

CONSOLIDATED TO 1 DECEMBER 2014

LAWS OF SEYCHELLES

CHAPTER 69

EMPLOYMENT ACT

[3rd April, 1995]

Act 2 of 1995
Act 8 of 1999
Act 4 of 2006
Act 21 of 2008
Act 18 of 2010
S.I 4 of 2011
SI 52 of 2013

Note: Subsidiary legislation made under the repealed Employment Act continues in force under this act (section 81).

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PART I – PRELIMINARY

Short title

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

Interpretation

2. In this Act-

“allowance” means a wage payable to a trainee;

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

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

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

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

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

“continuous employment” means consecutive employment for an unlimited period;

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

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

“employers’ organisation” means a trade union of employers registered under the Industrial Relations Act and includes a federation of such trade unions;

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

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

“Employment Service Bureau” means the Employment Service Bureau established under section 5;

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

“fixed-term contract” means consecutive employment for a fixed term;

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

“harassment” means any such unfriendly act, speech or gesture of one person towards another person that is based on the other person’s age, gender, race, colour, nationality, language, religion, disability, HIV status, sexual orientation or political, trade union or other association, or otherwise, as would adversely affect the other person’s dignity or make that person feel threatened, humiliated or embarrassed;

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

“member” means a member of the Employment Tribunal;

“Minister” means the Minister responsible for employment matters;

“Ministry” means the Ministry responsible for employment matters;

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

“National Vocational Training Board” means the Board established by section 28;

“Negotiation procedure” means the procedure laid down in Part I of Schedule 1.

“Outer island” means an island listed as such in Schedule 5;

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

“Piece work” means work the pay for which is determined by the amount of work performed irrespective of the time occupied in its performance;

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

“Secretary” means the Secretary to the Tribunal;

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

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

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

“trainee” means a person referred to in section 27;

“Tribunal” means the Employment Tribunal established under section 73A;

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

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

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

“young person” means a person who is not less than 15 years and not more than 18 years of age;

Republic bound

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

Application of Act, exemptions and restriction of jurisdiction of Court

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

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

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

(2) The Minister may, by order, exempt-

(a) any contract of employment;

(b) any person or category of persons;

(c) any business or occupation,

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

(3) Where provision is made under this Act for the hearing and determination of any matter in relation to a contract of employment to which this Act applies, any remedy or relief

granted under the Act in respect of that matter shall, subject to the supervisory jurisdiction of the Supreme Court conferred on that Court by article 125 of the Constitution, be binding on the parties to the hearing or determination.

PART II – EMPLOYMENT SERVICES BUREAU AND EMPLOYMENT AGENCIES

Employment Service Bureau

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

- (a) to monitor the activities of the employment agencies;
- (b) to collect and record all returns submitted by the employment agencies;
- (c) to keep a register of unemployed Seychellois seeking employment, being persons who have not been in employment at any time;
- (d) to keep a register of self-employed workers;
- (e) to conduct research on the potentialities of the labour market in or outside Seychelles;
- (f) to advise the Minister on matters relating to employment;
- (g) where the Minister so directs, to be an employment agency.

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

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

Employers to notify Employment Services Bureau of vacancies

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

Employment Agencies to be licenced

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

Licensed employment agency to be a body corporate

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

Register of applicants seeking employment through an employment agency

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

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

- (a) the name, address, date of birth, nationality, the national identity number and the job card number (if any) of the person;
- (b) particulars of skills or qualification held by the person;
- (c) nature of employment sought by such person;
- (d) particulars of any previous employment held by such person;
- (e) any other prescribed particulars.

Register of vacancies

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

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

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

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

- (a) requires the employment agency to advertise the vacancy, the employment agency shall in consultations with the employer advertise the vacancy in a local newspaper;
- (b) does not require the employment agency to advertise the vacancy, the employment agency shall submit to the employer the names and the particulars of persons registered under section 8 who are suitably qualified for the vacancy.

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

(6) Where an employer has employed any person from among the persons whose names have been submitted by the employment agency under subsection (4)(b) or (5), the

employer shall inform the agency the name, and such other particulars of the person employed as is required by the agency and forward the job card (if any) of that person to the Employment Services Bureau.

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

Fees

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

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

Employers to advertise vacancies in certain circumstances

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

(2) Where an employer fills a vacancy pursuant to an advertisement under subsection (1), the employer shall submit to the Employment Services Bureau within 15 days after the filling of such vacancy the name and such other prescribed particulars of the worker filling the vacancy and forward the job card (if any) of the worker to the Employment Services Bureau.

Returns

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

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

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

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

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

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

Accounts

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

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

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

Rights of entry for examination and inquiry

14. A competent officer may-

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

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

Regulations in respect of employment agencies

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

Self-employed workers

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

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

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

Job Card

17. (1) Every unemployed Seychellois seeking employment and every employed Seychellois seeking alternative employment shall furnish to the Employment Services Bureau the particulars specified in subsection (2) and obtain from the Employment Services Bureau a job card.

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

- (a) the name, address, date of birth, national identity number of that person;
- (b) particulars of skills or qualifications held by the person;
- (c) nature of employment sought by the person; and
- (d) any other prescribed particulars.

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

Prohibition of employment of Seychellois without job cards

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

Restriction on employment of non-Seychellois

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

- (a) the employer holds a certificate from the competent officer to the effect-
 - (i) that the vacant post for which the non-Seychellois is required has been advertised under section 9(4) or 11 and;
 - (ii) that-
 - A. the post requires the qualification demanded for it and no Seychellois holding the qualification is, at present, available for employment in that post, or
 - B. the Minister is satisfied that there is no unemployed Seychellois available for employment in the vacant post;
- (b) the employer has, together with the application for a certificate under paragraph (a) submitted in respect of the employer's establishment, a detailed manpower plan setting out a training and localization programme.

