

Malawi

Workers' Compensation Act Chapter 55:03

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Malawi

Workers' Compensation Act

Chapter 55:03

Commenced on 1 July 2000

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for compensation for injuries suffered or diseases contracted by workers in the course of their employment or for death resulting from such injuries or diseases; to provide for the establishment and administration of a Workers' Compensation Fund; and to provide for matters connected therewith or incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Workers' Compensation Act.

2. Meaning of “worker”

In this Act, unless the context otherwise requires, “worker” means any person who has, whether before or after the commencement of this Act, entered into, or works under, a contract of service or apprenticeship with an employer in any employment, whether the contract is expressed orally or in writing or is implied:

Provided that the following persons shall be excepted from the definition of “worker”—

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or
- (b) an outworker;
- (c) a tributer;
- (d) a member of the employer's family living in the employer's house;
- (e) a member of the armed forces of Malawi; or
- (f) any class of persons whom the Minister may, by notice published in the *Gazette*, declare not to be workers for the purposes of this Act.

3. Interpretation

- (1) In this Act, unless the context otherwise requires—

“**assessment**” means an assessment made under Part XI;

“**business**” means any industry, undertaking, trade, occupation or other activity in which a worker is employed;

“**Commissioner**” means the Commissioner for Workers' Compensation appointed under [section 36](#) and includes any officer subordinate to him or any other person duly acting within the powers and duties of the Commissioner conferred by this Act;

“**compensation**” means compensation payable under this Act and includes medical aid and any benefit of any nature to which a worker or his dependants may be entitled under this Act;

“**Board**” means the Board established under [section 27](#);

“**dependants**” means those members of the family of a worker who were wholly or in part dependant upon his earnings at the time of his death, or who but for the incapacity due to the injury have been so dependent; and, where the worker, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings or, being an illegitimate child, leaves a parent or grandparent so dependant on his earnings shall include such an illegitimate child or parent or grandparent, respectively:

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

“**earnings**” includes wages paid to a worker by the employer, the value of any food, fuel or quarters supplied to the worker by the employer and any overtime payments or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character or for work habitually performed, but does not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, or any *ex gratia* payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession, or a contribution paid by the employer of a worker towards any pension or provident fund, or a sum paid to a worker to cover any special expenses entailed on him by the nature of his employment;

“**employer**” includes the Government (except the armed forces of Malawi), a local authority, any body or association of persons, corporate or unincorporated, and the personal representative of a deceased employer, and where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to be the employer;

“**Fund**” means the Workers' Compensation Fund established under Part XI;

“**injury**” means a personal injury and includes the contraction of a scheduled disease;

“**medical aid**” means any or all the benefits for the worker under Part V;

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“**medical practitioner**” means a person registered as such under the Medical Practitioners and Dentists Act;

“**outworker**” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

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

Provided that every injury specified in the First Schedule, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to one hundred *per centum* or more, shall be deemed to result in permanent partial incapacity;

“**scheduled disease**” means a disease specified in the Second Schedule;

“**total incapacity**” means such incapacity, whether of a temporary or permanent nature, as incapacitates a worker for any employment which he was capable of undertaking at the time of the injury resulting in such incapacity:

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the First Schedule where the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred *per centum*;

“**tributer**” means a person who is granted permission to win minerals, receiving a proportion of the minerals won by him or the value thereof.

- (2) The exercise and performance of the powers and duties of the Government, a local authority or any other body, corporate or unincorporated, shall, for the purposes of this Act, be treated as the business of the Government or of such local authority or other body.
- (3) If in any proceedings for the recovery of compensation it appears to the Commissioner that the contract of service or apprenticeship under which the injured person was working at the time of the injury was not legally valid or otherwise legally unenforceable, the Commissioner, if having regard to all the circumstances of the case he thinks it proper to do may, with the approval of the Board, deal with the matter as if the injured person at the material time had been a person working under a legally valid and enforceable contract of service or apprenticeship.
- (4) Except for the purposes of [section 25](#), any reference to a worker who has been injured and is dead shall, unless the context otherwise requires, include reference to his personal representative or his dependants or any of them or the Administrator General or such other public officer as the Minister may appoint to act on behalf of the dependants of the worker.
- (5) This Act shall apply to workers employed by or under the Government in the same way and to the same extent as if the employer were a private person, except in the case of persons in the armed forces of Malawi:

Provided that nothing in this subsection shall be construed as preventing the application of this Act to persons in the armed forces of Malawi by any written law governing or regulating the armed forces of Malawi.

Part II – Eligibility for compensation in case of injury other than the contraction of a scheduled disease

4. Employer’s liability for compensation for death or incapacity due to injury other than the contraction of a scheduled disease

- (1) If an injury, other than the contraction of a scheduled disease, arising out of and in the course of his employment is caused to a worker, his employer shall, subject to this Act, be liable to pay compensation in accordance with this Act.
- (2) An employer shall not be liable to pay compensation under this Act—
 - (a) in respect of any injury which incapacitates the worker for a period of less than seven days from earning full wages or salary at the work at which he was employed;
 - (b) in respect of any incapacity or death resulting from deliberate self-injury; or
 - (c) if it is proved that the injury to the worker is attributable to the serious and wilful misconduct of that worker, or if the worker has at any time represented in writing to the employer that he was not suffering, or had not previously suffered, from that or a similar injury knowing that the representation was false:

Provided that where the injury results in death or serious permanent incapacity, the Commissioner may nevertheless, upon consideration of all the circumstances, award compensation to such extent as he considers appropriate with the approval of the Board.

- (3) For the purpose of this Act, an injury incurred by a worker in the course of his employment shall be deemed, unless the contrary is proved, also to have arisen out of that employment.

- (4) For the purposes of this Act, an injury incurred by a worker while he is acting for the purpose of and in connexion with his employer's business, and resulting in the death or serious permanent incapacity of the worker shall be deemed to have arisen out of and in the course of his employment, notwithstanding that the worker, at the time the injury was incurred, was acting in contravention of any statutory or other regulation applicable to his employment or any orders or instructions given by or on behalf of his employer, or that he was acting without orders or instructions from his employer.
- (5) For the purposes of this Act, an injury incurred by a worker in or about any premises at which he is for the time being employed for the purposes of his employer's business shall be deemed to have arisen out of and during the course of his employment if the injury is incurred while he is taking steps in an actual or supposed emergency in or about those premises to rescue, succour or protect persons who are, or are thought to be, injured or imperilled or to avert or minimize damage to property owned or utilized by the employer or for which the employer was responsible to the owner.
- (6) For the purposes of this Act, an injury incurred by a worker while he is travelling to or from his place of employment shall be deemed to have arisen out of and in the course of his employment if he is, with the express or implied permission of the employer, travelling on or by means of transport —
 - (a) provided by the employer for carrying workers employed by him; or
 - (b) which is under the control of the employer or accepted by the employer for use by a worker and the employer has expressly or impliedly authorized its use for carrying a worker or workers employed by him.

5. Compensation, how paid and by whom

Where an employer is liable to pay compensation under this Act to a worker or to the dependants or the personal representative of a worker, the compensation shall be paid by the Commissioner out of the Fund, on behalf of the employer, where the employer is subject to assessment under Part XI and where the employer has paid his assessment in accordance with regulations made by the Minister, on the recommendation of the Board, under this Act.

