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CHAPTER 69

Act 2 of 1995

Act 8 of 1999

EMPLOYMENT ACT

[3rd April, 1995]

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PART I PRELIMINARY

Citation. 1. This Act may be cited as the Employment Act.

Interpretation. 2. In this Act

"allowance" means a wage payable to a trainee;

"business" means any trade, industry or commercial activity, service or any part thereof;

"casual worker" means a person, engaged by the day and from day to day who is paid on a daily basis and whose engagement by one and the same employer does not exceed 21 consecutive days customary in the business in which the worker is engaged;

"Chief Executive " means the person acting or discharging the functions of such office in the Ministry or, as the case may be, the Department responsible for the administration of this Act;

"competent officer" in relation to any matter under this Act means a person authorised by the Minister to act in respect of that matter and means also the Minister wherever the Minister thinks it fit to act in person in respect of any matter;

"consecutive employment" means employment by the same employer for a minimum of 24 hours, or, irrespective of the period of work, a minimum of 3 days, a week;

"continuous employment" means consecutive employment for an unlimited period;

"domestic worker" means any person serving in, or attached as a worker to, a private household;

"employer" means a person having a worker in the employ of that person or, where that person is absent from Seychelles, the accredited representative in Seychelles of that person, and, other than in Part III, means also the manager, agent or other responsible person acting on behalf of the employer;

"employers' organisation" means a trade union of employers registered under the Industrial Relations Act and includes a federation of such trade unions;

"employment agency" means the business of providing services for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them;

"Employment Advisory Board" means the board established by the Minister under section 73;

"Employment Service Bureau" means the Employment Service Bureau established under section 5;

"fixed term", in relation to a contract of employment and subject to section 19(2), means a term exceeding 21 days the period of which is expressed by reference either to its duration in time or to the duration of a specific scheme or project or of specific works;

"fixed term contract" means consecutive employment for a fixed term;

"grievance procedure" means the procedure laid down in Part II of Schedule 1;

"mandatory wage" or "mandatory allowance" means the statutory mandatory wage or mandatory allowance, supplemented by any increment earned, prescribed in respect to the work, activity, or occupation in which a worker is engaged;

"national minimum wage" means the national minimum wage prescribed under section 40(2);

"National Vocational Training Board" means the Board established by section 28;

"negotiation procedure" means the procedure laid down in Part I of Schedule 1.

"outer island" means an island listed as such in Schedule 5;

"part time worker" means a worker other than a casual worker and other than a worker in continuous employment or engaged for a fixed term;

"piece work" means work the pay for which is determined by the amount of work performed irrespective of the time occupied in its performance;

"retirement age" means the age at which a person qualified for a retirement pension under the Social Security Act;

"Seychelles ship or aircraft" means a ship defined as a Seychelles ship in section 3 of the Merchant Shipping Act, or any aircraft registered in Seychelles under the Air Navigation (Overseas Territories) Order;

"statutory" in relation to "wage" or "allowance" means a wage or allowance prescribed under section 40;

"task" means the amount of work mutually agreed between employer and worker as being within the worker's capacity in an ordinary working day;

"trainee" means a person referred to in section 27;

"Union" in relation to a worker means a trade union registered under the Industrial Relations Act of which the worker is a member;

"wages" means the remuneration or earnings, however calculated, expressed in terms of money payable to a worker in respect to work done under the contract of employment of the worker but does not include payment for overtime work or other incidental purposes;

"worker" means a person of the age 15 years and above in employment in Seychelles or on a Seychelles ship or aircraft or employed in Seychelles for service in an agency of the Government or diplomatic mission of Seychelles abroad and a trainee;

3. Subject to section 4(2), this Act binds the Republic.

4.(1) Subject to subsection (2), this Act applies to

(a) a contract of employment for service in Seychelles or on a Seychelles ship or aircraft;

(b) a contract of employment entered into in Seychelles for service in an agency of the Government or diplomatic mission of Seychelles abroad.

(2) The Minister may, by order, exempt

(a) any contract of employment;

(b) any person or category of persons;

(c) any business or occupation,

from the operation of all or any of the provisions of this Act subject to such conditions as he thinks fit.

(3) Where provision is made under this Act for the hearing and determination of any matter in relation to a contract of employment to which this Act applies, any remedy or relief granted under the Act in respect of that matter shall, subject to the supervisory jurisdiction of the Supreme Court conferred on that Court by article 12 of the Constitution.

PART II EMPLOYMENT SERVICES BUREAU AND EMPLOYMENT AGENCIES

5.(1) The Minister shall, within the Ministry, establish an Employment Services Bureau

(a) to monitor the activities of the employment agencies;

(b) to collect and record all returns submitted by the employment agencies;

(c) to keep a register of unemployed Seychellois seeking employment, being persons who have not been in employment at any time;

(d) to keep a register of self employed workers;

(e) to conduct research on the potentialities of the labour market in or outside Seychelles;

(f) to advise the Minister on matters relating to employment;

(g) where the Minister so directs, to be an employment agency.

(2) Where the Minister directs the Employment Services Bureau to be an employment agency, the other provisions of this Part shall not apply to the Employment Services Bureau while carrying on an employment agency.

(3) The Employment Services Bureau shall issue to each person registered under subsection (1)(c) a job card in such form as the Minister may direct.

5A. An employer shall, whenever a vacancy occurs in the employer's establishment notify that fact, and when such vacancy is filled, the fact that it has been filled, to the Employment Service Bureau.

6. No person shall carry on any employment agency unless the person is the holder of a licence granted under the Licences Act to carry on such an agency.

7. An employment agency shall, on the grant of a licence to carry on such an agency, be a body corporate.

8.(1) An employment agency shall keep a register in which it shall enter the particulars of all persons applying to the agency for the purpose of finding employment and specified in subsection (2).

(2) There shall be entered in the register kept under subsection (1) the following particulars in relation to each person applying for the purpose of finding employment

(a) the name, address, date of birth, nationality, the national identity number and the job card number (if any) of the person;

(b) particulars of skills or qualification held by the person;

(c) nature of employment sought by such person;

(d) particulars of any previous employment held by such person;

(e) any other prescribed particulars.

9.(1) An Employment Agency shall keep a register of vacancies in respect of employers who seek its services.

(2) Any employer who seeks the services of an employment agency for supplying the employer with a worker for employment shall register with that agency a vacancy which the employer may have.

(3) An employment agency shall enter in the register of vacancies kept under subsection (1) the prescribed particulars in respect of each vacancy registered under subsection (2).

(4) Where the employer registering a vacancy with an employment agency

(a) requires the employment agency to advertise the vacancy, the employment agency shall in consultations with the employer advertise the vacancy in a local newspaper;

(b) does not require the employment agency to advertise the vacancy, the employment agency shall submit to the employer the names and the particulars of persons registered under section 8 who are suitably qualified for the vacancy.

(5) Where an employment agency has advertised a vacancy under subsection (4)(a), the employment agency shall, soon after the closing date for the submission of applications for the vacancy, submit to the employer the applications of persons who have responded to the advertisement together with the names and particulars of persons registered under section 8 who are suitably qualified for the vacancy.

(6) Where an employer has employed any person from among the persons whose names have been submitted by the employment agency under subsection (4)(b) or (5), the employer shall inform the agency the name, and such other particulars of the person employed as is required by the agency and forward the job card (if any) of that person to the Employment Services Bureau.

(7) The employment agency shall enter in the register of vacancies the name and other particulars of any person in respect of whom information has been supplied under subsection (6).

10.(1) An employment agency may charge such fees from an employer who seeks its service as may be agreed to between the employer and the agency.

(2) An employment agency shall not demand or receive directly or indirectly any fee from any person seeking employment or for finding that person employment.

11.(1) An employer who does not seek the services of an employment agency for supplying the employer with a worker to fill any vacancy which the employer may have shall advertise the vacancy in a local newspaper or in such other manner as may be necessary to bring the vacancy to the notice of persons seeking employment.

(2) Where an employer fills a vacancy pursuant to an advertisement under subsection (1), the employer shall submit to the Employment Services Bureau within 15 days after the filling of such vacancy the name and such

other prescribed particulars of the worker filling the vacancy and forward the job card (if any) of the worker to the Employment Services Bureau.

12.(1) An employment agency shall in respect of each month submit to the Employment Services Bureau on or before the 15th day of the immediately following month a return specifying

(a) the names and other particulars of persons registered under section 8 as persons applying for the purpose of finding employment;

(b) the particulars of vacancies registered by the agency under section 9;

(c) the names and other particulars of workers employed in respect of whom information has been supplied under section 9(6),

during the month in respect of which the return is submitted.

(2) Where in respect of a month for which the employment agency is required to submit a return under subsection (1), the employment agency has not registered any person or vacancy or received any particulars of persons employed it shall submit to the Employment Services Bureau a nil return for that month.