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

- (a) that the contract of employment of the worker which shall be a fixed-term contract is attested by a competent officer;
- (b) that the worker ceases to be in the employment of the employer upon the expiration of the unless the contract is, subject to subsection (1), extended or renewed; contract of employment

PART III – CONTRACTS OF EMPLOYMENT

Contracts of employment

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

- (a) of continuous employment;
- (b) for a fixed term;
- (c) for the employment of a part-time worker; or
- (d) for the employment of a casual worker.

(2) Where a contract for a fixed term is expressed to be for a period determined by reference to its duration in time, the contract, shall be for such period, not less than 3 months, as may be determined by the parties to the contract.

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

Contracts by minors

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

Written contracts generally

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

- (a) be reduced to writing by the employer;
- (b) be in duplicate;
- (c) specify as accurately as possible-
 - (i) the names of the employer and worker;
 - (ii) the nature of the employment;
 - (iii) in the case of a fixed-term contract, either the term or the specific scheme or project or specific work on which the worker is to be engaged, as the case may be;
 - (iv) in the case of a contract of continuous employment, the probation period, if any;

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

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

(vii) the number of working hours per week;

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

(ix) such other particulars as may be prescribed;

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

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

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

Contracts of employment (outer islands)

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

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

(b) in duplicate; and

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

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

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

Detention of worker beyond period of outer island contract

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

Conditions preliminary to employment abroad

24. Repealed

Contracts for casual work

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

(2) An employer shall not employ a casual worker, whether it be the same or another worker, for a period longer than 3 months or such other longer period authorized by a competent officer.

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

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

Language of contracts

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

PART IV – TRAINEES

Trainees

27. The following persons are deemed to be trainees-

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

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

(c) participants in apprenticeship schemes.

National Vocational Training Board

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

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

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

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

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

Board.

Premiums from trainees prohibited

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

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

Allowances for trainees and young workers

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

Benefits

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

PART V – A. PROTECTION OF WAGES

Payments of wages

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

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

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

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

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

Authorised deductions

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

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

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

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

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

(e) such other amount as the worker may in writing authorize.

(2) Without prejudice to any right of recovery of any debt due, the total amount of all deductions which, under subsection (1)(b), (c) and (d) may be made by an employer from the wages payable to a worker at any one time

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

Disposal of wages

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

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

Record of wage payments

35. (1) An employer, other than an employer solely employing part-time, casual or domestic worker, shall keep a record of the wages due to each of the workers in the employment of the employer, of the deductions made therefrom and of the amounts actually paid.

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

Evidence of payment

36. (1) An employer when paying the wages of a worker shall keep a record of the payment together with evidence of receipt of payment by the worker, and issue a pay slip recording details of payment to the worker; and

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

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

Workers privileged creditors

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

- (a) the wages of all workers;
- (b) their holiday pay;
- (c) payment in lieu of notice due to them upon termination of employment; and
- (d) compensation due upon termination,

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

Absconding employer

38. (1) Where an employer or former employer of any worker is about to leave Seychelles or to alienate his property or to do any other act-

- (a) without having paid or made satisfactory arrangements to pay-
 - (i) any wages due to the worker; or
 - (ii) any other moneys owed by the employer or former employer to the worker; or
- (b) with the intention, as may be presumed from the circumstances surrounding the business or finances of the employer or former employer, of foregoing the obligations, past or future, to the worker under this Act,

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

(1A) It shall be lawful for a competent officer, for the purpose of making an application under subsection (1), to require by written notice any airline or travel agency to furnish the competent officer with such information as may be specified in the notice in respect of any travel arrangement made by any person and it shall be the duty of such airline or travel agency to comply with the requirement of such notice.

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

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

payment of the amount of wages and moneys or for the discharge of the obligations, the Supreme court may vacate the order.

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

When wages not due

39. Where a worker-

- (a) is absent from work without leave and without good cause;
- (b) is in prison or otherwise detained in lawful custody,

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

PART V - B. REGULATION OF WAGES AND CONDITIONS OF EMPLOYMENT

Regulations relating to wages and conditions of employment

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

- (a) the statutory wages to be paid to workers by employers in accordance with subsection (2);
- (b) the conditions of employment to be provided for workers by employers.

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

- (a) prescribe a national minimum wage for workers, other than trainees, and mandatory wages in respect of such workers or category of such workers or in relation to any business;
- (b) provide for increments and the conditions under which they may be awarded or withheld;
- (c) prescribe allowances for trainees;
- (d) authorize benefits or advantages provided by the employer which may be reckoned as payment of wages by the employer in lieu of payment in cash and define the maximum value to be attached to them;
- (e) provide for any other matter in respect of wages.

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

- (a) the maximum permissible number of hours of work, normal and overtime, in any day or week, rest periods and the number of consecutive

hours of rest to which a worker is entitled;

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

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

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

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

(f) maternity protection benefits;

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

(h) generally improved living and working conditions.

Calculation of wages

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

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

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

Deduction for food or housing

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

(a) the maximum sum prescribed;

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

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

whichever is the less.

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

the written approval of the competent officer.

Effect and enforcement of regulations

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

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

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

Exception in case of disabled persons

44. Repealed

Security for wages

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

Employment benefits

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

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

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

PART VI – PROTECTION OF EMPLOYMENT

Prevention of discrimination

46A. (1) Where an employer makes an employment decision against a worker on the grounds of the worker's age, gender, race, colour, nationality, language, religion, disability, HIV status, sexual orientation or political, trade union or other association, the worker may make a complaint to the Chief Executive stating all the relevant particulars.

