

GAMBIA.

LABOUR ACT, 2007

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ISSN 0796 - 0298

Supplement "C" to The Gambia Gazette No. 20 of 19th October, 2007

Labour Act, 2007



THE GAMBIA

NO. 5 OF 2007

Assented to by The President,

this 17th day of October, 2007



YAHYA A. J. J. JAMMEH
President

AN ACT to provide for the administration of labour, the recruitment and hiring of labour, the protection of wages, and the registration of trade unions and employer organisations and for matters connected therewith.

[See section 1]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

Short title and
commencement

1. This Act may be cited as the Labour Act, 2007, and comes into force on such date as the Secretary of State shall, by Order published in the *Gazette*, appoint.

Interpretation

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

"apprentice" means a person who has entered into a contract of employment for a period during which the employer undertakes, on pre-determined conditions, to provide methodical and complete vocational training to that person who in return undertakes to serve the employer as an employee for the duration of the contract;

"Authority" means the National Training Authority established under the National Training Authority Act, 2002;

No. 5 of 2002

"bargaining agent" means a trade union which has agreed with an employer to represent a category of that employer's employees in negotiations concerning any matter which may be the subject of a trade dispute;

"child" means any person under the age of eighteen years;

"Commissioner" means the Commissioner of Labour in the Department of Labour;

"contract of employment" means an agreement, oral or written, implied or explicit, between an employer and a person by which that person undertakes to make his or her services personally available to the employer in return for remuneration and in a manner that gives the employer control over the person's work and working environment;

"dock worker" includes transit shed labour and tally clerk;

"domestic service" means a service provided by a person engaged to work wholly or mainly in or around a dwelling house, connected with that dwelling house or personally to those residing in that dwelling house;

"employee" means-

- (a) a person who offers his or her services under an oral or written contract of employment, whether express or implied;
- (b) a person, including a tenant share cropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person-
 - (i) in a position of economic dependence, and
 - (ii) under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor; or
- (c) where the context requires, a former employee;

"employer" means -

- (a) a person, corporation, public authority, governing body of an unincorporated association, partnership, or any other institution or organisation whatsoever that employs an employee, and includes a heir, successor and an assignee of the employer; or

- (b) where the context requires, a former employer;

"enterprise" includes a body corporate, individual business, partnership and other group of persons doing business;

"industrial action" means a concerted withdrawal of labour or restriction on the availability or quantity of labour on the part of workers, or a lockout by which one or more employers deny work to workers;

"industrial undertaking" means -

- (a) a mine, quarry or any other work for the extraction of minerals;

- (b) an undertaking in which-

- (i) articles are manufactured, altered, cleaned, ornamented, finished, adapted for sale, broken up or demolished, or

- (ii) materials are transformed,

and includes an undertaking engaged in food processing, agro-processing activities, ship building or in the generation, transformation or transmission of electricity or motive power of any kind; or

- (c) an undertaking engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work;

"Joint Industrial Council" means a Joint Industrial Council established under section 110;

"labour-only subcontractor" means an employer or a person who, by himself or herself or through others, procures, engages, hires or supplies, or attempts to procure, engage, hire or supply, a worker to be employed by himself or herself or any other person, where the worker does not provide services to the employer but supplies them to a client or contractor;

"management grade" means a level of employee who-

- (a) has a duty to supervise other employees or organize the work of other employees, or to participate in the administration of a business as distinct from directly participating in the production of goods; and

- (b) is designated by the employer as engaged in management;

"officer" means a public official, including the Commissioner, a labour officer authorized by him or her, and where the context requires, any other person authorized to administer or give effect to this Act or any other law relating to the employment of persons in The Gambia;

"public service" means the entire body of employees directly employed by the Government in the service of the Government;

"recruiter" means a person who recruits employees for other persons;

"Registrar General" means the Registrar General appointed under the Companies Act;

"remuneration" means all things of monetary value received by an employee in exchange for his or her services;

"Secretary of State" means the Secretary of State responsible for labour;

"trade dispute" means any dispute between an employer and a worker or between an employer and a group of workers over any of the following matters -

- (a) a term or condition of employment or performance of work;
- (b) the engagement or non-engagement of a person;
- (c) the demotion, suspension, termination or imposition of any other penalty or discipline on an employee;
- (d) the complaint of an employee concerning his or her employment;
- (e) the machinery for negotiation of any of the matters specified in paragraphs (a) to (d), or for the settlement of a grievance or dispute relating to an employee;

"trade union" means an organisation registered as a trade union under this Act;

"Tribunal" means the Industrial Tribunal established by section 26; and

"worker" means a person who offers his or her services personally to another whether under a contract of employment or otherwise.

Application

3. (1) Subject to subsection (2), this Act applies to all employment by any employer.

(2) The Act does not apply to-

- (a) the Civil Service;
- (b) the Armed Forces, except those employed in a civil capacity;
- (c) the National Guard, Police Force, Security Service or the Prisons Service, except those employed in a civil capacity;
- (d) domestic service;
- (e) employment of a member of the employer's household living in the employer's house.

(3) The Secretary of State may extend the application of this Act to any class of persons excluded in this section by an Order published in the *Gazette*.

(4) Notwithstanding subsection (2), the Secretary of State may make regulations to set out the terms and conditions for the employment of persons in the domestic service.

PART II – ADMINISTRATION

Administration of the Act

4. The Commissioner, acting under the authority of the Secretary of State, is responsible for the administration and application of this Act.

Authorization of
officers by the
Commissioner

5. (1) The Commissioner may authorize an officer of the Department of Labour to exercise any or all of his or her powers to enforce this Act, subject to such conditions as the Commissioner may set.

(2) An authorization shall be in writing and may be revoked at any time by written notice.

(3) The Commissioner shall notify the Secretary of State whenever he or she gives or revokes an authorization.

Certificate of
authority

6. (1) The Commissioner shall furnish a certificate of authority to every officer authorized by him or her under section 5.

(2) An officer shall-

(a) when acting under an authority, produce his or her certificate of authority on the request of any person affected by the authority; and

(b) surrender the certificate to the Commissioner if so requested.

(3) The Commissioner shall, so far as is reasonably practicable, endorse on the certificate of authority the date of its revocation.

Impersonating an
officer

7. A person who impersonates an officer of the Department of Labour or a person authorized by the Commissioner commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

Powers of entry

8. (1) For the purpose of satisfying himself or herself that the provisions of this Act or any other law relating to the employment of persons, including the Industrial Injuries Act, are being complied with, the Commissioner or an officer authorized by him or her, or a Medical or Health Officer exercising his or her own authority-

(a) may, subject to subsection (2)(a), enter-

(i) a workplace freely and without prior notice at any hour of the day or night,

(ii) during the day, any premises which he or she reasonably believes to be a workplace;

(b) shall not enter the private home of an employer pursuant to paragraph (a), except with the consent of the employer or under the authority of a warrant issued by a proper judicial officer;

(c) may, in general, carry out any examination, test or enquiry which he or she considers necessary in order to satisfy himself or herself that the provisions of this Act or any other law relating to the employment of persons, or the recruitment or housing of employed persons, are being strictly observed, and in particular, may-

(i) interrogate, alone or in the presence of witnesses, the employer or employees on any matter concerning the application of this Act and any other law relating to the employment of persons,

- (ii) require the production of any record, book, register or other document, the keeping of which is prescribed by this Act or any other law relating to the employment of persons or conditions of work, and make a copy of or take an extract from a document,
- (iii) enforce the posting of any notice required by this Act or any other law relating to the employment of persons, and
- (iv) take or remove, for purposes of analysis, samples of materials and substances used or handled, but the employer or the employer's representative must be notified of any sample or substance taken or removed under this paragraph;
- (e) may require from employers and employees information as to the remuneration, hours and conditions of work;
- (f) may inspect any record of accidents or occupational disease kept by the employer pursuant to the Injuries Compensation Act or any other law and require from an employer information on the causes and circumstances relating to any accident or occupational disease that may have occurred on the employer's premises or in the course of employment;

Cap.56:04

- (g) may be accompanied by a member of the police force if he or she has reasonable cause to apprehend any serious obstruction in the execution of his or her duty; and
 - (h) may take steps, with a view to remedying defects observed in plant lay-out, installation or working methods which he or she reasonably believes constitute a threat to the health or safety of employees.
- (2) A person exercising authority under subsection (1)(h), has the power to make an order requiring-
- (a) such alteration to the plant installation or layout, to be carried out according to a written order stating the date it takes effect and the corrective action required to terminate its effectiveness, as may be necessary to secure compliance with the legal provisions relating to health or safety of employees; or
 - (b) where there is imminent danger to the health or safety of the employees, the taking of measures, including plant closure with immediate executory force.
- (3) In this section, "employment of persons" includes the recruitment of persons for employment and the provision by the employer of housing and food for employees or persons being recruited for employment.

Notification of presence of officer on visit

9. An officer shall, when on an inspection visit, notify the employer or the employer's representative of his or her presence, unless the officer considers that such notification may be prejudicial to the performance of his or her duties.

Grant of facilities on visit

10. An employer shall –

(a) grant an employee every opportunity and necessary facilities for communicating freely with an officer; and

(b) when so requested, afford every reasonable assistance to an officer.

Prohibition of victimization

11. An employer shall not victimize an employee for anything done by the employee in pursuance of the provisions of this Part.

Prohibition against divulging information

12. (1) An officer shall not, while in office or subsequently, reveal any manufacturing or commercial secret or working process, which comes or came to his or her knowledge in the course of his or her duties.

(2) An officer shall treat as absolutely confidential the source of any complaint bringing to his or her notice a contravention of this Act and shall not reveal to the employer or the employer's representative that inspection was made in consequence of a complaint that a breach of this Act appeared to have been committed.

Prohibition against conflict of interest

13. An officer shall not have any interest, direct or indirect, in an enterprise under his or her supervision.

Assistance to small enterprises

14. An officer shall, in exercise of his or her powers-

(a) take into account the size, capitalization and degree of formality of the operation of an enterprise under his or her supervision; and

(b) make all efforts to assist smaller and informal enterprises in understanding and complying with this Act and any other law relating to the employment of persons.

Other powers of the Commissioner, and role in conciliation

15. (1) The Commissioner may -

(a) where a person is sick or the conditions of his or her employment, or recruitment centres are not conducive to the rapid recovery of the person's health, require the employer or recruiter, at the earliest opportunity and at his or her own expense, to send the person to the place of his or her engagement or to hospital, as the case may require;

(b) prohibit the further engagement of a worker at any place of employment where the conditions in the place do not comply with the requirements of this Act or regulations made under it.

(2) Whenever any question, difference or dispute concerning the employment relationship arises between an employee and an employer, either party may report the matter to the Commissioner who shall take such steps as seem to him or her to be expedient to encourage settlement between the parties.

(3) Whenever the Commissioner acts under subsection (2), the employee shall be asked whether he or she is a member of a trade union and if so, an appropriate official of the trade union shall be informed in writing of the matter.

Reporting to the
Industrial Injuries
Commissioner

16. A breach of the Industrial Injuries Act revealed by the exercise of authority under this Act shall be reported to the Industrial Injuries Commissioner.

Obstruction of
officers

17. A person who -

- (a) delays or obstructs an officer;
- (b) fails to comply with any reasonable request or inquiry made by an officer; or
- (c) conceals or otherwise prevents or attempts to conceal or otherwise prevent a person from appearing before or being examined by an officer,

exercising a function under this Act, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

Statistics

18. (1) An employer of more than five persons shall supply in writing to the Commissioner on or before a date fixed by the Commissioner, such information as he or she may request concerning the employment of persons by the employer.

(2) This section does not apply to an employer who is exempted by written notification of the Secretary of State to the Commissioner.

Commissioner to
furnish informa-
tion to The
Gambia Bureau
of Statistics

19. The Commissioner shall furnish all information supplied under section 18 to The Gambia Bureau of Statistics in a form specified by that Bureau and, on request, to any other agency of the Government authorized to receive it.

Assistance in
civil proceedings

20. The Commissioner may, if employee consents assist in the preparation and presentation of any civil claim by the employee under any provision of this Act.

Action by the
Commissioner on
contravention of
this Act

21. Where the Commissioner considers that a contravention of this Act has occurred, he or she may take such steps as may be necessary to enforce this Act, including making the facts known to the police or any other appropriate public authority or otherwise bringing the person concerned before an appropriate court.

PART III - LABOUR ADVISORY BOARD

Labour Advisory
Board

22. There is hereby established a board to be known as the Labour Advisory Board (in this Part referred to as "the Board")

Composition of
the Board

23. (1) The Board shall consist of eight members comprising-

- (a) equal numbers of representatives of employers and employees; and
- (b) such public officers and other persons as the Secretary of State may, from time to time, by Notice published in the *Gazette*, appoint.

(2) A member of the Board shall be appointed for a term of three years from the date of appointment and is eligible for reappointment when that term expires.

(3) The Secretary of State may remove a member of the Board only for misconduct rendering him or her personally unfit to be a member.

(4) The Board may make provisions for the conduct of its meetings and the procedure to be followed at those meetings.

Powers of the Board

24. (1) The Board shall advise the Secretary of State on any matter-

- (a) concerning legislation on labour or industrial relations;
- (b) which the Secretary of State or Commissioner is required by this Act to consult the Board;
- (c) connected with the subjects specified in paragraph (b);
- (d) connected with the employment of workers, industrial relations or organisations of employers or workers;
- (e) concerning the operation of the Industrial Injuries Compensation Scheme, and advise the Industrial Injuries Commissioner;
- (f) connected with the operation of the Factories Act, and any other provision made concerning the safety of employees, and also advise the appropriate Secretary of State;

Cap. 56:02

- (g) in any way connected with international labour standards of the Inter-national Labour Organisation, including their setting, ratification, implementation, reporting requirement, or denunciation; and
- (h) connected with the employment of persons in The Gambia.

(2) The Board shall review the classification of grades of employment and the wage levels established for trade tested employees, and submit its recommendations to the Secretary of State and the chairperson of the appropriate Joint Industrial Council.

