

THE EMPLOYMENT RIGHTS BILL

(No. XXX of 2008)

Explanatory Memorandum

The object of this Bill is to revise and consolidate the law relating to employment, contract of employment or service, minimum age for employment, hours of work, payment of remuneration and other basic terms and conditions of employment with a view to ensuring appropriate protection of workers.

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01 August 2008

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A BILL

To revise and consolidate the law relating to employment and contract of employment or contract of service

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Employment Rights Act 2008.

2. Interpretation

In this Act –

“agreement” means a contract of employment or contract of service between an employer and a worker, whether oral, written, implied or express;

“basic wage or salary”, in relation to a worker, means –

- (a) where the terms and conditions of employment of the worker are governed by a Remuneration Regulations, arbitral award or an agreement, whether oral or written, express or implied, the basic wage or salary prescribed in the Remuneration Regulations, award or agreement, or where the employer pays a higher wage or salary, the higher wage or salary so paid, but does not include any allowance by any name called, and whether paid in cash or in kind;
- (b) in any other case, all the emoluments received by the worker, excluding any bonus or overtime;

“child” means a person under the age of 16;

“collective agreement” has the same meaning as in the Employment Relations Act 2008;

“comparable full-time worker” means a full-time worker who –

- (a) has the same type of employment relationship;
- (b) is engaged in the same or a similar type of work or occupation; and
- (c) is employed in the same establishment, enterprise or branch of activity, as a part-time worker;

“continuous employment” means the employment of a worker under an agreement or under more than one agreement where the interval between an agreement and the next does not exceed 28 days;

“Council” means the Labour Advisory Council established under section 64;

“Court” means the Industrial Court established under the Industrial Court Act;

“day” means any period of 24 consecutive hours;

“employer”, subject to section 33 –

- (a) means –
 - (i) a person, enterprise or body of persons, who or which employs a worker; and
 - (ii) is responsible for the payment of remuneration to the worker;
- (b) includes –

- (i) a job contractor;
- (ii) a person, other than another shareworker, who shares the profit or gross earnings of a shareworker;

“enterprise” includes a trade or business;

“fortnight” means any period of 14 consecutive days;

“good and sufficient cause” includes –

- (a) illness or injury certified by a medical practitioner;
- (b) absence authorised by the employer;

“goods vehicle” has the same meaning as in the Road Traffic Act;

“harassment” means any unwanted conduct, verbal, non-verbal, visual, psychological or physical, based on age, disability, HIV status, domestic circumstances, sexual orientation, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, birth or other status, that a reasonable person would have foreseen that a worker would be affected negatively in his dignity;

“industrial undertaking” includes –

- (a) mining and quarrying operations or other activities connected with mineral prospecting;
- (b) the manufacture, production, assembly, installation, repair, maintenance, modification or destruction of materials or properties;
- (c) ship building operations;
- (d) the generation, transformation, and supply of electric power or other type of energy;
- (e) the construction, extension, installation, repair, maintenance, alteration or demolition of buildings, airfields, tramway lines, harbours, dockyards, piers, inland water ways, roads, tunnels, bridges, drainage, water pipes, telegraphic and telephonic installations, electric gas or water works or other construction work including the preparation for or laying the foundation of any such work or structure; and
- (f) such other undertaking as the Minister may, by regulations, determine;

“job contractor” means a person who employs a worker to perform any work or service that the person has contracted to do or provide for another person;

“local authority” has the same meaning as in the Local Government Act 2003;

“Minister” means the Minister to whom responsibility for the subject of labour and employment relations has been assigned;

“National Pensions Fund” means the National Pensions Fund established under the National Pensions Act;

“National Savings Fund” means the National Savings Fund established under the National Savings Fund Act;

“notional hourly rate” means the hourly rate as calculated in section 15;

“officer” means an officer designated by the Permanent Secretary;

“pay period” means the period for which remuneration is paid under section 21;

“part-time worker” means a worker whose normal hours of work are less than those of a comparable full-time worker;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for the subject of labour and employment relations;

“place of work” means a place where work is performed under an agreement;

“public holiday” has the same meaning as in the Public Holidays Act;

“public officer” has the same meaning as in the Constitution;

“remuneration” –

(a) means all emoluments, in cash or in kind, earned by a worker under an agreement;

(b) includes –

(i) any sum paid by an employer to a worker to cover expenses incurred in relation to the special nature of his work; and

(ii) any money to be paid to a job contractor, for work, by the person employing the job contractor;

(iii) any money due as a share of profits;

“retirement age” means, in respect of a worker whose month and year of birth is mentioned in Column 1 of the First Schedule, the date on which the worker attains the age specified in Column 2 of that Schedule;

“severance allowance” means an amount calculated in accordance with section 46;

“shareworker” means a person who –

- (a) is remunerated wholly or partly by a share in the profits of the enterprise for which he works, or gross earnings of an enterprise obtained from the work done by him; and
- (b) is not an owner of the main equipment, premises and materials used in the work he does;

“shift work” means work on which 2 or more persons are alternately employed at different times;

“shop” means a place where any wholesale or retail trade or business is carried on;

“stipulated hours” means the hours of work specified in section 14(1)(a) and 14(4)(a) or such lesser number of hours of work as may be specified in an agreement;

“threatening behaviour” means any behaviour or declaration of intention to use force on, or to intimidate, a worker;

“trade or business” means any occupation, calling, trade, business, profession, industry, service or other commercial activity;

“trade union” has the same meaning as in the Employment Relations Act 2008;

“Transition Unemployment Benefit” means the unemployment benefit as specified in section 44;

“Tribunal” means the Employment Relations Tribunal established under the Employment Relations Act 2008;

“week” means any period of 7 consecutive days;

“week day” means any day other than a public holiday;

“worker”, subject to section 33 or 40 –

- (a) means a person who has entered into, or works under an agreement or a contract of apprenticeship, other than a contract of apprenticeship regulated under the Industrial and Vocational Training Act, whether by way of casual work, manual labour, clerical work or otherwise and however remunerated;
- (b) includes –

- (i) a part-time worker;
 - (ii) a former worker where appropriate;
 - (iii) a shareworker;
- (c) does not include –
- (i) a job contractor;
 - (ii) except in relation to sections 30, 31 and Parts VIII, IX, X and XI, a person whose basic wage or salary is at a rate in excess of 360,000 rupees per annum;

“Workfare Programme” means the Workfare Programme set up under section 41;

“young person” means a person, other than a child, who is under the age of 18.

3. Application of the Act

(1) Subject to subsections (2) and (3) and to any provisions to the contrary in any other enactment, this Act shall apply to every agreement.

(2) Sections 4, 20(1), 54, 61, 62, 63 and 67(1)(e)(i), (2) and (3) of this Act, shall apply to every public officer.

(3) Subject to sections 4, 20(1), 54, 61, 62, 63 and 67(1)(e)(i), (2) and (3), this Act shall not apply to a worker of a local authority.

(4) Subject to Parts VIII and XI and sections 4, 20(1), 46(1), (2), (3), (4), (5), (7),(8), (9), (10), (11) and (12), 48, 61, 62, 63 and 67(1)(e)(i), (2) and (3), this Act shall not apply to a worker of a parastatal body.

PART II – AGREEMENTS

4. Discrimination in employment and occupation

(1) (a) No worker shall be treated in a discriminatory manner by his employer in his employment or occupation.

(b) No person shall be treated in a discriminatory manner by a prospective employer in respect of access to employment or occupation.

(2) Any distinction, exclusion or preference in respect of a particular occupation based on the inherent requirements thereof shall not be deemed to be discrimination.

(3) A person does not discriminate against another person by imposing, proposing to impose, on that other person, a condition, requirement or practice that has, or is likely to have, a disadvantaging effect, where the condition, requirement or practice is reasonable in the circumstances.

(4) The matters to be taken into account in determining whether or not a condition, requirement or practice is reasonable in the circumstances include –

- (a) the nature and extent of the disadvantage resulting or likely to result, from the imposition or proposed imposition of the condition, requirement or practice;
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is proportionate to the result sought to be achieved by the person who imposes, or proposes to impose the condition, requirement or practice.

(5) For the purpose of this section –

- (a) “discrimination” includes affording different treatment to different workers attributable wholly or mainly to their respective descriptions by age, race, colour, caste, creed, sex, sexual orientation, HIV status, religion, political opinion, place of origin, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- (b) “employment” or “occupation” includes access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

5. Agreements

(1) Subject to subsection (3), no person shall enter into an agreement where remuneration is to be paid at intervals of more than one month.

(2) Any agreement which contains a provision inconsistent with subsection (1) shall, to the extent of the inconsistency, be void.

(3) Any agreement may be entered into for a specified type of work or for a specified period of time.

(4) Where a worker is –

- (a) required to report at a place of work, or conveyed there by his employer or his employer’s agent; and
- (b) is found fit and willing to perform the work for which he was required, or conveyed,

the worker and the employer shall be deemed to have entered into an agreement.

(5) Where a worker is required to perform task work, his employer or his employer's agent shall, before the work is commenced, inform the worker of the nature of the task he is required to perform and the rate at which he will be remunerated for that work.

6. Capacity of workers

Notwithstanding any other enactment, a person who is of the age of 16 or more shall be competent to enter into an agreement and shall, in relation to the agreement and to its enforcement, be deemed to be of full age and capacity.

7. Liability for act or omission of another person

Notwithstanding any other enactment, no worker shall be bound by virtue of an agreement to be responsible for the act or omission of any other person.

8. Written particulars of work agreement

Every employer, who employs more than 10 workers, shall provide to every worker engaged for more than one month a written statement of particulars of employment in the form specified in the Second Schedule, within two weeks of entering into an agreement.

9. Continuous employment

(1) The continuous employment of a worker shall not be deemed to have been interrupted –

- (a) by the worker's absence from work –
 - (i) on any leave taken in accordance with this Act or any other enactment, agreement, collective agreement or award;
 - (ii) due to suspension from employment;
 - (iii) by reason of participation in a strike which is lawful under the Employment Relations Act 2008; or
 - (iv) with the consent of his employer;
- (b) on account of the limited number of days worked as specified in the agreement of a part-time worker;

- (c) where the worker has been detained pending a police enquiry and he has been released before a period of 60 days from the last day he worked; or
- (d) where the worker ceases to be in the employment of one employer and enters the employment of another employer under section 47(3).

(2) No worker shall cease to be in the continuous employment of an employer for reason of his participation for a first time in a strike which is unlawful under the Employment Relations Act 2008.

10. Consideration for full-time employment

(1) Where a vacancy occurs in the full-time workforce of an employer, priority of consideration for the full-time employment shall be given, as far as practicable, to a part-time worker or to a worker on determinate contract of employment in the same category and grade.

(2) Where there are 2 or more workers eligible under subsection (1), the employer shall make an offer to the more suitable worker, having regard to qualifications, merit, experience, performance and seniority.

11. Transfer to part-time work

A full-time worker may enter into an agreement with an employer to perform part-time work subject to the agreement –

- (a) being in writing;
- (b) being for a specified period of time; and
- (c) providing for the option to the worker to revert to full time work at the expiry of the specified period of the part-time work.

PART III – MINIMUM AGE FOR EMPLOYMENT

12. Employment of children and young persons

(1) No person shall employ a child for employment or work in any occupation.