6. Workers engaged on business outside Malawi, etc.

- (1) Where the usual place of employment of a worker is in Malawi and he suffers injury while he is temporarily employed outside Malawi by the same employer, the worker shall be entitled to compensation from the employer in the same manner as if the injury were incurred during employment in Malawi.
- (2) Where the usual place of employment of a worker is outside Malawi, and he suffers injury while he is temporarily employed inside Malawi he shall be entitled to compensation from the employer in the same manner as if he were ordinarily employed in Malawi:

Provided that such worker shall not be entitled to payment of his compensation out of the Fund unless his employer has prior thereto agreed with the Commissioner to be assessed and has in fact paid his assessment in that regard.
- (3) Where in the circumstances set out in subsections (1) and (2) the worker is also entitled to compensation under the law of another country and upon the worker electing to claim compensation under this Act, the Commissioner shall—
 - (a) before paying any compensation make due inquiries to satisfy himself that the worker has not already claimed under the law of that other country; and
 - (b) where compensation is paid to the worker under this Act, notify that fact to the person liable to pay compensation to the worker under the law of that other country.

- (4) Where a worker is engaged in Malawi for the purpose of service in another country and he suffers injury while on his way to commence employment in such other country or while being repatriated to his place of engagement in Malawi, he shall be entitled to compensation from the employer in the circumstances set out in [section 4](#) (6) whether the injury was incurred in Malawi or outside Malawi.

Part III – Compensation for injury caused otherwise than by the contraction of a scheduled disease

7. Compensation in fatal cases

- (1) Subject to [section 10](#), where death results from injury caused otherwise than by the contraction of a scheduled disease to a worker in circumstances in which compensation is payable—
- (a) if the worker leaves any dependants wholly dependent upon his earnings, the amount of compensation shall be a sum equal to forty-two times his monthly earnings at the time of the injury:
- Provided that, where in respect of the same injury compensation has already been paid for permanent total incapacity or permanent partial incapacity, such compensation shall be deducted from the sum payable as compensation for the death of the worker, but in no case shall the estate of the deceased worker be liable to refund any sum, in excess of the amount payable hereunder upon death, paid to the deceased worker for such permanent total incapacity or permanent partial incapacity;
- (b) if the worker leaves no dependants, the reasonable expenses of medical attendance on the deceased worker and the burial of his body shall be paid by the employer.
- (2) Expenses due to any person under subsection (1) (b) shall be recoverable from the Fund.

8. Compensation in the case of permanent total incapacity

- (1) Subject to [section 10](#), where permanent total incapacity results from injury to a worker in circumstances in which compensation is payable, the amount of compensation shall be a sum equal to fifty-four times the monthly earnings at the time of the injury.
- (2) Where the permanent total incapacity is of such a nature that the injured worker must have the constant help of another person, compensation additional to that provided under subsection (1) shall be payable out of the Fund as approved by the Board.

9. Compensation in the case of permanent partial incapacity

- (1) Where permanent partial incapacity results from injury to a worker in circumstances in which compensation is payable, the amount of compensation shall be—
- (a) in the case of an injury specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified in that Schedule as being the percentage caused by that injury; and
- [First Schedule]*
- (b) in the case of an injury not specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury in any employment which the employee was capable of undertaking at the time of his injury:
- [First Schedule]*

Provided that in no case shall the amount of compensation payable under this subsection be greater than the amount of compensation payable under [section 8](#).

- (2) Where more injuries than one are caused to the worker by the same accident, the amount of compensation payable under this section shall be aggregated, but not so as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

10. Minister may prescribe maximum amount of compensation payable under this Act

Compensation payable under this Act shall be subject to such maximum amounts as the Minister may, on the advice of the Board, prescribe by order published in the *Gazette* and the Minister may prescribe different maximum amounts of compensation relative to the earning capacity of workers.

Part IV – Calculation and distribution of compensation

11. Method of calculating earnings

- (1) For the purposes of this Act the monthly earnings of a worker shall be computed in such manner as is best calculated to give the rate per month at which the worker was being remunerated during the previous twelve months if he has been employed by the same employer, but if not, then for any less period during which he has been in the employment of the same employer:

Provided that where by reason of the shortness of the time during which the worker has been in the employment of his employer or the casual nature of the employment or by reason of the terms of the employment, it is impracticable at the date of the injury to compute the rate of remuneration, regard may be had to the average monthly amount which, during the twelve months previous to the injury, was being earned by a person of similar earning capacity in the same grade employed at the same work by the same employer, or if there is no person so employed by a person of similar earning capacity in the same grade employed in the same class of employment and in the same District or locality.

- (2) For the purposes of subsection (1), employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the injury uninterrupted by absence from work due to illness or any other unavoidable cause.
- (3) Upon request by the worker or by the Commissioner or any duly authorized person acting on behalf of the worker under this Act to the employer who is liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that worker upon which the amount of the monthly earnings may be calculated for the purposes of this section.
- (4) Any employer who, without reasonable cause, fails to furnish a list upon request made under subsection (3) or who furnishes or causes to be furnished any such list which he knows or has reason to believe is false in any material particular shall be guilty of an offence and liable to a fine of K20,000.

12. Persons entitled to compensation

- (1) The compensation under this Act shall be payable to or for the benefit of the worker or, where death results from the injury, to or for the benefit of his dependants.
- (2) Where there are both total and partial dependants, nothing in this Act shall be construed as presenting the compensation being allotted partly to the partial dependants.
- (3) Where a dependant dies before a claim in respect of death is made under this Act or, if a claim has been made, before an order for the payment of compensation has been made, the personal representative of the dependant shall not be entitled to payment of compensation, and the claim for compensation shall be dealt with as if that dependant had died before the worker.

13. Distribution of compensation

- (1) Compensation payable where the death of a worker has resulted from an injury shall be paid by the Board out of the Fund on behalf of the employer.
- (2) Compensation payable under sections 7, 8 or 9 shall be paid by the Board of the Fund and any sum so paid shall be paid to any person entitled thereto or be invested, applied or otherwise dealt with in such a manner as the Board thinks shall be beneficial to that person.
- (3) The receipt issued by the Board shall be a sufficient discharge in respect of any amount paid by an employer to the Board under this Act.
- (4) Any order or direction of the Board under this section shall be final.

Part V – Medical aid

14. Medical expenses

- (1) In addition to any compensation payable under this Act, the employer shall be liable to defray the reasonable medical expenses incurred by a worker within Malawi, or, with the advice of the Secretary for Health and the approval of the Board, outside Malawi as a result of an injury which would entitle the worker to compensation under this Act, not exceeding such amount as may be prescribed by the Board in consultation with the Secretary for Health—
 - (a) in respect of medical, surgical, dental and hospital treatment, skilled nursing services and the supply of medicines;
 - (b) in respect of the supply, fitting, maintenance, repair and normal renewal of any artificial appliance, limb, apparatus or mechanical aid;
 - (c) in respect of reasonable transport charges incurred in transporting the worker to and from a place where facilities for examination and treatment or assessment are available, if travel to such place is certified to be necessary by the medical practitioner in charge of the case.
- (2) In determining any dispute in respect of compensation or upon the application of any interested person, the Board may order the payment of any of the expense referred to in subsection (1) to the person entitled to receive it, and if such expenses exceed the amount prescribed under that subsection the Board may apportion the amount available in such manner as he considers expedient.
- (3) In case of an employer covered by [section 5](#), any expenses which he incurs under subsection (1) shall be refunded to him by the Board out of the Fund.