Advice of the Board

25. (1) The Board's advice shall be in writing, and shall be given, where requested, to the person requesting it, or shall otherwise be made known as the Board deems appropriate.

(2) Where any advice is given in the name of the Board, any one or more members may submit in writing to the recipient of the advice an alternative advice on any aspect of the same matter in the name of that member or those members.

PART IV - THE INDUSTRIAL TRIBUNAL

Industrial Tribunal

26. (1) There shall be an Industrial Tribunal in the City of Banjul and in such other Local Government Areas as the Chief Justice may determine.

(2) The Tribunal has the jurisdiction conferred on it by this Act and any other law.

Composition of
the Tribunal

27. (1) The Tribunal shall be presided over by a First Class Magistrate as the Chairperson and a panel of members appointed by the Chief Justice, on the recommendation of the Secretary of State.

(2) The Secretary of State shall, in making a recommendation under subsection (1), consult with organisations of employers, trade unions, and the management of public corporations.

(3) The members of the Tribunal shall be -

- (a) persons with experience of management, or as trade union officials or otherwise representing workers in industrial relations;
- (b) appointed for a term of three years from the date of appointment and are eligible for reappointment when that term expires; and
- (c) paid such sitting allowances approved by the Chief Justice as reasonable for any day on which they act in respect of the work of the Tribunal.

Officers of the
Tribunal
Cap.6:01

28. (1) Officers of the Magistrate's Court appointed under section 24 of the Courts Act shall be the officers of the Tribunal.

(2) The officers of the Tribunal-

- (a) may exercise such powers and perform such duties, in so far as they are applicable to the business of the Tribunal, as those exercised or performed by them in the Magistrate's Court; and

- (b) shall be subject to the same liabilities and penalties and have the same protections as attach by virtue of the Courts Act to a person exercising or performing similar powers or duties under that Act.

(3) The Commissioner may, in addition to the officers of the Tribunal specified in this section, authorize any public officer to assist in conciliation under this Act.

Jurisdiction of
Tribunal

29. (1) Subject to the provisions of subsection (2), the Tribunal has jurisdiction in respect of all individual claims arising under any contract of employment.

(2) The Tribunal has jurisdiction in any matter specified in subsection (1) against any person in The Gambia at the time the claim is brought whether or not the cause of action arose in The Gambia and whether or not any person by or against whom the complaint is brought, is ordinarily resident in The Gambia.

(3) The Tribunal has exclusive original jurisdiction in any matter specified in subsection (1).

Set-off and
adjustment of
claims

30. (1) The Tribunal may exercise all the powers of a First Class Magistrate in respect of all proceedings before it, but has unlimited jurisdiction to make pecuniary awards.

(2) The Tribunal may, in proceedings before it -

- (a) adjust and set off one against the other, all claims of the parties arising out of or incidental to the employment relation between them, whether under provisions of this Act or otherwise;

- (b) may direct the payment by one party to the other of any sum it finds due.

Cancellation of contract of employment

31. The Tribunal may order cancellation of a contract of employment, subject to such conditions as to payment of remuneration or other money due under the contract or of damages or compensation as the Tribunal sees fit to impose, but shall not make an order in respect of any non-contractual right granted by this Act.

Business to be conducted according to Rules

32. (1) The Tribunal shall receive claims, conduct its proceedings, make awards and orders, and otherwise conduct its business in accordance with the Industrial Tribunal Rules set out in the First Schedule.

First Schedule

(2) The Secretary of State may, from time to time, amend the Rules set out in the First Schedule.

PART V – LABOUR-ONLY SUBCONTRACTING

Labour-only subcontracting

33. (1) A person who operates as a labour-only subcontractor without a certificate of exemption issued under section 36 commits an offence in respect of each employee engaged by him or her.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding five hundred dalasis for each day of each offence or imprisonment for a period not exceeding two years, or to both the fine and imprisonment and to deportation from The Gambia if he or she is not a citizen of The Gambia.

Arrangements to use non-exempted labour-only subcontractor

34. (1) A person who enters into a contract or arrangement for labour-only services with a labour-only subcontractor who does not hold a certificate of exemption issued under section 36-

- (a) is deemed for all purposes to be the employer of a worker whose services he or she obtains under the contract or arrangement; and
- (b) commits an offence in respect of each person whose services he or she obtains.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding fifty thousand dalasis for each offence.

Application for exemption

35. A person seeking an exemption to operate as a labour-only subcontractor shall apply in writing to the Commissioner specifying –

- (a) the clients or contractors to whom he or she intends to supply a worker;
- (b) the categories of workers he or she intends to supply; and
- (c) any exceptional terms and conditions of employment he or she anticipates will be applicable to the workers.

Certificate of exemption

36. (1) The Commissioner may issue a certificate of exemption if he or she is satisfied that –

- (a) the circumstances which led to the desire of the client or contractor to secure labour by way of a labour-only subcontractor are wholly exceptional; and

- (b) without resort to the labour-only subcontracting, Gambian workers will lose or fail to secure employment.
- (2) The Commissioner may only issue a certificate of exemption on the following conditions, namely –
- (a) the labour-only subcontractor will only supply labour to the persons, not exceeding five in number, specified in the certificate;
 - (b) the terms and conditions of employment are not less favourable than those that might reasonably be expected by the workers in employment in that part of The Gambia;
 - (c) the person to whom the certificate is issued makes appropriate contributions to all statutory social security, industrial injuries, national insurance, training and insurance funds appropriate to the workers;
 - (d) the person to whom the certificate is issued makes a return to the Commissioner not less than once in every three months showing -
 - (i) the charge he or she makes to each client or contractor,
 - (ii) the numbers and classes of workers supplied to each client or contractor, and
 - (iii) the wages paid to each class of workers in each case during

- the whole of the period since the previous return.; and
 - (e) the person to whom the certificate is issued deposits an approved banker's certificate of credit-worthiness.
- (3) The Commissioner may charge such fee as is approved by the Secretary of State for the issue of a certificate of exemption and the filing of the required returns.
- (4) A certificate of exemption issued by the Commissioner shall-
- (a) have affixed to it a photograph of the exempted person; and
 - (b) state the name and address of the exempted person; and
 - (c) state the date of commencement and of expiry of the certificate.
- (5) A certificate of exemption remains in force for not more than three years, but may be renewed on proof of satisfaction of the conditions laid down in this section.
- (6) A labour-only subcontractor operating under a certificate of exemption issued under this section is deemed for all purposes to be the employer of the workers engaged by him or her.

PART VI – MAINTENANCE AND DEVELOPMENT OF HUMAN RESOURCES

Obligation to ensure competence

37. (1) An employer shall ensure that -

(a) newly engaged or transferred employees are either able to undertake their job adequately and safely or are provided with appropriate training to enable them to do so; and

(b) where new work methods are introduced to an existing job, adequate training is provided as would enable an employee of reasonable ability, in the performance of the job before the introduction, to continue to perform his or her work adequately and safely under the changed circumstances.

(2) Where an employee might reasonably be considered to have qualified to receive a trade certificate as a result of training provided consistent with this section, he or she is deemed to have applied to be examined for the trade certificate and the employer shall notify the examining authority of the application.

(3) Nothing in this section precludes an employer from terminating an employee otherwise than in conformity with this Act.

Remuneration
during periods of
training

38. An employer shall pay to his or her employee during any period of training wages not less than the amount he or she was entitled to receive immediately before the commencement of the period of training.

Quality of training

39. (1) The National Training Authority may at any time inspect any training facility provided or used by an employer and make recommendations as to the conduct and quality of training provided at the facility.

(2) An employee undergoing training, or a trade union acting on his or her behalf, may, at any time, before, during or within one month of, the conclusion of a training, complain to the Authority that the conduct, nature or quality of the training will not, does not or did not provide the skills needed to enable the employee to do his or her job.

(3) Where a complaint is made under subsection (2), the Authority shall conduct an inquiry and shall, if it finds the complaint wholly or partially well-founded, give such recommendations as are necessary to ensure that adequate training is provided for the employee.

(4) An employer or training facility that fails to comply with the recommendations of the Authority under subsection (3) shall, on a finding by the Tribunal, be ordered to pay to the Tribunal a sum equivalent to five times the wages which the employee would be entitled to receive during the whole period of training.

(5) On receipt of the sum specified under subsection (4), the Tribunal shall, in consultation with the Authority, arrange to provide a suitable alternative course of training for the employee.

Apprenticeship
and training

40. (1) Unless otherwise provided in this section, every employer shall maintain one suitable apprentice for every ten employees, each of whom shall be engaged on a course of apprenticeship approved by the Authority.

(2) Without prejudice to subsection (1)-

- (a) an employer of less than an aggregate of ten persons at all its establishments, or
- (b) any other employer,

may also send such number of his or her employees as approved by the Authority to one or more courses approved by the Authority, conducted by a technical institute or other institute or by the employer.

(3) An employer shall engage and supply employees of suitable ability to satisfy his or her obligation under subsection (1).

(4) The Authority may, on application by an employer, permit the substitution of some other suitable course of training for any one or more of the apprenticeships required by subsection (1).

(5) The Secretary of State may, by Order published in the *Gazette*, exempt an employer from the provisions of subsection (1).

(6) An apprenticeship commenced by reason of this section shall not be terminated because-

- (a) the number of those employed by his or her employer falls below that required to impose an obligation to institute a course of apprenticeship; or
- (b) he or she becomes exempt from the obligation imposed by subsection (1).

Terms of
apprenticeship

41. (1) An employer who is party to a contract of employment with an apprentice shall retain the apprentice in his or her employment and offer him or her appropriate training throughout the term of the contract unless, subject to -

Cap. 56:04

- (a) the Injuries Compensation Act, personal injuries to the apprentice has made it reasonably impracticable to continue that training; or
- (b) section 84, the apprentice has been dismissed.

(2) An employer who has an apprentice and proposes to go out of business before the completion of the period of apprenticeship shall-

- (a) arrange to transfer the apprenticeship to another suitable employer; or
- (b) if the apprentice reasonably refuses the transfer or no transfer is offered, pay to the Authority compensation of such amount as may be prescribed by the Secretary of State for each uncompleted year or part of an uncompleted year of the apprenticeship.

(3) Section 40 (6) applies to the continuation of an apprenticeship by the Authority under subsection (2).

(4) An amount of compensation payable by reason of subsection (2) is deemed to be a debt owed by the employer and is to be so treated on the insolvency, winding up or death of the employer.

Application for
trade testing

42. (1) An employee who wishes to secure a certificate of competence in any trade or occupation to which a trade certificate is normally available may apply to the Authority for examination and certification.

(2) The Commissioner shall refer, to the Authority or such other examining body as may be appropriate, an application made to him or her under subsection (1).

(3) The Authority or other examining body referred to in subsection (2) shall, if satisfied, after appropriate examination, that the applicant is qualified to receive a trade certificate in respect of one or more trades, issue the applicant with the appropriate trade certificate.

Trade and job
classification

43. (1) The Labour Advisory Board shall, from time to time, revise the recognized trade and job classifications and the job descriptions applicable to them in respect of a Joint Industrial Council.

(2) The Labour Advisory Board shall not revise trade and job classifications in any collective agreement made between one or more trade unions and one or more employers or organisations of employers.

Employment
service and
registry of job
seekers

44. (1) The Commissioner shall establish and maintain an employment service designed to bring together persons offering and seeking employment, including, at the minimum, maintaining a register in Banjul of persons seeking employment.

(2) The Commissioner shall take such measures as he or she deems fit to promote the use of the employment service including –

- (a) maintaining the Banjul register in a way that makes it an effective tool for matching employers with job seekers;
- (b) encouraging employers to notify the employment service of vacancies in their establishments;

Prohibition of
child labour
No. 5 of 2005

Hazardous work
No. 5 of 2005

- (c) encouraging job seekers to register their availability for work;
- (d) consulting with trade unions, employers' organisations, and the Labour Advisory Board on how to make the employment service effective; and
- (e) establishing services designed to attract users of the employment service in Banjul and throughout The Gambia.

PART VII – EMPLOYMENT OF CHILDREN

45. (1) Subject to subsection (2) and the Children's Act, 2005, no person shall engage a child in any public or private agricultural, industrial or non-industrial under-taking or in any of their branches.

(2) Subsection (1) does not apply to work done in a vocational or technical school or other training institution, if the work is –

- (a) approved and supervised by a public authority; or
- (b) an integral part of the educational or vocational training programme for which the school or institution is responsible.

46. (1) Subject to the Children's Act, 2005, no person shall engage a child in any occupation or activity that is likely to be –

- (a) harmful to the health, safety, education, morals or development of the child; or

- (b) prejudicial to his or her attendance at school or any other vocational or training programme.

(2) The Secretary of State may, in consultation with relevant organisations of employers and employees, specify, by notice published in the *Gazette*, occupations or activities, which, in his or her opinion, are likely to have the effect mentioned in subsection (1).

Registry of
employed
children

47. An employer shall keep a register of any person under the age of eighteen years employed by or working for him or her.

Offences against
this Part
No. 5 of 2005

48. Subject to the Children's Act, 2005, a person who contravenes a provision of this Part commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

PART VIII – CONTRACTS OF EMPLOYMENT

Types of
contracts

49. (1) Unless otherwise provided by this Act, this Part applies to all types of contracts of employment.

(2) A contract of employment shall be in any one of the following forms --

- (a) a contract for an unspecified period of time;
- (b) a contract for a specified period of time; or
- (c) a contract for a specific task.

Nullity of
provisions
prohibiting trade
union
membership

50. A term or condition, whether express or implied, in a contract of employment-

- (a) prohibiting an employee from becoming or remaining a member of a trade union or any other organisation representing workers; or

- (b) purporting to subject the employee to any penalty, loss of benefit or detriment by reason of membership of the trade union or organisation,

is null and void.

Probationary
period

51. (1) In a contract of employment for a skilled worker, the parties may agree on the duration of the probationary period, but that period shall not exceed twelve months.

(2) During a probationary period, either party may terminate a contract of employment at any time without notice and without regard for the requirement set out in section 83. (1).

(3) In this section, "skilled worker" means an employee in an enterprise who through acquisition, programmed or otherwise, of knowledge, attitude and behaviour, has special ability to do something.