- (2) No person shall employ, or continue to employ, a young person –
 - (a) on work which by its nature, or the circumstances in which it is carried out, is likely to jeopardise the health, safety, physical, mental, moral or social development of the young person; or
 - (b) after being notified in writing by the Permanent Secretary that the kind of work for which the young person is employed is

unsuitable for the young person, or will interfere with the young person's education.

13. Record of young persons

An employer shall keep a record of every young person employed by him stating –

- (a) the full name of the young person;
- (b) the address of the young person;
- (c) the date of birth of the young person; and
- (d) such other details that may be prescribed.

PART IV – HOURS OF WORK

14. Normal working hours

(1) The normal day's work of a worker, other than a part-time worker or a watchperson –

- (a) shall consist of 8 hours' actual work; and
- (b) may begin on any day of the week, whether or not on a public holiday.

(2) A worker, other than a part-time worker or a watchperson, and an employer may agree that the worker works in excess of the stipulated hours without added remuneration, if the number of hours covered in a fortnight does not exceed 90 hours, or such lesser number of hours as may be specified in an agreement.

(3) Where a daily paid worker, other than a part-time worker or watchperson, has completed 90 hours' work or such lesser number of hours as may be specified in an agreement, in less than 12 days in a fortnight, he shall be paid 12 normal days' basic wages in respect of that fortnight.

(4) A normal day's work of a watchperson, other than a part-time watchperson –

- (a) shall consist of 12 hours' actual work; and
- (b) may begin on any day of the week, whether or not on a public holiday.

(5) Every worker shall be entitled to a rest day of at least 24 consecutive hours in every period of 7 consecutive days, and the rest day shall at least twice a

month be a Sunday, or any other day as may be agreed between the worker and the employer.

(6) No person shall employ a young person in an industrial undertaking between 10.00 pm and 5.00 am.

(7) A worker shall not be required to resume work before a lapse of 11 hours after he has ceased work.

(8) A worker on shift work may work in excess of the stipulated hours, without added remuneration, provided –

- (i) the worker and the employer agree on the number of hours of work to be performed in the shift; and
- (ii) the average number of hours covered in a fortnight does not exceed 90 hours or such lesser number of hours as may be specified in an agreement.

15. Notional calculation of basic hourly rate

For the purposes of determining the hourly basic wage due for extra work or for any other reason, the number of hours of work shall notionally be calculated –

- (a) for a monthly paid worker on the basis of –
 - (i) 312 hours in the case of a watchperson; or
 - (ii) 195 hours in any other case;
- (b) for a fortnightly paid worker, on the basis of –
 - (i) 144 hours in the case of a watchperson; or
 - (ii) 90 hours in any other case;
- (c) for a weekly paid worker, on the basis of –
 - (i) 72 hours in the case of a watchperson; or
 - (ii) 45 hours in any other case; or
- (d) for a daily paid worker, on the basis of –
 - (i) 12 hours of work in the case of a watchperson; or
 - (ii) 8 hours of work in any other case.

16. Overtime

(1) Subject to subsection (3) –

- (a) a worker and an employer may agree on the number of hours of work to be performed in excess of the stipulated hours where the exigencies of an enterprise so require;
- (b) no employer shall require a worker to perform work in excess of the stipulated hours unless he has given, as far as is practicable, at least 24 hours notice in advance to the worker of the extra work to be performed.

(2) A worker who does not wish to work in excess of the stipulated hours on a particular day shall notify his employer, at least 24 hours in advance, of his intention not to work on that day.

(3) Subject to subsection (5), where a –

- (a) worker works on a public holiday, he shall be remunerated at twice the notional rate per hour for every hour of work performed;
- (b) worker, other than a watchperson, performs more than 90 hours' work or such lesser number of hours as may be specified in an agreement in a fortnight, not being the hours of work referred to in paragraph (a), he shall be remunerated at one and a half times the notional rate per hour for every hour of work performed; or
- (c) watchperson performs more than 144 hours of work in any fortnight, not being the hours of work referred to in paragraph (a), he shall be remunerated at one and a half times the notional rate per hour for every hour of work performed.

(4) For the purpose of subsections 3(b) and (c), the day on which a worker is on annual leave shall be reckoned in the computation of overtime.

(5) An agreement may stipulate that the remuneration provided for therein for a pay period includes payment for work on public holidays and for work in excess of the stipulated hours where –

- (a) the maximum number of public holidays; and
- (b) the maximum number of hours of overtime on a day other than a public holiday,

covered by the remuneration are expressly stated for in the agreement.

17. Public holiday

(1) A daily paid worker who remains in continuous employment with the same employer for a period of 12 consecutive months shall be entitled during each subsequent period of 12 months while he remains in continuous employment, to a normal day's pay in respect of every public holiday, other than a Sunday, on which he is not required to work that occurs while he remains in the continuous employment of the employer.

(2) Where a daily paid worker, referred to in subsection (1), is required to work on a public holiday, other than a Sunday, he shall be paid, in addition to the normal day's pay provided for under subsection (1), any remuneration due under section 16.

(3) Where a worker, other than a daily paid worker, is required to work on a public holiday, other than a Sunday, he shall be paid, in addition to his normal wage, any remuneration due under section 16.

18. Meal and tea breaks

Every employer shall, unless the employer and worker agree otherwise, grant to the worker on each working day –

- (a) a meal break of one hour not later than 4 consecutive hours of work; and
- (b) one tea break of at least 20 minutes or two tea breaks of at least 10 minutes each.

19. Meal allowance

- (1) Notwithstanding any other enactment or Remuneration Regulations, where a worker is required to perform work –
 - (a) for less than two hours but up to 7.00 p.m. on any day; or
 - (b) for a period of at least two hours and up to 6.00 p.m. on any day,

after having completed a normal day's work, he shall, in addition to any remuneration due for overtime work, be provided by the employer with an adequate free meal or be paid a meal allowance as specified in paragraph (a) of the Third Schedule.

(2) The meal allowance specified in subsection (1) shall be paid not later than on the last working day of the pay period.

PART V – REMUNERATION

20. Equal remuneration for work of equal value

(1) Every employer shall ensure that the remuneration of any worker shall not be less favorable than that of another worker performing the same type of work.

(2) Where an employer has recourse to the services of a job contractor, the job contractor shall ensure that the remuneration of any worker shall not be less favourable than that of another worker performing the same type of work.

21. Payment of remuneration

(1) Every employer shall pay remuneration to a worker at monthly intervals, unless the parties agree to payment at shorter intervals.

(2) Every employer shall pay remuneration directly to every worker –

- (a) in legal tender only, unless there is an agreement for payment by cheque or into the worker's bank account;
- (b) during working hours at the place of work, when paid in legal tender or by cheque; and
- (c) not later than the last working day of the pay period.

(3) Every employer shall –

- (a) issue to every worker, at the time of paying remuneration, with a payslip in the form specified in the Fourth Schedule; and
- (b) cause every worker, to whom remuneration is paid in legal tender or by cheque, to sign or affix his thumbprint to a remuneration book stating the particulars of the remuneration paid.

(4) No employer shall, in respect of the payment of remuneration –

- (a) restrict, by agreement or otherwise, the freedom of a worker to determine where and how his remuneration is to be spent; and
- (b) pay, require or permit remuneration to be paid in a shop, or cause or allow the owner of the shop or his representative or any person employed by him, to pay remuneration due to the worker, unless the worker is employed therein.

22. Deduction

(1) No employer shall deduct any amount from a worker's remuneration, other than an amount which –

- (a) is authorised by the worker in writing –

- (i) and which is due to the employer in recovery of an advance made on remuneration, provided the deduction does not exceed one fifth of the remuneration due for a pay period; or
 - (ii) where the worker wishes to pay to any body or fund;
- (b) is deducted in accordance with any enactment or a court order.
- (2) No employer shall deduct any amount from a worker's remuneration, which in the aggregate, exceeds one half of the worker's remuneration for any pay period.
- (3) No employer shall, in respect of the payment of remuneration, deduct any amount –
 - (a) by way of fine or compensation for poor or negligent work or for damage caused to the property of the employer;
 - (b) as a direct or indirect payment for the purpose of obtaining or retaining employment;
 - (c) by way of discount, interest or any charge on account of any advance of remuneration made to a worker.

23. Payment of remuneration to a part-time worker

(1) Every employer shall pay to a part-time worker not less than the basic wage or salary prescribed in any enactment or specified in a collective agreement except where the enactment overrides the agreement, for his category or grade whichever is the higher, calculated proportionately on the notional hourly rate and increased by not less than 5 per cent.

(2) Where no basic wage or salary is prescribed in an enactment or specified in a collective agreement, every employer shall pay to a part-time worker not less than the basic wage or salary of a comparable full-time worker calculated proportionately on the notional hourly rate and increased by not less than 5 per cent.

(3) Any award made by the Tribunal on the basic wage or salary of a part-time worker shall supercede any enactment or collective agreement providing for such basic wage.

24. Payment of remuneration in special circumstances

(1) An employer shall pay to a worker –

- (a) a full day's remuneration where –
 - (i) the employer is unable to provide work to the worker; or
 - (ii) owing to climatic conditions, power failure, or breakdown in machinery or appliances, work has been stopped after the worker has worked for more than 2 hours; or
- (b) half a day's remuneration where owing to climatic conditions, power failure or breakdown in machinery or appliances –
 - (i) the employer is of opinion that no work can be performed; or
 - (ii) work has been stopped before the worker has completed 2 hours of work.

(2) Subject to section 36(1), an employer may require a worker to work temporarily for a time shorter than that specified in his agreement at a reduced remuneration, subject to the approval of the Permanent Secretary.

(3) A worker who accepts the reduction in working time and remuneration shall be entitled to accept work for another employer during the time no work is provided to him.

(4) Where a cyclone warning class III or IV is in force, a worker may absent himself from work and the employer shall pay remuneration to the worker at the normal rate in respect of the period of absence.

(5) Subsection (4) shall apply until –

- (a) the cyclone warning class III or IV has been removed; and
- (b) (i) the employer provides a means of transport to the worker to attend his place of work; or
 - (ii) public transport is available.

(6) Where a worker works on a day on which a cyclone warning class III or IV is in force, the worker shall, in addition to any remuneration due to him, be entitled to –

- (a) an allowance equal to 3 times the basic rate per hour in respect of every hour of work performed; and
- (b) adequate free meals.

(7) No remuneration shall be payable to or recoverable by a worker for any period –

- (a) during which the worker was in lawful custody;

- (b) spent by the worker in a reform institution; or
- (c) spent by the worker in going to, attending or returning from any court in relation to proceedings in which he has been convicted for an offence.

25. Payment of remuneration due on termination of agreement

(1) Subject to subsection (2), every employer shall pay any remuneration due to a worker on the termination of the worker's agreement.

(2) Where the parties to an agreement are deemed to have entered into a fresh agreement under section 36(2), the employer shall, not later than 2 working days after the expiry of the previous agreement, pay to the worker the remuneration due under the previous agreement.

(3) Where notice of termination of an agreement has been given under section 37, the employer shall, on or before the date of expiry of the notice, pay to the worker any remuneration due.