(2) The Chief Executive shall hold an inquiry into the complaint, make a determination and communicate the determination to the worker and the employer, and where an act of discrimination is held to have been established, the determination shall include such directions to the employer as are necessary to redress the grievance complained of.

(3) An employer to whom a direction is issued under subsection (2) shall comply with the direction.

(4) For the purpose of this section-

“worker” includes a prospective worker;

“employer” includes a prospective employer;

“employment decision” means any decision relating to the recruitment, conditions of employment, wages, disciplinary control or termination of employment of a worker.

Harassment prohibited

46B. An employer shall not commit any act of harassment against a worker.

Restriction on termination of contracts

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

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

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

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

(i) the rate of five sixths of one day’s wage for each completed month of service in the case of contracts of continuous employment;

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

(iii) such higher rate as may be prescribed;

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

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

termination by the previous employer.

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

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

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

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

Restriction on lay-offs of workers

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

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

(3) An employer shall not lay off workers-

(a) without the approval of the competent officer;

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

(c) for a period longer than authorized.

Variation on terms of employment

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

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

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

Termination of contracts upon change of ownership

50. (1) Where an employer transfers a business undertaking in which workers are

employed to another person, and the other person accepts the obligations of the employer with effect from the date of transfer, irrespective of whether the ownership of the assets of the undertaking are transferred or not, the first mentioned employer shall be deemed to have terminated the contract of employment of the workers immediately before the date of transfer subject to subsection (2).

(2) The termination of employment of such workers shall be deemed to be for a cause in no way attributable to the workers and the workers shall be paid compensation calculated in accordance with section 47(2) (b) regardless of whether they are employed or not employed by the person to whom the undertaking is transferred.

(3) An employer who knows, or may reasonably be deemed to know, that a transfer of the business undertaking is due to occur, shall within one month notify the Chief Executive in writing of that fact and take steps to comply with the provisions of subsection (2).

Redundancy of workers

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

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

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

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

(d) introducing new technology in a business,

a worker employed in the business has become redundant and it is necessary to terminate the contract of employment of the worker the employer shall, before terminating the contract of employment, initiate and comply with the negotiation procedure.

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

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

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

PART VII – DISCIPLINE

Disciplinary offences

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

(2) Any-

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

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

is a serious disciplinary offence.

(3) Where a minor disciplinary offence is not followed by another minor disciplinary offence within 12 months of its commission, that offence is deemed not to have been committed and is discounted for the purposes of subsection (2).

Disciplinary proceedings

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

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

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

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

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

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

Drunkenness while at work, etc.

53A. Where an employer has reasonable grounds to believe that a worker is under the influence of alcohol or a controlled drug, during working hours and is unfit to work, the employer may require the worker to take a breath test or to give a specimen of urine or blood for analysis in accordance with regulations made in that behalf. For the purpose of this section, “controlled drug” has the meaning assigned to it by section 2 of the Misuse of Drugs Act (Cap 133).

Disciplinary proceedings relating to criminal matters

54. (1) If, while a disciplinary offence is being investigated under section 53, a criminal proceeding is instituted against the worker in respect of the same offence, the investigation may be continued and completed.

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

Disciplinary measures

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

Suspension

56. (1) When investigating a serious disciplinary offence, the employer may suspend a worker without pay-

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

(b) where the investigation is discontinued under section 54(1), pending the outcome of the trial and shall inform the worker, in writing, of the outcome of the investigation.

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

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

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

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

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

PART VIII – TERMINATION OF CONTRACTS

Termination by employer

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

(2) Notwithstanding section 47, an employer may terminate a contract of

employment with notice in the following cases-

- (a) where the worker is on probation, during the worker's probationary period if the worker does not satisfactorily complete the period;
- (b) where the worker is a trainee under section 27(a), at the end of the training period if the worker fails to satisfactorily complete the training;
- (c) where the termination is under section 49 or 50, on the occurrence of the event specified therein;
- (d) where the worker is a casual, part-time or domestic worker, at any time.

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

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

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

(6) An employer shall notify a worker,

- (a) who is employed under a fixed term contract; or
- (b) a worker who is about to reach retirement age,

at least 1 month before the expiration of the contract or the date of retirement, as the case may be, of that fact failing which the employer shall pay the worker referred to in paragraph (a) or (b) 1 month's wages in lieu of such notice.

Frustration of contracts

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

- (a) the business of the employer ceases through its becoming prohibited or illegal under any written law;
- (b) a worker is disqualified through the suspension or cancellation of any licence, permit, registration or authority required under the written law for the purpose of exercising the occupation or profession of the worker,

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

(2) Where a contract is frustrated through a business ceasing as a result of an acquisition by Government under the Acquisition of Lands in the Public Interest Act, any

liability under subsection (1) for payment in lieu of notice and payment of compensation lies primarily upon the Government subject to reimbursement by the employer.

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

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

Period of notice by employer

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

- (a) in the case of any casual worker, one day's notice;
- (b) in the case of a worker on probation seven day's notice;
- (c) in the case of any other worker, other than a non-Seychellois worker, one month's notice;
- (d) in the case of a non-Seychellois worker, not being a casual worker, the period of notice specified in the contract of employment of the worker or a worker on probation or, where a period of notice is not specified, one month's notice.

Termination by worker

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

- (a) in the case of any casual worker, with one day's notice;
- (b) in the case of a worker on probation, with seven day's notice;
- (c) in the case of any other worker, other than a non-Seychellois worker, with one month's notice;
- (d) in the case of a non-Seychellois worker, not being a casual worker or a worker on probation, with the period of notice specified in the contract, or where a period of notice is not specified, with one month's notice.

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

- (a) where the employer is in breach of the contract with the worker and such breach justifies termination;
- (b) where the employer acts in contravention of the Act and such contravention justifies termination; and
- (c) where the worker has been laid off;

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

Grievance procedure

61. (1) A worker-

(a) whose contract of employment is terminated-

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

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

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

may initiate the grievance procedure.