Particulars of
employment

52. (1) Every employer shall give to his or her employee a written statement of particulars of employment.

(2) The statement referred to in subsection (1) shall be given, in the case of an employee-

- (a) in employment at the commencement of this Act, within three months of the commencement of this Act; and
 - (b) employed after the commencement of this Act, within one month of his or her reporting for work.
- (3) The statement referred to in subsections (1) and (2) shall include the following particulars -
- (a) the names and addresses of the employee and of the employer;
 - (b) the job category, title or description of the work;
 - (c) the date of commencement of the contract;
 - (d) any provision for the termination of the contract, other than those provided by this Act;
 - (e) the rate of remuneration and the method of calculating remuneration;
 - (f) the intervals at which remuneration is paid;
 - (g) normal hours of work;
 - (h) any provisions for sickness or holidays, and payment during those periods, and pension rights, other than those provided by this Act; and
 - (i) any disciplinary rule applicable to the employee.
- (4) For the purposes of this section, "employer" means a person, body corporate, an undertaking or a body of persons that has in his or her employment at least five employees.

Contract of employment in writing

53. (1) An employee shall receive a contract of employment in writing-

- (a) where the contract is for a specified period of six months, or the equivalent in work-days of six months, or more;
- (b) where the contract is with an employee other than a citizen of The Gambia and provides for employment ordinarily in The Gambia; or
- (c) in any other case where the Commissioner so directs.

(2) A contract which is not in writing as required under subsection (1) is enforceable by the employee but not by the employer, but where the omission to make the contract in writing is due to the willful act of the employee, the contract is enforceable by either party.

Termination of contracts

54. (1) A contract of employment for an unspecified period of time may be terminated by either party subject to sections 55 and 83.

(2) A contract of employment for a specified period of time terminates automatically on the date specified for its termination and, unless it is expressly or tacitly renewed or prolonged, no notice is required for its termination.

(3) A contract of employment to perform a specific task terminates on the completion of the task and no notice of termination is required of either party.

(4) A contract is deemed to be for an unspecified period of time, if-

- (a) an employee is regularly and repeatedly employed and paid wages on the basis of completion of a quantity of work which can be completed in less than twenty-four hours; or
- (b) the purpose or effect of a contract of employment, that is purported to be for a specified period of time or a specific task, is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking.

Notice of termination of contracts for an unspecified period of time

55. (1) Subject to subsection (2), a contract of employment for an unspecified period of time may be terminated by either party on giving the other party the following minimum period of notice in writing where—

- (a) the contract is to pay wages at a monthly rate, one month's notice;
- (b) the contract is to pay wages at a fortnightly rate and the employee has been -
 - (i) employed for less than six years, one fortnight's notice, and
 - (ii) continuously employed for at least six years, one month's notice;
- (c) the contract is to pay wages at a weekly rate and the employee has been-
 - (i) employed for less than two years, one week's notice,
 - (ii) continuously employed for a period of not less than two years but not exceeding six years, one fortnight's notice, and

- (iii) continuously employed for at least six years, one month's notice;
- (d) the contract is to pay wages at a daily or hourly rate and the employee has been—
 - (i) employed for less than six months, one day's notice,
 - (ii) continuously employed for a period of not less than six months but not exceeding two years, one week's notice,
 - (iii) continuously employed for a period of not less than two years but less than six years, one fortnight's notice; and

(e) where the employee has been continuously employed for a period of at least six years, two months' notice.

(2) An employee who has been continuously employed for a period of more than six years shall, notwithstanding the rate at which he or she is paid, give to his or her employer not less than one month's notice.

(3) Where the contract of employment for unspecified period of time is to pay wages at any rate, other than an annual rate, not provided for in subsections (1) and (2), either party may determine the contract at the close of any day without notice.

(4) The minimum period of notice for a contract of employment for a specified period of time is fourteen days.

Additional agreed
notice

56. (1) Nothing in this Act prevents the parties to a contract of employment for an unspecified period of time from agreeing to terms of notice of termination more beneficial to either party than those required by section 55.

(2) An agreement to any lesser period of notice than those required by section 55 is null and void.

Notice in case of
redundancy

57. An employee whose contract of employment is terminated by the employer for reasons set out in section 93 (1) is, notwithstanding the employers' compliance with the requirements of that section, entitled to six months' notice.

Payment in lieu
of notice

58. (1) Section 55 does not prevent either party from waiving his or her right to notice on any occasion or from accepting payment in lieu of notice.

(2) An employer shall, in lieu of providing notice of termination -

(a) pay the employee a sum equal to the remuneration that would have been received; and

(b) confer on the employee all other benefits due to the employee,

up to the expiration of the required period of notice.

(3) If an employee terminates a contract of employment without notice in a case where notice is required, and the employer has not waived the right to notice, the employee-

(a) shall pay to the employer, in lieu of notice, a sum equal to the remuneration that would otherwise have been due to the employee up to the expiration of the required period of notice;

(b) is entitled to be paid remuneration and to receive other benefits which may have accrued at the date of termination.

Certificate of
termination

59. (1) On the termination of a contract of employment, an employer shall, if so requested by the employee, provide the employee with a certificate indicating--

(a) the name and address of the employer;

(b) the nature of the employer's business;

(c) the length of the employee's continuous employment with the employer;

(d) the capacity in which the employee was employed prior to the termination;

(e) the wages and other remuneration payable at the date of termination of the contract; and

(f) where the employee so requests, the reason for the termination of his or her employment.

(2) The certificate referred to in subsection (1) shall not contain an evaluation of the employee's work unless the employee requests the evaluation.

Transfer of
contract

60. (1) Except as provided in subsection (2), a contract of employment shall not be transferred from one employer to another without the consent of the employee.

(2) The contracts of employment of all employees in employment at the date of the transfer of an enterprise or part of an enterprise shall, except in the case of a transfer by a Receiver on the insolvency of an enterprise, automatically be transferred to the transferee.

(3) All the rights and obligations between the employees and the transferor at the date of the transfer shall continue to apply as if they were rights and obligations between the employees and the transferee.

(4) A thing done before the transfer, by or in relation to the transferor in respect of the employees, shall be deemed to have been done by or in relation to the transferee.

(5) The provisions of subsections (2), (3) and (4) do not absolve a person of the liability to be prosecuted for, convicted of and sentenced for any offence committed before the transfer of the undertaking.

(6) A transfer of a contract of employment is subject to the provisions of this Act on labour only subcontracting, as if the transfer involved a new employment.

(7) When the consent of the employee is required under subsection (1), the Commissioner may take any reasonable measures to satisfy himself or herself that the employee freely consents to the transfer.

(8) In this section, "transfer" includes sale and any disposition of an enterprise or part of an enterprise.

Death of employer

61. If the employer's personal or legal position formed the basis of a contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless it-

- (a) is otherwise terminated in accordance with section 83 within that period; or
- (b) expressly provides otherwise.

Death of employee

62. The death of an employee terminates a contract of employment, but the next-of-kin of the deceased employee is entitled to claim from the employer-

- (a) any remuneration or other benefits due to the employee at the date of his or her death; and
- (b) any property of the employee in the possession of the employer,

if the claim is made not later than six months from the date of the employee's death.

Imprisonment of employee

63. Where an employee's appointment is terminated because of his or her imprisonment, the termination constitutes a dismissal of the employee and the fact of imprisonment is not to be regarded as a frustration or other automatic ending of the contract.

Change of place of employment

64. (1) Subject to subsection (2), unless expressly provided in the contract of employment, an employee is not bound to continue in employment if the employer removes the employee's place of employment more than forty kilometres from its previous location.

(2) An employee is deemed to have consented to employment at a new location if he or she continues in employment at that location for a period of four weeks without protest.

Departure from
The Gambia

65. Unless expressly provided in the contract of employment, an employer shall not, without the consent of an employee, require the employee to accompany him or her out of The Gambia.

Termination of
contract due to
change of place
of employment

66. (1) Where section 64 or 65 applies and the employee is unwilling to change his or her place of employment or accompany the employer out of The Gambia, the contract is deemed terminated by reason of the unwillingness.

(2) Where a contract is deemed terminated under subsection (1), the employee is entitled to a sum equal to the remuneration due to the employee under the contract as if he or she had worked normally under the contract until the earliest date at which, but for the removal, it would have been terminable.

Winding-up of
employer

67. (1) Where in a voluntary winding-up of an employer's business, the Receiver does not renew a contract of employment he or she shall be responsible for terminating the contract in a way that is permissible under the contract.

(2) The compulsory winding-up of an employer's business –

- (a) operates to terminate any contract of employment with that employer; but
- (b) does not prevent renewal of that contract by the Receiver or any other person carrying on the business.

(3) On the insolvency or winding-up of an employer's business, the claim of an employee or those claiming on his or her behalf to wages and other payments to which he or she is entitled under this Act or any contract has priority over all other creditors, other than any claim for taxes levied by the State, for the following –

- (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the six months preceding the date of the declaration of insolvency or winding-up;
- (b) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up;
- (c) amounts due in respect of other types of paid absence accrued during the six months preceding the date of the declaration of insolvency or winding-up; and
- (d) severance pay, compensation for un- fair dismissal and other payments due to employees on the termination of their employment.

(4) The provisions of subsection (3) apply also where the business of an employer or a part of it is sold or transferred on application of a person holding a mortgage charge, lien or decree.

(5) The proceeds of a sale or an attachment under subsection (4) shall not be distributed until the person responsible for the distribution has taken reasonable steps to determine the remuneration and other benefits due -

- (a) to each employee of the business;
- (b) by order of the Tribunal to each employee; and
- (c) in respect of any contributions to social security or other social benefit funds, required by the laws of The Gambia.

PART IX – TERMS AND CONDITIONS OF EMPLOYMENT

Minimum conditions

68. (1) The provisions of this Part are minimum requirements and nothing in this Act is to prevent parties to a contract of employment from agreeing to terms and conditions of employment more beneficial than those provided under this Part.

(2) A provision of a contract of employment which purports to provide terms and conditions less beneficial than those provided under this Part, shall, unless expressly provided in this Act to the contrary, be null and void and the appropriate provision of this Act shall be substituted for that provision.

(3) An employer who enters into a contract of employment knowing that it contains terms that are null and void by reason of subsection (2) is liable, in an action before the Industrial Tribunal, to pay the employee concerned, in addition

to any damages for breach of the relevant provisions of this Part, further compensation of such amount as may be prescribed.

Work or wages during a contract

69. (1) During the duration of a contract of employment, an employer shall provide the employee concerned -

- (a) work in accordance with the contract for all days expressly or implicitly designated as working days under the contract; or
- (b) wages for the work at the same rate as if the employee had performed a day's work,

if the employee presents himself or herself for the work and is able, ready and willing to work.

(2) The provisions of subsection (1) do not apply-

- (a) if on a working day the employer offers suitable alternative employment which the employee unreasonably refuses or fails to undertake; or
- (b) to a public authority in respect of those it employs on a casual or semi-casual basis.

Medical examination

70. (1) A person entering into employment to which this section applies shall, at the expense of the employer, be examined by a medical officer not more than one month before the commencement of employment, and the employer shall keep a written report of the examination.

(2) This section applies to –

- (a) employment by The Gambia Ports Authority as a permanent or semi-casual employee;
- (b) employment in a groundnut oil processing plant;
- (c) employment as a driver of a motor vehicle;
- (d) employment in an occupation involving the preparation or handling of food for human consumption;
- (e) employment in a hotel or catering service;
- (f) employment as a fisherfolk or in a fish-processing plant;
- (g) employment which may reasonably be anticipated to continue for six months or more on a major project financed in whole or in part by the Government of a country, other than The Gambia, or by any international organisation; and
- (h) any other employment specified by the Secretary of State by Order published in the *Gazette*.

(3) If it is not reasonably practicable to comply with the requirement in subsection (1), the medical examination shall take place as soon as is reasonably practicable after the commencement of the employment.

Maternity benefit

71. (1) This section applies to every female employee –

- (a) with two years continuous service with the same employer; or
- (b) whose period of service with the same employer has been interrupted by one or more periods, none of which exceeds seven months and who has in aggregate not less than eighteen months service with the same employer.

(2) An employee to which this section applies is entitled to maternity leave with pay at her normal rate for not less than the six weeks immediately preceding the expected date of confinement and for not less than the six weeks following that date.

(3) An employee to which this section applies who takes a period of maternity leave and wishes to return to her former employment shall, within six weeks following the actual date of confinement, give notice to her employer of her wish to return.

(4) An employee returning from maternity leave shall be placed in the same job with the same benefits and entitlements as immediately before her maternity leave began, within four weeks of giving notice to her employer of her wish to return to her employment.

Safety equipment
Second
Schedule

72. (1) An employer who engages an employee in an activity specified in the Second Schedule shall supply the employee, free of charge, the safety equipment or safety device specified in that Schedule.

(2) A safety equipment or safety device supplied by an employer shall be of such nature and quality as to provide the employee adequate protection, so far as is reasonably practicable, from the risk occasioned by the activity in which he or she is engaged.

(3) The Secretary of State may, after consultation with the Secretary of State responsible for health and the Labour Advisory Board, by Order published in the *Gazette*, amend, extend or revoke any of the provisions of the Second Schedule.

(4) An employee to whom an employer has supplied safety equipment or safety device shall use the equipment so far as reasonably practicable.

(5) A person who wilfully-

(a) destroys or damages a safety equipment or safety device; or

(b) obstructs the proper operation or use of the equipment or safety device,

commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term of not less than six months, or to both the fine and imprisonment.

73. (1) An employee is entitled to accumulate days of annual leave provided for by Joint Industrial Council agreement, collective agreement, or otherwise by his or her contract of employment.

Second
Schedule

Entitlement to
annual leave and
public holiday

(2) Wherever a period of annual leave entitlement is specified by reference to a period of more than one month, the appropriate proportion of the entitlement is deemed to accrue for each month of employment.

(3) An employer shall, in consultation with the employee, determine and grant the date for the taking of annual leave.