(4) Where an agreement is terminated otherwise than by notice under section 37, or by expiry of the period for which the agreement was agreed to last, the employer shall pay to the worker any remuneration due on the termination of the employment.

(5) Where an agreement is terminated by an employer otherwise than on grounds of misconduct, and at the time of termination the worker has not taken any of the leave to which he is entitled to under section 27, the employer shall in lieu of leave, pay to the worker the remuneration to which the worker would have been entitled if he had worked.

PART VI – OTHER CONDITIONS OF EMPLOYMENT

26. Transport of workers

(1) An employer shall, where the distance between a worker's residence and his place of work exceeds 3 km, provide the worker with free transport from the worker's residence to his place of work and from the worker's place of work to his residence, or pay him the equivalent of the return bus fare.

(2) An employer shall, irrespective of the distance between a worker's residence and his place of work, provide the worker with free transport from the worker's residence to his place of work and from the worker's place of work to his residence, where the worker is required by his employer to attend or cease work at a time when no public bus service is available.

(3) No person shall, except with the Permanent Secretary's written authorisation, transport a worker or cause a worker to be transported in –

- (a) a goods vehicle; or
- (b) any other vehicle, unless the vehicle is provided with an easy means of entering into, and alighting therefrom, which does not involve climbing.

(4) Any vehicle, other than a bus or a motor-car, used to transport a worker to and from his place of work, shall be licensed for that purpose by the National Transport Authority.

(5) The Minister may, by regulations, prescribe for the categories of workers to whom transport facilities shall be provided and the conditions under which such workers shall be transported.

27. Annual leave

(1) Subject to subsection (7), every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 12 consecutive months shall be entitled, during each subsequent period of 12 months while he remains in continuous employment, to 20 working days' annual leave or such similar leave under any other name.

(2) Notwithstanding subsection (1), every worker shall be entitled to 2 days' leave in every year, in addition to the leave specified in –

- (a) subsection (1);
- (b) any other enactment;
- (c) any agreement;
- (d) any collective agreement; or
- (e) any award following arbitration.

(3) Where a part-time worker remains in continuous employment with the same employer for a period of 12 consecutive months, he shall be entitled during each subsequent period of 12 months, to the number of days of annual leave on full pay computed in accordance with the following formula –

$$N/W \times 20$$
 normal working days, where "N" means the number of days of work he is required to perform in a week and "W" means the number of working days in a week of a comparable full-time worker.

(4) Where an employer and a worker are unable to agree as to when the leave under this section is to be taken, half of the leave period shall be fixed by the employer and the other half by the worker.

(5) Where a worker has not taken or been granted all the leave to which he is entitled under this section, he shall be paid a normal day's wage in respect of each day's annual leave still due at the end of the period of 12 consecutive months.

(6) Any agreement by a worker to relinquish his annual leave entitlement under this section shall be null and void.

(7) This section shall be subject to any agreement, collective agreement, award or any other enactment, notwithstanding section 3.

28. Sick leave

(1) (a) Subject to subsections (3) and (4), every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 12 consecutive months shall be entitled, during each subsequent period of 12 months while he remains in the continuous employment, to 15 working days' sick leave on full pay.

(b) Where, at the end of the period of 12 consecutive months, a worker has not taken the sick leave to which he is entitled to under paragraph (a), any outstanding sick leave shall be accumulated to a maximum of 90 working days.

(2) (a) Where a part-time worker remains in continuous employment with the same employer for a period of 12 consecutive months, he shall be entitled, during each subsequent period of 12 months, to the number of days of sick leave on full pay computed in accordance with the following formula –

$N/W \times 15$ normal working days, where "N" means the number of days of work he is required to perform in a week and "W" means the number of working days in a week of a comparable full-time worker.

(b) Where, at the end of the period of 12 consecutive months, a worker has not taken the sick leave to which he is entitled under paragraph (a), any outstanding sick leave shall be accumulated up to a maximum number of days according to the following formula –

$N/W \times 90$ normal working days, where "N" means the number of days of work he is required to perform in a week and "W" means the number of working days in a week of a comparable full-time worker.

(3) Where a worker has exhausted the sick leave provided for under subsection (1)(a) or (2)(a) and he has wholly spent time –

(a) in a hospital, public or private;

(b) for his convalescence after discharge from a public or private hospital, certified by a medical practitioner,

any additional sick leave granted may be deducted from the accumulated sick leave.

(4) (a) Where a worker absents himself on ground of illness, he shall, except where the employer is aware of the nature of the illness, notify his employer of his illness as soon as possible.

(b) Where a worker, referred to in paragraph (a), remains ill for more than 3 consecutive working days, he shall forward to his employer a medical certificate –

(i) on the fourth day of absence; or

(ii) where the worker is admitted to a hospital, public or private, within 3 days following his discharge.

(5) A medical certificate referred to in subsection (4)(b) shall not be valid in respect of any period in excess of 4 days before the day on which the medical certificate was issued.

(6) Every employer may, at his own expense, cause a worker who is absent on ground of illness to be examined by a medical practitioner.

29. Medical facilities

(1) Every person who employs 10 or more workers shall provide appropriate arrangements for medical and health requirements of his workers at work.

(2) Where a worker suffers injury or illness at work necessitating his removal to his home or to a hospital or other similar institution, the employer shall promptly and at his own expense provide an appropriate means of conveyance for the worker.

(3) Notwithstanding subsection (1), the Minister may make regulations prescribing measures for every employer to make arrangements for, or to facilitate, medical examination or medical tests of his workers by any public or private hospital or para-medical units, as the case may be.

30. Maternity benefits

(1) A female worker who remains in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave under this section shall, on production of a medical certificate, be entitled to –

(a) 12 weeks' maternity leave on full pay to be taken either –

(i) before confinement, provided that at least 6 weeks' maternity leave shall be taken immediately following the confinement; or

- (ii) after confinement; and
- (b) subject to subsection (2), an allowance as specified in paragraph (b) of the Third Schedule payable within 7 days of her confinement.

(2) Where a part-time female worker remains in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave, she shall, on production of a medical certificate, be entitled to an allowance computed in accordance with the following formula –

$N/H \times$ amount specified in paragraph (b) of the Third Schedule, where “N” means the number of days of work she is required to perform in a week and “H” means the number of working days in a week of a comparable full-time worker.

(3) A female worker who reckons less than 12 months’ continuous employment shall not be entitled to the benefits specified in subsections (1)(b) or (2), as the case may be, but shall be entitled to the maternity leave specified in subsection (1)(a) without pay.

(4) Where a female worker suffers a miscarriage which is duly certified by a medical practitioner, she shall be entitled to 2 weeks’ leave on full pay immediately after the miscarriage.

(5) (a) Subject to paragraphs (b) and (c), where a female worker who has been in continuous employment with the same employer for a period of more than 12 consecutive months immediately preceding the beginning of leave under this section, gives birth to a still-born child, she shall, upon the advice of her medical practitioner, be entitled to a maximum of 12 weeks’ leave.

(b) At least 2 weeks of the leave specified in paragraph (a) shall be with pay and in case the period of the leave recommended is more than 2 weeks, the female worker shall be eligible to –

- (i) take the leave from her sick leave entitlement under section 28(1)(a) or (2)(a), as the case may be, in the first instance;
- (ii) take the sick leave accumulated under section 28(1)(b) or (2)(b), as the case may be, after having exhausted all the leave specified in subparagraph (i); or
- (iii) take the leave without pay.

(c) Where the female worker opts to take the maximum of 12 weeks’ leave specified in paragraph (a), the leave shall, for the purposes of subsection (3), be considered as one confinement.

(6) (a) A female worker who is nursing her unweaned child shall, for that purpose, be entitled every day at a time convenient to her and having regard to the needs of the child to at least –

(i) 2 breaks of half-hour; or

(ii) one break of one hour.

(b) The break specified in paragraph (a) shall –

(i) be for a period of 6 months from the date of confinement or such longer period as may be recommended by a medical practitioner; and

(ii) not be deducted from the number of hours of work of the female worker.

(7) An employer shall not require a female worker to perform work in excess of a normal day's work or work during night shift, 2 months before her confinement.

(8) Subject to medical recommendation, a female worker who is pregnant shall not be required to perform duties –

(a) requiring continuous standing; or

(b) that may be detrimental to her health and that of her baby.

(9) An employer shall not give to a female worker, who is on maternity leave, notice of termination of employment –

(a) during such leave; or

(b) that would expire during such leave,

for any reasons, unless the grounds relate to the economic, technological, structural or similar nature affecting the employer's activities.

31. Paternity leave

(1) A male worker shall be entitled to 5 continuous working days' leave, to be known as paternity leave, on production of –

(a) a medical certificate certifying the birth of his child from his spouse; and

(b) a written statement signed by him that he is living with his spouse under a common roof.

(2) Subject to subsection (1), the paternity leave shall –

- (a) begin within one week from the birth of the child; and
- (b) be on full pay where the worker has been in continuous employment with the same employer for a period of at least 12 months prior to the date of birth of the child.

(3) In this section, "spouse" means the person with whom the worker had contracted civil or religious marriage.

32. Other facilities

(1) Where the Permanent Secretary is of the opinion that no adequate arrangements have been made to nurse the child of a worker, he may, after consultation with a government medical practitioner, give such directions by written notice to the employer as he thinks fit.

(2) An employer shall comply with the directions given to him by the Permanent Secretary or government medical practitioner under subsection (1).

PART VII – ENTITLEMENT OF WORKERS IN THE SUGAR INDUSTRY

33. Interpretation of Part VII

In this Part –

"employer" means a person who owns either a sugar factory or land under sugar cane cultivation of an extent exceeding 10.5522 hectares (25 arpents) in aggregate;

"Remuneration Regulations" means –

- (a) the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983; or
- (b) the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985,

as the case may be;

"worker" –

- (a) has the same meaning as in regulation 2(1) of any of the Remuneration Regulations;
- (b) includes a person specified in regulation 2(2) of the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985.

34. Continuous employment of existing workers in the Sugar Industry

Subject to –

- (a) this Act;
- (b) section 23 and 23A of the Sugar Industry Efficiency Act 2001; and
- (c) section 24 of the Cane Planters and Millers Arbitration and Control Board Act,

every worker in employment on 31 May 2001 shall be entitled to remain in the employment of his employer.

35. Workers employed by job contractor

- (1) Where a worker is employed by a job contractor for the purposes of –
 - (a) land preparation, growing, harvesting or processing of sugar cane and the construction, repair or maintenance of roads, bridges or water works, structures or buildings, wholly or substantially required for the purposes of the sugar industry and any other work incidental to the exploitation of land; or
 - (b) the transport of canes, sugar, materials or supplies used in connection with any work specified in paragraph(a),

this Act and the Remuneration Regulations shall apply to the job contractor in the same manner as it applies to an employer in those enactments.

- (2) Where an employer has recourse to one or more job contractors, the total number of man-days performed by –
 - (a) workers employed by the job contractor; and
 - (b) seasonal workers employed by the employer,

shall not, in any year, exceed 20 per cent of the total number of man-days performed in that year by workers in employment under section 34.