(1A) Where a worker or employer has registered a grievance, the competent officer shall endeavour to bring a settlement of the grievance by mediation.

(1B) A competent officer in mediating a settlement, shall draw up a mediation agreement which shall be signed by the parties and be presented to the Tribunal for endorsement as a form of judgment by consent.

(1C) If a party breaches the mediation agreement or any part thereof, the agreement shall be enforced by the Tribunal.

(1D) If the competent officer is unsuccessful in the mediation he shall issue a certificate to the parties as evidence that mediation steps have been undergone by such parties.

(1E) A party to a grievance shall bring the matter before the Tribunal within 30 days if no agreement has been reached at mediation.

(2) Upon conclusion of a case before the Tribunal initiated under subsection (1), the Tribunal may determine as follows-

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

(i) that termination is justified;

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

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

contract of employment in the case of a non-Seychellois worker referred to in section 59(c), that amount and in any other case subject to the termination taking effect on the date of the competent officer's determination;

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

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

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

Compensation upon termination

62. Where-

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

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

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

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

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

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

Compensation upon resignation or retirement

62A. (1) Where a worker-

(a) resigns, otherwise than in the circumstances referred to in subsection (2);
or

(b) retires on completion of not less than five years' continuous service under an employer,

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

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

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

Payment in lieu of notice

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

Interest payable

63A. Where compensation is payable to a worker in respect of termination of employment under the provisions of this Part, interest on the amount of such compensation shall be payable at such rate as may be prescribed by the Minister, for the period between the date on which such compensation becomes payable and the date of actual payment. For the purpose of this section compensation becomes payable upon the determination of the competent officer, the ruling of the Minister or the Tribunal, as the case may be.

PART IX – MISCELLANEOUS PROVISIONS

Disputes

64. Wherever a dispute, other than one for which the grievance procedure is expressly provided under other provisions of this Act, arises between employer and worker and internal dispute procedures, if any, have been exhausted without agreement, either party to the dispute may initiate the grievance procedure.

Appeals and reviews

65. (1) Subject to subsection (2), wherever an employer or worker is aggrieved by an authority, approval, decision or determination of a competent officer, the employer or the employers' organization on behalf of the employer, the worker or the Union on behalf of the worker, may appeal against it to the Minister.

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

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

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

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

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

(7) A ruling of the Minister made under this section shall not be vitiated solely on the ground that it was not given within the period specified in subsection (6).

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

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

Retirement age

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

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

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

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

Non-Seychellois workers

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

Employer to keep register of workers

68. Every employer shall keep a register of the workers and the register shall contain in respect of, each worker the following information:

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

- (b) the occupation or previous occupation, if any;
- (c) the date of engagement;
- (d) the wages payable and any additional benefits or advantages;
- (e) any disciplinary offences committed, the date thereof and the disciplinary measure taken, if any;
- (f) any qualification attained by the worker during the employment of the worker under that employer;
- (g) such other particulars as may be prescribed.

Certificate of employment

69. An employer shall, not more than 21 days after the date of the termination of a worker's contract of employment, give to the worker a certificate of employment which shall contain such particulars as may be prescribed.

Probation

70. An employer shall not employ a worker on probation-

- (a) except under a contract of continuous employment when the worker is first employed by the employer; and
- (b) for longer than 6 months unless authorized by the competent officer.

Regulations

71. The Minister may make regulations-

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

(i) generally, for the better carrying into effect the purposes and provisions of this Act.

PART X – ADMINISTRATION

Responsibility for administration

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

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

Tripartite consultative body

72A. (1) The Minister may, in consultation with the organizations of workers and employers, appoint a National Consultative Committee on Employment consisting of representatives of such organizations and the Government to advise the Minister on matters relating to industrial relations and any specific matter referred to the Committee by the Minister.

(2) The members of the Committee shall be appointed by notice in the Official Gazette for a term of 3 years and shall be eligible for reappointment.

(3) The Minister shall, by regulations, provide for the procedure for the conduct of business by the Committee.

(4) The members of the Committee shall be paid such allowances by the Minister may determine.

Employment Advisory Board

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

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

Employment Tribunal

73A (1) There is hereby established a Tribunal which shall be known as the Employment Tribunal.

(2) Schedule 6 has effect with respect to the Employment Tribunal, its composition, jurisdiction, powers and otherwise

Competent offices and presumption of authority

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

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

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

Exercise of powers

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

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

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

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

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

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

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

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

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

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

PART XI – OFFENCES, PENALTIES AND PROSECUTION

Offences

76. (1) A person who-

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

- (b) furnishes false or misleading information to a competent officer or any other person under this Act;
- (c) intentionally obstructs, hinders or delays a competent officer or any other person in the exercise of the functions of the officer under this Act;
- (d) without reasonable excuse, fails to comply with any directions given by a competent officer or any conditions attached to any permit issued under this Act;
- (e) fails to inform or notify a competent officer or any other person in accordance with the provisions of this Act;
- (f) without reasonable excuse, fails to comply with a decision of the Minister made on a review or appeal under section 65;
- (g) fails to comply with an order under section 61(2)(a)(iii) or section 61(2)(b)(ii) or contravenes section 66(1);
- (h) alters or modifies any record, document or other return issued by any person, or required to be kept, under this Act,
- (i) contravenes section 46A(3) or 46B commits an offence,

is guilty of an offence.