13.(1) An employment agency shall keep proper accounts and proper records in relation to the accounts and shall prepare in respect of each financial year a statement of accounts in such form as shall comply with the best commercial standards.

(2) The accounts and statement of accounts of an employment agency shall be audited by an auditor appointed by the employment agency.

(3) An employment agency shall within 30 days after the accounts and the statement of accounts are audited under subsection (2), submit to the Employment Services Bureau the statement of accounts and the auditor's report thereon.

14. A competent officer may

(a) at any time enter any office of an employment agency and make any examination or inquiry which the officer considers necessary in order to satisfy the officer that the provisions of this Part are being complied with and may take extracts or make any copies from any register or other documents kept by the agency;

(b) require the production by an employment agency for the purpose of any examination or inquiry by that officer of any register or other document kept by the employment agency.

15. The Minister may make such regulations as may be necessary or required for the proper functioning of an employment agency.

16.(1) Every self employed worker shall furnish to the Employment Services Bureau such particulars as may be prescribed.

(2) The Employment Services Bureau shall in a register kept by the Bureau enter the particulars furnished under subsection (1).

(3) Where a person, being a self employed worker ceases to be a self employed worker or obtains employment under an employer, such person shall within 15 days after ceasing to be a self employed worker or obtaining employment under an employer inform the Employment Services Bureau of such occurrence, and furnish to the Bureau such particulars as may be prescribed.

17.(1) Every unemployed Seychellois seeking employment and every employment Seychellois seeking

alternative employment at any time shall furnish to the Employment Services Bureau the particulars specified in subsection (2) and obtain from the Employment Services Bureau a job card.

(2) The particulars required to be furnished by an unemployed Seychellois under subsection (1) are

(a) the name, address, date of birth, national identity number of that person;

(b) particulars of skills or qualifications held by the person;

(c) nature of employment sought by the person; and

(d) any other prescribed particulars.

(3) Where a person referred to in subsection (1) obtains employment with an employer, the person shall submit the job card to that employer.

17A. From and after the date of coming into operation of this section, no person shall employ a Seychellois who has not obtained a job card from the Employment Services Bureau.

18.(1) Subject to the Immigration Decree an employer in Seychelles shall not employ a non Seychellois unless

(a) the employer holds a certificate from the competent officer to the effect

(i) that the vacant post for which the non Seychellois is required has been advertised under section 9(4) or 11 and;

(ii) that

A. the post requires the qualification demanded for it and no Seychellois holding the qualification is, at present, available for employment in that post; or

B. the Minister is satisfied that there is no unemployed Seychellois available for employment in the vacant post;

(b) the employer has, together with the application for a certificate under paragraph (a), submitted in respect of the employer's establishment, a detailed manpower plan setting out a training and localisation programme.

(2) An employer who employs a non Seychellois worker shall ensure

(a) that the contract of employment of the worker is attested by a competent officer;

(b) that the worker ceases to be in the employment of the employer upon the expiration of the contract of employment unless the contract is, subject to subsection (1), extended or renewed;

PART III CONTRACTS OF EMPLOYMENT

19.(1) A contract of employment may be a contract

(a) of continuous employment;

(b) for a fixed term;

(c) for the employment of a part time worker; or

(d) for the employment of a casual worker.

(2) Where a contract for a fixed term is expressed to be for a period determined by reference to its duration in time, the contract, shall be for such period, not less than 21 days, as may be determined by the parties to the contract:

Provided, however, that where the interval between two consecutive fixed term contracts under which a worker is employed by the employer is not more than ninety days, the worker shall be deemed to have been in continuous employment during such interval and such worker shall be entitled to compensation under this Act in respect of the entire period of such employment.

20. Notwithstanding any written law, a contract of employment entered into by a minor and whereby the minor is, or is to be, employed is binding upon the minor if attested by the competent officer.

21.(1) A contract of employment to which section 19(1)(a), (b) or (c) refers shall

(a) be reduced to writing;

(b) be in duplicate;

(c) specify as accurately as possible

(i) the names of the employer and worker;

(ii) the nature of the employment;

(iii) in the case of a fixed term contract, either the term or the specific scheme or project or specific work on which the worker is to be engaged, as the case may be;

(iv) in the case of a contract of continuous employment, the probation period, if any;

(v) the place where the work is to be performed;

(vi) the remuneration or wages to be paid and the periods of payment and any other benefits the worker is to receive;

(vii) the number of working hours per week;

(viii) the requirements for overtime work, where applicable;

(ix) such other particulars as may be prescribed;

(d) subject to subsection (3), be signed or marked by the parties to the contract.

(2) The employer shall retain one copy of the contract of employment and give the other copy of the contract to the worker.

(3) Where a party to the contract is illiterate, the contract shall be read and explained, and attested on behalf of the party, by a witness whose signature, full name and address shall appear on the contract.

22.(1) Notwithstanding section 21, contracts of employment for work on an outer island shall be for such period as may be determined by the parties to the contract and shall be

(a) reduced to writing and contain the particulars specified in section 21(1)(c);

(b) in duplicate; and

(c) subject to subsection (2), signed or marked by the parties.

(2) Where a party to the contract is illiterate, the contract shall be read and explained and attested on behalf of the party by a witness whose signature, full name and address shall appear on the contract.

(3) The employer shall retain one copy of the contract and give the other copy to the worker.

23. Where a worker is detained on an outer island for a period of up to one month beyond the date of expiry of the contract of the worker, the contract is deemed to be extended for that period but after a month has elapsed, the obligation to work ends but the worker remains entitled to the pay stipulated under the contract and to all benefits thereunder until the worker returns to the home island of the worker or, where the home island is not Mahe, to Mahe.

24. A Seychellois worker shall not leave Seychelles for the purpose of being employed abroad as a domestic worker or in such other occupation as the Minister may, by notice in the Gazette, specify unless the worker holds a certificate by the competent officer stating that

(a) the competent officer has attested a copy of the contract of employment or other document setting out the terms and conditions of employment and that the terms and conditions are satisfactory;

(b) the worker is 18 years of age or over;

(c) the worker holds a medical certificate of fitness for service abroad;

(d) the worker holds the necessary visa, entry permit or work permit of the place of employment and has complied with all the formalities prerequisite to entering the country of destination;

(e) the worker has made adequate financial provision for the maintenance of any spouse, and for the maintenance, custody and care of any children, the worker leaves behind in Seychelles;

(f) the country of destination is not at war or in any state of insurrection or hostility;

(g) the employer, if known, is reputed to be a good employer;

(h) the worker has paid a deposit or given adequate security for repatriation of the worker;

(i) any other conditions as may be prescribed under this Act have been complied with.

25.(1) A contract for the employment of a casual worker is not required to be in writing.

(2) An employer shall not employ a casual worker, whether it be the same or another worker, for a period longer than 21 consecutive days in any month or such other longer period authorised by a competent officer.

(3) Subject to subsection (2), an employer shall not employ a casual worker in a job which is of a permanent or continuous nature except for the purpose of allowing the substantive holder of the job to go on leave or to fill in a vacancy pending recruitment of a substantive holder for the job.

(4) The Minister may, by regulations, exempt any category of workers from the application of subsection (1), (2) or (3).

26. Written contracts of employment under this Part shall be in English, French or Creole.

PART IV TRAINEES

27. The following persons are deemed to be trainees

(a) persons employed as trainees on an employer's training scheme in respect of the whole period of their training;

(b) untrained workers in occupations for which a training course is readily available until they have completed their training;

(c) participants in apprenticeship schemes.

28.(1) There is hereby established the National Vocational Training Board.

(2) The National Vocational Training Board shall in collaboration with public or private organisations promote, develop and organise training and apprenticeship schemes and coordinate their activities.

(3) The National Vocational Training Board shall keep at the Centre for Skills Development established by the Board a register of training and apprenticeship schemes organised by the Board.

(4) The National Vocational Training Board shall issue policy guidelines and make recommendations to the Minister with a view to promoting the vocational training

of Seychellois workers.

(5) Schedule 4 shall have effect with respect to the National Vocational Training Board.

29.(1) An employer shall not receive directly or indirectly from a trainee or on behalf or on account of a trainee any payment by way of premium not specifically authorised by or under a written law.

(2) The court may, in addition to imposing any penalty for contravening subsection (1), order the employer to repay to the trainee or other person by whom the payment was made the sum improperly received as premium.

30. A trainee shall be entitled to such allowances as the Minister may, by regulations, prescribe.

31. Subject to section 33, trainees are entitled to the same conditions of employment as other workers and to any other additional benefits approved by the competent officer.