15. Decisions of the Board in regard to medical aid

- (1) All disputes as to the necessity for, or the character or sufficiency of, any medical aid provided or to be provided under this Part shall be determined by the Board.
- (2) In determining any question under subsection (1) the Board may call for such evidence as the Board considers desirable or necessary.

Part VI – Compensation for injury due to the contraction of scheduled diseases

16. Compensation where incapacity or death due to a scheduled disease

- (1) Where a medical practitioner grants a certificate—
 - (a) that a worker is suffering from a scheduled disease causing incapacity or that the death of a worker was caused by a scheduled disease; and
 - (b) that such disease was due to the nature of the worker's employment and was contracted within the period prescribed in the Second Schedule preceding the date of such incapacity or death,

[Second Schedule]

and the Board is satisfied on evidence that the allegations contained in the certificate are correct, the worker or, if the worker is dead, his dependants shall be entitled to compensation under this Act as if such incapacity or death were dealt with in accordance with the provisions of section 7, 8 or 9 and the other relevant provisions of this Act shall apply with any necessary modifications:

Provided that in no event shall the worker or his dependants be entitled to compensation in respect of any causation or aggravation of the disease which was due to employment outside Malawi, except in respect of a worker from Malawi employed outside Malawi by his employer within Malawi.

- (2) In any case of any incapacity or death arising from a scheduled disease, if the worker has at any time represented in writing to the employer that he was not suffering, or had not previously suffered, from that or a similar scheduled disease, knowing that the representation was false, then the Board after considering all the circumstances, may declare forfeit the compensation provided for by this Act or such part thereof as the Board thinks fit; and any sum paid as compensation to any person upon a false representation shall be recoverable by the Board as a civil debt owing to the Fund.

17. Employer's liability to pay compensation in case of incapacity or death due to scheduled disease

- (1) Compensation payable under [section 16](#) shall be paid by the employer who last employed the worker during the period prescribed in the Second Schedule unless that employer proves that the disease was not contracted while the worker was employed by him and has not been aggravated by reason of conditions in his employment.
- (2) The worker or his dependants if so required by the employer or the Board shall furnish to the employer from whom compensation is claimed such information as the worker possesses or as the dependants possess as to the names and addresses of all other employers who during the said period referred to in [section 16](#) employed the worker in the occupation to the nature of which the disease is due.
- (3) Where the employer alleges that the disease was in fact contracted while the worker was employed by some other employer and not while employed by him he may join such other employer as a party to the proceedings in such manner as may be prescribed, and, if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable.
- (4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who, during the period referred to in [section 16](#) employed the worker in the occupation to the nature of which the disease is due may be required by the Board to make to the employer from whom compensation is recoverable such contributions as by agreement with such other employer or employers may be determined or, in default of such agreement, may seem to the Board to be appropriate.

18. Special provisions relating to incapacity or death due to scheduled disease

- (1) In the application of this Act to incapacity or death caused by a scheduled disease, references to the date of the injury shall be construed as meaning—
 - (a) in the case of a scheduled disease causing incapacity, the date of the certificate referred to in [section 16](#); and
 - (b) in the case of death from a scheduled disease, the date of the death of the worker.
- (2) The relevant provisions of this Act including those relating to the giving of notice of an injury to the worker by an employer to the Board, the making of a claim for compensation therefor and the calculation of the earnings of a worker shall apply in respect of the recovery of compensation under this Part with necessary modifications.

19. Presumption as to cause of a scheduled disease

If a worker who becomes incapacitated or who dies as a result of any scheduled disease was, within the period prescribed in the Second Schedule preceding the incapacity or death, employed in any occupation specified in relation to that disease in the Second Schedule it shall be presumed unless or until the contrary is proved, that the disease was due to the nature of such employment.

[Second Schedule]

20. Right of worker to proceed against previous employer

Nothing in this Part shall be construed as preventing compensation being recovered from any employer who employed the worker during the period referred to in [section 16](#) if the employer who last employed the worker during that period proves that the disease was not contracted while the worker was employed by him, in which case [section 17](#) (3) shall apply.

21. Minister to amend Second Schedule

- (1) The Minister may, after consultation with the Board, by notice published in the *Gazette*, delete from the Second Schedule any disease specified therein and may, in like manner, insert any other disease in that Schedule:

Provided that the Minister shall cause to be published in the *Gazette* the intention to make such an order at least thirty days before the making of the order, and any person wishing to object to the making of such an order may make his objections in writing to the Minister.
- (2) The Minister shall consider the merits of any objection made pursuant to subsection (1) but shall have power to make any decision thereon as he sees fit after consultation with the Board and shall be obliged to give reasons for his decision.

22. Pre-engagement clinical test for scheduled diseases

The Board may make rules providing for pre-engagement clinical tests in regard to scheduled diseases.

Part VII – Procedure for obtaining compensation

23. Requirements as to notice of injury and application for compensation

Proceedings under this Act for the recovery of compensation for an injury shall not be maintainable unless notice of the injury has been given to the Board by or on behalf of the worker as soon as practicable after it has been incurred and before the worker has voluntarily left the employment in which he was injured, and

unless the application for compensation with respect to such injury has been made within twelve months from the date it was incurred or, in the case of death, within twelve months from the time of death:

Provided that—

- (a) the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the injury from any other source at or about the time it was incurred, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy or such want, defect or inaccuracy was occasioned by mistake or other reasonable cause;

[Cap. 10:02]

- (b) the notice may be given, and the application may be made, under this section by a Labour Officer or such other officer as may be so directed by the Board or his representative on behalf of the worker;
- (c) the failure to give notice or to make an application within the period specified in this section shall not be a bar to the maintenance of such proceedings if it is proved—
 - (i) that the failure was occasioned by mistake or other reasonable cause, including the error or mistake of any person advising or assisting the worker under this Act; or
 - (ii) that the employer has failed to comply with [section 24](#) (1).

24. Employers to report injuries

- (1) Every injury arising out of and in the course of employment which results in—
 - (a) the death of a worker or which may result in death to a worker;
 - (b) or is likely to result in some degree of permanent incapacity to a worker; or
 - (c) incapacitating a worker from following his normal employment for more than fourteen days,and every injury or death of a worker from any cause whatsoever shall, within twenty-one days of the date when the injury occurred or the death occurs, be reported by the employer in the prescribed form to the Board.
- (2) Any employer who without reasonable cause, fails to comply with the requirements of subsection (1) shall be guilty of an offence and liable to a fine of K20,000.
- (3) Failure by an employer to comply with the requirements of subsection (1) shall not be a bar to the institution or maintenance of proceedings by the worker concerned for compensation under this Act.

