medical practitioners by whom the
said has been examined are hereto annexed.

The said, who is now at has
been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

(OR The said does not appear to be in a fit condition to travel for the purpose of being examined.)

The referee is requested to forward his certificate to the Magistrate at the Magistrate's Court, District situate at on or before the day of, 20.....

Dated this day of, 20.....

.....
Magistrate

NOTE: Where only one party is the applicant this form shall be used with the necessary modifications.

FORM 29

(Regulation 36(3))

CERTIFICATE OF MEDICAL REFEREE UNDER SECTION 49 OF THE ACT

Montserrat.

In the Magistrate's Court, District

In the Matter of the Workmen's Compensation Act

and

In the Matter of a Certificate of medical referee.

In accordance with the reference made to me on (date of order of reference) by the Magistrate, District upon the application of (name and address of party or parties) I have on the day of examined (name of workman) and I hereby certify that—

1. The condition of the said (name of workman) is as follows. (Describe condition of workman, stating whether he has wholly or partially recovered (see footnote) from the injury by accident or occupational disease and stating whether workman is fit for his ordinary or other work, specifying where necessary the kind of work, or whether he is unfit for work of any kind.)

2. The incapacity of the said (name of workman) (state whether the incapacity has ceased or to what extent, if any, the incapacity is due to the accident or occupational disease).

Dated this day of, 20..... .

.....
Medical Referee

Either paragraph 1 or paragraph 2 to be filled up, or both to be filled up, according to the terms of the Reference.

In dealing with the question of recovery, if the referee finds that the workman is no longer physically incapacitated for work as a result of the accident or of the attack of the disease, but that the workman's condition is such that either (a) there is a reasonable probability of the workman becoming again incapacitated through the effects of the accident or through a recrudescence of the attack of the disease, or (b) there is, as a result of the attack, an increased susceptibility to a fresh attack of the disease, the referee should include a statement as to his findings.

If the Order of Reference and the documents which accompanied it show that the decision of the Referee is desired as to the workman's condition or fitness for employment (or as to whether or to what extent his incapacity was due to the accident) at some date previous to the date of the Referee's examination (see section 13), the Referee should deal with this point also, so far as he can.

FORM 30

(Regulation 38)

WORKMEN'S COMPENSATION ACT

**NOTICE BY MEDICAL REFEREE TO INJURED WORKMAN
UNDER SECTION 38(2)(i) OF THE ACT**

Montserrat.

In the Magistrate's Court, District

To of

I hereby give you notice that I have been appointed to report on your case under section 38(2) of the abovenamed Act, and that I propose to examine you at on the day of at o'clock; and you are required to submit yourself for examination accordingly.

Dated this day of, 20..... .

.....
Medical Referee

FORM 31

(Regulation 38)

WORKMEN'S COMPENSATION ACT

**NOTICE BY MEDICAL REFEREE TO WORKMAN
IN CASE OF REFERENCE UNDER SECTION 49(2) OF THE ACT**

Montserrat.

In the Magistrate's Court, District

To of

I hereby give you notice that in accordance with the Reference made to me in your case by the Magistrate, District holden at, under section 49(2) of the abovenamed Act, I propose to examine you at on the day of at o'clock.

And you are required to submit yourself for examination accordingly. Any statements made or submitted by you will be considered.

Dated this day of, 20..... .

.....
Medical Referee

FORM 32

(Regulation 38)

WORKMEN'S COMPENSATION ACT

**NOTICE BY MEDICAL REFEREE TO EMPLOYER
IN CASE OF A REFERENCE UNDER SECTION 49(2) OF THE ACT**

Montserrat.

In the Magistrate's Court, District

To of

I hereby give you notice that in accordance with the Reference made to me by the Magistrate, District holden at under section 49(2) of the abovenamed Act, in the case of (name and address of workman) I propose to examine the said at on the day of at o'clock.

Any statements made or submitted by you will be considered.

Dated this day of, 20..... .

.....
Medical Referee

SCHEDULE B

(Regulation 39)

WORKMEN'S COMPENSATION ACT

PART I

REMUNERATION AND OTHER EXPENSES OF MEDICAL REFEREE

\$ c.

- (a) For examination of workman, issue of certificate and all other duties performed by a medical referee in relation to a reference under section 38 or section 49 of the Act 10.00
- (b) Where a medical referee has to travel a distance of more than two miles from his office or residence to examine a workman pursuant to a reference—A sum equal to the travelling allowances paid by Government to officers in their employment with a minimum sum equivalent to the allowance for travelling two miles.

PART 2

FORM 1

WORKMEN'S COMPENSATION ACT

**FORM OF APPLICATION FOR REGISTRATION BY EMPLOYERS
TO WHOM SECTION 25 OF THE ACT APPLIES**

- 1. Name of employer
- 2. Place of business of employer
- 3. Name of insurance company with which employer is insured and number and date of each policy
- 4. Type of risks against which employer is insured
- 5. Nature of employments in which workmen are engaged
- 6. Approximate number of workmen employed
- 7. Total sum assured.