PART V A. PROTECTION OF WAGES

32.(1) Unless otherwise provided under this Act, the wages of a worker are payable to the worker in the currency of the country where payment is made

(a) in cash at or near the place of employment; or

(b) by cheque or bank transfer but with the worker's consent where the wages are less than R.2000 a month or such other monthly sum as may be prescribed.

(2) Wages payable in cash are payable at regular intervals as agreed between employer and worker but not less than once a month and not later than the fifth day following the date on which they fall due.

(3) Wages payable by cheque or by bank transfer are payable not less than once a month before the date on which they fall due.

33.(1) An employer may make deductions from the wages of a worker in respect of

(a) any amount which the employer is required or empowered to deduct from the wages under any written law or court order;

(b) the recovery of the cost of any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the wilful default of the worker;

(c) any amount paid to the worker in error as wages in excess of the amount of wages due to the worker;

(d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of a worker, who, by virtue of the occupation of the worker, is entrusted with the receipt, custody and payment of money;

(e) such other amounts as the worker may in writing authorise.

(2) Without prejudice to any right of recovery of any debt due, the total amount of all deductions which, under subsection (1)(b), (c) and (d) may be made by an

employer from the wages payable to a worker at any one time shall not exceed one quarter of the wages unless the worker authorises a higher amount in writing.

(3) Notwithstanding subsection (2) where any sum of money is due from a worker to the employer of the worker at the time the worker ceases to be employed by the employer, the employer may deduct that sum from any sum due from the employer to the worker as wages or any other benefit under the Act.

34.(1) An employer shall not limit or attempt to limit the right of a worker to dispose of the wages as the worker deems fit.

(2) An employer having a shop, store, or place for the sale of commodities to the workers of the employer shall not directly or indirectly, bind a worker to make use of any such shop, store or place.

Record of wages 35.(1) An employer, other than an employer solely employing

payment part time, casual or domestic workers, shall keep a record of the

Act 8/1999 wages due to each of the workers in the employment of the employer, of the deductions made therefrom and of the amounts actually paid.

(2) The record shall be kept at the place of employment and shall be available for inspection by the competent officer.

Evidence of 36.(1) An employer upon paying the wages of a worker shall keep

payment a record of the payment made together with evidence of receipt of

Act 8/1999 payment by the worker.

(2) Where an employer fails to keep a record as required under subsection (1) and there is a dispute over the fact of payment, a presumption that the employer has not made payment arises against the employer.

(3) Where the receipt of payment is not recorded on the record kept under section 35(1), the receipt of payment shall contain the particulars of wages together with the deductions made therefrom.

37. Notwithstanding any other written law, privileges and rights in respect of wages of servants under Articles 2101, 2104 and 2105 of the Civil Code extend to

(a) the wages of all workers;

(b) their holiday pay;

(c) payment in lieu of notice due to them upon termination of employment; and

(d) compensation due upon termination,

up to an amount of R30,000, or any larger amount prescribed, in respect of any one claimant.

Absconding 38.(1) Where an employer or former employer of any worker is

employer about to leave Seychelles or to alienate his property or to do any

Act 8/1999 other act

(a) without having paid or made satisfactory arrangements to pay

(i) any wages due to the worker; or

(ii) any other moneys owed by the employer or former employer to the worker; or

(b) with the intention, as may be presumed from the circumstances surrounding the business or finances of the employer or former employer, of foregoing the obligations, past or future, to the worker under this Act,

then, unless the employer or former employer furnishes sufficient and good security for the full amount of the wages and moneys due under paragraph (a) and of the obligations under paragraph (b), the competent officer may apply to the Supreme Court for an order preventing the employer or former employer from leaving Seychelles.

(2) An order of the Supreme Court under subsection (1) preventing the employer or former employer from leaving Seychelles shall be sufficient authority for the Director of Immigration from preventing the employer or former employer from leaving Seychelles or alienate his property or doing such other act.

(3) Where the Supreme Court is satisfied that an employer or former employer in respect of whom an order has been made under subsection (1) has paid the amount of wages and moneys and discharged the obligations or furnished sufficient and good security for the payment of the amount of wages and moneys or for the discharge of the obligations, the Supreme court may vacate the order.

(4) The Chief Justice may make rules of the Supreme Court for the purposes of an application under subsection (1).

39. Where a worker

(a) is absent from work without leave and without good cause;

(b) is in prison or otherwise detained in lawful custody,

no wages are due to the worker, and the employer may, at his discretion, withhold payment for the period of absence, imprisonment or detention.

B. REGULATION OF WAGES AND CONDITIONS OF EMPLOYMENT

40.(1) The Minister may, after consultation with the Unions and the employers' organisations and such other representatives of workers of any category who are not members of any Union whom the Minister considers it fit to consult, make regulations prescribing

(a) the statutory wages to be paid to workers by employers in accordance with subsection (2);

(b) the conditions of employment to be provided for workers by employers.

(2) Regulations under subsection (1)(a) may

(a) prescribe a national minimum wage for workers, other than trainees, and mandatory wages in respect of such workers or category of such workers or in relation to any business;

(b) provide for increments and the conditions under which they may be awarded or withheld;

(c) prescribe allowances for trainees;

(d) authorise benefits or advantages provided by the employer which may be reckoned as payment of wages by the employer in lieu of payment in cash and define

the maximum value to be attached to them

(e) provide for any other matter in respect of wages.

(3) Regulations under subsection (1)(b) may prescribe

(a) the maximum permissible number of hours of work, normal and overtime, in any day or week, rest periods and the number of consecutive hours of rest to which a worker is entitled;

(b) the number of days of annual leave, maternity leave, sick leave, leave for the purpose of fulfilling or in connection with any civic duties or unpaid leave and the conditions under which such leave may be granted;

(c) extra rates of payment or time off in lieu of overtime, work on Sundays and other public holidays and exceptions therefrom;

(d) the maximum sum which an employer may deduct from the wages to be paid to a worker in respect of the cost of food or housing or both food and housing provided by the employer;

(e) conditions attaching to the employment of women, trainees and disabled persons;

(f) maternity protection benefits;

(g) facilities to be granted to the worker for training or for social, sport and cultural activities;

(h) generally improved living and working conditions.

41.(1) Subject to subsection (2) and unless regulations made under subsection (3) otherwise provide, wages are calculated on an hourly basis.

(2) Wages may be calculated on a task or piece work basis wherever the Minister is satisfied that such calculation will encourage productivity, but where wages are so calculated, the worker shall not receive less than the national minimum wage.

(3) The Minister may, by regulations, prescribe the manner of computing wages either generally or in respect of any class or category of workers.

42.(1) Where a maximum sum to represent food or housing or both food and housing has been prescribed, the employer may deduct from the worker's wages, if in excess of the national minimum wage, in payment therefor

(a) the maximum sum prescribed;

(b) the actual cost of the food or housing or of both food and housing; or

(c) the difference between the worker's wages and the national minimum wage,

whichever is the less.

(2) Where no sum has been prescribed under subsection (1), no deduction from the worker's wages is allowed in respect of food or housing or both food and housing except with the written approval of the competent officer.

43. The statutory wages prescribed under section 40(1)(a) and the conditions of employment prescribed under section 40(1)(b) are deemed to be part of every contract of employment to which they relate, whether the contract was entered into before or after the

commencement of this Act save that

(a) where the contract provides for a wage higher than the national minimum wage, that higher wage, if not itself in excess of any mandatory wage applicable, or, if that higher wage exceeds the mandatory wages, the mandatory wage, shall apply;

(b) where the contract provides for conditions of employment more favourable than those prescribed, those conditions more favourable shall apply unless otherwise prohibited under this Act.

44. Where the competent officer is satisfied that a worker or person seeking employment is suffering from some disability which makes it difficult for the worker or person seeking employment to compete on the labour market, the competent officer may issue to the worker or person seeking employment a permit exempting the person who employs the worker or person seeking employment from any regulation made under section 40(1)(a) subject to such conditions as the competent officer deems fit to include in the permit.

45. The competent officer may, where the officer deems it necessary, require an employer to give security for the payment of the wages of, and for the discharge of any other obligations which the employer may have or incur towards the workers engaged or to be engaged by the employer, the security to be in such form as the competent officer may demand or as may be prescribed.

46.(1) Workers under contracts of continuous employment are entitled to all employment benefits under this Act from the date of employment until lawful termination of the contracts.

(2) Workers under contracts of employment for a fixed term are entitled to all employment benefits up to the day the fixed term contract expires or the earlier lawful termination of the contracts, as the case may be.

(3) Where the lawful termination of the contract as referred to in subsection (1) or (2) is immediately preceded by a period of suspension without pay, the termination is deemed to take effect as from the date the period of suspension began.