25. Medical examination and treatment

- (1) Where a worker has given notice of an injury he shall, if the employer, before the expiry of seven days from the time at which notice has been given, offer to have him examined free of charge by a medical practitioner named by the employer, submit himself for such examination.
- (2) For the purpose of subsection (1), the worker shall, when required, attend upon the medical practitioner named by his employer at the time and place notified to the worker by the employer or by the medical practitioner, provided such time and place are reasonable.
- (3) In the event of the worker being, in the opinion of any medical practitioner unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and the employer shall arrange with the medical practitioner so named to fix a reasonable time and place for a personal examination of the worker and the employer shall notify the worker accordingly.

- (4) If the worker fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place and if such failure extend for a period of fifteen days from the date when the worker was required to submit himself for examination no compensation shall be payable unless the Board is satisfied on consideration of all the circumstances that compensation or such part of it shall be payable.
- (5) The worker shall be entitled at his own expense to have his own medical practitioner present at any medical examination under this section.
- (6) Where the worker is not attended by a medical practitioner he shall, if so required by the employer, submit himself for treatment by a medical practitioner at the expense of the employer.
- (7) If the worker fails to submit himself for treatment by a medical practitioner when so required under subsection (6), or, having submitted himself for such treatment, has disregarded the instructions of such medical practitioner, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the worker had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly:

Provided that where aggravation of the injury has resulted in death, the amount of compensation shall be the amount payable under this subsection or the amount payable under [section 7](#), whichever is less.
- (8) Where under this section a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

26. Dependents of deceased worker

Where in any proceedings on a claim for compensation in respect of the death of a worker, the Board is satisfied that other or sufficient evidence as to the dependency on the deceased worker of a person claiming to be a dependant, or as to the degree of dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, the Board shall make reference to the rules of succession as provided for in the Wills and Inheritance Act.

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Part VIII – Establishment of the Board

27. Establishment and composition of the Board

- (1) For the purposes of this Act there is hereby and established a Board to be known as the Workers' Compensation Trustee Board (hereinafter referred to as the "Board").
- (2) The Board shall consist of—
 - (a) the following members appointed by the Minister—
 - (i) one member not being a public servant, who should be the Chairman;
 - (ii) three persons being members of the Employers Consultative Association of Malawi;
 - (iii) one person being a member of the Malawi Chamber of Commerce and Industry;
 - (iv) two persons each being a member of a different registered trade union;
 - (v) one person being a member of the Insurance Association of Malawi;
 - (vi) one person being a member of the Medical Council of Malawi;
 - (vii) one person being a member of the Nurses and Midwives Council of Malawi.

- (b) the following members, *ex officio*—
 - (i) the Secretary for Labour and Vocational Training; and
 - (ii) the Secretary for Health.
- (3) The Board shall, from amongst its members, elect one member to be the Vice Chairman.

28. Tenure of office of the members of the Board and vacancies thereon

- (1) A member of the Board, other than a member *ex officio* shall hold office for such period not exceeding two years as specified in the instrument of his appointment.
- (2) Upon expiry of the period for which a member is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.
- (3) The office of a member of the Board, other than a member *ex officio*, shall be vacated—
 - (a) upon his death;
 - (b) if he is absent without valid excuse from three consecutive meetings of the Board of which he has had notice;
 - (c) upon expiry of three months notice in writing of his intention to resign given by him to the Board and to the Minister;
 - (d) if he becomes of unsound mind; and
 - (e) if he becomes an undischarged bankrupt.

29. Remuneration of members of the Board

Members of the Board shall be paid such allowances, as the Minister shall determine.

30. Secretary

The Commissioner shall be the Secretary to the Board.

31. Meeting of the Board

- (1) The Board shall meet at places and times as the Board determines, and such meetings shall be convened by the Chairman.
- (2) In the absence of the Chairman, the Vice Chairman shall preside and in the absence of both the Chairman and the Vice Chairman the members present, if constituting a quorum, shall elect one of their number to preside at that meeting.
- (3) The Board shall conduct its meetings in such manner as the Board deems fit.
- (4) A simple majority of the Board shall constitute a quorum.
- (5) At all meetings of the Board the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- (6) Minutes of each meeting of the Board shall be kept by the Secretary and shall be confirmed at the succeeding meeting.

32. Committees of the Board

The Board may, as it deems appropriate, establish one or more committees to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions of the Board as it may deem expedient.

33. Functions of the Board

- (1) The Board shall be responsible for overseeing the administration of the Fund with the view to ensuring maximum efficiency and shall have such further functions and powers in relation to the execution and administration of this Act as are conferred upon it by this Part or by any regulations made under this Act.
- (2) Without derogation from the generality of subsection (1), the functions of the Board shall be—
 - (a) to make recommendations to the Minister as to the maximum rates of assessments to be paid by employers and as to scales and classifications in relation thereto;
 - (b) to administer the Workers' Compensation Fund;
 - (c) to prevent accidents to workers by such means as the Board thinks fit, and cooperate with any other Government Department and other bodies and persons for that purpose, whether by making contributions towards their expenses or otherwise; and
 - (d) to consider data on work related accidents and injuries and to advise the Minister on policy matters relating to workers' compensation.
- (3) The Board may, out of its funds, purchase, take on lease or hire or otherwise acquire such land, buildings, plant, machines and equipment as in the opinion of the Board are necessary for the performance of its functions.
- (4) The Board may sell, transfer, lease, hire or otherwise dispose of any of its real or personal property.

34. Regulations

The Minister may, on the recommendation of the Board, make regulations for the better carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may make provisions for—

- (a) prescribing procedures, forms and fees;
- (b) prescribing anything which is to be or may be prescribed under this Act;
- (c) requiring employers to keep such records and to make such periodic and other returns as to such matters as the Board thinks fit, and prescribing a time limit for the making of such returns.

Part IX – Administration

35. Appointment of the Commissioner and other staff

For the administration of this Act, the Board shall, with the approval of the Minister, appoint—

- (a) an officer to be designated as the Workers' Compensation Commissioner (in this Act referred to as the "Commissioner");
- (b) such other staff subordinate to the Commissioner as may be deemed necessary.

36. Duties and functions of the Commissioner

The Commissioner shall, subject to this Act and to the general or special directions of the Board—

- (a) receive notice of injuries and claims for compensation;
- (b) inquire into or cause inquiry to be made into causes of injuries;
- (c) adjudicate upon all claims and other matters coming before him for decision;

- (d) determine whether any person is a worker, or an employer for the purposes of this Act;
- (e) decide any question relating to—
 - (i) the right to compensation;
 - (ii) the submission, consideration and determination of claims for compensation;
 - (iii) computation of earnings;
 - (iv) the degree of incapacity of any worker;
 - (v) the amount and method of payment of any compensation;
 - (vi) the withholding, revision, discontinuance or suspension of any compensation;
- (f) determine whether any person is a dependant within the meaning of this Act and, if so the degree of dependency;
- (g) determine any question relating to the rendering of statements of wages;
- (h) advise the Board on the determination of the liability for assessment, and method of payment of assessment;
- (i) determine any other question falling within his purview in connexion with the application of this Act or in respect of any employer or worker;
- (j) upon the expiry of each financial year, report to the Board on the administration of this Act during that year;
- (k) collect, compile, analyse and maintain such statistics and information relating to the occurrence or cause of injuries and the grant of benefits to persons under this Act as he may deem necessary or as may be required by the Board;
- (l) conduct research into causes and methods of prevention of accidents, injuries and diseases in respect of which compensation may become payable under this Act and make arrangements with any person having appropriate facilities for the conduct of any such research;
- (m) investigate whether any disease should be included in or deleted from the Second Schedule and make recommendations to the Board in regard thereto; and
- (n) perform such other functions and duties as may be assigned to him by the Board, or as are necessary, for the administration of this Act.