- (3) Every employer shall, on or before 31 January of every year, submit to the Permanent Secretary, separate returns on agricultural workers and non-agricultural workers, showing in respect of the preceding year –
 - (a) the number of workers employed by job contractors under subsection 2(a);
 - (b) the number of seasonal workers employed by him under subsection 2(b);
 - (c) the number of workers employed by him under section 34; and

- (d) the number of man-days performed by the workers referred to in paragraphs (a), (b) and (c).

PART VIII – TERMINATION OF AGREEMENT

36. Termination of agreement

(1) Subject to any express provision of an agreement and to subsections (2), (3), (4) and (5), every agreement shall terminate on the last day of the period agreed upon or on the completion of the specified piece of work.

(2) A party to an agreement, other than an agreement entered into for a specified piece of work, shall on the termination of the agreement, be deemed to have entered into a fresh agreement upon the same terms and conditions as the previous agreement unless notice has been given by either party to terminate the agreement in accordance with section 37.

(3) Where a worker is ill-treated by his employer, he may claim that the agreement has been terminated by his employer.

(4) Where an employer fails to pay the remuneration due under the agreement to a worker, the latter may claim that the agreement has been terminated by his employer.

(5) (a) Subject to paragraph (b), an agreement shall not be broken by a worker where he absents himself from work for 3 consecutive working days without good and sufficient cause for a first time.

(b) Where the worker absents himself from work without good and sufficient cause, for 3 consecutive working days on a second or subsequent occasion, the employer may consider that the worker has broken his agreement.

37. Notice of termination of agreement

(1) A party to an agreement, other than an agreement for a specified piece of work or for a period of time, may, except where he is prohibited by an enactment from doing so, terminate the agreement on the expiry of a notice given by him to the other party of his intention to terminate the agreement.

(2) The employer shall, at the time of notifying a worker of the termination of his employment, state the reason of such termination.

(3) Notice may be verbal or written and may, subject to subsection (4), be given at any reasonable time.

(4) Subject to any provision of an agreement, the length of the notice to be given under subsection (1) shall be of 30 days.

(5) Any party may, in lieu of giving notice of termination of agreement, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice.

(6) Any employer who –

- (a) intends to reduce any number of workers or to close down his enterprise for reasons of an economic, technological, structural or similar nature; or
- (b) terminates the employment of a worker for any other reason,

shall give written notice thereof to the Minister.

38. Protection against termination of agreement

(1) An agreement shall not be terminated by an employer by reason of –

- (a) a worker's race, colour, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status or family responsibilities;
- (b) a worker's absence from work during maternity leave;
- (c) a worker's temporary absence from work because of injury or sickness duly notified to the employer and certified by a medical practitioner;
- (d) a worker becoming or being a member of a trade union, seeking or holding of trade union office, or participating in trade union activities outside working hours or, with the consent of the employer, within working hours;
- (e) the worker's filing in good faith of a complaint, or participating in proceedings against an employer involving alleged breach of any terms and conditions of employment;
- (f) a worker's exercise of any of the rights provided for in this Act or other enactment, or in such agreement, or collective agreement or award.

(2) No employer shall terminate a worker's agreement –

- (a) for reasons related to the worker's misconduct, unless –
 - (i) he cannot in good faith take any other course of action;
 - (ii) the worker has been afforded an opportunity to answer any charge made against him in relation to his misconduct;

- (iii) he has within, 10 days of the day on which he becomes aware of the misconduct, notified the worker of the charge made against the worker;
 - (iv) the worker has been given at least 5 working days' notice to answer any charge made against him; and
 - (v) the termination is effected not later than 7 days after the worker has answered the charge made against him, or where the charge is subject of an oral hearing, after the completion of such hearing;
 - (b) unless, where an alleged misconduct is subject of criminal proceedings –
 - (i) the employer has afforded the worker an opportunity to answer any charge made against him in relation to his misconduct;
 - (ii) he has, within 10 days of the day on which he becomes aware of the conviction of the worker by the Court of first instance, notified the worker of the charge made against the worker;
 - (iii) the worker has been given at least 5 working days notice to answer the charge made against him; and
 - (iv) the termination is effected not later than 7 days after the worker has answered the charge made against him, or where the charge is subject of an oral hearing, after the completion of such hearing;
 - (c) in cases not covered by paragraphs (a) and (b), unless the termination is effected within 7 days from the day the employer becomes aware of the misconduct.
- (3) No employer shall terminate a worker's agreement for reasons related to the worker's poor performance, unless –
- (a) he cannot in good faith take any other course of action;
 - (b) the worker has been afforded an opportunity to answer any charge made against him related to his alleged poor performance;
 - (c) the worker has been given at least 5 working days' notice to answer any charge made against him; and

- (d) the termination is effected not later than 7 days after the worker has answered the charge made against him, or where the charge is subject of an oral hearing, after the completion of such hearing.

(4) Where the opportunity afforded to a worker to answer any charge made against him under subsection 2(a)(ii) , 2(b)(i) or 3(b) is the subject of an oral hearing, he may have the assistance of –

- (a) a representative of his trade union or his legal representative; or
- (b) an officer, where he is not assisted as specified in paragraph (a).

(5) Any written statement acknowledging guilt by a worker obtained at the instance of his employer shall not be admissible in evidence before any authority or any court.

(6) Where an employer suspends a worker pending the outcome of disciplinary proceedings against the worker on account of the worker's misconduct or poor performance –

- (a) any period of such suspension shall be on full pay;
- (b) any extension to the delay provided for under sub-section 2(a)(iv), 2(b)(iii) or 3(c) shall be without pay if the request for extension is made by or on behalf of the worker.

39. Worker under notice of termination

During the period when a worker is under notice of termination of agreement under section 37, the employer shall, on satisfactory proof of the purpose of the request, allow the worker reasonable time-off, without loss of pay, to seek further employment.

PART IX – WORKFARE PROGRAMME

40. Interpretation of Part IX

In this Part –

“basic wage or salary”, in relation to a worker, means –

- (a) where the terms and conditions of employment of the worker are governed by a Remuneration Regulations, arbitral award or an agreement, whether oral or written, express or implied, the basic wage or salary prescribed in the Remuneration Regulations, award or agreement, or where the employer pays a higher wage or salary, the higher wage or salary so paid, but does not include any allowance by any name called, and whether paid in cash or in kind;

- (b) in any other case, all the emoluments received by the worker, excluding any bonus or overtime; but

shall not exceed the maximum basic wage or salary as specified in the Second Schedule to the National Savings Fund (Collection of Contributions) Regulations 1997.

"worker" does not include –

- (a) a public officer;
- (b) a person employed by a parastatal body or by a local authority;
- (c) a part-time worker;
- (d) a migrant worker;
- (e) a worker employed in the sugar industry who voluntarily retires –
 - (i) in the context of a Voluntary Retirement Scheme under section 23 of the Sugar Industry Efficiency Act 2001;
 - (ii) an Early Retirement Scheme under section 23A of the Sugar Industry Efficiency Act 2001; or
 - (iii) a factory closure pursuant to section 24 of the Cane Planters and Millers Arbitration and Control Board Act;
- (f) a person reckoning less than 6 months continuous employment with an employer as at the date of the termination of his employment.

41. Workfare Programme

- (1) There is set up for the purposes of this Act a Workfare Programme.
- (2) The Workfare Programme shall consist of –
 - (a) the payment of a Transition Unemployment Benefit to every worker whose agreement has been terminated and who opts to join the Workfare Programme;
 - (b) assistance by the relevant bodies referred to in section 43(2) for any of the following activities –
 - (i) job placement;
 - (ii) training and re-skilling; or
 - (iii) starting up of a small business.

42. Eligibility to join the Workfare Programme

(1) Subject to section 46 and subsection (3), a worker whose agreement is terminated by an employer –

- (a) for the reasons specified in section 36(3) and (4);
- (b) in contravention of section 38(1), (2) and (3);
- (c) for reasons of –
 - (i) economic, technological, structural or similar nature affecting the enterprise;
 - (ii) misconduct; or
 - (iii) poor performance;

shall be entitled to join the Workfare Programme.

(2) (a) A worker who elects to join the Workfare Programme shall register himself with the Permanent Secretary within 7 days of the termination of his employment.

(b) The Permanent Secretary may, on good cause shown to his satisfaction, extend the time within which registration under paragraph (a) may be made.

(3) (a) Where the agreement of a worker or a group of workers is terminated, the worker, the group of workers or the trade union recognised by the employer may agree on the quantum and the payment of a compensation with the employer.

- (b) Where an agreement has been reached under paragraph (a) –
 - (i) the worker shall not be entitled to join the Workfare Programme under section (41); and
 - (ii) the employer shall not be required to pay the recycling fee under section 47(1).

43. Election for Workfare Programme

(1) A worker whose employment is terminated on grounds specified in section 42(1) and who registers himself in the Workfare Programme shall be entitled only to benefits under the Workfare Programme.

(2) Where a worker registers himself in the Workfare Programme, he shall, within 7 days, opt for any of the activities under section 41(2)(b) and the Permanent Secretary shall refer the worker, as the case may be, to either –

- (a) the Employment Service of the Ministry for job placement;
- (b) the Human Resource Development Council for training and re-skilling; or
- (c) the Small Enterprises and Handicraft Development Authority for self employment activities, including starting up of a small business.

(3) Upon election by the worker of any of the activities of the Workfare Programme, the Permanent Secretary shall, within 7 days of the date of the election by the worker, notify the Permanent Secretary of the Ministry responsible for the subject of social security in the form specified in the Fifth Schedule.

(4) Where the Permanent Secretary of the Ministry responsible for the subject of social security is notified under subsection (3), he shall pay the Transition Unemployment Benefit to the worker.

44. Transition Unemployment Benefit

(1) Subject to subsection (4), every worker who is registered in the Workfare Programme shall be entitled to a Transition Unemployment Benefit for a minimum period of one month accruing as from the beginning of the month in which his employment is terminated and for a period not exceeding 12 months at the rates specified in the Sixth Schedule.

(2) The Transition Unemployment Benefit shall be financed as specified in the Seventh Schedule.

(3) The total contribution payable under section 17 of the National Pensions Act shall be paid from the Workfare Programme Fund under section 45(3) in respect of a worker for the period during which he is a beneficiary of the Transition Unemployment Benefit, on the basis of the same basic wage or salary of the worker on which the contribution was payable before the termination of his employment.

(4) The Transition Unemployment Benefit shall cease at the end of the month in which the worker –

- (a) opts out of the Workfare Programme;
- (b) becomes gainfully employed;
- (c) refuses an offer for job placement for a second time;
- (d) is admitted by the Human Resource Development Council to a training or re-skilling scheme;

- (e) sets up a small business with the assistance of the Small Enterprises and Handicraft Development Authority; or
- (f) reaches the retirement age.

(5) Subject to section 43(2)(a), where a worker becomes gainfully employed, he shall notify the Permanent Secretary within 7 days of the day he became gainfully employed.

(6) The Employment Service shall notify the Permanent Secretary within 7 days from the time the worker has been placed in a job or refuses an offer for job placement for a second time.

(7) The Human Resource Development Council shall notify the Permanent Secretary within 7 days from the time the worker has been admitted to a training or re-skilling scheme.

(8) The Small Enterprises and Handicraft Development Authority shall notify the Permanent Secretary within 7 days from the time the worker has set up a small business.