PART VI PROTECTION OF EMPLOYMENT

47.(1) Subject to Part VIII, an employer shall not terminate, or give notice of termination of, a worker's contract of employment except under section 49 or 50 unless the employer first initiates and complies with the negotiation procedure.

(2) Where, consequent upon the negotiation procedure initiated under subsection (1), the competent officer determines that

(a) a contract of employment should not be terminated, the contract shall continue to have effect;

(b) a contract of employment may be terminated and the cause of the termination is in no way attributable to the worker, the employer shall pay to the worker compensation calculated at

(i) the rate of one day's wage for every month of service in the case of contracts of continuous employment;

(ii) double the rate in sub paragraph (1) in the case of fixed term contracts; or

(iii) such higher rate as may be prescribed;

(c) a contract of employment may be terminated and the cause of the termination is partly or wholly attributable to the worker, the employer shall pay to the worker a lesser rate of compensation than at paragraph (b) or none, as the competent officer may assess.

(3) The reference to every month of service in subsection (2)(b)(i) includes service with a previous employer where the service is continued by the new employer without termination by the previous employer.

(4) For the purpose of computing compensation under subsection (2)(b) or (c)

(a) no account is taken of any period of service in respect of which a pension or a gratuity was earned and is payable under the Pensions Act or the Seychelles Security Guards Service Pensions Act;

(b) the wage shall be the wage payable to the worker at the time the contract of employment was terminated.

(5) For the purposes of this section, "wage" includes any responsibility allowance or duty allowance.

48.(1) Where, due to circumstances beyond an employer's control such as a shortage of raw materials, a natural catastrophe or any disruption of work which could not have been foreseen, work has to be temporarily suspended and workers temporarily laid off, the employer shall initiate and comply with the negotiation procedure.

(2) Where, consequent upon the negotiation procedure initiated under subsection (1), the competent officer approves the lay offs, the officer shall notify the employer and the Union of the conditions under which they are approved, the authorised period of the lay offs and the percentage of wages to be paid to the workers during that period.

(3) An employer shall not lay off workers

(a) without the approval of the competent officer;

(b) on conditions other than those notified by the competent officer;

(c) for a period longer than authorised.

49.(1) An employer shall not vary the terms and conditions of employment of a worker in any way less favourable to the worker without the worker's written consent and that of the Union.

(2) Where the written consent required under subsection (1) to a variation of the terms and conditions of employment of the worker cannot be obtained, the employer may subject to subsection (3) and section 57(2) terminate the contract of employment of the worker.

(3) The termination of employment of a worker under subsection (2) shall be deemed to be for a cause in no way attributable to the worker and the worker is entitled to compensation calculated in accordance with section 47(2) (b).

Change of owner- 50.(1) Where a change of ownership of a business for the purpose

ship and termina- of which a worker is employed occurs, the employer shall be

tion of contract deemed to have terminated the contract of employment of the

Act 8/1999 worker, subject to subsection (2).

(2) The termination of employment of such worker under subsection (1) shall be deemed to be for a cause in no way attributable to the worker and the worker shall be paid compensation calculated in accordance with section 47(2)(b), irrespective of whether the worker is employed by the new owner or not.

(3) For the purposes of this section, a change of ownership of a business is deemed to occur when ever by sale, lease or other disposition, or by operation of law, an owner transfers to another person

(a) the business;

(b) the equipment, fittings or furnishings of the business;

(c) the goodwill of the business; or

(d) the business name.

(4) When an employer knows, or may reasonably be deemed to know, that a change of ownership of the business is due to occur, he shall within one month notify the Chief Executive in writing, of that fact and take steps to comply with the provisions of subsection (2)

51.(1) Subject to this section, where as a result of an employer

(a) ceasing to operate, in whole or part, a business, otherwise than as provided under section 50;

(b) temporarily suspending, in whole or part, the operation of a business for any reason specified in section 48(1);

(c) reconstructing the operation of a business for the purpose of facilitating improvement in the business by which greater efficiency and economy can be effected; or

(d) introducing new technology in a business,

a worker employed in the business has become redundant and it is necessary to terminate the contract of

employment of the worker the employer shall, before terminating the contract of employment, initiate and comply with the negotiation procedure.

(2) Where consequent upon the negotiation procedure initiated under subsection (1), the competent officer determines

(a) that the contract of employment of the worker may be terminated the worker shall be entitled to compensation calculated in accordance with section 47(2) (b);

(b) that the contract of employment of the worker shall not be terminated, the contract shall continue to have effect.

PART VII DISCIPLINE

52.(1) A disciplinary offence listed in Part 1 of Schedule 2 is a minor disciplinary offence.

(2) Any

(a) disciplinary offence listed in Part II of Schedule 2; and

(b) minor disciplinary offence which is preceded by 2 or more disciplinary offences, whether of the same nature or not, in respect of which some disciplinary measure has been taken,

is a serious disciplinary offence.

(3) Where a minor disciplinary offence is not followed by another minor disciplinary offence within 12 months of its commission, that offence is deemed not to have been

committed and is discounted for the purposes of subsection (2).

53.(1) No disciplinary measure shall be taken against a worker for a disciplinary offence unless there has been an investigation of the alleged offence or, where the act or omission constituting the offence is self evident, unless the worker is given the opportunity of explaining the act or omission.

(2) Where the disciplinary offence relates to a serious disciplinary offence, the worker shall be informed in writing with copy to the Union, if any, of the nature of the offence as soon as possible after it is alleged to have been committed and of the suspension of the worker, where the employer deems suspension to be necessary as a precautionary measure or for investigative purposes.

(3) The employer shall ensure that the investigation pursuant to subsection (1), even where it consists in no more than requiring an explanation for a self evident act or omission, is conducted fairly and that the worker has, if the worker so wishes, the assistance of a colleague or a representative of the Union, if any, and of such witnesses as the worker may wish to call.

(4) Where a disciplinary offence is established, the employer shall decide on the disciplinary measure to be taken and, where such measure is termination without notice, shall inform the worker of the same in writing with copy to the Union, if any.

(5) A worker aggrieved by a disciplinary measure taken against the worker may initiate the grievance procedure and under that procedure the burden of proving the disciplinary offence lies on the employer.

(6) In subsection (3) "representative of the Union" means a person nominated by the Union.

Drunkness while 53A. Where an employer has reasonable grounds to believe that a

at work etc. worker is under the influence of alcohol or a

controlled drug,

Act 8/1999 during working hours and is unfit to work, the employer may require the worker to take a breath test or to give a specimen of urine or blood for analysis in accordance with regulations made in that behalf. For the purpose of this section, "controlled drug" has the meaning assigned to it by section 2 of the Misuse of Drugs Act (Cap. 133).

54.(1) If, while a disciplinary offence is being investigated under section 53, a criminal proceeding is instituted against the worker in respect of the same offence, the investigation shall be suspended pending the outcome of the criminal proceeding.

(2) Where the criminal proceeding results in a conviction, the disciplinary offence is deemed to have been proved and disciplinary measures may be taken accordingly.

(3) Where the criminal proceeding results in an acquittal, disciplinary proceedings may nevertheless be instituted or continued against the worker provided they relate to some charge other than that on which the worker was acquitted.

(4) Nothing in this section is to be read as preventing a disciplinary measure from having effect subject to section 53 (5), whatever the outcome of a criminal proceeding, where the disciplinary measure is taken before the institution of the criminal proceeding.

55. Upon proof of a disciplinary offence, the employer may take any one or more of the disciplinary measures listed in Part III of Schedule 2, but, upon the grievance procedure being initiated under section 53(5), the competent officer may review such disciplinary measure and substitute another or none as the officer deems fit.

Suspension. 56.(1) When investigating a serious disciplinary offence, the

Act 8/1999 employer may suspend a worker without pay

(a) pending the investigation but for no longer than 1

month;

(b) where the investigation is discontinued under section 54(1), pending the outcome of the trial,

and shall inform the worker in writing, of the outcome of the investigation.

(2) Where a worker who has been suspended under subsection (1) is reinstated, the worker is entitled to payment for the period of suspension.

(3) A worker who is suspended under subsection (1) may terminate a contract of employment of the worker with notice.

(4) An employer shall, before the expiry of 40 days after the date of suspension of a worker under subsection (1)(a), or immediately after the completion of an investigation referred to in subsection (1)(b), inform the worker of the outcome of the investigation.

(5) A worker who is aggrieved by the failure of an employer to comply with the provisions of sub section (4) or by the result of the investigation may initiate the grievance procedure under Part II of Schedule I.

PART VIII TERMINATION OF CONTRACTS

57.(1) An employer may terminate a contract of employment with notice upon a determination by the competent officer following the negotiation procedure initiated under Part VI that the contract may be terminated.