(2) An employer who -

- (a) contravenes section 5(A), section 8(1), section 9(1), (2) or (3), section 10(2), section 11(1) or (2), section 12(1) or (2), section 16(1) or (3), section 17A, section 18(1) or (2), section 25(2), section 29(1), section 34(1), section 35(1), section 50(4), section 57(5), section 58(4), section 66(2), section 69, or section 70; or
- (b) fails to give to a worker a copy of the contract of employment under section 21(2) or 22(3);
- (c) subject to subsection (6), employs or retains in employment a worker without intending to pay or without having reasonable grounds for believing that the employer can pay the wages of the worker as they become payable;
- (d) without reasonable excuse, fails on demand to pay in accordance with section 32(2) or (3) any wages due to a worker;
- (e) makes any deduction from wages other than that authorized under section 33 or section 61(2)(b) (ii) or contrary to section 42(2);
- (f) deducts more than the amount authorized under section 42(1) from the wages of a worker;
- (g) pays a worker, other than a trainee defined under section 27(a) or (c), a wage less than the national minimum wage;

- (h) pays a trainee defined under section 27(b) an allowance less than the national minimum wage;
- (i) in the case where a mandatory wage or allowance is prescribed, pays a worker a wage or allowance other than the mandatory wage or allowance;
- (j) fails to provide a worker with any of the applicable conditions of employment prescribed under section 40(1)(b);
- (k) terminates a contract contrary to section 47(1);
- (l) fails to comply with a determination of the competent officer in accordance with section 61(2)(a)(ii) or section 61(2)(b)(i);
- (m) fails to pay any compensation due under section 62;
- (n) knowingly gives or causes to be given a false certificate of employment to a worker,
- (o) fails to make a worker available for interrogation by a competent officer under section 75,

is guilty of an offence.

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

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

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

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

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

Penalties

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

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

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

(4) Notwithstanding subsection (1),(2) or (3) or any other written law, where an offence of which an employer is convicted under this Act and in connection with that offence moneys, whether consisting of wages, compensation, benefits earned, payment in lieu of notice or otherwise, are due and payable to another person in respect of whom the offence has been committed, the court, shall, in addition to any penalty imposed under this section, order the person convicted to pay to the other person the moneys due.

Prosecution

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

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

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

(4) Wherever any person is convicted of an offence under this Act and in connection with that offence moneys, whether consisting of wages, compensation, benefits earned, payment in lieu of notice or otherwise, are due and payable to another person in respect of whom the offence has been committed, the Tribunal, shall, in addition to any penalty imposed under this section, order the person convicted to pay to the other person the moneys due.

Determination of competent officer conclusive

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

Employer's liability for agents

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

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

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

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

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

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

PART XII – TRANSITIONAL

Transitional

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

SCHEDULE 1 (SS 47, 48, 51): NEGOTIATION PROCEDURE

PART I.

NEGOTIATION PROCEDURE (SS 47, 48, 51)

A. RESTRICTIONS ON TERMINATION OF CONTRACT (S 47)

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

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

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

(a) the reason for the proposed termination;

(b) the number of workers concerned;

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

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

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

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

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

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

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

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

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

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

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

6. No action shall be taken by the employer in connection with the proposal termination (including giving notice to a worker of termination) until 21 days has elapsed following a determination under paragraph 4(2) or until the competent officer fails to make a determination within the time allocated under paragraph 4(3).

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

B. LAY-OFFS UNDER SECTION 48

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

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

(b) consultations as under paragraph 3 of Part 1A shall take place within 3 working days after the date of registration of the proposed lay-offs;

(c) a determination by the competent officer as under paragraph 4(3) of Part

1A shall be made within 14 days after the date of registration.

C. REDUNDANCY OF WORKER UNDER SECTION 51

1. The employer shall notify the Chief Executive 21 days before the employer intends to give notice of redundancy to a worker of the fact specifying the particulars referred to in paragraph 1(3) under the heading "A. Restrictions on termination of contract".
2. The Competent Officer shall register the notification, hold consultations and make a determination within the said period of 21 days. The employer may give notice to the worker after 72 hours have elapsed from the date of the determination.
3. The worker, the union or the employer may appeal within 7 days against the determination of the competent officer to the Minister who shall give his decision within 30 days.
4. Where, upon an appeal-
 - (a) the redundancy is approved, the contract of employment of the worker shall be terminated with notice, the period of notice commencing 72 hours after the date of the competent officer's determination;
 - (b) the redundancy is not approved, the contract of employment of the worker shall continue to have effect.
5. Workers who are being made redundant shall be given paid leave for half a day for each week during the period of notice to enable them to secure employment.

PART II

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

1. In this Part "worker" includes an unemployed person.
2. (1) Wherever an employer or worker is empowered by or under this Act to initiate the grievance procedure, the employer or worker may, within 14 days of becoming aware of the event, act or matter giving rise to the grievance, register a grievance with the competent officer furnishing the officer with all the information the officer may require.

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

(3) An employer or worker who fails to register a grievance within the time specified under subparagraph (1) loses the right to do so, but the competent officer, if satisfied that the failure to do so is not attributable to the fault of the employer or worker as the case may be or if the officer has himself suspended registration under sub-paragraph (2), shall allow registration out of time.
3. This procedure is also subject to Part III of this Schedule.

4. A competent officer shall complete mediation within 28 days from the date of registration of the grievance

PART IIA

Special provisions relating to non-Seychellois workers

1. An employer who terminates a contract of employment of a non-Seychellois worker who has committed a serious disciplinary offence shall notify the Chief Executive of the termination within 48 hours thereof and shall supply the Chief Executive with all the relevant particulars.

2. A non-Seychellois worker aggrieved by the termination may initiate the grievance procedure within 7 days of becoming aware of the grievance.

3. The registration of the grievance may be suspended if there are internal procedures of the employer for resolving disputes and they have been set in motion.

4. If a non-Seychellois worker fails to lodge a grievance within 7 days he will lose the right to do so, but the competent officer shall, if satisfied that such failure is not attributable to the fault of the worker or if the officer had himself suspended registration, allow the registration out of time.