37. Powers of inspection and investigation

- (1) The Commissioner may, under the direction of the Board, in writing authorize, either generally or specially any competent person to investigate any matter falling within his purview and to report to him upon any such matter, and any person so authorized shall have the power to require and take affidavits or declarations as to any matter to which the investigation or report relates, or to take any other declarations required under this Act, and in all cases to administer oaths and attest declarations.
- (2) Upon the production of the written authority referred to in subsection (1), the person thereby authorized may, without previous notice and at all reasonable times, enter upon any land, works, premises or other place, and may question any employer or other person and inspect any part of the land, works, premises or other place or any books or documents which may contain information required for the purposes of this Act and take copies of, or extracts from, such books or documents.
- (3) Any person who obstructs any person authorized under subsection (1) in the lawful exercise of his functions under this section or, in answer to any question or inquiry by such authorized person, makes or subscribes to any statement, knowing it is false, or refuses to answer any question or

produce any document, asked for or demanded by such authorized person shall be guilty of an offence and be liable to a fine of K2,000.

- (4) The Commissioner may, with the advice of the Board, himself exercise any of the powers under this section, and whenever the Commissioner is exercising any such power, all the provisions of this section shall apply.

38. Secrecy

- (1) If any person in the exercise of any powers conferred or in the performance of any duties imposed by or under this Act acquires information relating to the financial affairs of any other person, firm or business, or to any manufacturing or commercial secrets or working processes, he shall not, save for the purposes of legal proceedings under this Act, disclose such information to any other person, except—
 - (a) to a court of law or to any person who by law is invested with the power to compel the disclosure of such information; or
 - (b) to the Board or to any person acting in the execution of this Act in so far as such information may be necessary for the execution of this Act.
- (2) Any person who wilfully contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of K3,000.

39. Revision of compensation by the Commissioner

- (1) The Commissioner may, with the advice of the Board, after giving notice in writing to the person concerned and giving him an opportunity to be heard, at any time review any compensation granted on any of the following grounds—
 - (a) that the worker has not submitted himself for medical examination or has not submitted a medical report when required to do so under the provisions of this Act;
 - (b) that the incapacity which gave rise to the award is continued or aggravated by the unreasonable refusal or wilful neglect of the worker to submit himself to medical treatment;
 - (c) that the worker has absented himself in such manner that no notice can reasonably be served on him;
 - (d) that the Commissioner is satisfied upon the opinion of a medical practitioner that the degree of incapacity has increased or diminished or that the worker is no longer suffering from permanent incapacity;
 - (e) that any compensation awarded is or has become either excessive or insufficient to meet the circumstances of the case;
 - (f) that the award was based on a mistake or misrepresentation of fact, or that a different award might have been made if evidence presently available, but which was not available when the Commissioner made the award, had been produced.

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- (2) The Commissioner, after making such inquiry or receiving such evidence as he deems necessary, may confirm the award of compensation or order the discontinuance, suspension, reduction or increase of any such compensation with the approval of the Board.

40. Powers of the Commissioner in respect of witness, etc.

- (1) With the general or specific advice of the Board, the Commissioner may, and at the request of any interested party shall, summon any person who may be able to give material information concerning the subject of any investigation or formal inquiry held by him under this Act or under his control, any book, document or thing which has any bearing on the investigation or formal

inquiry, to appear before him at a time and place specified in such summons, to be interrogated or to produce such book, document or thing, and the Commissioner may retain for further examination any book, document or thing so produced.

- (2) The Commissioner may call, and administer an oath to, any person present at an investigation who was or might have been summoned under the provisions of subsection (1), and the Commissioner and any assessor may interrogate such person and require him to produce any relevant book, document or thing in his possession or custody or under his control.
- (3) If any person, having been duly summoned under subsection (1), fails without sufficient cause to attend at the time and place specified in such summons, he shall be guilty of an offence and be liable to a fine of K2,000.
- (4) Any person who, having been duly summoned under subsection (1) or been called under subsection (2), fails to remain in attendance until excused by the Commissioner from further attendance or refuse to be sworn as a witness or fails to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him, or to produce any book, document or thing in his possession or custody or under his control when lawfully required to do so, shall be guilty of an offence and be liable to a fine of K2,000.
- (5) In connexion with the interrogation of any person by, or the production of any book, document or thing before the Commissioner, the law relating to privilege, as it applies to a witness summoned to give evidence or produce any book, document or thing before a court, shall apply.
- (6) Any witness who knowingly gives false testimony touching any matter which is material to any question then pending in any investigation or formal inquiry or intended to be raised in the investigation or inquiry shall be guilty of an offence and liable to imprisonment for a period not exceeding one year; and it shall be immaterial whether such testimony is given on oath or under any other sanction authorized by law.
- (7) Proceedings before the Commissioner need not take the form of proceedings in an open court and the Commissioner may exclude any persons who are not interested parties.
- (8) A person summoned to appear before the Commissioner may, if the Commissioner, with the advice of the Board, is satisfied that he has, by reason of such appearance, suffered any pecuniary loss or been put to any expense, be paid out of the Fund such allowances as may be prescribed or the amount of such loss and such expense, whichever is less.
- (9) Any person who wilfully hinders the Commissioner in the exercise of any of the powers conferred upon him by this section shall be guilty of an offence and be liable to a fine of K2,000.

41. Objections by workers or employers against decisions of the Commissioner

- (1) Any worker or employer affected by a decision of the Commissioner, may, within thirty days of such decision, or within such further period as the Commissioner may, on good cause shown, lodge with the Minister an objection against such decision.
- (2) An objection under this section shall be in writing and may be in the prescribed form, accompanied by particulars containing—
 - (a) a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined; and
 - (b) the full name and address of the objector and of any legal practitioner or other representative who represents or is to represent such objector.
- (3) If, owing to being illiterate or blind or having any other physical disability, an objector is unable to complete the prescribed form or to supply the information required, the labour officer or District Commissioner of the district in which the objector resides shall fill in the objection and particulars in the prescribed form and shall lodge the objection with the Minister.

42. Objections on behalf of dependants in case of death of a worker

- (1) If an objection under [section 41](#) arises out of a claim for compensation in respect of the death of a worker, the objection made on behalf of the dependants shall be made by the representative of deceased worker or, if there is no such representative, by a person appointed by the Commissioner to make such objection and in other respects to act as a representative of the deceased worker for the purposes of this Act, and the Commissioner, with the advice of the Board, shall have power to make such appointments; and, for the purposes of this subsection, "dependants" includes persons who claim or may be entitled to be dependants under the rules of the Wills and Inheritance Act.