(9) Where a worker ceases to be entitled to the Transition Unemployment Benefit under subsection (4), the Permanent Secretary shall not later than the next working day following receipt of notification under subsections (5), (6) (7) or (8), notify, on an approved form, the Permanent Secretary responsible for the subject of social security.

45. Establishment of Workfare Programme Fund

(1) There is established for the purposes of this Act a Workfare Programme Fund which shall be managed by the National Savings Fund.

(2) There shall be paid into the Workfare Programme Fund –

- (a) money collected by way of levy at the rates specified in the Second Schedule of the Human Resource Development Act 2003;
- (b) all monies appropriated by the National Assembly for the purposes of the Workfare Programme; and
- (c) interests on investments.

(3) There shall be paid out of the Workfare Programme Fund –

- (a) the Transition Unemployment Benefit payable at the rate specified in the Sixth Schedule;

- (b) the total contributions of workers payable under the National Pensions Act as referred to in section 44(3); and
- (c) all expenses incurred in the administration of the Workfare Programme Fund.

PART X – COMPENSATION

46. Payment of severance allowance

(1) Where a worker has been in continuous employment for a period of not less than 12 months with an employer and the employer terminates his agreement, the employer shall pay severance allowance to the worker as specified in subsection (5).

(2) Subject to section 42(3) or 43(1), where a worker claims severance allowance under subsection (1), the Permanent Secretary shall enquire into the matter with a view to promoting a settlement.

(3) Where the matter under subsection (2) does not result in being satisfactorily settled, the Permanent Secretary –

- (a) may enter proceedings before Court if he is of the opinion that the worker has a *bona fide* case and thereupon, the worker referred to in section 40, shall be entitled to be admitted to the Workfare Programme;
- (b) may not enter proceedings before Court if he is of the opinion that the worker does not have a *bona fide* case and advise the worker referred to in section 40 that he may apply for registration in the Workfare Programme, unless the worker institutes proceedings on his own to claim severance allowance.

(4) Where there has been a settlement under subsection (2), other than a settlement by reinstatement or by payment of any compensation, the worker shall be entitled to be admitted to the Workfare Programme.

(5) Where a worker has been in continuous employment for a period of not less than 12 months with an employer, the Court may, where it finds that –

- (a) the termination of agreement of the worker was due to the reasons specified under section 36(3) and (4);
- (b) the termination of agreement of the worker was in contravention of section 38(1), (2), (3), and (4);
- (c) the reasons related to the worker's alleged misconduct or poor performance under section (38)(2) and (3) do not constitute valid reasons for the termination of employment of the worker;

- (d) the grounds for the termination of agreement of a worker for economic, technological, structural or similar nature affecting the enterprise, do not constitute valid reasons,

order that the worker be paid severance allowance as follows –

- (i) for every period of 12 months of continuous employment, a sum equivalent to 3 months remuneration; and
- (ii) for every period less than 12 months, a sum equal to one twelfth of the sum calculated under subparagraph (i) multiplied by the number of months during which the worker has been in continuous employment of the employer.

(6) Where the Permanent Secretary has not entered proceedings on behalf of a worker under subsection (3)(b) and the worker has instituted proceedings before the Court on his own, and the Court has given judgment in favour of the worker in terms of subsection (5), the worker referred to in section 40 shall be eligible to be admitted to the Workfare Programme as from the date of judgment.

(7) Where a matter is referred to the Permanent Secretary under subsection (2) or to Court under subsection (3)(a), the employer may not set up as defence that the worker has abandoned his employment unless he proves that the worker has, after having been given written notice –

- (a) by post with advice of delivery; or
- (b) by service at the residence of the worker,

requiring him to resume his employment, failed to do so within a time specified in the notice which shall not be less than 24 hours from the receipt of the notice.

(8) Subsection (7) shall not apply in relation to a worker who has notified the termination of his employment in writing.

(9) Where the employment of a part-time worker or a migrant worker, who has been in continuous employment with an employer for a period of 12 months or more, has been terminated by the employer for reasons of economic, technological, structural or similar nature affecting the enterprise, the employer shall pay severance allowance to the part-time or migrant worker –

- (a) for every period of 12 months, one quarter of a month's remuneration;
- (b) for every period less than 12 months, a sum equal to one twelfth of the sum calculated under paragraph (a) multiplied by the number of months during which the worker has been in the continuous employment of the employer.

(10) Where a worker's remuneration is fixed at a rate calculated on work done or includes any sum paid by way of commission in return for services, his remuneration shall, for the purposes of this section, be computed in the manner best calculated to give the rate at which the worker was being remunerated over a period not exceeding 12 months prior to the termination of his agreement.

(11) The Court may, where it thinks fit and whether or not a claim to that effect has been made, order an employer to pay interest at a rate not exceeding 12 per cent per annum on the amount of severance allowance payable from the date of the termination of the agreement to the date of payment.

(12) For the purposes of this section, the remuneration which shall be taken into account in calculating the severance allowance shall be the remuneration payable to a worker at the time of the termination of his agreement.

47. Payment of Recycling Fee

(1) (a) Subject to subsection (2), where an employer terminates the agreement of a worker, he shall in respect of that worker, pay, not later than 30 days from the date of termination of employment of the worker, to the National Pensions Fund for credit to the National Savings Fund a recycling fee according to the rates specified in the Eighth Schedule.

(b) An employer shall, at the time of payment of the recycling fee under paragraph (a), submit a return in the form specified in the Ninth Schedule.

(c) The recycling fee payable under paragraph (a) shall be credited into the National Savings Fund Account of the worker under section 5(B) of the National Savings Fund Act.

(2) No recycling fee shall be payable where –

- (a) an employer dies and his worker is employed or offered employment by the personal representative or heir of the deceased employer forthwith after the death;
- (b) a worker's employment by a partnership ceases on the dissolution of the partnership, and he is employed or offered employment by a member of the dissolved partnership or a new partnership forthwith after the dissolution;
- (c) a worker's employment by a body corporate ceases on the dissolution of that body and he is employed or offered employment by some other corporate body in accordance with an enactment or a scheme of reconstruction forthwith after the dissolution; or
- (d) a worker's employment ceases on the disposal by his employer of the goodwill, or of the whole or a substantial part of the business, or of that part of the business in which he is employed

and he is employed or offered employment by the person who acquires the goodwill or business or part of the business forthwith after the disposal,

on terms and conditions which are not less favourable than those of the former agreement.

(3) Where a worker to whom an offer is made in writing in any of the circumstances specified in subsection (2) accepts the offer, he shall be deemed to enter the employment of the person by whom the offer is made forthwith upon the cessation of his employment with the first employer and the employment of the worker by the first and the second employer shall be deemed to be continuous.

(4) Where a worker is deemed to be in continuous employment in accordance with subsection (3) and that continuous employment is terminated in circumstances in which the recycling fee under subsection (1) or severance allowance under section 46 is payable, the employer in whose service the worker was employed immediately before the termination shall be deemed to be the employer during the whole of the period and shall be liable to pay the recycling fee or severance allowance, as the case may be.

48. Deductions from severance allowance

- (1) An employer may deduct from the severance allowance payable –
- (a) any gratuity granted by the employer;
 - (b) any contribution made to any fund or scheme by the employer;
and
 - (c) any recycling fee paid under section 47(1).

(2) In this section, "fund" or "scheme" means any pension or provident fund or scheme set up by the employer for the benefit of a worker.

49. Gratuity on retirement

(1) An employer shall pay a gratuity to a worker who has been in continuous employment with him for a period of 12 months or more where –

- (a) the worker, on or after attaining the age of 60, retires voluntarily;
- (b) the worker who has been in continuous employment with the same employer for not less than 10 years retires before the age of 60 on grounds of permanent incapacity to perform his work and such incapacity is duly certified by a government medical practitioner; or
- (c) the worker, on or after attaining the retiring age, retires at the request of the employer.

(2) The gratuity referred to in subsection (1) shall be paid in a lump sum and shall be calculated –

- (a) in the case of a worker, other than a part-time worker, on the basis of –
 - (i) 15 days' remuneration for every period of 12 months' continuous employment; and
 - (ii) a sum equal to one twelfth of the sum referred to in subparagraph (i) multiplied by the number of months during which the worker has remained in the continuous employment of the employer, for every period less than 12 months.
- (b) in the case of a part time worker, on the basis of the following formula –

$N/H \times$ amount of gratuity payable under subsection (a), where "N" means the number of days of work performed by the part-time worker in a week and "H" means the number of days of work performed by a comparable full time worker in a week.

(2) – (3) An employer may deduct from any gratuity payable under subsection

- (a) half the amount of any gratuity due at the retirement age or the age of 60 from any fund or scheme, computed by reference only to the employer's share of contributions;
- (b) five times the amount of any annual pension granted at the retirement age or the age of 60 from any fund or scheme, computed by reference only to the employer's share of contributions;
- (c) any other gratuity granted at the retirement age or the age of 60 by the employer;
- (d) ten times the amount of any other annual pension granted at the retirement age or the age of 60 by the employer.

(4) In this section, "fund or scheme" means any pension or provident fund or scheme set up by the employer for the benefit of the worker.

(5) For the purposes of this section –

- (a) the remuneration which shall be taken into account in calculating the gratuity shall be the remuneration payable to a worker at the time of the retirement;

- (b) a day's remuneration means remuneration calculated on the basis of stipulated hours.

50. Death grant

(1) Where a worker who has been in continuous employment with the same employer for not less than 12 consecutive months dies, the employer shall pay a death grant as specified in paragraph (c) of the Third Schedule to –

- (a) his spouse on production of a written statement by him that he was living with the deceased under a common roof at the time of death; or
- (b) if he leaves no spouse, the person who satisfies the employer that he has borne the funeral expenses.

(2) For the purpose of subsection (1), "spouse" means the person with whom the deceased worker had contracted civil or religious marriage.

51. Certificate of employment

(1) Every employer shall provide a worker, whose employment has been terminated, with a certificate of employment in the form prescribed in the Tenth Schedule within 7 days of the termination of his employment.

(2) No employer shall insert in the certificate issued under subsection (1) any particulars other than those specified in the Tenth Schedule.

52. Termination of appointment under the Constitution

(1) Subject to subsections (2) and (3), where an appointment is terminated under section 92 or 113 of the Constitution, the holder of the office whose appointment is terminated shall –

- (a) where he has served for a period of 3 years or more, be eligible to compensation representing 3 months' salary;
- (b) where he has served for a period of less than 3 years be eligible to compensation representing one month's salary.

(2) Notwithstanding anything to the contrary in any agreement, no gratuity or severance allowance shall be payable to the holder of any office the appointment to which is terminated under section 92 or 113 of the Constitution.

(3) Where the holder of an office to which subsection (1) applies was, immediately before his appointment to that office, the holder of a public office or in employment with a local authority or statutory body –

- (a) he shall be entitled to resume his former office; or

- (b) where the former office is no longer vacant, he shall be deemed for the purposes of any other enactment to have retired from the office vacated on the ground of abolition of that office.

53. Contractual worker

(1) Notwithstanding any agreement or any enactment, every worker, who is employed on a contract of determinate duration which ends before the 31 December of any year and who has performed a number of normal days' work equivalent to not less than 80 per cent of the number of working days during his employment in that year, shall be entitled to a gratuity equivalent to one twelfth of his earnings for that year.