(2) Notwithstanding section 47, an employer may terminate a contract of employment with notice in the following cases

(a) where the worker is on probation, during the worker's probationary period if the worker does not satisfactorily complete the period;

(b) where the worker is a trainee under section 27(a), at the end of the training period if the worker fails to satisfactorily complete the training;

(c) where the termination is under section 49 or 50, on the occurrence of the event specified therein;

(d) where the worker is a casual, part time or domestic worker, at any time.

(3) Notwithstanding subsection (2), notice of termination shall not be given to a worker while that worker is on sick leave or pregnant or on maternity leave unless the competent officer so authorises.

(4) Notwithstanding section 47, an employer may terminate a contract of employment without notice where the worker has committed a serious disciplinary offence within the meaning of that expression in section 52(2).

(5) An employer shall not, otherwise than under this section, terminate the contract of employment of a worker.

(6) An employer shall notify a worker,

(a) in the case of a worker who is employed under a fixed term contract, at least 1 month before the expiry of the contract; or

(b) in the case of a worker who is about to reach retirement age, at least 3 months before the worker reaches retirement age,

of the impending expiration of the contract failing which the employer shall pay to the worker in lieu of notice, in the case of a worker referred to in paragraph (a), 1 month's salary or, in the case of a worker referred to in paragraph (b), three months' salary.

58.(1) A contract is frustrated when it becomes impossible of performance as when, among other things or reasons

(a) the business of the employer ceases through its becoming prohibited or illegal under any written law;

(b) a worker is disqualified through the suspension or cancellation of any licence, permit, registration or authority required under the written law for the purpose of exercising the occupation or profession of the worker,

and, except in the case of paragraph (b), the worker, other than a casual worker, is entitled upon frustration of the contract to one month's notice or to payment in lieu and to any additional compensation payable under section 62.

(2) Where a contract is frustrated through a business ceasing as a result of an acquisition by Government under the Acquisition of Lands in the Public Interest Act, any liability under subsection (1) for payment in lieu of notice and payment of compensation lies primarily upon the Government subject to reimbursement by the employer.

(3) For the avoidance of doubt it is declared that where a contract is frustrated, the negotiation procedure under Part VI and the grievance procedure under section 61 do not apply.

(4) An employer whose business ceases under subsection (1)(a) shall forthwith notify the competent officer of the same.

59. Termination under section 57(1) and (2) requires

(a) in the case of any casual worker, one day's notice;

(b) in the case of a worker on probation seven day's notice;

(c) in the case of any other worker, other than a non Seychellois worker, one month's notice;

(d) in the case of a non Seychellois worker, not being a casual worker, the period of notice specified in the contract of employment of the worker or a worker on probation or, where a period of notice is not specified, one month's notice.

60.(1) A worker may terminate the contract of employment of the worker

(a) in the case of any casual worker, with one day's notice;

(b) in the case of a worker on probation, with seven day's notice;

(c) in the case of any other worker, other than a non Seychellois worker, with one month's notice;

(d) in the case of a non Seychellois worker, not being a casual worker or a worker on probation, with the period of notice specified in the contract, or where a period of notice is not specified, with one month's notice.

(2) A worker, other than a casual worker, may terminate the contract of employment of the worker without giving prior notice

(a) where the worker suffers ill treatment at the hands of the employer;

(b) where the employer is, in respect of the worker, in breach of this Act; or

(c) where the worker is under suspension for investigative purposes or has been laid off,

but the worker shall inform the employer in writing of the termination and of the reason therefor and shall obtain from the employer the certificate of employment referred to in section 69.

Grievance 61.(1) A worker

procedure

Act 8/1999 (a) whose contract of employment is terminated

(i) pursuant to section 57(2)(a) or (b);

(ii) for a serious disciplinary offence pursuant to section 57(4);

(b) who terminates his contract under section 60(2)(a) or (b),

may initiate the grievance procedure.

61.(A) Where a worker or employer has registered a grievance, the competent officer shall first endeavour to bring about a settlement of the grievance by mediation and thereafter

(a) if the employer and the worker agree to a settlement, the terms of such settlement shall be reduced to writing and the parties shall sign the document in the presence of the competent officer and the settlement shall have effect as if it were a determination made by the competent officer;

(b) if a settlement is not effected after a lapse of fourteen days, the competent officer shall proceed to make the determination.

(2) Upon conclusion of the grievance procedure initiated under subsection (1), the competent officer may determine as follows

(a) in the case of subsection (1)(a)

(i) that termination is justified;

(ii) that termination is not justified and that the worker is reinstated in the post or offered other suitable employment and that, where applicable, some disciplinary measure or none be taken in lieu of termination;

(iii) that termination is not justified but, as it would be impractical or inconvenient to reinstate the worker in the post or offer the worker other suitable employment, allow the termination subject, in the case of subsection (1)(a)(ii), to the payment in lieu of notice of one month's wages or, where an amount is specified in the worker's contract of employment in the case of a non Seychellois worker referred to in section 59(c), that amount;

(b) in the case of subsection (1)(b)

(i) that termination is justified, in which case the worker is entitled to the payment of one month's salary in addition to any benefits or compensation the worker may have earned;

(ii) that termination is not justified, in which case the worker is liable to pay the employer a sum equal to one month's salary or, where an amount specified in the contract of employment in the case of a non Seychellois worker referred to in section 60(1)(d), that amount and the employer may deduct the sum or the amount from any payments owed by him to the worker in accordance with section 33(2).

62. Where

(a) a contract of employment is frustrated, other than under section 58(1)(b);

(b) a contract of employment is terminated by an employer

(i) under section 57(2)(a) or (b) and the grievance procedure is initiated by the worker with the result that termination is allowed under section 61(2)(a)(iii);

(ii) other than for a serious disciplinary offence under section 57(4);

(c) a contract of employment is terminated by the worker and the competent officer determines pursuant to section 61(2)(b)(i) that the worker is justified in terminating the contract,

compensation is payable to the worker, in addition to his wages and any benefits earned, in accordance with section 47(2)(b) or (c).

Compensation 62A.(1) Where a worker

upon resignation

or retirement (a) resigns, otherwise than in the circumstances referred to

Act 8/1999 in subsection (2); or

(b) retires,

on completion of not less than five years' continuous service under an employer, compensation for length of

service shall be payable to such worker, in addition to the wages and other benefits earned, in accordance with section 47(2)(b).

(2) Compensation shall not be payable to a worker under subsection (1) where the worker resigns during a period of suspension from service for disciplinary reasons, or where the circumstances of the resignation are such that disciplinary action could have been taken against the worker by the employer.

(3) Where a worker who has completed not less than five years continuous service dies while in employment, compensation for length of service shall be payable to the legal representative of such worker, in addition to the wages and other benefits earned by the worker, in accordance with section 47(2)(b).

63. Wherever notice is required to be given under this Part, payment corresponding to the period of notice required or to such part of it as is not worked may be made in lieu.

Interest 63A. Where compensation is payable to a worker in respect of

payable termination of employment under the provisions of this Part,

Act 8/1999 interest on the amount of such compensation shall be payable at such rate as may be prescribed by the Minister, for the period between the date on which such compensation becomes payable and the date of actual payment. For the purpose of this section compensation becomes payable upon the determination of the competent officer or the ruling of the Minister, as the case may be.

PART IX MISCELLANEOUS PROVISIONS

64. Wherever a dispute, other than one for which the grievance procedure is expressly provided under other provisions of this Act, arises between employer and worker and internal dispute procedures, if any, have been

exhausted without agreement, either party to the dispute may initiate the grievance procedure.

Appeal and 65.(1) Subject to subsection (2), wherever an employer or worker

reviews is aggrieved by an authority, approval, decision or determination

Act 8/1999 of a competent officer, the employer or the employers' organisation on behalf of the employer, the worker or the Union on behalf of the worker, may appeal against it to the Minister.

(2) An appeal under subsection (1), other than an appeal against a determination of the competent officer consequent upon initiation of the negotiation or grievance procedure, shall be lodged with the Chief Executive within 14 days or such other period as may be prescribed after the date on which the authority, approval, decision or determination was given.

(3) Where the competent officer who gave the original authority, approval, decision or determination is the Minister, the right of appeal under subsection (1) gives place to a right of review by the Minister.

(4) Upon an appeal or review under this section, the Minister may consult with the Employment Advisory Board before giving the ruling on such appeal or review.

(5) A reference in this Act to the authority, approval, decision or determination of a competent officer is to be construed, where the context so admits, as reference to that authority, approval, decision or determination as confirmed, reversed or amended by a ruling of the Minister upon an appeal or review.

(6) Subject to subsection (8), a ruling of the Minister under this section shall be given within 42 days or such longer period as may be prescribed after the date of lodgement of the appeal or of the application for review, as the case may be.

(7) A ruling of the Minister made under this section shall not be vitiated solely on the ground that it was not given

within the period specified in subsection (6).