(4) An amount of annual leave entitlement accumulated but not used at the time an employment is terminated shall be paid to the employee, calculated according to subsection (6).

(5) An employee is entitled to his or her regular remuneration for each day of public holiday, and his or her period of annual leave shall be extended by one working day with full pay for each day of public holiday that falls within the period of leave and would have been an ordinary working day for the employee.

(6) Payment for each day of annual leave and for each day of public holiday is due to an employee at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment for his or her usual work on that day, excluding bonus but including overtime payment.

74. (1) An employee is entitled to accumulate days of paid sick leave provided for by Joint Industrial Council Agreement, collective agreement, or otherwise by his or her contract of employment up to a maximum of the entitlement attainable by any twelve months of employment.

Sick leave
entitlement

(2) An employer may use paid sick leave days in respect of any day of normal work on which an employee is unable to perform his or her usual work because of bodily or mental illness, disease or injury.

(3) The payment for any day of paid sick leave shall be at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment for normal work on that day, including both over-time and bonus pay.

Enforceable
retiring age

75. A contract of employment that fixes retirement at an age after the attainment by an employee of his or her sixtieth birthday is valid and enforceable, and termination in accordance with that provision does not amount to unjustified dismissal under section 83.

PART X – PROTECTION OF WAGES

Payment of
wages

76. (1) The wages payable to an employee shall be paid in accordance with the terms of the contract of employment and may only be changed by agreement of both parties, provided they are paid-

(a) at least as frequently as once fortnightly, in the case of an employee whose wages are –

- (i) fixed by the hour, day or week, or
- (ii) calculated solely on a piece-work or task-work basis; or

(b) at least once a month in the case of an employee whose wages are fixed on a monthly or yearly basis; and

(c) ordinarily on the employee's normal work day and at the employee's normal place of work, unless specially agreed between the employee and employer.

(2) Subject to the proviso to subsection (1), where the contract of employment is for a specific task, wages may be paid on the completion of the task or, if the employer and the employee so agree, weekly, fortnightly or monthly, in which case the contract will not be considered to be one for a specific task.

(3) The remuneration payable to an employee-

(a) shall be paid to the employee or to a person specified by him or her in writing;

(b) shall be paid in legal tender; and

(c) may, with the consent of the employee, be paid by cheque in the sum of the wages payable, or by direct payment to an account with a bank operating in The Gambia.

(4) Subject to subsection (5), partial payment of wages in the form of allowances-in-kind may be made in enterprises or occupations where allowances are customary and –

(a) the allowances are appropriate for the personal use and benefit of the employee and the employee's family; and

(b) the value attributed to an allowance is fair and reasonable.

(5) The payment of wages in the form of liquor or noxious drugs is not permitted under any circumstance.

Pay statement
and deductions

77. (1) Every employee shall receive, with each payment of wages, an accurate itemized statement from the employer in writing in a form which sets out-

- (a) the employee's gross wages due at the end of the pay period;
- (b) the amount of every deduction from the employee's wages during the pay period and the purpose for which each deduction was made; and
- (c) the employee's net wages payable at the end of the pay period.

(2) The following deductions may be agreed in a contract of employment –

- (a) deduction of a reasonable charge for food, drink, lodging or clothing supplied by the employer to the employee, provided that no compulsion, by means of any contract or otherwise, has been imposed on the employee to purchase or otherwise incur the charges that are the basis for the deduction;
- (b) deduction representing reasonable rent or other reasonable charge for accommodation provided by the employer for the employee or the employee's family;
- (c) deduction of an amount for recovery of any advance made to the employee or in order to adjust a previous overpayment of wages;

- (d) deduction of the amount of any tax, contribution to a statutory social security, superannuation, industrial injury or national insurance scheme, or any other charges imposed by any law of The Gambia;
- (e) deduction of any contribution to a pension fund, superannuation scheme or friendly society organised by the employer, if the employee has given written consent to the deduction in advance and the entire deduction is applied for the benefit of the employee;
- (f) deduction of any dues to a trade union of which the employee is a member, if the employee has given written consent to the deduction and the amount of the deduction is remitted directly to the trade union or its authorized official, subject only to retention by the employer of a reasonable charge, if any, for the cost of making and remitting the deduction; and
- (g) deduction of reasonable compensation for damage to, or loss of, goods or monies expressly entrusted to the employee by his or her employer for safe custody and for which the employee is required to account if the loss or damage is directly attributable to the neglect or fault of the employee and the employee is employed on such work as may reasonably be expected to impose the responsibility.

(3) The total of all deductions made in any one-wage period shall not exceed one-third of all remuneration due in that wage period.

(4) For the avoidance of doubt, a reduction in remuneration usually paid or expected that occurs on account of-

- (a) the disciplinary suspension from work of an employee; or
- (b) the failure of an employee to report for work on a normal work day,

does not constitute a deduction for the purposes of this section if the amount not paid does not exceed the proportion of the wages payable for the period of absence or one twenty-sixth part of the wages payable for one month in respect of each day of the absence.

Attachment of wages

78. A court of civil jurisdiction shall not make an order for the attachment of wages or other benefits due to an employee.

Payment on termination

79. All remuneration and accrued benefits due to an employee on the termination or completion of his or her contract of employment shall be paid to the employee on the day of the termination or completion of the contract.

Nullity of provisions imposing conditions contrary to this Part

80. (1) A practice or provision of a contract of employment which imposes conditions contrary to the requirements of this Part is null and void.

(2) An employer who breaches subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

Recovery of prohibited payment

81. (1) An employee is entitled to recover by action in the Tribunal any amount paid or not paid in contravention of any provision of this Part.

(2) An employee who induced the payment or non-payment under subsection (1) may only recover such amount as exceeds the benefit to him or her derived from the contravention.

(3) In addition to an award under subsection (1), the Tribunal may, if an employee makes an application concerning a contravention within two years of the contravention, order the employer to give the Commissioner at intervals of not less than once a month, for a period not exceeding two years, such information as shall, in the opinion of the Tribunal, show the absence of any further contravention of this Part:

PART XI – DISCIPLINE, DISMISSAL AND REDUNDANCY

Justification for disciplinary action

82 (1) In this Part, a "disciplinary action" includes-

- (a) a written warning;
- (b) suspension; and
- (c) demotion.

(2) An employer is entitled to take disciplinary action, other than dismissal, when it is reasonable to do so considering all the circumstances of the case.

(3) Subject to subsection (4), an employer shall not impose a fine or other monetary penalty on an employee, and is not obliged to pay wages to an employee for the period the employee is absent from work without permission of the employer or without reasonable excuse.

(4) An employer may deduct an amount of money from an employee's wages to cover the costs of any property damaged by the employee.

(5) In deciding whether the employer has acted reasonably, the Tribunal or Court shall take into account the nature of the violation, the employee's duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

Justification for
termination or
taking disciplinary
action

83. (1) An employer shall not terminate an employee's appointment or take disciplinary action against an employee unless there is a valid reason for the termination or action connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise.

(2) The following reasons do not constitute valid reasons for dismissal or taking of disciplinary action -

- (a) an employee's pregnancy or having taken maternity leave, race, colour, sex, religion, political opinion, national extraction, ethnic or social origin;

(b) an employee's absence from work for a period of less than two weeks because of sickness or injury;

(c) an employee's actual, perceived or suspected HIV/AIDS status;

(d) an employee's removing or attempting to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health;

(e) an employee's exercise of a right to freely associate, including -

(i) membership in a trade union,

(ii) refusal, or indication of an intention to refuse, to join a trade union,

(iii) participation or proposed participation in a legal industrial action,

(v) refusal to do any work normally done by an employee who is engaged in industrial action;

(f) an employee's refusal, except in circumstances of national emergency or grave emergency to his or her employer, to work for more than the number of hours permitted by any law, collective agreement, or established work rule;

(g) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of any laws, regulation or collective agreement; or

- (h) the institution of a police investigation involving the employee, concerning a matter not connected with the suitability of the employee for employment;

Unfair dismissal

84. A dismissal is unfair if it is not in conformity with section 83 or is a constructive dismissal under section 86.

Summary dismissal

85. (1) An employer may summarily dismiss an employee on the following grounds -

- (a) if an employee is guilty of serious misconduct, inconsistent with the fulfilment of the expressed or implied conditions of his or her contract of employment which makes it unreasonable to expect the employer to continue the employment relationship;
- (b) habitual or substantial neglect, through absence or otherwise, of his or her duties;
- (c) lack of a skill that the employee expressly or by implication holds himself or herself to possess; or
- (d) misrepresentation on which the contract of employment was based.

(2) In subsection (1), "summarily dismiss" means terminate the contract of employment of the employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

Constructive dismissal

86. An employee is entitled to terminate the contract of employment without notice or with less notice than the employer is entitled by any statutory provision or contractual term if the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship.

Resignation

87. An employee is deemed not to have voluntarily resigned from employment unless there is clear evidence of the employee's deliberate intention to resign.

Suspension pending dismissal or prosecution

88. (1) Where an employer has reason to believe that grounds exist for dismissing an employee, the employer may suspend the employee without pay during a period of investigation, but not exceeding two weeks.

(2) Where an employer has taken action in accordance with section 89, the employee concerned may be suspended without pay until he or she is dismissed or the employer resolves not to dismiss him or her, or for three days, whichever is less.

(3) Where an employee is suspended without pay under subsection (1) or (2), but is not consequently dismissed, the employer shall pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended.

(4) Notwithstanding subsections (1), (2) and (3), where the conduct of an employee is the subject of an inquiry by the police force of The Gambia, or any other country, an employer may, if he or she considers it necessary in the interests of the

undertaking, suspend that employee without pay during all or any part of the time covered by the inquiry, subject to subsection (5).

(5) Where an employee is suspended under subsection (4) but is not consequently prosecuted to conviction in a court of law, the employer shall reinstate the employee in his or her original employment and pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended.

Notification and hearing before dismissal.

89. (1) Before deciding to dismiss an employee, the employer shall-

(a) explain to the employee the reason for which the employer is considering dismissing that employee; and

(b) hear and consider any representations made in defence of the employee.

(2) The employer shall give the explanation pursuant to subsection (1) in the presence of the employee and one other person, if any, whether or not a representative of a trade union, whom the employee may choose to accompany him or her.

(3) Before proceeding to comply with subsection (1), the employer shall, if the employee chooses not to be accompanied by another person, explain to the employee the advantage of being so accompanied.

(4) Proof that an employer failed to satisfy an obligation under subsections (1) and (2) raises a rebuttable presumption that the employer did not act with justice and equity in dismissing the employee.

Proof of reason for dismissal

90. (1) There is a conclusive presumption that the dismissal of an employee is unfair if, in a claim or complaint arising out of the dismissal, the employer fails to provide the reason for dismissal.

(2) In addition to proving that an employee was dismissed for reasons stated in section 83(1), an employer is required to show that in all circumstances of the case he or she acted with justice and equity in dismissing the employee.

(3) Failure by the employer to deliver to the employee at the time of dismissal a written statement of the reason for the dismissal raises a rebuttable presumption that the reason for dismissal was wrong or that the employer did not act with justice and equity in dismissing the employee, whichever may be applicable in the context of the case.

(4) In the circumstances mentioned in section 86, the employee shall provide the reason which made the continuation of the employment relationship unreasonable.

Complaints of unfair dismissal

91. (1) An employee may, within six months of the date of dismissal, complain, orally or in writing, to the Commissioner or to an official of a trade union of which he or she is a member, that he or she has been unfairly dismissed, irrespective of whether notice has been given or not.

(2) Where a complaint is made to an official of a trade union, the official shall -

(a) collect such information as the Commissioner shall, by regulations, direct; and

(b) communicate the complaint and the accompanying information to the Commissioner within one week of its receipt.

(3) Where an official fails to communicate the complaint to the Commissioner within twenty-seven weeks of the dismissal, the Commissioner may, on behalf of the employee, and notwithstanding any other provision of law, commence proceedings in a civil court for negligence against the trade union and the official concerned.

(4) The right of an employee to make a complaint under this section is without prejudice to any right that he or she may enjoy under a collective agreement.

(5) Where the Commissioner fails to settle the matter within one month of receipt of a complaint made to him or her, the employee or trade union may bring a claim before the Tribunal in accordance with the Rules set out in the First Schedule of this Act.

First Schedule

Remedies for unfair dismissal

92. (1) If the Tribunal finds that an employee's complaint of unfair dismissal is not well founded, it shall dismiss the complaint.

(2) If the Tribunal finds that a complaint is well founded, it shall uphold the complaint and –

(a) order reinstatement or re-engagement, of the employee with such compensation, if any, as the Tribunal considers just and equitable; or

(b) award such compensation as the Tribunal considers just and equitable.

(3) The Tribunal shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account, in particular, the wishes of the employee and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal.

(4) Where the Tribunal finds that the employee caused or contributed to the dismissal to any extent, it may include a disciplinary penalty as a term of the order for reinstatement or re-engagement.

(5) An award of compensation shall be such amount as the Tribunal considers just and equitable in the circumstances, having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal as well as –

- (a) the reasonable expectation of the employee as to the period of time his or her employment with that employer might have continued but for the dismissal;
- (b) the opportunities available to the employee for securing other suitable employment;
- (c) the value of contractual benefits to which the employee might reasonably have expected to become entitled if he or she continued to be employed by the employer and, in particular, to such benefits as might have accrued with increased seniority;

- (d) the value of statutory rights including pension rights of which dismissal has deprived the employee or frustrated the reasonable expectation of the employee that those rights would accrue; and
- (e) the value of an accrued benefit to which the employee was entitled before his or her dismissal and of which he or she has been deprived as a result of his or her dismissal.

Redundancy and
re-organisation

93. (1) A dismissal wholly or mainly for -

- (a) economic, organisational, climatic or technical reasons, including mechanization or automation; or
- (b) the reason that the employer propose to move the place of employment more than forty kilometres and the employee is either not offered employment at the new place or declines the offer in accordance with section 64,

is deemed to be unfair if the employer is unable to show that he or she acted on sound business principles and has satisfied the conditions specified in subsection (2).