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- (2) The representative of a deceased worker under subsection (1) shall comply with the provisions of [section 41](#) as to the lodging of an objection and the particulars to accompany such objection.

43. Formal inquiry by the Commissioner

An objection lodged under the provisions of [section 42](#) shall be considered and determined by the Commissioner in a formal inquiry in such manner as may be prescribed, and the Commissioner, with the advice of the Board, may confirm or vary any decision in respect of which the objection was lodged or give such other decision as in his opinion is equitable.

44. Appeal against a decision of the Commissioner made under section 36

Any person affected by a decision of the Board, made decision under [section 43](#) may, within twenty-one days of such decision or within such further period as the court may on good cause shown allow, appeal to the court of a Chief Resident Magistrate.

45. Suspension of obligation

Except where the Commissioner otherwise orders, no obligation to pay any assessment, compensation or other amount to the Commissioner or the Fund, or in respect of a worker by reason of a decision of the Commissioner shall be suspended or deferred by reason of the fact that an objection has been lodged against such decision under [section 41](#) or that an appeal has been lodged under [section 44](#); but if, as a result of any such objection or review, the amount payable by reason of the original decision is varied the person who made the payment shall be entitled to a refund or be liable to pay the additional amount, as the case may be.

46. Commissioner may state a case for High Court

- (1) The Commissioner may, with the advice of the Board, and shall at the request of any interested party to any proceedings under this Act, state a special case on any question of law in connexion with any matter arising in such proceedings for the decision of the High Court.
- (2) In any case so stated the Commissioner shall set forth—
 - (a) the facts which were established; and
 - (b) the view of the law which he has adopted in relation to those facts.

47. Commissioner may submit tribunals decision to the High Court

Whenever the Commissioner has any doubt as to the correctness of any decision given by the Workers' Compensation Tribunal on any question of law in connexion with this Act, he may submit that decision to the High Court and cause the matter to be argued before it, in order that it may determine the said question for future guidance.

48. Assessors

- (1) The Commissioner may with the approval of the Board appoint as an assessor any person skilled in technical questions to sit with the Commissioner and to act in an advisory capacity in a formal inquiry under the provisions of [section 43](#).
- (2) No person shall be appointed as an assessor under this section or, if appointed, sit as an assessor if—
 - (a) he is an employee of, or associated in any pecuniary manner with, the employer of the worker concerned; or
 - (b) he has, in connexion with the injury or death out of which the formal inquiry arises, given professional assistance or advice in regard to the accident or injury or question in dispute to any party to the inquiry or to any person who may become liable to pay such worker compensation under this Act.
- (3) There shall be paid out of the Fund to any person appointed as an assessor under this section, other than any assessor being person employed in the public service, such fees as may be prescribed.

49. Applications for the Commissioner's determination by interested parties

- (1) Any interested party or any duly authorized person acting on behalf of a worker under this Act may apply to the Commissioner for a determination or order if—
 - (a) any question or matter to be determined by the Commissioner under this Act has arisen and requires determination;
- (2) Applications to the Commissioner under subsection (1) shall be in the prescribed form.

50. Enforcement of determinations of the Commissioner

Determinations or orders of the Commissioner under this Act may be enforced as if they were determinations or orders of a Chief Resident Magistrate court in civil cases, irrespective of the value involved.

51. Appeals to the High Court

Subject to the conditions set out hereunder an appeal shall lie to the High Court from any order or determination of a court under [section 44](#):

Provided that—

- (a) unless some substantial question of law is involved, no appeal shall lie except with the leave of the court concerned or of the High Court if the amount in dispute in the case is less than K5,000;
- (b) no appeal shall lie in any case in which the parties have agreed to abide by the determination of the court, or in which the order of the court gives effect to an agreement concluded between the parties; and
- (c) no appeal shall lie after the expiration of thirty days from the order or determination of the court unless the High Court, after consideration of all the circumstances of any particular case, considers it just or proper to extend the time for appealing under this provision.

Part X – Appeal

52. Establishment of Workers' Compensation Tribunal

- (1) There shall be established a Workers' Compensation Tribunal, which shall have the jurisdiction, powers and authorities conferred upon it under this Part.
- (2) The Workers' Compensation Tribunal shall consist of the following—
 - (a) one member, not being a public servant appointed by the Minister who shall be the Chairman;
 - (b) one person being a member of the Employers' Consultative Association of Malawi;
 - (c) one person being a member of a registered trade union;
 - (d) one person from the Medical Association of Malawi;
 - (e) one member from the Law Society of Malawi;
 - (f) one member from the Insurance Association of Malawi; and
 - (g) one person being a member of the Nurses and Midwives Council of Malawi.
- (3) Members of the Tribunal shall hold office for such period and upon such conditions as to remuneration and otherwise as the Board may determine.
- (4) Members of the tribunal shall elect one member amongst themselves to be Vice-Chairman.
- (5) No matter or thing done by the Chairman, Vice Chairman or any member officer or agent of the Workers' Compensation Tribunal, if done *bona fide* in the execution or purported execution of this Act shall subject any such person to any action, claim, liability or demand whatsoever.

53. Proceedings of Workers' Compensation Tribunal

- (1) The Chairman shall preside at all meetings of the Workers' Compensation Tribunal.
- (2) All matters considered by the Workers' Compensation Tribunal shall be decided by the votes of a majority of the members present. In the event of an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.
- (3) A record shall be kept of all proceedings of the Workers' Compensation Tribunal, including a summary of any evidence given before it.
- (4) Any interested party/parties may appear in person or may be represented before the Workers' Compensation Tribunal by a Legal Practitioner.
- (5) The Chairman of the Workers' Compensation Tribunal after consultation with other members of the tribunal may, with the approval of the Minister, make rules regulating the procedure of such Tribunal:

Provided that such rules do not contravene accepted rules of the High Court.

54. Appeals to the Workers' Compensation Tribunal

Any person aggrieved by any decision of the Commissioner or Board made in pursuance of any power which they may exercise under this Act may appeal to the Workers' Compensation Tribunal within thirty days of receipt by him of the notification of such decision, and such court may either confirm or reverse the decision so appealed against or may make such other order as to such court may seem just.

55. Powers of the Workers' Compensation Tribunal

- (1) The Workers' Compensation Tribunal shall have powers upon the hearing of an appeal under section 54—
 - (a) to enter and inspect, authorize any person to enter and inspect, or examine any premises of interested persons for the purpose of enabling it to determine any question being considered by it;
 - (b) to administer oaths and to order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court;
 - (c) to award costs of any proceedings before it and direct that such costs shall be taxed upon such scale and in such manner as may be prescribed by rules made under section 34, or to award a specific sum as costs; and
 - (d) to do all things which it is required or empowered to do by or under this Act.
- (2) The proceedings of the Workers' Compensation Tribunal shall, for all purposes, be considered as judicial proceedings.

56. Appeals from the Workers' Compensation Tribunal

- (1) Save as otherwise provided in this section, the decision of the Workers' Compensation Tribunal shall be final.
- (2) An appeal shall lie to the High Court from any order of the Workers' Compensation Tribunal on any point of law but not on any matter of fact. Upon such appeal the High Court may make such order as it thinks proper, including any direction as to costs.
- (3) An appeal shall lie to the Supreme Court of Appeal from the High Court on any point of law but not on any matter of fact.