(8) The Minister may revoke a ruling referred to in subsection (6) within a period of 14 days after the date of the ruling and give a new ruling if he is satisfied that relevant facts in existence at the time when the original authority, approval, decision or determination was given, were not made known to the competent officer or the Minister and that it is just and equitable that a new ruling be given. The Minister shall hear the parties concerned before giving the new ruling.

(9) In any proceedings for an offence under section 76(1) for failing to comply with a decision of the Minister made under this section, a certificate purporting to be issued by the Minister shall be evidence of the facts stated therein.

66.(1) A person who has attained retirement age shall not, without the written approval of the competent officer or after such approval has been withdrawn, remain in the employment of, or take up employment with, another person.

(2) An employer shall not employ a person who has reached retirement age unless that person has the written approval of the competent officer and such approval has not been withdrawn.

(3) Approval shall not be given under this section wherever there is a younger person suitably qualified to replace a person who has reached retirement age.

(4) A younger person aggrieved by an approval given under this section may appeal to the Minister under section 65.

67. Non Seychellois workers, not exempt from the provisions of this Act, shall enjoy the same terms and conditions of employment as are applicable to Seychellois workers but may be given such additional benefits and privileges as the competent officer may authorise.

68. Every employer shall keep either a record card on

each of the workers or a register of the workers, being workers other than casual, part time or domestic workers, which shall contain in respect of each worker the following information

(a) the name, date of birth, national identity number and address;

(b) the occupation or previous occupation, if any;

(c) the date of engagement;

(d) the wages payable and any additional benefits or advantages;

(e) any disciplinary offences committed, the date thereof and the disciplinary measure taken, if any;

(f) any qualification attained by the worker during the employment of the worker under that employer;

(g) such other particulars as may be prescribed.

69. An employer shall, the termination of a worker's contract of employment, give to the worker a certificate of employment which shall contain such particulars as may be prescribed.

70. An employer shall not employ a worker on probation

(a) except under a contract of continuous employment when the worker is first employed by the employer; and

(b) for longer than 6 months unless authorised by the competent officer.

71. The Minister may make regulations

- (a) prescribing anything which is required to be prescribed under this Act;
- (b) prescribing forms for the registers to be kept under this Act;
- (c) prescribing the records and returns to be kept or produced by employers;
- (d) prescribing fees and charges in respect of any matter done under this Act;
- (e) providing for the training of trainees and for a training levy on employers;
- (f) prescribing allowances payable to a trainee and the manner in which the allowances are payable;
- (j) qualifying, modifying or excepting provisions of this Act as regards their application to workers in outer islands and their employer;
- (h) amending the Schedules;
- (i) generally, for the better carrying into effect the purposes and provisions of this Act.

PART X ADMINISTRATION

72.(1) Subject to such exceptions as the Minister may impose in relation to any Part or to any provision of this Act and subject to the control and directions of the Minister, the Chief Executive is responsible for the general

administration of this Act.

(2) The Chief Executive may, subject to the approval of the Minister, delegate any of the functions which the Chief Executive is required to perform under this Act to any other person.

73. (1) The Minister shall establish an Employment Advisory Board.

(2) Schedule 3 has effect with respect to the Employment Advisory Board, its composition, panel, quorum, functions and otherwise.

74.(1) The Minister may authorise any person to act as a competent officer under this Act, and any person so acting is presumed to have been duly authorised.

(2) Notwithstanding the presumption under subsection (1), the Chief Executive shall issue to every person authorised by the Minister to act as a competent officer a certificate of authority so to act.

(3) No evidence of authority under subsection (2) is required where the Minister or the Chief Executive, when so authorised by the Minister, acts as a competent officer.

75.(1) Subject to subsection (2), in the exercise of the functions under this Act a competent officer may

(a) at any time enter any office or work place or site and make any examination or inquiry which the officer considers necessary in order to satisfy the officer that this Act is being complied with, and may take extracts or make copies from any books, records or other documents and, if this is not practicable, remove the same upon giving a receipt therefor;

(b) interrogate any employer or worker on any matter concerning the application of this Act;

(c) require the production by the employer for examination of any register, record, return or other document the keeping of which is prescribed by or under this Act, copy the same or take extracts therefrom;

(d) require an employer to make any worker available for interrogation;

(e) require an employer to furnish projections of the future activities and of the manpower needs of the employer;

(f) require an employer to furnish information relating to the plans for training the workers of the employer and furnish reports on the training given to them;

(g) require an employer to furnish any information relevant to manpower;

(h) give any directions or advice necessary to ensure compliance with this Act.

(2) A competent officer, other than the Minister or the Chief Executive, shall, in the exercise of the functions under subsection (1), if so requested by any person affected thereby, produce the certificate of authority referred to in section 74(2).

PART XI OFFENCES, PENALTIES AND PROSECUTION

76.(1) A person who

(a) fails to produce or submit any record, document or return or furnish any information when required under this Act or by a competent officer;

(b) furnishes false or misleading information to a

competent officer or any other person under this Act;

(c) intentionally obstructs, hinders or delays a competent officer or any other person in the exercise of the functions of the officer under this Act;

(d) without reasonable excuse, fails to comply with any directions given by a competent officer or any conditions attached to any permit issued under this Act;

(e) fails to inform or notify a competent officer or any other person in accordance with the provisions of this Act;

(f) without reasonable excuse, fails to comply with a decision of the Minister made on a review or appeal under section 65;

(g) fails to comply with a determination under section 61(2) (a)(iii) or section 61 (2)(b) (ii) or contravenes section 66(1);

(h) alters or modifies any record, document or other return issued by any person, or required to be kept, under this Act,

is guilty of an offence.

(2) An employer who

(a) contravenes section 5A, section 8(1), section 9(1), (2) or (3), section 10(2), section 11(1) or (2), section 12(1) or (2), section 16(1) or (3), section 17A, section 18(1) or (2), section 25(2), section 29(1), section 34(1), section 35(1), section 50(4), section 57(5), section 58(4), section 66(2), section 69, or section 70; or

(b) fails to give to a worker a copy of the contract of employment under section 21(2) or 22(3);

(c) subject to subsection (6), employs or retains in employment a worker without intending to pay or without having reasonable grounds for believing that the employer can pay the wages of the worker as they become payable;

(d) without reasonable excuse, fails on demand to pay in accordance with section 32(2) or (3) any wages due to a worker;

(e) makes any deduction from wages other than that authorised under section 33 or section 61(2)(b) (ii) or contrary to section 42(2);

(f) deducts more than the amount authorised under section 42(1) from the wages of a worker;

(g) pays a worker, other than a trainee defined under section 27(a) or (c), a wage less than the national minimum wage;

(h) pays a trainee defined under section 27(b) an allowance less than the national minimum wage;

(i) in the case where a mandatory wage or allowance is prescribed, pays a worker a wage or allowance other than the mandatory wage or allowance;

(j) fails to provide a worker with any of the applicable conditions of employment prescribed under section 40(1)(b);

(k) terminates a contract contrary to section 47(1);

(l) fails to comply with a determination of the competent officer in accordance with section 61(2)(a)(ii) or section 61(2)(b)(i);

(m) fails to pay any compensation due under section 62;

(n) knowingly gives or causes to be given a false certificate of employment to a worker,

(o) fails to make a worker available for interrogation by a competent officer under section 75,

is guilty of an offence.

(3) Where an employer is charged with an offence in relation to section 51(1) the burden of proving that the employer has complied with that section shall be on the employer.

(4) A person upon whom there lies an obligation under Part VI to initiate the negotiation procedure and who fails to do so is guilty of an offence.

(5) A person who, having initiated the negotiation procedure under Part VI, fails or refuses to comply with or is in breach of any condition of any determination of the competent officer consequent upon the negotiation procedure is guilty of an offence.

(6) Wherever initiation of negotiation procedure is required under Part VI, it is a defence for an employer charged with an offence under subsection (2) (c) to show that as soon as the employer realised the employer would not be able to meet the wages of a worker the employer initiated the negotiation procedure;

(7) Where an employer is convicted of an offence under subsection (2)(e) to (i) for having paid a lesser wage or allowance than that which the employer ought to have paid, the court shall order the employer to pay to the worker the difference between the amount paid and that which ought to have been paid.

77.(1) A person who is convicted of an offence under section 76, other than an offence specified in subsection (2) of this section, is liable to a fine of R.20,000.

(2) A person who is convicted of an offence under section 76(2)(a) in relation to section 57(5) or under section 76 (1)(f), (4) or (5) is liable to a fine of R.40,000.

(3) Where an offence of which a person is convicted under subsection (1) or subsection (2) is of a continuous nature and that offence is continued after a conviction therefor, the person so convicted is guilty of a further offence for everyday on which the offence is so continued by the person and is liable to a mandatory daily penalty of R.400 in addition to any penalty imposable for the further offence.