(2) Where an employer contemplates a dismissal for reasons set out in subsection (1), he or she shall-

- (a) where they exist, consult the authorized representatives of any trade union which has members among the employees the employer contemplates should be dismissed and the relevant works committee;

- (b) engage in consultations under paragraph (a) by, at least, supplying any person or group of persons required to be so consulted the following written information -
 - (i) an explanation of the circumstances giving rise to the need to dismiss,
 - (ii) an explanation for the rejection of any alternative course of action which the employer has considered, provided that, where appropriate, the employer has considered the possibility of re-deploying or of re-training the employees concerned,
 - (iii) a statement of any reasonable probability that a specified number of employees in specified categories may be re-employed by him or her within the twelve months following the dismissal, and
 - (iv) any other matter which the Commissioner may direct to be so communicated, either in a particular case or generally;
- (c) in all cases where a selection is made for dismissal among a group of employees of the same class-
 - (i) make that selection in accordance with an agreement between the employer and a trade union representing the members of that class, or

- (ii) if there is no agreement, make that selection on the principle of last in first out or on some other principle considered by the Tribunal to have been established and reasonable; and
 - (d) take all reasonable steps to secure that an offer of re-engagement or of suitable alternative employment within not more than six months of the date of dismissal is made in writing before the dismissal or as soon as reasonably practicable after the dismissal and, in the case of an apprenticeship, that suitable provision for continuation of the apprenticeship or for employment as a journeyman has been made.
- (3) An alternative employment is not considered suitable under subsection (2) if it involves work which-
- (a) the employee is not qualified to perform, or work of a substantially inferior grade to that which the employee was previously performing; or
 - (b) provides a significantly lower level of remuneration than that previously received by the employee.
- (4) The provisions of subsections (1) and (2) do not apply to an employer-
- (a) of five or less employees in aggregate in all his or her establishments; or

- (b) who has agreed with a trade union with which he or she habitually negotiates in respect of the employees affected, a method of selection for dismissal and the terms of compensation for dismissal and who has honoured that agreement.
- (5) An employer who -
- (a) has delivered to an employee a written undertaking to re-engage the employee within not more than six months from the date of dismissal;
 - (b) has agreed to pay to the employee a retainer in accordance with subsection (6) during the whole of the interval between dismissal and re-engagement; and
 - (c) continuously honours the agreement,
- is deemed to have satisfied the provisions of subsection (2).
- (6) The minimum amount of the retainer mentioned in subsection (5) shall be-
- (a) fixed by each Joint Industrial Council as soon as possible after the coming into operation of this Act, and may be amended, from time to time; or
 - (b) established by agreement with a trade union representing the employee in question, if the employment in question is not covered by the agreement of a Joint Industrial Council; or

- (c) ten *per cent* of the employee's basic pay, where no rate is fixed as specified by paragraph (a) or (b).

(7) An employer who has agreed to pay a retainer to a temporarily laid off employee may set off against his or her undertaking any amount of wages received by the employee from another employer during the period covered by the retainer, but if the employee does not disclose to the employer the total amount of any alternative remuneration received during the period covered by the retainer, the employer is deemed to have satisfied the whole of his or her agreement without further payment.

(8) Notwithstanding the requirements for the giving of notice for termination of a contract of employment under this Act, an employee dismissed by an employer for reasons set out in this section shall, notwithstanding an employer's compliance with the requirements of this section, receive a redundancy allowance of six months regular remuneration.

Agreed
settlement

94. (1) The Commissioner shall send a copy of all complaints received under section 91 to the Tribunal, endorsed with a note stating whether or not he or she intends to take steps to effect a settlement of the matter.

(2) Where the Commissioner attempts to effect a settlement, he or she shall do so within one month of his or her receipt of the complaint and, at least before the end of that period, notify the Tribunal that a settlement has been effected or that settlement efforts have ceased.

(3) A communication made by either party to the complaint in the course of settlement discussions undertaken by the Commissioner is not admissible as evidence in any proceedings in the Tribunal or any Court without the consent of the party who made the communication.

(4) No settlement effected by any means, other than that specified in subsection (2), is binding on either party to the complaint.

(5) If a settlement is effected, the Commissioner shall record its terms in writing and notify the Tribunal.

Exemption

95. The Secretary of State may, by Order published in the *Gazette*, exempt an employer or employers from the application of sections 82 to 94, on condition that -

- (a) the employer or employers so exempted have agreed, in writing, with a trade union or trade unions whose members are his or her employees to provide rights and mechanisms which, in the opinion of the Secretary of State, are at least as favourable to the employees as those provided in sections 82 to 94;
- (b) the agreement makes provision for final resort to independent binding arbitration;
- (c) that a joint application for exemption has been made by the parties to the agreement, indicating those groups or classes of employees covered by the agreement; and
- (d) the exemption applies only to groups or class of employees of the employer or employers concerned that are covered by the agreement.

PART XII - REGISTRATION OF EMPLOYERS' ORGANISATIONS AND TRADE UNIONS

Registers of employers' organisations and trade unions

96. (1) The Registrar General (in this Part referred to as "the Registrar") is the Registrar of Trade Unions and Employers' Organisations.

(2) The Registrar shall maintain separate registers of employers' organisations and trade unions.

(3) The Registrar shall enter on the register of employers' organisations any employers' association which-

- (a) applies to be so registered;
- (b) has, among its principal objects, the regulation of terms and conditions of employment of workers or the conduct of industrial relations with workers; and
- (c) satisfies the conditions for registration under this Part.

(4) The Registrar shall enter on the register of trade unions any organisation which, immediately before the coming into force of this Part, was registered as a trade union, and any other organisation -

- (a) of not less than fifty workers applying to be so registered and having among its principal objects -
 - (i) the regulation of terms and conditions of employment of workers, or
 - (ii) the conduct of industrial relations with employers; or

(b) composed entirely of organisations of workers having among their principal objects -

- (i) the regulation of terms and conditions of employment of workers, or
- (ii) the conduct of industrial relations with employers ; and

(c) which satisfies the conditions for registration under this Part.

Obligation to apply for registration

97. (1) The managing committee of an employers' association or a trade union within the meaning of section 96 shall, within thirty days of the founding of the organisation, make an application in writing to the Registrar for the registration of the organisation, accompanied by a copy of the rules of the organisation.

(2) Where the provision of subsection (1) are not complied with, the members of the managing committee of the organisation commit an offence and are liable on conviction before a Magistrate to a fine not exceeding one thousand dalasis for each day the non compliance continues.

(3) The Registrar shall, within one month of the receipt of the application and rules under section 97, cause notice of the application, together with the rules of the organisation, to be published in the *Gazette*.

Conditions for registration

98. (1) The Registrar shall not register an organisation unless he or she is satisfied that -

- (a) the rules of the organisation have been submitted in writing and satisfactorily disclose the objects of the organisation;
 - (b) one of the principal objects of the organisation is an object specified in subsection (3) or (4) of section 96, as the case may be;
 - (c) in the case of an organisation consisting of persons engaged in, or engaged in working in, more than one trade or occupation, the rules of the organisation contain provision adequate to protect the sectional interests of those persons; and
 - (d) no objection received to the registration shows that the organisation conducts its affairs in contradiction of the laws or Constitution of The Gambia.
- (2) Before making a decision to deny an application for registration, the Registrar shall give the managing committee of the organisation the right to make such oral or written submissions in support of its application, as the managing committee considers appropriate.
- (3) Within three months after the date of publication of the notice of receipt of the application under section 97, the Registrar shall notify the organisation-
- (a) that it has or has not, been registered; and
 - (b) if it has not been registered, the reasons for non-registration.
- (4) A member of an organisation whose application for registration has been denied may appeal against the decision to the High Court within three months from the date of the denial.

- (5) On an appeal under subsection (4), the High Court may make such order as it thinks proper, including an order that the organisation be registered, and a direction as to the cost of the appeal.
- Registration 99. (1) Within two months of the date of publication of the notice referred to in section 97, the Registrar, on being satisfied that the organisation has complied with any regulations for registration in force under this Part and subject to the provisions of section 98, register the organisation and its rules either as an employers' organisation or as a trade union.
- (2) On registration, the Registrar shall issue a certificate, which, unless revoked or cancelled, is conclusive evidence that the provisions of this Act as to registration have been complied with.
- Legal personality 100. An organisation registered under this Part has legal personality, with the right to sue and be sued, enter into contracts, own and dispose of property, real and personal, and is subject in all other ways to the laws of The Gambia in accord with its status under this section.
- Maintenance of registration 101. An employers' organisation or trade union that is or has been registered immediately before the commencement of this Act is deemed to be registered under this Act.
- Initial returns 102. (1) Within three months of receipt of notification from the Registrar that the organisation has been registered, the secretary of the organisation shall deposit with the Registrar -
- (a) a note of the name and address of the registered office of the organisation;

- (b) a copy of the rules of the organisation showing any difference, if any, between them and those submitted in support of the application for registration;
 - (c) a list of the names and addresses of all the national officers of the organisation whether or not they are wholly or partially remunerated by the organisation;
 - (d) the names and addresses of the members of the governing body of the organisation;
 - (e) a statement of the current financial position of the organisation containing a note of the date on which the financial year of the organisation is due to end; and
 - (f) in the case of a trade union, a statement of the number of members of the organisation at a specified date not earlier than one month before the date of the return.
- (2) While the organisation remains registered, the secretary of the organisation shall notify the Registrar within one month of any change of a matter notified under paragraph (a), (b), (d) or (f) of subsection (1).
- (3) On notification by a registered organisation of its change of name, the Registrar shall register the new name and delete the former name, unless the new name so closely resembles the name of an existing registered organisation as to be likely to cause confusion.
- (4) A registered organisation that fails to give the information required by this section commits an offence and is liable on conviction to a fine of not exceeding twenty thousand dalasis.

Annual returns

103. (1) Subject to subsection (2), an organisation registered under this Part shall, not later than the thirty-first day of January in every year, furnish to the Registrar an annual return containing the information specified in this section.

(2) An organisation is not required to furnish an annual return under this section until at least twelve months after the date of its registration.

(3) The annual return shall include -

- (a) a general statement of the receipts, funds, effects and expenditure of the organisation showing -
 - (i) fully the assets and liabilities at that date, and the receipts and expenditure during the year preceding the date of the return,
 - (ii) separately the expenditure in respect of the several objects of the organisation, the expenditure for remuneration of officers and the expenditure for training officers and officials of the organisation;
- (b) a note of the number of members of the organisation at the commencement of that year; and
- (c) a note of any alteration in the rules of the organisation which came into operation in the year preceding that year.

(4) A registered organisation that fails to provide an annual return commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis.

Inspection and
audit of accounts

104. (1) Where the Registrar, on the basis of an annual return, is unable to -

- (a) determine with accuracy the receipt or expenditure of the organisation or the present financial position of the organisation; or
- (b) ascertain with certainty the absence of irregularity or fraud,

he or she may, call for any book, record or other document kept by the organisation and relating to the account for his or her examination, or for examination by an auditor qualified as an accountant, appointed by him or her.

(2) Without derogating from the generality of subsection (1), an organisation shall disclose the following matters in its accounts -

- (a) the authority for all expenditure by the organisation;
- (b) the state of arrears of a payment due to the organisation including a statement of the estimated arrears of dues from members and a note of the steps taken to collect or write-off any arrears of more than three months' standing;
- (c) the state of the organisation's investments and of deposits or loans made by or on behalf of the organisation, and of any obligation of the organisation in respect of any guarantee for an advance, loan or mortgage to any person; and

(d) a statement of the estimated value of the property of the organisation.

(3) Where the Registrar appoints an auditor under subsection (1), the organisation shall pay the reasonable expenses of the audit.

(4) An auditor has the power to require the production of all books, papers and documents relating to the accounts to be audited and to inspect them, but the auditor shall not enter the premises of an organisation without the consent of the organisation.

(5) A person who -

- (a) fails to furnish any book, record or other document called for by the Registrar under subsection (1);
- (b) fails to provide the auditor with any book, paper, or document to which the auditor requires ; or
- (c) otherwise hinders or molests the Registrar or the auditor in the exercise of the powers granted to them by this section,

commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

(6) Where a person fails to comply with a requirement specified in subsection (1) or hinders the Registrar or an auditor in the exercise of their powers under this section, the Registrar may apply to the High Court, and the Court shall, if satisfied that the failure or hindrance has occurred, order the person concerned to comply with the requirement or cease the hindrance.

(7) Where an examination or audit of any account under the provisions of this section reveals that –

- (a) a criminal offence may have been committed;
- (b) a failure to satisfy any provision of this Act may have occurred; or
- (c) the organisation has failed to take adequate steps to secure payment of outstanding monies due to it,

the Registrar may, if it appears expedient to do so for the benefit of the members of the organisation, institute appropriate criminal or civil proceedings against the person concerned.

(8) The proceedings under subsection (7) shall be instituted on behalf of and in the name of the organisation but shall be conducted at the expense of the Registrar.

(9) Once the Registrar has certified the copy of the accounts submitted under the provisions of this section as acceptable, the organisation shall make it available at its registered office for inspection by any member of the organisation on reasonable request.

Cancellation of
registration

105. (1) The Registrar may cancel the registration of an organisation if, after notification to the organisation at the last known address of its registered office and consideration of any representation made to him or her by any person acting on behalf of the organisation, he or she is satisfied that –

- (a) the organisation has ceased to exist;
- (b) the organisation does not satisfy, or has ceased to satisfy the requirements of section 98;
- (c) any one of the purposes of the organisation is unlawful; or
- (d) the organisation has requested that its registration be cancelled.

(2) The Registrar shall notify an organisation of the cancellation of its registration at the last known address of its registered office.

(3) Any one or more members of an organisation whose registration has been cancelled may, within sixty days of their notification of the cancellation, appeal against the cancellation to the High Court.

(4) On an appeal under subsection (3), the High Court may make such order as it thinks proper, including an order to register the organisation and a direction as to costs.

(5) The Registrar shall not give effect to a cancellation of registration, when the final outcome of an appeal is pending.

Regulations for
the operation of
this Part

106. The Registrar may make rules to facilitate the operation of this Part and shall publish those rules in the *Gazette*.