5. A competent officer shall complete mediation within 7 days from the date of registration of the grievance

6. The non-Seychellois worker or employer may, within 7 days of receiving the determination of the competent officer, appeal to the Minister.

7. An employer of a non-Seychellois worker shall continue to provide such worker with food and shelter while the grievance of the worker is being dealt with by the competent officer or the Tribunal.

8. If an agreement is reached at mediation the employer may subject to paragraph 9, cease to provide food and shelter to the worker.

9. Where the mediation agreement provides that decides that the employer must pay employment benefits to the worker, the employer shall be liable to provide food and shelter to until the worker is paid such benefits;

10. Where the employer does not pay employment benefits according to the mediation agreement and enforcement procedure before the Tribunal is commenced by the competent officer, the obligation to provide food and shelter to the worker shall come to an end.

11. Whenever the employer's obligation to provide food and shelter ends, the employer shall provide air tickets to the non-Seychellois worker to return to the worker's country of origin. The employer may however, provide air tickets at any time to the worker at his request.

PART III
GENERAL PROVISIONS APPLICABLE TO
PARTS 1 AND II

1. The absence of any person invited to consultation under Part I or Part II of this Schedule from those consultations does not vitiate the procedures.
2. Wherever possible the consultations should be joint but the competent officer may hold separate consultations.
3. (1) A party to any consultation under Part I or Part II of this Schedule may attend in person and be accompanied by a representative.

(2) Notwithstanding sub-paragraph (1) where the number of workers concerned by either procedure exceeds 3, there may not be more than 3 representatives on their behalf.
4. Any right of an employer or worker under Part I or Part II of this Schedule may, at the request of the employer or worker, be exercised on behalf of the employer or worker by the employers' organization or the Union respectively.
5. An employer's organization shall only be invited to consultations under Part I or Part II of this Schedule where-
 - (a) the employer concerned so requests; or
 - (b) the competent officer considers its presence necessary.

SCHEDULE 2 (SS. 52 AND 55): DISCIPLINARY OFFENCES

PART I
DISCIPLINARY OFFENCES

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

- (a) within a period of 12 months fails to observe working hours on one or not more than two occasions;
- (b) within a period of 12 months fails to report for work on one or not more than two occasions;
- (c) is absent without permission from the undertaking or from the post of the worker during working hours;
- (d) fails to obey reasonable orders or instructions given by the employer or

representative of the employer.

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

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

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

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

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

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

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

PART II

SERIOUS DISCIPLINARY OFFENCES

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

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

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

(c) fails repeatedly to obey reasonable orders or instructions given by the employer or representative of the employer including orders or instructions relating to the use of care of protective equipment; and

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

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

(f) is unable to carry out the duties of the worker due to the effect of alcohol or dangerous drugs or refuses to comply with a requirement of an employer under section 53A;

- (g) commits any offence involving dishonesty, robbery, breach of trust, deception or other fraudulent practice within the undertaking or during the performance of the work of the worker;
- (h) in the course of the employment of the worker assaults, or inflicts bodily injury upon a client of the employer or another worker;
- (i) commits any active or passive bribery or corruption;
- (j) commits an offence under this Act whereby the worker causes serious prejudice to the employer or employer's undertaking;
- (k) does any act, not necessarily related to the work of the worker, which reflects seriously upon the loyalty or integrity of the worker and causes serious prejudice to the employer's undertaking;
- (l) shows a lack of respect to, insults or threatens a client of the employer or another worker whether it be a superior, a subordinate or a colleague.
- (m) willfully, repeatedly and without justification fails to achieve a normal output as fixed in accordance with standards applicable to the worker's work;

PART IIA

SPECIAL PROVISIONS RELATING TO NON-SEYCHELLOIS WORKERS

1 An employer who terminates a contract of a non-Seychellois worker who has committed a serious disciplinary offence shall notify the Chief Executive of the termination within 48 hours thereof and shall supply the Chief Executive with all the relevant particulars.

2 A non-Seychellois worker aggrieved by the termination may initiate the grievance procedure within 7 days of becoming aware of the grievance.

3 The registration of the grievance may be suspended there are internal procedures of the employer for resolving disputes and they have been set in motion.

4 If a non-Seychellois worker fails to lodge a grievance within 7 days he will lose the right to do so, but the competent officer shall, if satisfied that such failure is not attributable the fault of the worker or if the officer had himself suspended registration, allow the registration out of time.

5 A competent officer seized of a grievance shall within 7 days after registration of the grievance, invite the worker, the union, if any, the employer and employers organization, if any, for consultation. A record of the consultations shall be kept and a determination shall be made within 72 hours after the end of consultations.

6 The non-Seychellois worker or employer may, within 7 days *bring the matter before the Tribunal if no settlement is reached at mediation** of receiving the determination of the competent officer appeal to the Minister.

Note: The words in italics were inserted by Act 21 of 2008; they remain italicised because they do not make sense in the context of the pre-existing text.

7 An employer of a non-Seychellois worker shall continue to provide such worker with food and shelter while the grievance of the worker is being dealt with until the competent officer makes the determination

8 Upon the determination of the competent officer, the employer may, subject to paragraph (9), cease to provide food and shelter to the worker whether an appeal against the determination is lodged by the worker or not.

9 Where-

(a) the competent officer decides that the employer must pay employment benefits to the worker, the employer shall be liable to provide food and shelter to the worker until the worker is paid such benefits;

(b) where an appeal is lodged by the employer, the employer shall continue to provide food and shelter until the determination of the appeal.

10 If the employer does not appeal, does not pay the said employment benefits and enforcement procedure before the courts is commenced by the Department, the obligation to provide food and shelter to the worker shall come to an end.