(4) Notwithstanding subsection (1),(2) or (3) or any other written law, where an offence of which an employer is convicted under this Act relates to or affects more than one worker, the fines and mandatory daily penalty imposable under the preceding provisions of this section may be imposed in respect of each worker.

(5) Notwithstanding any other written law, a penalty imposed on a person convicted of an offence under this Act shall be without prejudice to the liability of the person to pay compensation or any other sum for contravening a provision of this Act.

78.(1) Without prejudice to section 72(1), no prosecution for an offence under this Act is commenced without the consent in writing of the Chief Executive.

(2) A prosecution for an offence under this Act may be conducted by a competent officer.

(3) Nothing in this section derogates from the powers of the Attorney General in respect of the prosecution of criminal offences.

(4) Wherever any person is convicted of an offence under this Act and in connection with that offence moneys, whether consisting of wages, compensation, benefits

earned, payment in lieu of notice or otherwise, are due and payable to another person in respect of whom the offence has been committed, the court, shall, in addition to any penalty imposable under this section, order the person convicted to pay to the other person the moneys due.

79. In any proceedings for an offence under this Act which relate to an authority, approval, decision or determination of a competent officer, that authority, approval, decision or determination shall, subject to any orders made in the exercise of the supervisory jurisdiction of the Supreme Court, not be called in question and shall, if given under the hand of the Minister or Chief Executive, be conclusive evidence of the same without proof being given of the signature of the signatory.

80.(1) Whenever a manager, agent or another worker of any employer does or omits to do an act which it would be an offence under this Act for the employer to do or omit to do, unless it is proved that

(a) in doing or omitting to do that act, the manager, agent or other worker was acting without the connivance and permission of the employer;

(b) all reasonable steps were taken by the employer to prevent any act or omission of the kind in question; and

(c) it was not under any condition or in any circumstances within the scope of the authority, or in the course of the employment, of the manager, agent or worker to do or omit to do the act, whether lawful or unlawful, of the character of the act or omission charged,

the employer shall be presumed to have done or omitted to do that act and be liable to be convicted and sentenced in respect of it.

(2) Whenever any manager, agent or other worker of an employer does or omits to do an act, which it would be an offence under this Act for the employer to do or omit to do, the manager, agent or other worker is liable to be convicted and sentenced in respect thereof as if the manager, agent or other worker were the employer and may be so convicted and sentenced in addition to the employer.

PART XII TRANSITIONAL

Transitional 81.(1) Notwithstanding the repeal of the Employment Act by this Act, any statutory instrument made under that Act and in force immediately before the commencement of this Act shall continue in force until amended or revoked by a statutory instrument made under this Act.

SCHEDULE 1

PART I.

NEGOTIATION PROCEDURE (SS 47, 48, 51)

A. RESTRICTIONS ON TERMINATION OF

CONTRACT (S 47)

1. (1) Where an employer wishes to terminate a contract of employment otherwise than under section 57, the employer shall, not less than 42 days before the employer intends to give notice of termination to any worker, notify the Union and the Chief Executive.

(2) The period of 42 days referred to in sub paragraph (1) may, in exceptional circumstances and at the discretion of the Chief Executive, be reduced.

(3) The notification under sub paragraph (1) shall specify

(a) the reason for the proposed termination;

(b) the number of workers concerned;

(c) the names, ages, occupation, date of engagement and wages of the workers concerned;

(d) whether the proposed termination relates to an activity in a particular sector of the business or to the business as a whole;

(e) the criteria used for selecting the workers whose contracts are to be terminated.

(4) The employer shall also furnish any further information which the competent officer may request.

2. Upon receipt of the notification and of any additional information requested under paragraph 1(4), the competent officer registers the notification and issues to the employer a certificate of registration.

3. (1) As soon as possible after the date of registration of the notification and in any case not later than 7 days therefrom, the competent officer shall invite the Union, the employer or the employer's organisation to which the employer may belong, for consultations with a view to exploring and agreeing on how the proposed terminations may be avoided or their effects minimised.

(2) Notwithstanding sub paragraph (1), where the reason for the proposed termination of a contract is a personal one in the sense that it relates to the character, competence, loyalty or other attribute of the worker, the competent officer shall invite the worker's participation to consultations in pursuance of sub paragraph (1).

4. (1) The competent officer shall keep a record of the statements made during the consultations held pursuant paragraph 3, and shall file all documents and evidence produced by the parties and any written submission they may make.

(2) Following the conclusion of consultations the competent officer considers the case and makes the determination of the officer.

(3) A determination by the competent officer under sub paragraph (2) shall be made within 14 days after the date of registration of the notification.

5. The worker, the Union or, the employer may, not later than 14 days after service of a determination made under paragraph 4(3), appeal to the Minister against that determination.

6. No action shall be taken by the employer in connection with the proposed termination (including giving notice to a worker of termination) until 21 days has elapsed following a determination under paragraph 4(2) or until the result of an appeal or review, as the case may be, or unless the competent officer fails to make a determination within the time allotted under paragraph 4(3).

7. This procedure is also subject to Part III of this Schedule.

B. LAY OFFS UNDER SECTION 48

The procedure laid out in paragraphs 1 to 7 Part IA of this Schedule applies, mutatis mutandis, to the case of lay offs subject to the following modifications

(a) the period referred to in paragraph 1(1) of Part IA does not apply and notification may be given at any time before the proposed lay offs;

(b) consultations as under paragraph 3 of Part IA shall take place within 3 working days after the date of registration of the proposed lay offs;

(c) a determination by the competent officer as under paragraph 4(3) of Part IA shall be made within 14 days after the date of registration.

C. REDUNDANCY OF WORKER UNDER SECTION 51

The procedure laid out in paragraphs 1 to 7 of Part IA of this Schedule applies mutatis mutandis, to cases of termination on ground of redundancy under section 51.

PART II

GRIEVANCE PROCEDURE (SS. 53(5), 61, 64)

Definition 1. In this Part "worker" includes an unemployed person.

Registration 2. (1) Wherever an employer or worker is empowered by or

of grievance under this Act to initiate the grievance procedure, the employer or worker may, within 14 days of becoming aware of the event, act or matter giving rise to the grievance, register a grievance with the competent officer furnishing the officer with all the information the officer may require.

(2) Where there exist internal procedures for resolving disputes between employer and worker or where the information required under subparagraph (1) is not furnished to the competent officer, the officer may suspend registration of the grievance until satisfied that internal procedures have been exhausted or have proven inconclusive or until the officer has at hand the information required.

(3) An employer or worker who fails to register a grievance within the time specified under subparagraph (1) loses the right to do so, but the competent officer, if satisfied that registration within the time was impracticable or if the officer has himself suspended registration under sub paragraph (2), shall allow registration out of time.

Grievance relating 3. (1) Where the grievance relates to any matter, other than the

to termination etc. termination of a worker's contract of

employment, the competent officer shall immediately upon the grievance being registered refer the matter to the Union, if any, and the Union shall consult with the employer and worker concerned with the object of resolving the matter by agreement.

(2) Where, within 14 days after a referral to the Union under subparagraph (1), no agreement has been reached or the Union has failed to enter into consultation as required under subparagraph (1), or where the worker is not a member of a Union the competent officer shall, upon inquiry into the grievance, determine the matter.

4. A competent officer seized of a grievance relating to the

termination of worker's contract of employment or to refusal of

access to employment shall, within 7 days after registration of the grievance, invite the worker, the Union, if any, the employer and employers' organisation, if any, for consultation.

Record of 5. (1) The competent officer shall keep a record of the

consultation and consultations held pursuant to paragraph 4 and shall file any

determination evidence or documents produced and any written submission made.

(2) Following the conclusion of consultations the competent officer considers the case and makes the determination.

(3) A determination by the competent officer under this paragraph shall be made within 42 days after the date of registration of the grievance.

6.(1) The employer or worker may, not later than 14 days after being notified of a determination by the competent officer under paragraph 3(2) or paragraph 5(3) register an appeal to the Minister against that determination.

(2) The Minister may, where it shall appear to the Minister that there was sufficient cause for the delay in registering the appeal under subparagraph (1), entertain an appeal out of time.

7. Where the same grievance is registered by a number of workers against the same employer a joint procedure may be followed.

8. This procedure is also subject to Part III of this Schedule.

PART III

GENERAL PROVISIONS APPLICABLE TO

PARTS I AND II

Absence or 1. The absence of any person invited to consultation under Part I

delay not a defect or Part II of this Schedule from those consultations does not vitiate the procedures.

Consultations 2. Wherever possible the consultations should be joint but the

may be separate competent officer may hold separate consultations.