PART XIII – FREEDOM OF ASSOCIATION, RIGHT TO COLLECTIVE BARGAINING, AND INDUSTRIAL RELATION

Freedom to
associate

107. Workers and employers have the right to establish and join workers' and employers' organisations of their own choice in accordance with the Constitution and laws of The Gambia.

Organisations'
rights

108. (1) Workers' and employers' organisations have the right to draw up their constitutions and rules, to elect their representatives, to organise their administration and activities, and to formulate their programmes in full freedom, subject only to the Constitution and laws of The Gambia.

(2) Workers' and employers' organisations have the right to establish and join federations and confederations, and any organisation, federation or confederation has the right to affiliate with international organisations of workers and employers, subject only to the Constitution and laws of The Gambia.

Prohibition of
domination

109. (1) An employer who does an act designed to promote the establishment of a workers' organisation under its domination, or to support a workers' organisation by financial or other means, with the object of placing the organisation under his or her control, commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis.

(2) A person who has an interest in the matter may bring an action before the High Court alleging the offence specified in subsection (1).

(3) A Court that finds an employer guilty of an offence specified in subsection (1) may also order the cancellation of the registration of the dominated workers' organisation.

(4) The powers given by this section for remedying an employer's domination of a workers' organisation does not prevent any court from fashioning a remedy which it deems adequate in the circumstances.

Joint Industrial
Councils

110. (1) There are hereby established Joint Industrial Councils for the following industries, which shall be constituted in accordance with the provisions of this Act-

- (a) commerce;
- (b) artisans;
- (c) transport;
- (d) the port industry; and
- (e) agriculture and fisheries.

(2) The Secretary of State may-

- (a) on the advice of the Labour Advisory Board, by Order published in the *Gazette*, constitute other Joint Industrial Councils; and
- (b) assign to the Joint Industrial Councils supervision over the terms and conditions of employment of such categories of industry and of workers as, on the advice of the Labour Advisory Board, he or she deems fit.

(3) The Secretary of State may, on the advice of the Labour Advisory Board-

- (a) revise the assignment of categories of industry and of workers in respect of any Joint Industrial Council; and
- (b) terminate the operation of any Joint Industrial Council,

if he or she believes that adequate terms and conditions of employment will be maintained for all grades of workers for whom the Council operates.

(4) The Secretary of State shall appoint to each Joint Industrial Council-

- (a) equal number of representatives of employers' organisations and of registered trade unions; and
- (b) two independent members.

(5) A trade union which satisfies the Secretary of State that it has in membership not less than twenty-five *per cent* of the employees in any three or more categories of employees for which the Joint Industrial Council operates is entitled to have at least one representative on the relevant Joint Industrial Council.

(6) No registered trade union shall have more than three times the number of members of a Joint Industrial Council and of workers as any other single registered trade union which is a member of that Joint Industrial Council.

111. (1) A Joint Industrial Council shall, by agreement of a majority of representatives of employers and of trade unions, fix the minimum terms and conditions of employment of any employee or category of employees within the industries or job categories for which it operates, whether or not the employees are in management grades or are pensionable.

(2) A Joint Industrial Council shall fix minimum terms and conditions of employment for apprentices and, separately, for trained categories of workers possessing trade certificates.

(3) A provision of a Joint Industrial Council agreement, which is contrary to a valid direction of the Authority, is invalid.

(4) A Joint Industrial Council has the power to fix, amend or revoke any classification of trades within the industry in which it operates but shall act on the recommendation of the Labour Advisory Board in accordance with section 43.

(5) Nothing in this section permits a Joint Industrial Council to make any agreement which contravenes or derogates from any provision of this Act or of any other legislative provision whatsoever.

Officers of Joint Industrial Councils

112. (1) The members of a Joint Industrial Council shall, at the first meeting in each calendar year, elect, to a twelve-month term, a chairperson and deputy chairperson from among their number.

(2) An outgoing chairperson and deputy chairperson are eligible for re-election under subsection (1).

Rules of Joint Industrial Council

113. A Joint Industrial Council may adopt, replace or amend its rules of procedure, but the rules must not contravene or revoke any provision of this Act.

Meetings of Joint Industrial Councils

114. (1) The chairperson, or if he or she is for any reason incapable of acting or fails or declines to, the deputy chairperson of a Joint

Industrial Council shall convene a meeting of that Council at least once in every six months and, in any event, on the request of any three members of the Council and shall cause all members to be notified of the time and place of the meeting.

(2) If both the chairperson and the deputy chairperson are incapable of acting or fail or decline to act in accordance with subsection (1), any three members of the Joint Industrial Council may convene a meeting of the Council and those members shall cause all members to be notified of the time and place of the meeting.

(3) If the chairperson or the deputy chairperson willfully fails or declines to convene a meeting of the relevant Joint Industrial Council as required by subsection (1) he or she shall, on the application of any member of that Council to the Tribunal, be removed from office, in which case the Secretary of State shall appoint a replacement within three months of the removal.

(4) If a meeting of a Joint Industrial Council properly convened under subsection (1) or subsection (2) is postponed, or is not attended by a quorum as established in its rules of procedure or is, for any other reason, ineffective, the person convening the meeting shall reconvene the meeting after a reasonable interval and shall notify the members of the time and place of the meeting.

(5) If, at a meeting reconvened under subsection (4) because-

- (a) at the first meeting there was no quorum on one side of the membership; or

(b) the first meeting was postponed at the request of one side of its membership,

there is no quorum on the same side, the reconvened meeting shall, notwithstanding anything in the Council's rules of procedure, be conclusively deemed to have a quorum and competent to conduct the business of the Council.

(6) A meeting reconvened under subsection (5) shall not be postponed again on the request of the same side and shall, if necessary, appoint an acting chairperson for the meeting.

(7) A Joint Industrial Council shall not meet jointly with another except with the agreement of the employer and trade union representatives and the independent members of all the Councils concerned.

(8) The Commissioner, or such person as he or she shall appoint for the purpose, may attend a meeting of a Joint Industrial Council in an advisory capacity.

Publication of agreement

115. (1) A Joint Industrial Council shall request the Secretary of State to publish by Notice, in the *Gazette*, such minimum terms and conditions of employment on which it has agreed.

(2) The Secretary of State shall, within one month of receipt of a request under subsection (1), either -

- (a) publish, in the *Gazette*, Notice of the agreement which constitutes the minimum terms and conditions of employ-

ment for employees or group of employees within the industry for which the Joint Industry Council operates; or

- (b) refer any matter back to the Joint Industrial Council for reconsideration, and delay publication until the Joint Industrial Council again requests publication of the agreement in the same or an amended form.

(3) The Secretary of State shall not refer any matter back to a Joint Industrial Council for reconsideration a second time, but shall publish the Notice in the *Gazette*.

Effect of
publication

116. (1) Within the expiration of one month of the publication of Notice of a Joint Industrial Council agreement, all employers of employees or groups of employees specified in the agreement shall observe terms and conditions of employment not less favourable than those set out in the Notice.

(2) On the coming into operation of the obligation specified in subsection (1), the terms and conditions of employment specified in the Notice shall be implied into the contract of employment of each employee to whom they apply and any provision less favourable in the contract is null and void.

(3) Nothing in this section or in any provision of this Act prevents the formation of a valid contract of employment setting terms and conditions more beneficial than those provided by an agreement of a Joint Industrial Council.

Penalties for
failure to apply
terms and
conditions of
employment

117. (1) An employer who applies terms and conditions of employment, that are less favourable than those specified in the relevant published Joint Industrial Council agreement, commits an offence and is liable on conviction to a fine not exceeding five hundred dalasis for each day of the offence.

(2) A Court that finds an employer guilty of the offence specified in subsection (1) may order the employer to pay to each affected employee such sum as the Court shall assess as the appropriate monetary compensation for the the benefit he or she has actually received and the benefit he or she would have received by reason of compliance with section 116.

(3) The powers given by this section for the recovery of sums due from an employer are not in derogation from any right to recover those sums by civil proceedings, but in the civil proceedings a sum recovered by reason of subsection (2) shall be taken into account and set off against the amount of damages awarded in those proceedings.

Special terms for
disabled persons

118. (1) An employee or other person desiring to be employed who is affected by an infirmity or physical incapacity, which renders him or her incapable of performing work of a quantity and quality that justified payment of the minimum remuneration specified in a Joint Industrial Council agreement, may apply for a permit authorising his or her employment at a specified rate less than the minimum remuneration set by the agreement.

(2) An application under subsection (1) shall be made to the chairperson of the relevant Joint Industrial Council, who shall grant the application subject to such conditions as he or she may determine.

(3) Whenever the chairperson of a Joint Industrial Council receives an application under this section, he or she shall report the fact of the application and the action taken on it to the next meeting of the Joint Industrial Council.

(4) On receiving the information in subsection (3), a Joint Industrial Council may withdraw the permit or amend, impose, or revoke any condition attached to it, and any action taken shall come into force immediately.

Records and
notices

119. (1) The employer of the employees to whom a Joint Industrial Council agreement applies shall-

- (a) keep, for not less than three years, records showing compliance with section 116, as in respect of those employees; and
- (b) post in a prominent place at the workplace a notice containing the terms of the agreement in a language that all the employees understand.

(2) An employer who fails to comply with any provision of this section commits an offence and is liable on conviction to a fine not exceeding five hundred dalasis for each day the offence continues.

(3) An employer who -

- (a) keeps a false or misleading record, or wilfully makes a false or misleading entry in a record; or
- (b) with intent to mislead, produces a false record or gives a false information,

commits an offence and is liable on conviction to a fine of five hundred dalasis for every false or misleading record or statement.

Employment of
dock workers, etc

120. (1) The Gambia Ports Authority is responsible for the recruitment of dockworkers on such terms and conditions as it may determine as appropriate.

(2) In this section, "dock workers" include transit shed labour and tally clerks.

Exemption from
collective
bargaining

121 (1) The Secretary of State shall, on the joint application of an employer and a trade union, exempt any category of workers, industry or establishment from the operation of the relevant Joint Industrial Council agreement, if he or she is satisfied that there exists a machinery for voluntary collective bargaining sufficient to maintain adequate terms and conditions of employment in that category, industry, or establishment.

(2) An exemption under subsection (1) shall be made by Notice published in the *Gazette*.

(3) The Secretary of State may, by Notice published in the *Gazette*, revoke or amend the exemption granted pursuant to subsection (1), if he or she is satisfied that -

- (a) the machinery in question has wholly or partially ceased to exist; or

- (b) the terms or conditions of employment have fallen below the minimum level established by the relevant Joint Industrial Council agreement without satisfactory compensatory terms or conditions.

(4) On the revocation of an exemption under subsection (3), the relevant Joint Industrial Council agreement shall apply, but any term or condition previously applied to an employee that-

- (a) is more beneficial than the corresponding term or condition in the Joint Industrial Council agreement, shall continue to apply and be incorporated in the employees' contract of employment as a minimum condition; and
- (b) is less beneficial than the corresponding term or condition in the Joint Industrial Council agreement, shall become invalid and be replaced by the corresponding term of the Joint Industrial Council agreement.

Enforceability of
voluntary agree-
ments

122 (1) Notwithstanding anything in section 123, a collective agreement made between an employer and a trade union, in circumstances to which section 121 applies, is enforceable as a contract between the parties to the agreement.

(2) A copy of an agreement falling within section 121 shall be reduced to writing and sent to the Commissioner who shall register the agreement, unless he or she is not satisfied that the writing adequately represents the terms of the agreement between the parties.

Registration of
voluntary
agreements

123. (1) The Commissioner shall register a written voluntary collective agreement, which is not exempted under section 121, on the application of both parties to the agreement and notify the parties of the registration.

(2) On receipt by both parties of notification of registration of a voluntary agreement under subsection (1), the agreement becomes enforceable as a contract between the parties to the agreement.

Enforcement as
part of the
contract of
employment

124. The provisions of a collective agreement registered under section 122 or 123 which, on their face, are to be applied to a class or group of employees-

- (a) is applicable to all employees in the class or group employed by a party to the agreement, irrespective of whether the employee is a member of the trade union which is party to the agreement; and

- (b) is deemed to be incorporated into the contract of employment of each employee in the class or group.

Binding effect of
procedural
agreements

125. Where a collective agreement registered under section 122 or 123, which contains clauses directly applicable to the terms and conditions of employment of an employee or class of employees, those clauses are deemed to be incorporated as terms and conditions of the contracts of employment of the employee or class of employees.

Effect of
procedural
agreements on
industrial action

126. A party to a collective agreement registered under section 122 or 123 shall not take any form of industrial action or impose any other sanction, including a withdrawal of labour or lockout in pursuit of an industrial dispute, if the agreement sets procedures for the settlement of disputes during the duration of the agreement, unless the dispute relates to a provision of an agreement which-

- (a) has fallen below the minimum standard set by the relevant Joint Industrial Council; or
- (b) would have been set by a Joint Industrial Council but for the operation of section 121.

Time limit on
binding
agreements

127. (1) When a Joint Industrial Council agreement or an agreement falling within section 121, 122 or 123 specifies a period of time during which a substantive provision shall operate without review, the substantive provision is binding on the parties and not subject to revision, alteration or cancellation during the period specified, but if the period specified exceeds three years it is deemed to be three years.

(2) Where an agreement referred to in subsection (1) specifies no period of time during which it shall remain binding, it is deemed to remain binding for one year.

(3) A party to an agreement may, not earlier than three months before the termination of the agreement, demand negotiation of a new agreement to take effect on or after termination of the agreement, and the other party to the agreement shall participate in good faith in the negotiation.

Commissioner as
adviser

128 The Commissioner or a person acceptable to the parties nominated by him or her, may, if jointly invited by the parties involved, attend a Works Committee or a voluntary negotiation as an adviser, mediator or conciliator.

Works
Committee

129. (1) An employer who employs one hundred or more employees at a single establishment for a continuous period of three months shall set up a Works Committee on the request of a trade union which has, in membership, an employee at that establishment, unless a Works Committee applicable to the employee already exists.