(2) The gratuity provided for under subsection (1) shall be without prejudice to the gratuity payable under the End of Year Gratuity Act 2001.

PART XI – VIOLENCE AT WORK

54. Violence at work

- (1) No person shall –
 - (a) harass, sexually or otherwise;
 - (b) assault;
 - (c) verbally abuse, swear at or insult;
 - (d) express the intention to cause harm;
 - (e) bully or use threatening behaviour towards;
 - (f) use aggressive gesture indicating intimidation, contempt or disdain towards;
 - (g) by words or act, hinder,

a worker, in the course of or as a result of his work.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) For the purpose of subsection (1), a person sexually harasses another person where, in circumstances in which a reasonable person would have foreseen that other person would be humiliated, offended or intimidated, he –

- (a) makes an unwelcome sexual advance, or an unwelcome request for a sexual favour to that other person; or

- (b) engages in any other unwelcome conduct of a sexual nature towards that other person.

PART XII – JOB CONTRACTORS

55. Issue of permit

(1) No person shall work as a job contractor unless he holds a permit issued by the Permanent Secretary.

(2) Any person who wishes to work as a job contractor shall apply to the Permanent Secretary for a permit.

(3) On receipt of an application under subsection (2), the Permanent Secretary may, after making such inquiry as he thinks fit –

- (a) grant the permit subject to such conditions as he thinks fit;
- (b) refuse to grant a permit and specify the ground of his refusal.

(4) Any conditions imposed under subsection (3) shall be endorsed on the permit.

(5) The Permanent Secretary may revoke the permit of a job contractor where the job contractor–

- (a) persistently fails to comply with this Act or any other enactment relating to the terms and conditions of employment of workers employed by him or his statutory obligations imposed by such enactment;
- (b) acts in breach of the conditions specified by the Permanent Secretary under subsection (3)(b).

56. Joint liability of employer and job contractor

(1) Subject to subsection (2), a job contractor and the principal, for whom the job contractor has recruited or employed a worker, shall be jointly and severally liable for the payment of the remuneration of any worker.

(2) The liability of the principal of a job contractor under subsection (1) shall be limited to the sum payable by him to the job contractor under the arrangement between them.

(3) No person who is jointly liable with a job contractor under subsection (1) may set up as a defence to a claim from a worker seeking to recover remuneration the fact that he has already paid to the job contractor any sum due under the arrangement with the job contractor.

57. Remuneration to be privileged debt

(1) Subject to subsection (2), every worker employed by a job contractor shall, for securing payment of his remuneration, have the same privileges, in respect of the property of the principal, as he would have had if he had been directly employed by the principal without the intervention of the job contractor.

(2) Any amount recoverable under subsection (1) shall not exceed the amount payable by the principal to the job contractor under section 56(2).

PART XIII – RECORDS AND ADMINISTRATION

58. Register of employers

(1) Every employer who has 10 or more workers shall apply to the Permanent Secretary for registration under this Act.

(2) Every application made under subsection (1) shall be made in the prescribed form.

(3) The Permanent Secretary shall maintain a register of employers.

59. Keeping of records

(1) Every employer referred to in section 58 shall keep a register of workers, a record of remuneration paid, an inspection report book, and such other records as may be prescribed, and shall retain these records for a period of 3 years.

(2) There shall be sufficient compliance if an employer keeps the information specified in subsection (1) in an electronic form.

(3) Every employer shall –

(a) enter, in the register of workers, the name, the date of birth and the date of employment of every worker and the nature and conditions of the work he performs;

(b) enter, in the record of remuneration paid, the days or periods during which a worker has worked and the remuneration and other benefits paid to the worker.

(4) Every employer shall, on request –

(a) produce to an officer any records kept under subsections (1) and (3);

- (b) sign any entry made in the inspection report book by an officer;
- (c) submit to the Permanent Secretary such particulars as may be required.

60. Labour inspection

The Ministry shall be responsible for maintaining a labour inspection service which shall –

- (a) administer, and ensure the enforcement of this Act and any other enactment relating to labour or employment;
- (b) bring to the notice of the Minister defects or abuses not specifically covered by this Act or any other enactment relating to labour or employment.

61. Power to make enquiries

- (1) The Permanent Secretary may –
 - (a) enter without previous notice, at any hour of the day or night, any place of work, other than premises used solely for residential purposes except with the permission of the occupier thereof;
 - (b) enter by day and without previous notice any premises which he has reasonable cause to believe to be a place of work other than premises used solely for residential purposes except with the permission of the occupier thereof;
 - (c) carry out any examination or enquiry which he may consider necessary in order to satisfy himself that this Act or any other enactment relating to labour or employment is being strictly observed;
 - (d) interview alone or in the presence of any other person, as he thinks fit, and at such place he deems appropriate, the employer or his representative and any person employed in the enterprise, regarding the application of this Act or any other enactment relating to labour or employment, and any such person shall answer such questions truly to the best of his ability provided that no such person shall be required to give any information tending to incriminate himself;
 - (e) require the production of any books, records or other documents, whether prescribed by law or kept by the employer, relating to terms and conditions of employment, in order to ascertain whether this Act or any other enactment relating to

labour or employment are being complied with, and copy such documents or make extracts therefrom;

- (f) enforce the posting of such notices as may be required by this Act or any other enactment relating to labour or employment;
- (g) require an employer to submit in writing any information relating to remuneration, and terms and conditions of employment, of a worker, as well as the worker's name, address, date of birth, date of commencing employment and category;
- (h) require an employer or his representative to furnish the facilities and assistance required for entry, inspection, examination or enquiry in the exercise of any of the powers conferred under this Act or any other enactment relating to labour or employment.

(2) The Permanent Secretary shall, on the occasion of an inspection visit, notify the employer or the employer's representative of his presence, unless neither of them is present or easily accessible at that time, or he considers that such notification may be prejudicial to the performance of his duties.

(3) The Permanent Secretary may request the assistance of a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duties.

- (4) No person shall –
 - (a) willfully impede or delay the Permanent Secretary in the exercise of any power under this Act or any other enactment relating to labour or employment;
 - (b) fail to comply with a requirement or request or to answer a question of the Permanent Secretary under subsection (1);
 - (c) conceal or prevent any person from appearing before or being examined by the Permanent Secretary or any officer delegated by him, or attempt to do so.

62. Power to summon

- (1) Where the Permanent Secretary –
 - (a) has reason to believe that an offence relating to the observance of this Act or any other enactment relating to labour or employment has been committed by an employer; or
 - (b) wishes to enquire into a matter concerning a dispute between an employer and his workers or their representatives –

he may, by written notice, summon any person who he believes can provide information relating to the offence or the enquiry to attend and produce any document which he may require.

- (2) Any person summoned under subsection (1) who –
 - (a) having been served with the written notice, fails to comply with its requirements;
 - (b) refuses to answer faithfully any question put to him by the Permanent Secretary;
 - (c) gives any false or misleading information;
 - (d) refuses to produce a document required by the Permanent Secretary,

shall commit an offence.

(3) (a) The written notice specified in subsection (1) shall be issued to the person concerned by causing it to be –

- (i) handed over to him in person; or
- (ii) left at, or sent by registered post to, his usual or last known place of business or residence.

(b) Any person to whom a written notice is issued in accordance with paragraph (a) –

- (i) refuses to accept delivery of the written notice; or
- (ii) fails to take delivery of the written notice after being informed that it awaits him at a post office,

shall be deemed to have been duly served with the written notice on the day on which he refuses to accept delivery thereof or he is informed that it awaits him at a post office.

63. Complaint procedure

(1) Any worker may make a complaint to the Permanent Secretary against his employer or any agent of the employer, in respect of any matter arising out of his employment.

(2) No employer or any agent of an employer shall prevent a worker from making a complaint to the Permanent Secretary under subsection (1).

PART XIV – LABOUR ADVISORY COUNCIL

64. Establishment of Council

(1) There is established, for the purposes of this Act, a Labour Advisory Council.

(2) The Council shall consist of an equal number of public officers, representatives of employers and representatives of workers.

(3) The members of the Council shall be appointed by the Minister for such period and on such terms and conditions as he may determine.

(4) The Chairperson of the Council shall be appointed by the Minister from among the public officers.

(5) The Council may co-opt non-voting members as and when required.

(6) The appointment of every member of the Council shall be published in the *Gazette*.

(7) The Council shall regulate its proceedings in such manner as it thinks fit.

65. Functions of Council

(1) The Council shall, on the request of the Minister or upon its own initiative, advise the Minister on, any matter relating to labour and employment, including –

- (a) the review of the operation and enforcement of this Act and any other enactment relating to employment rights;
- (b) Government replies to questionnaires concerning items on the agenda of the International Labour Conference and Government comments on proposed texts to be discussed by the Conference;
- (c) proposals to be made in connection with the submission of International Labour Organisation Conventions and Recommendations to the National Assembly;
- (d) the re-examination of unratified International Labour Organisation Conventions and of Recommendations to which effect has not yet been given, and consideration of measures to be taken to promote their implementation or ratification;
- (e) questions arising out of reports to be made to the International Labour Organisation on ratified Conventions;

- (f) proposals for the denunciation of ratified International Labour Organisation Conventions.

(2) The Council shall exercise such other duties and powers in such manner and subject to such conditions as the Minister may, by regulations, direct.

66. Meetings of Council

The Council shall meet at the request of the Chairperson at such time and place as he may determine.

PART XV – MISCELLANEOUS

67. Offences

- (1) Any person who –
 - (a) fails to credit a worker with the full amount of remuneration for work done;
 - (b) makes, or knowingly allows to be made, any entry in a record required to be kept by an employer which he knows to be false or misleading in a material particular;
 - (c) for the purposes of this Act, produces, furnishes or knowingly allows to be produced or furnished any register, report, book, remuneration sheet, record, list, documents or information which he knows to be false or misleading in a material particular;
 - (d) prevents a worker from appearing before the Permanent Secretary or the Labour Advisory Council;
 - (e) contravenes –
 - (i) sections 4(1), 5(1), 8, 10, 12, 13, 14(5), (6), (7), 16(1)(b), 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37(2), 38, 39, 44(5), 47, 50, 51, 53, 55(1), 58(1), 59, 61(4), 62(2), 63 or any subsidiary enactment made under this Act;
 - (ii) any order made by the Court;
 - (iii) any order or direction given under this Act;
 - (iv) the conditions of any permit or certificate granted under this Act;
 - (v) the conditions of any authority issued, or approval given under this Act,

shall commit an offence.

(2) Any person who commits an offence shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding one year.

(3) The Court may, on the conviction of any person under this Act, where it thinks appropriate, make an order directing that person to comply with this Act within such time as may be fixed in the order.

68. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for the amendment of the Schedule.

69. Repeal

(1) The Labour Act is repealed.

(2) Section 20 of the Industrial Expansion Act is repealed.

70. Consequential amendments

(1) The Factory Employees (Remuneration Order) Regulations 2001 is amended in regulation 2, in the definition of “factory”, by deleting the words “Labour Act” in paragraph (a) and replacing them by the words “Occupational Safety and Health Act 2005”.