Representation 3. (1) A party to any consultation under Part I or Part II of this Schedule may attend in person and be accompanied by a representative.

Joint procedure (2) Notwithstanding sub paragraph (1) where the number of workers concerned by either procedure exceeds 3, there may not be more than 3 representatives on their behalf.

Exercise of 4. Any right of an employer or worker under Part I or Part II of

right this Schedule may, at the request of the employer or worker, be exercised on behalf of the employer or worker by the employers' organisation or the Union respectively.

Employers' 5. An employer's organisation shall only be invited to

organisation consultations under Part I or Part II of this Schedule where

(a) the employer concerned so requests; or

(b) the competent officer considers its presence necessary.

SCHEDULE 2

(SS.52 and 55)

PART I

DISCIPLINARY OFFENCES

A worker commits a disciplinary offence wherever the worker fails, without a valid reason, to comply with the obligations connected with the work of the worker and more particularly, inter alia, where the worker

(a) within a period of 12 months fails to observe working hours on one or not more than two occasions;

(b) within a period of 12 months fails to report for work on one or not more than two occasions;

(c) is absent without permission from the undertaking or from the post of the worker during working hours;

(d) fails to obey reasonable orders or instructions given by the employer or representative of the employer;

(e) makes any illicit or unauthorised use of the property or equipment of the undertaking;

(f) negligently causes minor damage to the property of the undertaking;

(g) fails to keep a secret connected with the work of the worker, the production of goods or the provision of services, where required by law or by the rules of the undertaking to keep it;

(h) fails to comply with the rules and regulations of the undertaking;

(i) commits an offence under this Act other than an offence referred in Part II (j) of this Schedule;

(j) appears at work while under the influence of alcohol or dangerous drugs or consumes alcohol or dangerous drugs while at work or within the undertaking;

(k) knowingly makes false statements during investigation of accidents at work or of breaches of discipline.

PART II

SERIOUS DISCIPLINARY OFFENCES

A worker commits a serious disciplinary offence wherever, without a valid reason, the worker causes serious prejudice to the employer or employer's undertaking and more particularly, inter alia, where the worker

(a) fails repeatedly to observe working hours or is absent from work without authorisation on 3 or more occasions within a period of 12 months;

(b) is absent from work without justification for a whole day on 3 or more occasions within a period of 12 months;

(c) fails repeatedly to obey reasonable orders or instructions given by the employer or representative of the employer;

(d) fails to keep a secret connected with the work of the worker, the production of goods or the provision of services, where the failure results in serious prejudice to the undertaking or the general interests of the Republic;

(e) wilfully or intentionally damages the property of the undertaking thereby causing a reduction or stoppage of production or serious prejudice to the undertaking;

(f) is unable to carry out the duties of the worker due to the effect of alcohol or dangerous drugs;

(g) commits any offence involving dishonesty, robbery, breach of trust, deception or other fraudulent practice within the undertaking or during the performance of the work of the worker;

(h) in the course of the employment of the worker assaults, or inflicts bodily injury upon a client of the employer or another worker;

(i) commits any active or passive bribery or corruption;

(j) commits an offence under this Act whereby the worker causes serious prejudice to the employer or employer's undertaking;

(k) does any act, not necessarily related to the work of the worker, which reflects seriously upon the loyalty or integrity of the worker and causes serious prejudice to the employer's undertaking;

(l) shows a lack of respect to, insults or threatens a client of the employer or another worker whether it be a superior, a subordinate or a colleague.

(m) wilfully, repeatedly and without justification fails to achieve a normal output as fixed in accordance with standards applicable to the worker's work;

PART III

DISCIPLINARY MEASURES (S. 55)

In the event of the commission of a disciplinary offence any one or more of the following disciplinary measures may be taken

(a) a written warning which may be copied to the Union;

(b) recovery of cost for any damage done to, or loss of, the property of the employer;

(c) non payment of wages for any unauthorised absence from work; provided that an employer may deduct the equivalent of 3 days wages for each day of unauthorised absence from work for each second or subsequent unauthorised absence within a period of 12 months;

(d) withholding of annual merit increments;

(e) redeployment;

(f) demotion;

(g) suspension from work without pay for a period of up to 14 days;

(h) termination of employment with notice or payment in lieu of notice;

(i) termination of employment without notice ie instant dismissal without payment of compensation;

(j) such other measures as the Minister may prescribe.

SCHEDULE 3 (S. 73)

EMPLOYMENT ADVISORY BOARD

Definition 1. In this Schedule the "Board" means the Employment Advisory Board.

Composition 2. The Minister may, by notice in the Gazette, appoint up to 15 persons from among responsible members of the community to be members of the Board.

Period of 3. Appointments under paragraph 2 are for two years and are

appointment renewable.

Functions 4. The functions of the Board are to advise the Minister whenever a matter is referred to it by the Minister under this Act.

Panel of 3 5. (1) When exercising its functions under paragraph 4 with

members respect to any specific matter referred to it, the Board consists of a panel of 3 members selected from among the Board's membership by the Chief Executive or person authorised by the Chief Executive.

(2) The members of the panel shall select one member to be the panel's chairman for the sitting relating to the specific matter.

Role of 6. The competent officer shall place before the panel of the

competent Board all the facts and submissions pertinent to the matter in question together with his decision or determination with respect of that matter.

Proceedings 7. Whenever a panel as constituted under paragraph 5 sits, it

Advice regulates its own proceedings.

8. Where the advice to be tendered to the Minister by a panel as

constituted under paragraph 5 with respect to any matter referred to it is not unanimous, each member of the panel shall tender a separate advice.

SCHEDULE 4 (S.28)

THE NATIONAL VOCATIONAL TRAINING BOARD

Definition 1. In this Schedule, the "Board" means the National Vocational Training Board;

Composition 2. The Board shall consist of the following members

(a) the President as chairman unless the President appoints another person as chairman by notice in the Gazette.

(b) such other members as the President may, by notice in the Gazette, appoint for such periods as may be specified in the notice.

Meetings of 3. The Board meets whenever its chairman summons a meeting.

the Board

Proceedings 4. The Board regulates its own proceedings.

SCHEDULE 5 (S.2)

OUTER ISLANDS

Ile Plate

Coëtivy

Amirantes Group:

Rémire

D'Arros

Desroches

Etoile

Boudeuse

Marie Louise

Denoeufs

African Banks :

Bancs Africains

Ile du Sud

St. Joseph's Atoll :

St. Joseph

Ile au Fouquets

Ressource

Petit Carcassaye

Grand Carcassaye

Benjamin

Bancs Ferrari

Cheins

Pelicans

Vars

Ile Paul

Banc de Sable

Bancs aux Cocos

Ile aux Poules

Poivre Atoll :

Poivre

Florentin

Ile du Sud

Alphonse and St. Francois Atolls:

Alphonse

Bijoutier

St. François

Farquhar Group :

Farquhar Atoll :

Ile du Nord

Ile du Sud

Manahas Nord

Manahas Milieu

Manahas Sud

Ile aux Coëlettes

Lapins

Ile du Milieu

Déposés

Bancs de Sable

Providence Atoll :

Providence

Bancs Providence

St. Pierre

Aldabra Group:

Aldabra Atoll :

Grande Terre

Picard

Polymnie

Malabar

Ile Michel

Ile Esprit

Ile aux Moustique

Ilot Parc

Ilot Emile

Ilot Yangué

Ilot Magnan

Ile Lanier

Champignon des Euphrate

Grand Mentor

Grand Ilot

Gros Ilot Gionne

Gros Ilot Sésame

Heron Rock

Hide Island

Ile aux Aigrettes

Ile aux Cèdres

Iles Chalands

Ile Fangame

Ile Héron

Ile Michel

Ile Suacco

Ile Sylvestre

Ile Verte

Ilot Déder

Ilot du Sud

Ilot du Milieu

Ilot du Nord

Ilot Dubois

Ilot Macoa

Ilot Salade

Middle Row Island

Noddy Rock

North Row Island

Petit Mentor

Petit Mentor Endans

Petit Ilots

Pink Rock

Table Ronde

Cosmoledo Atoll :

Menai

Ile du Nord

Ile Nord Est

Ile du Trou

Goëlettes

Grand Polyte

Petit Polyte

Grand Ile (Wizard)

Pagode

Ile du Sud Ouest

Ile aux Macaques

Ile aux Moustiques

Ile Baleine

Ile aux Chauve Souris

Ile aux Macaques

Ile aux Rats

Ile du Nord Ouest

Ile Observation

Ile Sud Est

Ilot la Croix

Astove

Assomption

Note: SUBSIDIARY LEGISLATION MADE UNDER THE REPEALED EMPLOYMENT ACT CONTINUES IN FORCE UNDER THIS ACT (Section 81)