11 Whenever the employer's obligation to provide food and shelter ends, the employer shall provide air tickets to the non-Seychellois worker to return to the worker's country of origin. The employer may however, provide air tickets at any time to the worker at his request.

PART III

DISCIPLINARY MEASURES (S. 55)

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

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

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

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

(d) withholding of annual merit increments;

(e) redeployment;

(f) demotion;

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

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

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

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

SCHEDULE 3 (S.73): EMPLOYMENT ADVISORY BOARD

1. In this Schedule the “Board” means the Employment Advisory Board.
2. The Minister may, by notice in the Gazette, appoint up to 15 persons from among responsible members of the community to be members of the Board.
3. Appointments under paragraph 2 are for two years and are renewable.
4. The functions of the Board are to advise the Minister whenever a matter is referred to it by the Minister under this Act.
5. (1) When exercising its functions under paragraph 4 with respect to any specific matter referred to it, the Board consists of a panel of 3 members selected from among the Board’s membership by the Chief Executive or person authorized by the Chief Executive.

(2) The members of the panel shall select one member to be the panel’s chairman for the sitting relating to the specific matter.
6. The competent officer shall place before the panel of the Board all the facts and submissions pertinent to the matter in question together with his decision or determination with respect of that matter.
7. Whenever a panel as constituted under paragraph 5 sits, it regulates its own proceedings.
8. Where the advice to be tendered to the Minister by a panel as constituted under paragraph 5 with respect to any matter referred to it is not unanimous, each member of the panel shall tender a separate advice.

SCHEDULE 4 (S.28): THE NATIONAL VOCATIONAL TRAINING BOARD

1. In this Schedule, the “Board” means the National Vocational Training Board;
2. The Board shall consist of the following members-
 - (a) the President as chairman unless the President appoints another person as chairman by notice in the Gazette.
 - (b) such other members as the President may, by notice in the Gazette, appoint for such periods as may be specified in the notice.
3. The Board meets whenever its chairman summons a meeting.

4. The Board regulates its own proceedings.

SCHEDULE 5 (S.2): OUTER ISLANDS

Ile Plate

Coëtivy

Amirantes Group:

Rémire

D'Arros

Desroches

Etoile

Boudeuse

Marie-Louise

Denoeufs

African Banks:

Bancs Africains

Ile du Sud

St. Joseph's Atoll

St. Joseph

Ile au Fouquets

Ressource

Petit Carcassaye

Grand Carcassaye

Benjamin

Bancs Ferrari

Cheins

Pelicans

Vars

Ile Paul

Banc de Sable

Bancs aux Cocos

Ile aux Poules

Poivre Atoll:

Poivre

Florentin

Ile du Sud

Alphonse and St. Francois Atolls

Alphonse

Bijoutier

St. Francois

Farquhar Group:

Farquhar Atoll:

Ile du Nord

Ile du Sud

Manahas Nord

Manahas Milieu

Manahas Sud

Ile aux Coëlettes

Lapins

Ile du Milieu

Déposés

Bancs de Sable

Providence Atoll:

Providence

Bancs Providence

St. Pierre

Aldabra Group:

Aldabra Atoll:

Grande Terre

Picard

Polymnie

Malabar

Ile Michel

Ile Esprit

Ile aux Moustique

Ilot Parc

Ilot Emile

Ilot Yangué

Ilot Magnan

Ile Lanier

Champignon des Euphrate

Grand Mentor

Grand Ilot

Gros Ilot Gionne

Gros Ilot Sésame

Heron Rock

Hide Island

Ile aux Aigrettes

Ile aux Cédres

Iles Chalands
Ile Fangame
Ile Héron
Ile Michel
Ile Suacco
Ile Sylvestre
Ile Verte
Ilot Déder
Ilot du Sud
Ilot du Milieu
Ilot du Nord
Ilot Dubois
Ilot Macoa
Ilot Salade
Middle Row Island
Noddy Rock
North Row Island
Petit Mentor
Petit Mentor Endans
Petit Ilots
Pink Rock
Table Ronde
Cosmoledo Atoll:
Menai
Ile du Nord
Ile Nord-Est

Ile du Trou
Goëlettes
Grand Polyte
Petit Polyte
Grand Ile (Wizard)
Pagode
Ile du Sud-Ouest
Ile aux Moustiques
Ile Baleine
Ile aux Chauve-Souris
Ile aux Macaques
Ile aux Rats
Ile du Nord-Ouest
Ile Observation
Ile Sud-Est
Hot la Croix
Astove
Assumption

SCHEDULE 6 (S 73A): EMPLOYMENT TRIBUNAL

1. (1) (a) The Chairperson of the Tribunal shall be a Magistrate nominated by the Chief Justice.

(b) The Minister shall appoint two Vice-Chairpersons who shall be legal practitioners.

(2) The Minister shall appoint not more than twelve other members to serve on a part time basis from a panel drawn up after consultations with the representatives of employers' organizations and trade unions.

(3) The names of the members shall be published in the Gazette.

(4) A member shall hold office for a term of three years and may be reappointed for a further term.

(5) A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct or indirect pecuniary interest.

(6) A member of the Tribunal or any other person under the direction of the Tribunal has immunity in respect of anything which is done or purported to be done in good faith in pursuance of this Act.

2. The allowances of the members shall be as may be prescribed by the Minister.

3. (1) The Tribunal shall have exclusive jurisdiction to hear and determine employment and labour related matters.

(2) Without prejudice to the generality of the foregoing, the Tribunal shall hear and determine matters relating to employment and labour that have not been successful at mediation if a party to the dispute instigates such matter.