(2) A Works Committee established in accordance with subsection (1) shall-

- (a) not be disbanded if the number of employees at that establishment exceeds ten, whether or not any employee remains a member of a trade union; and
- (b) operate in respect of all members of management or of all other workers as appropriate to the membership of the trade union which requested its establishment.

(3) A Works Committee shall compose of employees of the establishment, elected by secret ballot at intervals determined by the employer but at least once in every three years.

(4) The members of the Works Committee shall be elected by the employees represented by the Committee as a whole, or by the employees voting by categories, as defined by the constitution of the Committee.

(5) Voting for members of a Works Committee shall be readily accessible to all members of the electorate, and candidates shall be afforded not less than one reasonable opportunity to address a meeting of all the electorate.

(6) Nothing in this section prevents the voluntary establishment of a Works Committee and the Committee when established is subject to the provisions of this section.

(7) The management of an establishment shall consult a Works Committee, whether established under this section or voluntarily, on any proposal, which may affect the employment or the terms and conditions of employment of an employee represented by that Committee.

Requirements for
sole bargaining
agency

130. (1) An employer may grant a trade union sole bargaining rights for a category of employees if the trade union has, in membership, at least thirty *per cent* of the employees in that category at his or her establishment or group of establishments.

(2) An employer shall not grant sole bargaining rights to a trade union if another trade union has more employees in membership among that category of employees at the establishment or group of establishments.

(3) Subject to the provisions of subsections (1) and (2), if one or more trade unions have an aggregate membership of not less than forty-five *per cent* of the employees in a category of employees at an establishment where more than one hundred employees in total are habitually employed, the union or unions may request the employer to constitute it or them as the sole bargaining agent for that category of employees.

(4) Subject to the provisions of subsection (1) and (2), if one or more unions have in aggregate membership fifty *per cent* plus one of the employees in a category of employees at an establishment where more than one hundred employees in total are habitually employed, the employer shall grant that union or those unions the sole bargaining right for that category of employees within three months from the date of a request by the union or unions.

(5) If an employer requested to grant sole bargaining rights by reason of subsection (4) fails to do so within three months from the date of the request, a trade union party to that request may at any time after the expiration of the three months complain to the Tribunal.

(6) The Tribunal may, if satisfied that the request has been duly made and the conditions specified in subsection (4) have been satisfied, order the employer to constitute the union or unions as the sole bargaining agent.

(7) If an employer fails to implement an order made under subsection (6) within a reasonable period after it has been made, each director, member of the board, proprietor, partner or other person the Tribunal determines to be an employer, commits an offence and is liable on conviction to a fine not exceeding five hundred dalasis for every day of the failure to comply with the Tribunal's order.

Balloting

131. (1) An employer may, on receiving an application to establish a sole bargaining agency, organise a secret ballot among the employees in the specified category in order to determine the matters referred to in the Third Schedule.

Third Schedule

(2) An employer may, at the request in writing of not less than twenty *per cent* of the employees in a category of employees subject to sole bargaining agreements, organise a secret ballot to determine whether sufficient support remains for continuation of the sole bargaining agency.

(3) An employer shall not organise a secret ballot under subsection (2) within twelve months of a proceeding ballot organised under subsection (1).

(4) The ballots mentioned in subsections (1) and (2) shall give one vote to each employee in the sole bargaining category and ask only those questions specified in the Third Schedule.

Third Schedule

(5) If a ballot discloses that-

(a) the sole bargaining agent or the trade union applying for sole bargaining agency has in membership less than thirty *per cent* of the employees in the relevant category, the agency shall not be granted or shall be withdrawn, as the case may be, and

(b) the trade union has in membership less than forty-five *per cent* of the employees in that category, the employer shall be free to decide whether to grant or withdraw the agency, as the case may be.

(6) Where, on a ballot as to continuation of a sole bargaining agency, the answers to the optional questions disclose that the union having the sole agency has, in membership, less than forty-five *per cent* of the employees in the category and another trade union registered as efficient has, in membership, a higher percentage of the employees in that category, the employer shall withdraw the bargaining agency agreement with the first mentioned trade union.

(7) Where a sole bargaining agency is withdrawn as a result of the provisions of subsection (5) or (6), the employer-

(a) may, if he or she wishes, withdraw check-off arrangements; and

- (b) shall withdraw check-off arrangements with the former sole bargaining agent, if a sole bargaining agency in respect of the same category of employees is subsequently granted to another trade union,

Negotiation in
good faith

132. (1) An employer shall-

- (a) bargain in good faith with a sole bargaining agent on all matters in respect of the relevant category of employees which might give rise to a trade dispute; and
- (b) not negotiate a matter with any other trade union, organisation or person in respect of that category of employees.

(2) A sole bargaining agent shall negotiate in good faith on behalf of all the employees within the category of employees to which the agency relates, whether or not they are members of the union or unions.

Check-off

133. (1) Where a trade union or a group of trade unions has been constituted a sole bargaining agent, the union or group may request the employer to deduct union membership dues from the wages of union members and the employer shall comply with the request in the case of an employee who gives written consent to the deduction.

(2) An employer shall remit the amount so deducted to the relevant trade union or group, but may retain a sum, not exceeding five *per cent* of the amount so deducted, to meet the cost of collecting and remitting the amount.

Conspiracy in
trade disputes

134. (1) An agreement or a combination by two or more persons to do or procure to be done an act in contemplation or furtherance of a trade dispute does not constitute a criminal conspiracy if the act committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or a combination by two or more persons is, if done in contemplation or furtherance of a trade dispute, not actionable unless the act if done without the agreement or combination would be actionable.

Immunity from
liability for inter-
ference with
contract

135. An act done by a person in contemplation or furtherance of a trade dispute is not actionable on the ground only that it-

- (a) induces some other person to break a contract of employment or to interfere with a contract of employment of some other person or with the rights of some other person to dispose of his or her capital or his or her labour; or
- (b) constitutes a threat to do any of the things mentioned in this section.

Immunity from
action in tort
against trade
unions

136. An act done by or on behalf of a registered trade union in contemplation or furtherance of a trade dispute is not actionable in tort against the trade union or against a person in a representative capacity for the trade union.

Picketing

137. It is lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer in contemplation or furtherance of a trade dispute, to assemble-

- (a) at or near their own place of employment; or
- (b) if the persons are officials of the registered trade union, at or near the place of employment of employees whom they represent,

if they so assemble for the purpose of peacefully persuading a person to work or abstain from working or to communicate information.

Secondary action

138. (1) An employee who is subject to disciplinary action by his or her employer shall not take industrial action against the employer, unless his or her employer is a party to a trade dispute, or deemed to be a party to a trade dispute as specified in subsection (2).

(2) For the purposes of subsection (1), the following employers are deemed to be a party to a trade dispute-

- (a) an employer who controlled by the same company, person or group of persons, one of which is party a to the trade dispute in contemplation or furtherance of which the industrial action in question is taken; or
- (b) an employer who is supplying goods or services, or at any time, during the trade dispute against the employer who is party to a trade dispute, in contemplation or furtherance of which the action in question is taken, has supplied to the employer who is party to the dispute, goods or services in place of goods or

services, the supply of which has been adversely affected by the industrial action taken directly against the employer who is party to the dispute.

(3) An industrial action, or incitement or inducement to undertake industrial action, in breach of subsection (1), is deemed unlawful and may be prohibited by order of the High Court on the application of an employer affected by the action.

(4) The immunity granted by any provision of this Part does not apply to improper industrial action under this section or section 139.

Political action
and action in
breach of
procedure

139. (1) The following industrial actions are deemed improper industrial actions and may be prohibited by order of the High Court, on the application of an employer affected by the action-

- (a) subject to the provisions of subsection (2), action of which fourteen days' notice has not been given in writing to the Commissioner; or
- (b) action which is in breach of a collectively agreed procedure for the settlement of trade disputes applicable to the trade dispute in question and which provides expressly or impliedly in accordance with section 127 that the procedure shall be exhausted before industrial action is taken; or

- (c) action which is primarily in pursuit of a political object, where a trade dispute is either no part of the purpose of the action or only an insignificant part of that purpose.

(2) Where the taking of industrial action is likely to affect the continuation of a service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the Commissioner shall be given twenty-eight days notice of the action.

Emergency provisions

140. (1) Where, in the opinion of the President of the Republic of The Gambia, the existence of an industrial action threatens the continuation of a service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population, he or she may –

- (a) appoint a Court of Inquiry to report to him or her the facts of the dispute within one week of its appointment; or
- (b) order a return to work and immediately appoint a Board of Arbitration in accordance with subsection (3).

(2) The report of the Court of Inquiry shall be published in the *Gazette* within seven days of its submission to the President.

(3) If the dispute has not been settled within seven days of the publication of the report of the Court of Inquiry, the President shall immediately appoint a Board of Arbitration whose award shall-

- (a) be made within seven days of its appointment;
- (b) be published in the *Gazette* within three days of its making;
- (c) be final and binding on the parties; and
- (d) where appropriate to individual terms and conditions of employment, be deemed to be incorporated as terms and conditions of employment of the employees to whom it applies.

(4) An industrial action in contemplation or in furtherance of the same trade dispute as gave rise to the action referred to in subsection (1), taken after the appointment of the Court of Inquiry and before the award of the Board of Arbitration-

- (a) is deemed an unlawful industrial action; and
- (b) is prohibited without further order of any court and may be penalised as if it were a contempt of the High Court, but this prohibition does not apply if the Court of Inquiry or the Board of Arbitration fails to report within the specified time or the report of either body is not published in the *Gazette* within the times specified.

(5) A Judge of the High Court, nominated by the Chief Justice, shall be the chairperson of the Court of Inquiry and an independent person who has experience of industry or of trade unions or of industrial relations, nominated by the Chief Justice, shall be the chairperson of the Board of Arbitration.

(6) The Court of Inquiry and the Board of Arbitration shall have, in addition to the Chairperson;

(a) a member nominated by the Chief Justice, after consultation with trade unions not party to the dispute in question; and

(b) a member nominated by the Chief Justice, after consultation with employers or organisations of employers not party to the dispute in question.

(7) A party to the industrial action may appeal to the High Court on the ground that the industrial action does not fall within subsection (1), and if there is an appeal, none of the provisions of this section shall apply until the decision of the High Court is announced.

PART XIV - MISCELLANEOUS

Discrimination on
the basis of
HIV/AIDS

141. (1) An employer shall not discriminate in any way in employment, including in hiring, remuneration, promotion or assignment, and termination, based on the actual, perceived or suspected HIV/AIDS status of a person.

(2) A complaint of discrimination on the basis of HIV/AIDS status may be made to the Commissioner and shall, in any case, be within the jurisdiction of the Tribunal.

(3) An employer who discriminates on the basis of HIV/AIDS status of a person commits an offence and is liable on conviction to a fine of not less than five thousand dalasis and not more than twenty-five thousand dalasis, in addition to any other remedy available to the person or persons involved

Enforceability of
illegal contracts

142. No provision of a contract of employment or a right or an obligation granted or imposed by this Act or any other rule of law is unenforceable by reason of illegality of the contract on the grounds of public policy, if-

(a) the person seeking to enforce the contract did not know of the illegality when the contract was made; and

(b) the Tribunal is satisfied that the absence of that knowledge is not due to that person's willful neglect or default.

Continuity of
employment

143. (1) The following provisions apply wherever continuity of employment is to be ascertained for the purpose of any provision of this Act or any other law-

(a) a period of continuous employment begins from and includes the first day of which an employee begins to work for an employer and continues up to and includes the date of termination of employment;

(b) where an employee is engaged in a seasonal occupation and is employed in two successive seasons but is not employed by the same employer during an intervening period, the employee is deemed to have been continuously employed for the aggregate of all the time he or she has actually been working for the same employer in successive seasons;

(c) periods of employment with the same employer, not falling within paragraph (b) where the employment has been temporarily interrupted by weather, the suspension of a project, a period of maternity leave or for any other reason, are deemed to be periods of continuous employment for the aggregate of all the time covered by those periods of employment;

(d) consecutive periods of employment with two or more successive employers, where a successor has taken over the business of the former employer either as receiver or liquidator, personal representative or heir, or on transfer of the whole or part of the business, or otherwise, is deemed a single period of continuous employment with the successor.

(2) The payment of a retainer during a period of interruption of employment is not, of itself, regarded as implying either that the contract continues during that period or has been terminated at the commencement of that period.

144. (1) An employer or a class of employers may be required, by order of the Commissioner and at the employer's expense, to display in a prominent position at any work-place, a notice explaining any provision, or Part, or the whole of this Act, in such terms and languages as the Commissioner may decide.

Display of
explanatory
notices

(2) The Commissioner may cause to be printed and sold, at a reasonable price, a model copy of any notice required to be displayed under subsection (1).

Regulations

145. The Secretary of State may make regulations for the better carrying into effect of the provisions of this Act.

Repeal and saving of regu- lations, orders, awards and agreements Cap 56:01

146. (1) The Labour Act is hereby repealed.

(2) All regulations, orders, awards or agreements made by or in relation to any Joint Industrial Council, or affecting the composition or functions of the Department of Labour made before the commencement of this Act shall, on the commencement of this Act, be deemed to remain effective and in force in so far as they do not contravene this Act.

SCHEDULES

FIRST SCHEDULE (sections 32 and 91(5))

INDUSTRIAL TRIBUNAL RULES

Arrangement of Rules

Rule

1. Content of claims
2. Limitation
3. Service of claim and notice of hearing
4. Promotion of conciliation
5. Chair to prevent prejudicial delay
6. Place of hearing
7. Public hearing unless otherwise ordered
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9. Hearing to be informal
10. Hearing in the absence of defendant
11. Decision announced at conclusion of hearing, if possible
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15. Joint defendants
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19. Review of awards or orders
20. Leave to appeal on point of law
21. Power of High Court
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23. Stay of execution on review or appeal
24. Registration of awards in the High Court
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26. Payment of award in joint or representative claims
27. Defendant not liable for allocation of award
28. Chair to exercise powers of Magistrate
29. Registrar of the Tribunal
30. Amendment of Rules
31. Power of the Chair to enforce payment of fine, etc.
32. Procedure generally

INDUSTRIAL TRIBUNAL RULES

Content of claims

1. (1) A proceedings in the Tribunal shall be commenced by filing a claim with the Tribunal.