FORM 2

(Regulation 41(2))

WORKMEN'S COMPENSATION ACT

CERTIFICATE OF REGISTRATION UNDER SECTION 27 OF THE ACT

This is to certify that

M

of

carrying on the business or trade mentioned hereunder has been registered by me in accordance with section 27 of the Workmen's Compensation Act.

Type of Business or Trade	Location	Average number employed	Number of persons covered by Insurance	Insurance Policy No

This certificate shall be posted in a conspicuous place for workpeople to see.

.....
Labour Commissioner

Date

PART 3

(Regulation 42(1))

WORKMEN'S COMPENSATION ACT

SOLICITOR'S COSTS AND ALLOWANCES TO PARTIES AND WITNESSES

\$ c.

1. Solicitor's fees—

(a)	In uncontested claims for compensation.....	6.00
(b)	In contested claims for compensation—	
	(i) where the sum in dispute does not exceed \$100.....	12.00
	(ii) exceeds \$100 but does not exceed \$400.....	16.00
	(iii) exceeds \$400—	
	for the first \$400.....	16.00
	for any succeeding \$400 or part thereof.....	6.00

(For the purposes of this Part of this Schedule the expression “**sum in dispute**” means, where costs are awarded to a successful applicant, the sum recovered, and wherever costs are awarded to a successful respondent, the sum claimed.)

(c)	Fee on adjourned hearing, if allowed.....	6.00
(d)	Preparation and registration of Memorandum of Agreement	6.00
(e)	Applications for review or redemption.....	6.00
(f)	Attendance to file any document with the clerk75
(g)	Appeals from a Magistrate to the Court of Appeal and	} Such fees as may be allowed within the limits authorised by the Magistrate's Court Act.
(h)	Special Cases—	
(i)	Any matter not provided for in this Part of this Schedule— Such reasonable costs as may be allowed by the Magistrate.	

2. Allowances to parties and witnesses—

(a)	Medical practitioners, planters, merchants, bankers, public officers and professional persons, not exceeding per diem	2.40
(b)	Agricultural labourers, domestic servants, day labourers and the like persons, not exceeding per diem.....	1.00

- | | | |
|-----|-----------------------------------------------------------------------------|------|
| (c) | Other persons, according to their rank in life, not exceeding per diem..... | 1.50 |
|-----|-----------------------------------------------------------------------------|------|

And any actual travelling expenses allowed by the Magistrate.

(Amended by Act 9 of 2011)

PART 4

(Regulation 43)

WORKMEN'S COMPENSATION ACT

MEDICAL PRACTITIONERS' FEES UNDER SECTION 6(2)(a) OF THE ACT

	\$ c.	
(a)	Where a workman is examined at a medical practitioner's office or surgery between 7 a.m. and 7 p.m.	3.00
(b)	Where a workman is examined at a medical practitioner's office or surgery between 7 p.m. and 7 a.m.	4.00
(c)	Where a medical practitioner is required to examine a workman at a place other than his office or surgery between the hours of 6.30 a.m. and 7 p.m.	4.00
(d)	Where a medical practitioner is required to examine a workman at a place other than his office or surgery between the hours of 7 p.m. and 7 a.m.	5.00

PART 5

(Regulation 44)

WORKMEN'S COMPENSATION ACT

FEES OF COURT

1.	Applications for compensation—	\$ c.
(a)	where compensation is claimed in the form of recurring payments	1.50
(b)	where compensation is claimed in the form of a lump sum where the sum does not exceed \$250.	
	Plus \$1.50 for each additional sum of \$250 or fraction thereof.....	1.00
2.	Applications for redemption—	
(a)	by agreement between the parties	1.50
(b)	in all other cases	3.00

3.	Applications for the deposit of compensation—	
	(a) under section 14(1) of the Act.....	.75
	(b) in all other cases, in respect of each person to whom compensation is payable.....	1.50
4.	Applications for distribution by dependants, for each dependant.....	1.50
5.	Applications for review—	
	(a) where the review claimed is the continuance, increase, decrease, or ending of weekly or half-monthly payments.....	1.50
	(b) where the weekly or half-monthly payments are sought to be converted into a lump sum	3.00
	(c) in all other cases	1.50
6.	Application for the registration of agreements—	
	(a) where the application or the memorandum of agreement is signed by both parties.....	.75
	(b) in all other cases	1.50
7.	Applications to summon witnesses—For every witness25
8.	Application for indemnification	3.00
9.	Applications for the recovery of compensation—	
	(a) under an order already made by the Magistrate50
	(b) in all other cases—the same fee as is payable on a similar application for compensation.	
10.	All applications not otherwise provided for50
11.	Answer to any claim.....	.50
12.	Notice of motion for appeal from Magistrate to the Court of Appeal	3.00
13.	Filing any document not otherwise provided for.....	.25
14.	Copy of any document furnished by the clerk—per folio04
15.	(a) For service of any notice or process15
	(b) For service at a greater distance than two miles from the Magistrate's Office, for every extra mile or part of a mile in addition to the above fee06

Provided that, mileage shall be calculated to a place, and not to and from a place.