Part XI – Workers' Compensation Fund

57. Establishment of the Workers' Compensation Fund

- (1) There shall be established and maintained for the purposes of this Act, a fund to be known as the Workers' Compensation Fund, herein referred to as the Fund.
- (2) There shall be paid into the Fund—
 - (a) any assessments payable by employers including the Government under this Act;
 - (b) any moneys paid by employers, including the Government, to the Commissioner under this Act;
 - (c) any moneys paid as penalties imposed under this Act, other than penalties imposed as fines by a court; and
 - (d) any other sums to which the Fund may become entitled.

58. Application of the Fund

- (1) Sums out of the Fund shall be applied by the Commissioner in line with the budget approved by the Board for the payment of—
 - (a) compensation to workers or dependants wherever any employer is liable to pay such compensation under this Act;

- (b) expenditure lawfully incurred by the Commissioner in carrying out his functions under this Act; and
 - (c) any other expenditure lawfully incurred under this Act for due administration of the Fund.
- (2) Any surplus in the Fund may, with the approval of the Board, be applied by the Commissioner in the reduction of future assessments or may be retained in the Fund.
 - (3) Any deficiency in the Fund may be made good by an increase in the amount of any future assessment.
 - (4) There may be established within the Fund such reserve funds as the Commissioner, with the approval of the Board, considers necessary or desirable for the purposes of this Act.

59. Holding of assets of the Fund

- (1) All moneys received by the Commissioner on behalf of the Fund shall be paid into a bank account and no money shall be withdrawn therefrom except by means of cheques signed by such person or persons as may be authorized by the Board in that behalf.
- (2) A proportion of the Fund shall be held in liquid form and such proportion may be determined and varied from time to time by the Commissioner, with the approval of the Board, having regard to the due execution of this Act; and such liquid portion of the Fund may be held in any bank account or on deposit with banks or building societies registered in Malawi.
- (3) The Commissioner shall hold the remainder of the Fund in investments approved, either generally or specifically, by the Board.

60. Accounts and audit

- (1) The Commissioner shall keep and maintain proper books of account and other books and records in relation thereto, in which shall be recorded all financial transactions of the Fund and he shall in every respect comply with the provisions of the Finance and Audit Act.
- (2) The accounts of the Fund shall be examined and audited annually by auditors appointed by the Commissioner with the approval of the Board.
- (3) The Commissioner shall furnish to the Board annually, or as often as the Board may direct, accounts in respect of the finances and other assets of the Fund.
- (4) There shall be an actuarial valuation on the financial all viability of the Fund after every three years.

61. Liability to assessment

- (1) Every employer, including the Government, shall be liable to assessment under this Part.
- (2) The Minister may, with the advice of the Board, make regulations for the making of assessments on employers regarding their contribution to the Fund.

Part XII – General

62. Remedies against both employer and stranger

- (1) Where the injury in respect of which compensation is payable was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the worker may take civil proceedings in court against that person to recover such damages and to recover such compensation under this Act against any person liable to pay compensation, but shall not, save in the circumstances described in subsection (2), be entitled to recover both such damages and compensation.

- (2) Notwithstanding anything contained in subsection (1)—
- (a) where a worker has recovered from any person other than the employer damages in respect of an injury for which compensation is payable and the amount of such damages is less than the amount of the compensation so recoverable, the worker shall be entitled to recover from the person by whom such compensation is payable whichever amount is greater; and
 - (b) where the worker has recovered compensation in respect of an injury caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof and the amount of such compensation is less than the amount of the damages so recoverable from such person, the worker shall be entitled to take civil proceedings in court to recover from such person whichever amount is greater.
- (3) If a worker has recovered compensation in respect of an injury caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the person by whom the compensation was paid, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay damages as aforesaid to the extent of the amount of the damages for which such person is liable, and any question of such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Act.
- [Cap. 6:03]*
- (4) Nothing in this section shall be deemed to give the Commissioner power to award damages or to award costs against any person.

63. Proceedings independently of this Act

Where the injury was by the personal negligence or wilful act or default of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer by civil suit independently of this Act:

Provided that—

- (a) any damages awarded in such civil suit shall take into account any compensation previously paid under this Act in respect of the same injury;
- (b) any compensation paid under this Act shall take into account any damages previously paid in respect of the same injury; and
- (c) no such additional payment, if it is in excess of the amount of compensation payable under this Act, shall be made from the Fund.

64. Provisions in case of bankruptcy of employer

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

- (2) If the liability of the insurers to the worker is less than the liability of the employer to the worker, the worker may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may take steps to recover the balance from the receiver or manager.
- (3) There shall be included among the debts which—
 - (a) under section 35 of the Bankruptcy Act are included in the distribution of the property or assets or a bankrupt; or
[Cap. 11:01]
 - (b) under any written law relating to companies are, in the winding-up of a company, to be paid in priority to all other debts, the amount due in respect of any liability for compensation or assessment before the following dates, that is to say—
 - (i) in the circumstances of paragraph (a), the date of the receiving order; and
 - (ii) in the circumstances of paragraph (b), the date of the winding-up order, or the date of commencement of the winding-up of the company, whichever is appropriate.
- (4) Where a bankrupt or a company in liquidation has entered into such a contract with insurers as is referred to in subsection (1) the provisions of subsection (3) shall not apply in respect of the liability of the employer to the worker or that part thereof which is met by the insurers.

65. Contracting out

Any contract or agreement whether made before or after the commencement of this Act, whereby a worker relinquished any right of compensation from an employed for injury arising out of and in the course of his employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

66. Compensation not to be assigned, charged or attached

Compensation payable under this Act shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against such compensation.

67. General penalty

Any person who commits an offence under this Act for which no other penalty is prescribed shall be liable to a fine of K2,000.

68. Offences relating to records and returns

Any person required to keep a record or to make a return by virtue of any regulation made under [section 34](#) who fails to keep such a record, to make such a return within the time which he is required to make the return or makes or causes to be made a record or return which is false in any material particular, or having been duly required so to do, fails to give any information or explanation respecting the record or return which is in his power to give shall be guilty of an offence and liable to a fine as stipulated in the schedule hereto and if the contravention in respect of which he was so convicted is continued after the conviction he shall be guilty of a further offence and liable in respect thereof to a fine as stipulated in the schedule hereto.

69. Other laws

- (1) Except where otherwise expressly provided, the provisions of this Act shall be in addition to and not in substitution for the provisions of any other law.

- (2) The Limitations Act shall not apply in relation to claims for compensation.

[Cap. 6:02]

70. Transitional

A claim for compensation in respect of an injury incurred before the commencement of this Act shall be dealt with under the Act repealed by section 71 as if this Act had not been enacted; but so, however, that the Commissioner shall be the court for the purpose of dealing with any such claim or with any dispute or question arising therefrom.