(2) A claim shall be in writing in the prescribed form, be signed, by each claimant and person represented, as being correct to the best of his or her knowledge, and shall contain -

- (a) the name and address of each claimant, and, in the case of a representative claim, the name and address of each person represented;
- (b) the name and address of each defendant;
- (c) the sum of money claimed by each claimant or person represented; and
- (d) such particulars of the claim as is reasonably sufficient to inform the defendant of the grounds for the claim and of the manner in which the amount claimed by each claimant or person represented has been calculated.

Limitation

2. (1) The following periods of limitation apply to the filing of claims before the Tribunal -

- (a) a claim arising from a contract of employment shall be made within two years of the date of the breach leading to the claim;
- (b) a claim arising in respect of an unfair dismissal under the Act shall be made within six months of the date of the dismissal;

(c) any other claim arising under the provisions of this Act shall be made within two years of the date of the cause of action.

(2) The Tribunal may in any case extend the period of limitation wherever it considers it just and equitable to do so, having regard to the interests of both parties.

Service of claim and notice of hearing

3. When a claim has been filed, the Chairperson shall-

- (a) fix a place and date for hearing of the claim which shall, unless the parties otherwise agree, be not later than thirty days from the filing of the claim, and
- (b) cause a copy of the claim, together with a notice in the prescribed form of the date and place of hearing, to be served on every defendant to the claim.

Promotion of conciliation

4. (1) The Tribunal may adjourn proceedings at any stage if it appears possible that the claim can be settled through conciliation.

(2) An order of adjournment under sub-rule (1) shall -

- (a) direct that the parties, together with a conciliator appointed by the Tribunal and mutually agreeable to the parties, attempt to effect a settlement; and
- (b) set a date, time and place for reconvening proceedings in the absence of settlement.

(3) The Tribunal shall not hear a claim until a certificate in the prescribed form signed by the conciliator appointed under sub-rule (2) is filed, or produced, to the effect that-

- (a) one or more of the parties had refused to take part in conciliation;
- (b) conciliation had been attempted but no settlement was reached;
- (c) conciliation was unlikely to result in a settlement being reached; or
- (d) conciliation may prejudice the interests of a party.

(4) A certificate under sub-rule (3) shall be filed with or produced to the Tribunal not later than twenty-four hours before the date fixed for the hearing of the claim.

Chair to prevent
prejudicial delay

5. A Chairperson and other Tribunal officers shall-

- (a) ensure that there is no avoidable delay in the determination of a claim; and
- (b) have regard to any proceedings in any other court which may result in judgments to the prejudice of the claimant.

Place of hearing

6. A Chairperson shall convene the Tribunal at such places and times as, having regard to the convenience of the parties and witnesses, he or she thinks fit.

Public hearing
unless otherwise

7. (1) The hearing of a claim shall be conducted in public.

Summary of
evidence

(2) Notwithstanding sub-rule (1), a Chairperson may order, in the interest of justice, that all or part of a hearing be conducted in private.

Hearing to be
informal

8. A Chairperson shall make notation of the evidence, submissions or statements made or given and of any point of law raised at the hearing and of his or her decision on such point of law.

9. (1) The Tribunal shall determine claims heard by it in a summary manner in accordance with these Rules.

(2) The Tribunal shall investigate any matter it considers relevant to a claim, whether or not a party has raised it.

(3) Subject to the Act, the hearing before the Tribunal shall be conducted without due regard for the rules of evidence, and the Tribunal may receive any evidence which it considers relevant.

Hearing in the
absence of
defendant

10. If a defendant who has been duly served with a copy of the claim and a notice of hearing fails to appear at the hearing, by himself or herself or by a person authorized by the Tribunal or defendant to appear on his or her behalf, the Tribunal may, if it is of the opinion that the facts relating to the claim are sufficiently established-

(a) hear and determine the claim; and

(b) make such award or order as it thinks fit,

notwithstanding the absence of the defendant.

Decision
announced at
conclusion of
hearing, if
possible

11. (1) The Tribunal shall deliver its determination of a claim and make such award or order on the claim at the conclusion of the hearing or within a reasonable time after the hearing, as it thinks fit.

(2) The reasons for an award or order shall be given, either orally or in writing, as the Chairperson thinks fit.

(3) A Chairperson shall, when the Tribunal has made an award or order orally, reduce it to writing before he or she rises.

(4) Every party to the proceedings is entitled to a copy of the written award or order.

Right to be heard

12. The following persons have a right to be heard before the Tribunal –

- (a) a claimant or defendant;
- (b) an authorized officer;
- (c) an officer or servant of an incorporated or unincorporated company or a member of a partnership, if the company or partnership is a party; and
- (d) with the leave of the Tribunal, an officer of a registered trade union or of an association of employers who is authorized in writing by a claimant or defendant to appear as his representative.

Consolidation of
claims

13. (1) If two or more claims are filed and it appears to the Tribunal that –

- (a) a common question of law or fact arises in both or all of them;

(b) the claims arise out of the same cause of action; or

(c) it would be in the interest of justice to consolidate the claims,

the Tribunal may order that the claims be consolidated.

(2) The power conferred by this section may be exercised notwithstanding that proceedings have begun on one or more of the claims.

Representative
claims

14. (1) If two or more persons have claims against the same defendant, those claims may be brought in the name of one of those persons as the representative of some or all of them.

(2) Notwithstanding sub-rule (1), the Tribunal may at any time order that the claims of all or any of the persons represented be heard separately, if it considers that bringing a representative claim may prejudice the defendant.

(3) A person represented in a representative claim is deemed to have authorized the representative on his or her behalf to –

- (a) call and give evidence and make submissions to the Tribunal on any matter arising during the inquiry into the claim;
- (b) file affidavits, statements or other documents;
- (c) agree to an adjournment or change of venue;
- (d) agree to the holding of and to take part in conciliation;

- (e) agree to a settlement of the claim on such terms as he thinks fit;
- (f) consent to the Tribunal having jurisdiction over a claim pursuant to the limitations set out in rule 2;
- (g) amend the claim in respect of all or any of the individual claims or to abandon the claim; and
- (h) act generally in as full and free a manner as the claimant could act himself or herself.

(4) The authority deemed to be given to a representative by sub-rule (3) may be withdrawn only by leave of the Tribunal.

(5) In making an award in respect of a representative claim, the Tribunal may allocate such part of the award to each person represented as it thinks fit.

(6) The Tribunal may, at any time before making an award, grant leave to any person to join as a person represented in a claim on such terms as it thinks fit.

(7) The Tribunal may cause public notice to be given of the particulars of a representative claim which has been filed and of the date and place fixed for hearing of the claim.

Joint defendants

15. (1) If two or more persons are defendants to a claim, it is sufficient to serve any one of them with process, and an award may be obtained and execution issued against any person so served, notwithstanding that any other person jointly liable may not be within the jurisdiction of the Tribunal.

(2) If an award made against a person in accordance with sub-rule (1) is certified by that person, he or she is entitled to recover in the Tribunal contribution from any other person jointly liable with him or her.

(3) An award obtained against a person in respect of his or her liability jointly with another person does not release the other person from liability under the award.

(4) A person against whom a claim has been made in respect of his or her liability jointly with another person, may set up any defence or counter claim which he or she would have been entitled to set up if all the persons liable had been made defendants.

(5) If two or more persons are joined as defendants, the claimant may-

- (a) obtain an award against any one or more of them; and
- (b) enforce the award without prejudice to his or her right to proceed with the action against any other defendant.

Costs

16. (1) The Tribunal may award to a party costs and expenses, which may include -

- (a) any reasonable expenses necessarily incurred and any loss of salary or wages suffered by that party; and
- (b) any reasonable sum paid to a witness for the expenses necessarily incurred and any loss of salary or wages suffered by him in attending a hearing of the Tribunal.

(2) In making an award of costs, the Tribunal shall include a direction as to the amount to be paid by each party who is liable to pay costs.

(3) An award of costs is enforceable in the same way as any other award made by the Tribunal.

Frivolous claims

17. The Tribunal may at any time dismiss a claim that it considers to be frivolous or vexatious on such terms as to payment of costs as it thinks fit.

Adjournment

18. If the Tribunal is of the opinion that the adjournment of a hearing may prejudice a party because of the disposal or loss of control of assets by a defendant, it may grant an adjournment on payment, into the Tribunal, of such sum of money, or the giving of such other security for the payment of the amount of any award, as the Tribunal thinks sufficient.

Review of awards or orders

19. (1) The Tribunal may, within fourteen days from the date of an award or order made by it, review its award or order –

- (a) on its own motion, on notice in the prescribed form to all parties; or
- (b) on the application of a party within seven days, on notice in the prescribed form to all other parties.

(2) On a review under sub-rule (1), the Tribunal may–

- (a) reopen and rehear the claim in whole or in part;
- (b) call or hear fresh evidence; and

(c) confirm, vary or reverse its previous award or order.

(3) The power conferred by sub-rule (1) may not be exercised if an application for leave to appeal has been made.

(4) On the application of a party for a review, the Tribunal may, having regard to the possibility of assets which may be available to satisfy an award being disposed of to the prejudice of any party, make such order regarding payment into the Tribunal, giving of security or otherwise, as it thinks fit.

Leave to appeal on point of law

20. (1) A party who is aggrieved by an award, order or determination of the Tribunal may appeal to the High Court on point of law.

(2) An appeal under this section shall be in the prescribed form and set out the grounds of appeal.

Power of High Court

21. (1) On an appeal under these Rules, the High Court may –

- (a) order a new inquiry by the Tribunal on such terms as it thinks fit;
- (b) confirm, vary or set aside the award or order; or
- (c) make such award or order in substitution for the award or order made by the Tribunal as it thinks fit.

(2) A decision of the High Court on an appeal is final.

Procedure on
appeal

22. Subject to these Rules, an appeal from the Tribunal shall be brought in such manner and be subject to such condition as shall be prescribed.

Stay of execution
on review or
appeal

23. (1) A decision by a Tribunal to exercise its power of review under rule 19 or the filing of an appeal under rule 20 does not operate as a stay of execution of an award or order, unless the Chairperson or High Court, as the case may be, otherwise orders.

(2) A stay of execution may be subject to such conditions as to costs, payments into the Tribunal, the giving of security or otherwise, as the Chairperson or High Court thinks fit.

Registration of
awards and
orders in the
High Court

24. (1) Subject to an appeal made under these Rules, a final award or order of the Tribunal may be registered in the High Court.

(2) On registration, the award or order becomes for all purposes a judgment of the High Court and may be enforced accordingly.

Interest on
claims and
awards

25. (1) The Tribunal may include in the amount of an award, interest on the whole or part of the amount claimed for the period, beginning on the date on which the cause of action arose and ending on the date of the award.

(2) The powers conferred by sub-rule (1) may be exercised -

(a) whether or not interest is expressly claimed;

(b) at any time after the date of the award, if it appears to the Tribunal that the failure to claim or to award interest was through inadvertence; and

(c) if an award is made *ex parte* against the defendant.

(3) An award shall carry interest at such rate as ordered by the Tribunal on the aggregate amount of the award, from the time beginning on the date of the award until satisfaction.

Payment of
award in joint or
representative
claims

26. In a joint or representative claim, the amount of an award or order shall be paid into the Tribunal and be allocated amongst such parties to the claim and in such amounts as the Tribunal thinks fit.

Defendant not
liable for
allocation of
award

27. When a defendant pays money into the Tribunal in full or part discharge of an award or order, he or she-

(a) is deemed to have satisfied his or her liability under the award or order to the extent of the amount so paid; and

(b) is not liable to any claimant as to the manner in which the money may be allocated by the Tribunal.

Chairperson to
exercise powers
of Magistrate

Cap.6:01
Cap.8:02

Registrar of the
Tribunal

28. In proceedings in the Tribunal, its Chairperson may, subject to this Act and these Rules, exercise all such powers as are conferred on him or her as a Magistrate by the Courts Act and the Subordinate Courts (Civil Proceedings) Act in respect of proceedings in a Magistrate's Court.

29. A Registrar of the Tribunal, or other person, shall be appointed and designated as the person who shall receive and register with the Tribunal all communications, including costs and deposits of awards.

THIRD SCHEDULE (section 131)

BALLOTS IN RESPECT OF SOLE BARGAINING AGENCIES

Questions to be asked on the establishment of a sole bargaining agency

1. The following questions may be asked in a ballot on the establishment of a sole bargaining agency-

- (a) Are you at present a member of the (XY) trade union?
- (b) Whether you are or are not a member of the (XY) trade union, do you wish the (XY) trade union to be the only organisation to represent you in negotiations with your employer on terms and conditions of employment?

Questions to be asked on the continuation of a sole bargaining agency

2. The following questions may be asked in a ballot on the continuation of a sole bargaining agency-

- (a) Are you at present a member of the (XY) trade union?
- (b) If you are not now a member of the (XY) trade union, have you ceased to be a member of the (XY) trade union during the past twelve months?
- (c) Whether you are or are not a member of the (XY) trade union, do you wish the (XY) trade union to continue to be the only organisation to represent you in negotiations with your employer on terms and conditions of employment?

Additional questions to be asked in certain cases on the continuation of sole bargaining agency

3. If the employer has reason to suspect that any other union has developed a substantial membership among employees in the category of employees for which a bargaining agency exists, he or she may add the following questions to a ballot on the continuation of a sole bargaining agency-

- (a) Are you at present a member of a trade union other than (XY) trade union? If so, specify which union.
- (b) Whether you are or are not a member of any other trade union other than the (XY) trade union, do you wish a trade union to be your only representative in negotiations with your employer on terms and conditions of employment?

PASSED in the National Assembly this Third day of September
in the year of Our Lord Two Thousand and Seven

D. C. M. Kebbeh
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill
which has passed in the National Assembly, and found by me to be a true and correct
copy of the said Bill.

D. C. M. Kebbeh
Clerk of the National Assembly.