(2) The Human Resource Development Act 2003 is amended in section 18

–

(a) in subsection (2), by deleting the word “Schedule” and replacing it by the words “First Schedule”;

(b) in subsection (3), by deleting paragraph (e) and replacing it by the following paragraphs –

(e) with respect to the rate specified for the National Training Fund in the Second Schedule, be remitted by the Ministry to the Council at such intervals and subject to such terms and conditions as may be agreed between the Ministry and the Council;

(f) with respect to the rate specified for the Workfare Programme Fund in the Second Schedule, be credited by

the Ministry to the Workfare Programme Fund set up under section 45 of the Employment Rights Act 2008.

- (c) in section 18A, subsection (2), in the definition of employer, by deleting the words “section 26 of the Labour Act” and replacing them by the words “section 33 of the Employment Rights Act 2008”
- (d) by deleting the Schedule and replacing it by the following Schedules –

FIRST SCHEDULE

(section 18(2))

Rate of levy

one and a half per cent

SECOND SCHEDULE

(section 18(3))

	Rate of levy
National Training Fund	Half per cent
Workfare Programme Fund	One per cent

- (3) The National Pensions Act is amended –

- (a) in section 17 A, subsection (2), in the definition of employer, by deleting the words “section 26 of the Labour Act” and replacing them by the words “section 33 of the Employment Rights Act 2008”;
- (b) by inserting after section 17A, the following new section –

17B. Contribution in respect of persons in receipt of Transition Unemployment Benefit.

(1) Where a person is in receipt of a Transition Unemployment Benefit under section 5C of the National Savings Fund Act, contributions at the rate of 9 per cent of the basic wage or salary shall be paid in respect of that person to the Fund.

(2) The contributions under subsection (1) shall be paid out of the Workfare Programme Fund set under section 45 of the Employment Rights Act 2008.

- (4) The National Savings Fund Act is amended –

- (a) in section 2 –

- (i) by inserting in the appropriate alphabetical order the following new definitions –

“lump sum” means –

- (a) where entitlement arises on ground of death of the employee or retirement as defined at paragraph (a), (b)(i) or (b)(iii) of the definition of “retirement”, a lump sum made up of any balance, including any balance of the Recycling Fee in the National Savings Fund Account of the employee; or
- (b) where entitlement arises on ground of retirement as defined at paragraph (b)(ii), (iv), (v) or (vi), a lump sum made up of the 2.5 per cent contributions paid by the employer and interest accrued thereon;

“retirement” –

- (a) means the attainment of retirement age; and
- (b) includes –
 - (i) retirement from employment on ground of age as provided for under the Employment

Rights Act 2008, any pension law or any Remuneration Regulations;

- (ii) retirement on medical ground, duly certified by a Government Medical Officer or a medical practitioner in the service of the employer;
 - (iii) in respect of a member of the Police Force, retirement after the completion of 25 years of pensionable service;
 - (iv) the loss of employment on or after attaining the age of 45 as a result of the cessation of business, reduction of workforce or redundancy;
 - (v) voluntary retirement in the context of a Voluntary Retirement Scheme under section 23 of the Sugar Industry Efficiency Act 2001, an Early Retirement Scheme under section 23A of the Sugar Industry Efficiency Act 2001 or a factory closure pursuant to section 24 of the Cane Planters and Millers Arbitration and Control Board Act;
 - (vi) the loss of employment as a result of the cessation of business, reduction of workforce or redundancy and where the employee has opted to set up a business with the assistance of the Small Enterprises and Handicraft Development Authority under section 43(2)(c) of the Employment Rights Act 2008;
- (ii) by repealing the definition of “basic wage or salary” and replacing it by the following definition –
- “basic wage or salary”, in relation to a worker –
- (a) means, where the terms and conditions of employment of the worker are governed by a Remuneration Regulations, arbitral award or an agreement, whether oral or written, express or implied, the basic wage or salary prescribed in the Remuneration Regulations, award or agreement, or where the employer pays a higher wage or salary, the higher wage or salary so paid, but does

not include any allowance by any name called, and whether paid in cash or in kind;

- (b) means, in any other case, all the emoluments received by the worker, excluding any bonus or overtime,

but shall not exceed the maximum basic wage or salary as specified in the Second Schedule to the National Savings Fund (Collection of Contributions) Regulations 1997;

- (b) in section 4(a), by deleting the words “on his reaching retirement age or earlier, or on his death” and replacing them by the words “on his retirement or in respect of every employee, at the time of his death”;
- (c) by repealing section 5 and replacing it by the following section –

5. Contributions to the Fund

(1) Subject to section 5A, every employer shall, in respect of every month and in respect of every employee who works during that month, pay the amount of contribution as specified in the First Schedule into the National Pensions Fund for credit to the Fund.

(2) The employer of any employee referred to in item 2 of the First Schedule shall, at the time of paying to the employee his basic wage or salary for any period, deduct therefrom one per cent of the basic wage or salary and pay over that sum to the National Pensions Fund for credit to the Fund.

- (d) in section 5A, subsection (2), in the definition of employer, by deleting the words “section 26 of the Labour Act” and replacing them by the words “section 33 of the Employment Rights Act 2008”;
- (e) by inserting after section 5A, the following new sections –

5B. National Savings Fund Account

(1) The Fund shall, in respect of every employee, hold a National Savings Fund Account into which shall be credited –

- (a) the 2.5 per cent contributions payable by the employer under section 5;
- (b) the one per cent contributions payable by the employee under section 5;

- (c) the Recycling Fee payable under section 47 of the Employment Rights Act 2008; and
- (d) any interests earned on the contributions and the Recycling Fee as determined by such actuary designated by the Minister.

(2) There shall be paid out of the National Savings Fund Account of an employee –

- (a) any lump sum;
- (b) the Transition Unemployment Benefit payable at the rate specified in paragraph 1(a) of the Third Schedule; and
- (c) any other benefit that may be prescribed.

5C. Transition Unemployment Benefit

(1) Every employee who is registered in the Workfare Programme set up under section 41 of the Employment Rights Act 2008, shall be entitled to a Transition Unemployment Benefit.

(2) Where an employee is registered under subsection (1), the Permanent Secretary responsible for the subject of labour and employment relations shall notify, under section 43(3) of the Employment Rights Act 2008, the Permanent Secretary as to the entitlement of the employee to the Transition Unemployment Benefit.

(3) The Transition Unemployment Benefit shall be paid –

- (a) at the rate specified in the Fourth Schedule;
- (b) for a period of not less than one month and not more than 12 consecutive months, as specified in section 44(1) of the Employment Rights Act 2008.

(4) Upon notification from the Permanent Secretary responsible for the subject of labour and employment relations under section 44(9) of the Employment Rights Act 2008, the Transition Unemployment Benefit shall cease to be payable.

5D. Workfare Programme Fund

(1) The Workfare Programme Fund set up under section 45 of the Employment Rights Act 2008 shall hold an account to be known as the Workfare Programme Account.

(2) The account shall be credited with –

- (a) the levy payable at the appropriate rate specified in the Second Schedule of the Human Resource Development Act 2003;
- (b) all monies appropriated by the National Assembly for the purposes of the Workfare Programme; and
- (c) any interests on investments.

(3) There shall be paid out of the Workfare Programme Account –

- (a) the Transition Unemployment Benefit payable at the rates specified in the Third Schedule;
- (b) the National Pensions Fund contribution payable under section 44(3) of the Employment Rights Act 2008;
- (c) all expenses incurred in the administration of the Workfare Programme Fund.

5E. Recovery of overpayment

(1) Where a lump sum, a Transition Unemployment Benefit or any other benefit has been paid into a bank account of an employee and it is subsequently found by the Permanent Secretary that the lump sum or benefit should not have been so paid, the bank shall, on written request to that effect by the Permanent Secretary, refund the amount so paid to the Fund and may debit the bank account accordingly.

(2) (a) Where the bank account is closed, the bank shall not be required to refund to the Fund the amount paid under subsection (1).

(b) When the amount standing in the bank account is less than the amount paid under subsection (1), the bank shall refund only the amount standing in the bank account.

(3) Notwithstanding any other enactment, where a refund is made under this section, no action shall lie against the bank in respect of the amount so refunded.

(4) Where an employee has received a Transition Unemployment Benefit to which he was not entitled, any amount overpaid may be recovered from any balance in his National Savings Fund Account.

(f) in section 15, subsection (1), by repealing paragraph (c) and replacing it by the following paragraph –

(c) fails to comply with any other provisions of this Act or any regulations made under this Act.

(g) in section 16, subsection (1), by deleting the word “Schedule” and replacing it by the words “First Schedule”;

(h) by deleting the First Schedule to the Act and replacing it by the First Schedule specified in the Eleventh Schedule to this Act;

(i) by adding after the Second Schedule, the Third and Fourth Schedules specified in the Twelfth and Thirteenth Schedules, respectively, to this Act.

(5) The National Savings Fund (Claims and Payment) Regulations 1997 are amended in regulation 2, by deleting the definitions of ‘lump sum’ and ‘retirement’.

(6) The Public Procurement Act 2006 is amended in section 46, by adding after subsection (4), the following new subsections –

(5) There shall be included in every procurement contract a clause ensuring –

(a) rates of remuneration and other conditions of work of the workers engaged in the execution of the contract that are not less favourable than those established for work of the same character in the trade concerned –

(i) by collective agreement applying to a substantial proportion of the workers and employers in the trade concerned;

(ii) by arbitration awards; or

(iii) by Remuneration Regulations made under the Employment Relations Act 2008;

- (b) where remuneration and conditions of work are not regulated in a manner referred to in (a), rates of remuneration and other conditions of work which are not less favourable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.

(6) No contractor shall be entitled to any payment in respect of work performed in the execution of the procurement contract unless he has, together with his claim for payment, filed a certificate –

- (a) stating the rates of remuneration and hours of work of the various categories of workers employed in the execution of the contracts;
- (b) stating whether any remuneration payable in respect of work done is due;
- (c) containing such other information as the public body administering the procurement contract may require to satisfy himself that the provisions of this Act have been complied with.

(7) Where the public body administering the procurement contract is satisfied that remuneration is still due to a worker employed on a public contract at the time the claim for payment is filed under subsection (2), he may, unless the remuneration is sooner paid by the contractor, arrange for the payment of the remuneration out of the money payable under the procurement contract.

(8) Except with the written consent of the public body administering the contract, no contractor shall transfer or assign a procurement contract.

(9) Every contractor shall display a copy of subsections (5), (6), (7) and (8) at the place at which the work required by the contract is performed.

(10) In this section, “worker” has the same meaning assigned to it under section 2 of the Employment Rights Act 2008.

71. Transitional provisions

The terms and conditions on which a person was employed immediately before the commencement of this Act shall continue, unless the worker and the employer agree otherwise.

72. Commencement

(1) The Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming of operation of different sections of the Act.