First Schedule (Sections 3 and 9)
Schedule of percentage of incapacities

	<i>Percentage of Incapacity Injury</i>
Loss of two limbs	100
Loss of both hands or of all fingers and thumbs	100
Loss of both feet	100
Total loss of sight	100
Total paralysis	100
Injuries resulting in being permanently bedridden	100
Any other injury causing permanent total disablement	100
Loss of arm at shoulder	70
Loss of arm between elbow and shoulder	60
Loss of arm at elbow	55
Loss of arm between wrist and elbow	50
Loss of hand at wrist	50
Loss of four fingers and thumb on one hand	50
Loss of four fingers	35
Loss of thumb-	
both phalanges	35

	one phalange	35
Loss of index finger-		
	three phalanges	10
	two phalanges	8
	one phalange	4
Loss of middle finger-		
	three phalanges	6
	two phalanges	4
	one phalange	2
Loss of ring finger-		
	three phalanges	5
	two phalanges	4
	one phalange	2
Loss of little finger-		
	three phalanges	4
	two phalanges	3
	one phalange	2
Loss of metacarpals-		
	first or second (additional)	3
	third, fourth or fifth (additional)	2
Loss of leg-		
	at or above knee	70
	below knee	60

Loss of foot	40	
Loss of toe-		
	all of one foot	15
	great, both phalanges	5
	great, one phalange	2
	other than great, if more than one toe lost each	1
Loss of sight of one eye	30	
Loss of hearing in one ear	10	
Total loss of hearing	50	

Scars from injuries or burns which result in disfigurement shall be treated as resulting in from 0 to 50 per cent permanent incapacity, according to their size and location.

Total permanent loss of the use of a member shall be treated as loss of such member.

The percentage of incapacity of ankylosis of any joint shall be reckoned as from 25 to 100 per cent of the incapacity for loss of the part at that joint, according to whether the joint is ankylose in a favourable or unfavourable position.

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

Injuries which result in permanent incapacity but which are not included in this Schedule shall be assessed in relation to the percentage of incapacity specified in this Schedule, wherever possible.

Second Schedule

Diseases

	Description of Disease	Name of Occupation and Occupation involving	Prescribed Period
1.	Anthrax	Work in connexion with animal carcasses or parts of such carcasses or of wool, hair, bristles, hides, skins hoofs or horns	2 weeks
2.	Byssinosis	Any occupation in any room where any process up to and including the carding process is performed in factories in which the spinning or manipulation of raw or other waste cotton is carried on	1 year
3.	Chrome ulceration or its sequelae	The use of or handling of chronic acid, chromate or bichromate of ammonium, potassium, sodium or zinc, or any preparation or solution containing any of these substances	1 year
4.	Compressed air illness or its sequelae	Subjection to compressed air	1 year or in the case of arthritis 5 years
5.	Glanders	Contact with equine animals or their carcasses	6 months
6.	(a) Infection by leptospira icterohaemorrhagiae	Work in places which are or are not liable to be infested with rats	3 weeks

	(b) Infection by leptospira canicola	Work at dog kennels or in the care or handling of dogs	3 weeks
7.	Pathological manifestations due to radium or other radioactive substances	Exposure to the radioactive substances or X-rays	10 years
8.	Primary epitheliomatous cancer or ulceration of the skin	The use or handling of, or exposure to tar, pitch, bitumen or mineral oil (including paraffin), or any compound, product or residue of any of these substances	10 years
9.	Tobaccosis	Any occupation involving the handling of or exposure to tobacco dust	2 years
10.	Toxic anaemia	The use or handling of, or exposure to the fumes or vapours of tetrachlorethane, nitro or aminoderivatives of benzene or its homologues	2 years
11.	Toxic jaundice	The use or handling of, or exposure to tetrachlorethane, carbon tetrachloride, arseniuretted hydrogen, trinitrotoluene nitro and amino derivatives of benzene or its homologues	3 months
12.	Tuberculosis	Close and frequent contact with a source or sources of tuberculosis infection by reason of employment-	2 months
		(a) in the medical treatment or nursing of	

		<p>persons suffering from tuberculosis, or in a service ancillary to such treatment</p> <p>or nursing;</p>	
		(b) in attendance upon a person or persons suffering from tuberculosis where the need for such attendance arises by reason of physical or mental infirmity;	
		(c) as a research worker engaged in research in connexion with tuberculosis;	
		(d) as a laboratory worker, pathologist or postmortem worker, where the occupation involves working with material which is a source of tuberculosis infection or in an occupation ancillary to such employment.	
13.	Any disease contracted as a result of poisoning by-		
	(a) Aniline compounds of benzene and its homologues	The use or handling of, or exposure to the fumes, dust or vapour of a nitro or amino-derivative of benzene, or a homologue of benzene	2 years
	(b) Arsenic or the sequelae thereof	The use or handling of, or exposure to the fumes, dust or vapour of arsenic or a compound or arsenic or a substance containing arsenic	1 year
	(c) Benzene or any of its homologues and	The use or handling of, or exposure to the fume	1 year

	the sequelae thereof or a nitro or amino-derivative of benzene, and the sequelae thereof	of, or vapour containing benzene or any of its homologues or a nitro or aminoderivative of benzene or of a homologue benzene	
	(d) Carbon bisulphide	The use or handling of, or exposure to, the fumes of, or vapour containing, carbon bisulphide, or compound of carbon bisulphide or a substance containing carbon bisulphide	1 year
	(e) Lead or the sequelae thereof	The use or handling of, or exposure to the fumes, dust or vapour of, lead or a compound of lead or a substance containing lead	2 years
	(f) Manganese or a compound of manganese	The use or handling of, or exposure to the fumes, dust or vapour of, manganese or a compound of manganese or a substance containing manganese	2 years
	(g) Mercury or a compound of mercury	The use or handling of, or exposure to the dust or vapour of, mercury or a compound of mercury or a substance containing mercury	2 years
	(h) Phosphorus or phosphine or poisoning due to the anticholinesterase action of organic phosphorus compounds	The use or handling of, or exposure to the fumes, dust vapour of, phosphorus or a compound of phosphorus or a substance containing phosphorus	3 years
14.	Bilharzia	Work in connexion with water-scheme (irrigation) infested with fresh water snails of	6 weeks

		<i>Biompharia or balimus</i> species	
15.	Bagassois	Work in connexion with molasses processing	
16.	Unconsciousness/death (carbon monoxide)	Exposure in mines after explosions and in iron and steel industry, and gas plants to carbon monoxide	mins-few hours
17.	Chronic cadmium poisoning	Work in connexion with mining metallurgy, chemical industry, scrap metal treatment, and superphosphate fertilizers	12 years
18.	Dermatoses	The use or handling of organic substances such as formaldehyde solvents or inorganic materials, acids, and alkalis	3–4 weeks
19.	Noise induced hearing loss	Working in environments with continuous noise levels beyond 90 decibels without protective hearing devises	long-term
20.	Mesothelioma (cancer of pleura and peritoneum)	The use or exposure to crocidolite, a form of asbestos	30–40 years
21.	Mineral-dust pneumoconiosis (silicosis, asbestosis)	Work in connexion to mining quarrying, pottery ceramics, masonry and drilling tunnels	5–10 years
22.	Undulent fever (Brucellosis)	Work related to animal husbandry veterinary, butchery and dairy	1–3 weeks

23.	Viral hepatitis B	Work injuries related to health care waste, especially sharps	60–90 days
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