FIRST SCHEDULE
(section 2)

The retirement age of a person in respect of his date of birth shown in Column 1 shall be the corresponding age specified in Column 2

COLUMN 1		COLUMN 2		
MONTH AND YEAR OF BIRTH		RETIREMENT AGE	MONTH AND YEAR OF RETIREMENT DATE	
MONTH	YEAR		MONTH	YEAR
AUGUST	1948	60 years + 1 month	SEPTEMBER	2008
SEPTEMBER	1948	60 years + 2 months	NOVEMBER	2008
OCTOBER	1948	60 years + 3 months	JANUARY	2009
NOVEMBER	1948	60 years + 4 months	MARCH	2009
DECEMBER	1948	60 years + 5 months	MAY	2009
JANUARY	1949	60 years + 6 months	JULY	2009
FEBRUARY	1949	60 years + 7 months	SEPTEMBER	2009
MARCH	1949	60 years + 8 months	NOVEMBER	2009
APRIL	1949	60 years + 9 months	JANUARY	2010
MAY	1949	60 years + 10 months	MARCH	2010
JUNE	1949	60 years + 11 months	MAY	2010
JULY	1949	61 years	JULY	2010
AUGUST	1949	61 years + 1 month	SEPTEMBER	2010
SEPTEMBER	1949	61 years + 2 months	NOVEMBER	2010
OCTOBER	1949	61 years + 3 months	JANUARY	2011
NOVEMBER	1949	61 years + 4 months	MARCH	2011
DECEMBER	1949	61 years + 5 months	MAY	2011
JANUARY	1950	61 years + 6 months	JULY	2011
FEBRUARY	1950	61 years + 7 months	SEPTEMBER	2011
MARCH	1950	61 years + 8 months	NOVEMBER	2011
APRIL	1950	61 years + 9 months	JANUARY	2012
MAY	1950	61 years + 10 months	MARCH	2012
JUNE	1950	61 years + 11 months	MAY	2012
JULY	1950	62 years	JULY	2012

COLUMN 1		COLUMN 2		
MONTH AND YEAR OF BIRTH		RETIREMENT AGE	MONTH AND YEAR OF RETIREMENT DATE	
MONTH	YEAR		MONTH	YEAR
AUGUST	1950	62 years + 1 month	SEPTEMBER	2012
SEPTEMBER	1950	62 years + 2 months	NOVEMBER	2012
OCTOBER	1950	62 years + 3 months	JANUARY	2013
NOVEMBER	1950	62 years + 4 months	MARCH	2013
DECEMBER	1950	62 years + 5 months	MAY	2013
JANUARY	1951	62 years + 6 months	JULY	2013
FEBRUARY	1951	62 years + 7 months	SEPTEMBER	2013
MARCH	1951	62 years + 8 months	NOVEMBER	2013
APRIL	1951	62 years + 9 months	JANUARY	2014
MAY	1951	62 years + 10 months	MARCH	2014
JUNE	1951	62 years + 11 months	MAY	2014
JULY	1951	63 years	JULY	2014
AUGUST	1951	63 years + 1 month	SEPTEMBER	2014
SEPTEMBER	1951	63 years + 2 months	NOVEMBER	2014
OCTOBER	1951	63 years + 3 months	JANUARY	2015
NOVEMBER	1951	63 years + 4 months	MARCH	2015
DECEMBER	1951	63 years + 5 months	MAY	2015
JANUARY	1952	63 years + 6 months	JULY	2015
FEBRUARY	1952	63 years + 7 months	SEPTEMBER	2015
MARCH	1952	63 years + 8 months	NOVEMBER	2015
APRIL	1952	63 years + 9 months	JANUARY	2016
MAY	1952	63 years + 10 months	MARCH	2016
JUNE	1952	63 years + 11 months	MAY	2016
JULY	1952	64 years	JULY	2016
AUGUST	1952	64 years + 1 month	SEPTEMBER	2016
SEPTEMBER	1952	64 years + 2 months	NOVEMBER	2016
OCTOBER	1952	64 years + 3 months	JANUARY	2017
NOVEMBER	1952	64 years + 4months	MARCH	2017

COLUMN 1		COLUMN 2		
MONTH AND YEAR OF BIRTH		RETIREMENT AGE	MONTH AND YEAR OF RETIREMENT DATE	
MONTH	YEAR		MONTH	YEAR
DECEMBER	1952	64 years + 5 months	MAY	2017
JANUARY	1953	64 years + 6 months	JULY	2017
FEBRUARY	1953	64 years + 7 months	SEPTEMBER	2017
MARCH	1953	64 years + 8 months	NOVEMBER	2017
APRIL	1953	64 years + 9 months	JANUARY	2018
MAY	1953	64 years + 10 months	MARCH	2018
JUNE	1953	64 years + 11 months	MAY	2018
JULY	1953	65 years	JULY	2018
AUGUST 1953 and after		On reaching 65 years		

SECOND SCHEDULE
(section 8)

PARTICULARS OF WORK AGREEMENT

- (a) Name of employer :
- (b) Address of employer :
- (c) Nature of activity :
- (d) Name of worker :
- (e) Date of birth of worker :
- (f) Address of worker :
- (g) Date of commencement of agreement :
- (h) Place of work :
- (i) Grade, class or category of employment :
- (j) Rate and particulars of remuneration :
- (k) Interval at which remuneration is to be paid:
- (l) Normal hours of work :
- (m) Leave entitlement :

Date Signature of employer

THIRD SCHEDULE
(section 19(1))

(a) Payment of meal allowance
(section 19(1))

Rs 50.00 per day

(b) Payment of maternity allowance
(section 30(1)(b))

Rs 2,000

(c) Payment of death grant
(section 50)

Rs 3,500

FOURTH SCHEDULE
(section 21(3)(a))

PAYSLIP

Pay Period

1. Name of employer
2. NPF Reg. No. of employer
3. Name of worker
4. National Identity Number of worker
5. Date of entry
6. Category
7. Basic rate of pay
8. Total number of days present at work
9. No. of day(s) of leave taken (to specify)
10. Number of hours of extra work performed and the corresponding extra payment
 - (i) 1.5 x
 - (ii) 2 x
11. Allowance(s) paid (please specify)
12. Piece rate earnings
13. Total remuneration
14. Deduction(s) made and the reasons therefor
15. Net pay

FIFTH SCHEDULE

(section 43(3))

1. Particulars of employer

- (a) Name
- (b) Phone number
- (c) National Pensions registration number
- (d) Address

2. Particulars of worker

- (a) National Identity Card Number
- (b) Name
- (c) Phone number
- (d) Address
- (e) Occupation
- (f) Basic wage /month'/fortnight'/week' (delete whichever not applicable)

3. Details of employment

- (a) Date joined service
- (b) Date of termination of employment
- (c) Reason for termination of employment
- (d) Amount payable as recycling fee

I certify that the above-named worker is registered in the Workfare Programme is entitled for the Transitional Unemployment Benefit.

.....
Date

.....
*Permanent Secretary
Ministry of Labour, Industrial
Relations & Employment*

SIXTH SCHEDULE
(section 44(1))

TRANSITION UNEMPLOYMENT BENEFIT

Period after termination of employment	Rate of benefit per month
First 3 months	90 percent of basic wage or salary but not less than Rs 3,000
From 4 th month to end of 6 th month	60 percent of basic wage or salary but not less than Rs 3,000
From 7 th month to end of 12 th month	30 percent of basic wage or salary but not less than Rs 3,000

SEVENTH SCHEDULE
(section 44(2))

1. The Transition Unemployment Benefit shall be financed from –
 - (a) the 1 per cent contribution of the worker and the recycling fee in the National Savings Fund Account of the worker and any interests accrued thereon, to the level of 50 per cent of the Transition Unemployment Benefit; and
 - (b) the Workfare Programme Fund to the level of 50 per cent of the Transition Unemployment Benefit.
2. Where the accumulated funds under paragraph 1(a) are not sufficient, any shortfall to the set rates shall be met from the Workfare Programme Fund.

EIGHTH SCHEDULE
(section 47(1)(a))

PAYMENT OF RECYCLING FEE

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Between 12 and 36 months continuous employment	3 days' basic wage or salary for every 12 months of continuous employment
Above 36 months up to 120 months continuous employment	6 days' basic wage or salary for every 12 months of continuous employment
Above 120 months up to 240 months continuous employment	10 days' basic wage or salary for every 12 months of continuous employment
More than 240 months continuous employment	15 days' basic wage or salary for every 12 months of continuous employment

NINTH SCHEDULE

(section 47(1)(b))

RETURN OF RECYCLING FEE

(to be submitted with payment)

Name of employer :

Tax Account number :

National Pensions registration number :

.Address of employer :

Total amount of Recycling Fee :

I certify that to the best of my knowledge the information in this return as correct.

.....
Signature and name of employer

.....
Status

Date

Details of Worker

	ID No.	Name	Other names	Salary (Rs)	Interval of payment	Date of entry	Date of termination of employment	Amount of Recycling Fee
1								
2								
3								
4								
5								
Total								

TENTH SCHEDULE

(section 51)

CERTIFICATE OF EMPLOYMENT

This is to certify that (1) of
(2) was
employed as (3) with
(4) from
(5) to (6)

.....
Date

.....
Signature of employer

- (1) Name of worker in block letters
- (2) Address of worker
- (3) Position held by worker
- (4) Name of employer
- (5) Date of commencement of agreement
- (6) Date of termination of agreement

ELEVENTH SCHEDULE

(section 70(4)(h))

FIRST SCHEDULE

(section 5)

	Category of employees	Contributions (rounded to the nearest rupee) calculated on the basic wage or salary	Contributions (rounded to the nearest rupee) calculated on the basic wage or salary
		BY EMPLOYER	BY EMPLOYEE
1.	Public officers, employees of a local authority, employees of parastatal bodies	2.5%	---
2.	Any other employee	2.5%	1%

Where an employer is late in paying monthly contributions and the unpaid contributions amount to less than Rs 50, no surcharge shall be payable

TWELFTH SCHEDULE

(section 70(4)(i))

THIRD SCHEDULE

(sections 5B and 5D)

FINANCING OF TRANSITION UNEMPLOYMENT BENEFIT

1. The Transition Unemployment Benefit shall be financed from –
 - (a) the 1 per cent contribution of the worker and the recycling fee in the National Savings Fund Account of the worker and any interests accrued thereon, to the level of 50 per cent of the Transition Unemployment Benefit; and
 - (b) the Workfare Programme Fund to the level of 50 per cent of the Transition Unemployment Benefit.
2. Where the accumulated funds under paragraph 1(a) are not sufficient, any shortfall to the set rates shall be met from the Workfare Programme Fund.

THIRTEENTH SCHEDULE

(section 70(4)(i))

FOURTH SCHEDULE

(section 5C)

TRANSITION UNEMPLOYMENT BENEFIT

Period after termination of employment	Rate of benefit per month
First 3 months	90 per cent of basic wage or salary but not less than Rs 3,000
From 4 th month to end of 6 th month	60 per cent of basic wage or salary but not less than Rs 3,000
From 7 th month to end of 12 th month	30 per cent of basic wage or salary but not less than Rs 3,000

In this Schedule, basic wage or salary means –

- (i) one twelfth of the sum of the basic wage or salary drawn by the employee for the 12 consecutive months preceding the month in which entitlement arises; or
- (ii) where the worker has worked for less than 12 consecutive months immediately before the month of entitlement, the monthly basic wage or salary shall be the sum of the basic wage or salary drawn for each month he has worked during the 12 preceding months divided by the number of months.