(3) The Tribunal shall not hear and determine any claim relating to damages for personal injuries,

(4) For the purposes of this Act, a reference to the Magistrates' Court in any written law in connection with matters under subsection (1) and (2) shall be deemed to be a reference to the Tribunal.

4. Any person against whom judgment has been given by the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates' Court.

5. The Tribunal shall have powers to-

(a) summon any person to appear before it;

(b) examine a witness or any person appearing before it on oath;

(c) require any person to produce any document which the Tribunal considers relevant.

6. (1) In any proceeding of the Tribunal, there shall always be a representative from the employers' organisation and the trade union sitting as a member provided where parties to a dispute agree the Chairperson or the Vice-Chairperson may sit with only one member.

(2) The Tribunal shall where possible sit at least three times a week and laws relating to evidence shall be applicable to witnesses or persons appearing before the Tribunal.

(3) Each member of the Tribunal shall have an equal vote and decisions shall be reached by a majority vote.

(4) A decision of the Tribunal is enforceable as if it were a decision of the Magistrates' Court.

(5) A party before the Tribunal may be represented by a lawyer or by a representative of a trade union or an employers' organization or any other person as the case may be.

(6) The Tribunal shall before making any decision-

(a) afford the parties the opportunity to be heard;

(b) generally observe the rules of natural justice.

(7) Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate.

7. At the conclusion of the proceedings the Tribunal shall in addition to any other remedies provided under this Act, award compensation or costs or make any other order as it thinks fit.

8. (1) The Minister shall appoint a Secretary to the Tribunal who shall be responsible-

(a) for ensuring the overall smooth running of the Tribunal;

(b) for convening the sittings of the Tribunal after consultations with members.

(c) for the issuing of summonses and notices on behalf of the Tribunal;

(d) for the implementation of decisions made by the Tribunal;

(e) for the taking of appropriate steps to enable the Tribunal to enforce its orders;

(f) for ensuring that orders or directions given by the Tribunal are complied with;

(g) for receiving and making payments as the case may be;

(2) The Secretary of the Tribunal shall be answerable to the Minister.

(3) The Secretary may waive application fees where an applicant gives valid reasons for not being able to pay such fees.

9. (1) Any person who-

(a) disobeys without reasonable cause any order of the Tribunal;

(b) without reasonable excuse-

(i) fails to attend the Tribunal when summoned or required by the Tribunal;

(ii) fails to produce a document when required to do so by the Tribunal;

- (c) disrupts, or misbehaves in the course of, the proceedings of the Tribunal;
- (d) insults or threatens a member in the performance of his functions;
- (e) having attended the Tribunal, refuses or fails to answer any question,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine of not more than R40,000.

10. The Minister may make regulations-

- (a) for the better carrying out of the purposes of the Tribunal;
- (b) regulating the procedure of the Tribunal;
- (c) prescribing allowances for witnesses, application fees and any other fees in connection with services given by the Tribunal;
- (d) prescribing forms to be used by the Tribunal.

LAWS OF SEYCHELLES

CHAPTER 69

EMPLOYMENT ACT

**SUBSIDIARY LEGISLATION: SECTION 4(2): EMPLOYMENT ACT
(EXEMPTION) ORDER**

[13th May, 1991]

SI. 36 of 1991
SI. 4 of 2000
SI. 25 of 2000

1. This Order may be cited as the Employment Act (Exemption) Order.
2. A person specified in column 1 of the Schedule is exempt from the provisions of the Act specified in the corresponding entry in column 2 of the Schedule and subject to the conditions specified in that column.
3. Where a worker is exempted for a provision of the Act under paragraph 2, the employer of that worker is exempted from the application of the provision in accordance with the condition to which the exemption is subject.

SCHEDULE

| Column 1 | Column 2 |
|--------------------------------------|---|
| A person who solely employs a casual | Sections 6, 8(1) and 12(1) subject to the |

| | |
|---|--|
| worker for a period not exceeding one day | conditions that section 14 shall apply to him as if the Minister had made a regulation under section 14(1) in respect of a casual worker |
| A non-Seychellois worker employed in Seychelles under an international agreement or a bilateral agreement between Seychelles and another country. | Whole Act |
| A non-Seychellois worker employed in Seychelles under an international agreement between Seychelles and another country* | Whole Act |
| A casual worker, being a part time worker | Section 22(2) |
| A Public officer, other than a Member of the Seychelles People's Defence Force, a Member of the Seychelles Police Force or a prison officer | Parts VI, VII, VIII and IX, sections 64, 66 and 6, Part XII other than section 80(1)(e) |
| A Public officer, other than a Member of the Seychelles People's Defence Force, a Member of the Seychelles Police Force or a prison officer* | Parts VI, VII and VIII, sections 64 and 65, Part XI other than section 76(1)(e) |
| A member of the Seychelles People's Defence Force | Whole Act |
| A member of the Seychelles Police Force | Whole Act |
| A Prison officer | Whole Act |
| A person employed as Helper Under a contract of employment With the Universal Dredging and Reclamation Corporation Limited | Regulation 4 of the conditions of Employment Regulations |

Note: SI 4 of 2000 did not revoke the exemption order previously made by SI 36 of 1991; that is why several of the provisions in this order are repetitive.

SUBSIDIARY LEGISLATION: SECTION 16(7): EMPLOYMENT ACT (FIXED-TERM CONTRACT) (EXEMPTION) REGULATIONS

[1st January, 1991]

SI. 13 of 1994
SI. 5 of 2000

1. The Regulations may be cited as the Employment Act (Fixed-term Contract) (Exemption) Regulations.

2. A fixed-term contract in respect of a worker or class of workers specified in the Schedule is exempt from the application of section 19(2).

SCHEDULE

1. A non-Seychellois worker
2. A Seychellois worker performing the functions of, or functions equivalent to the function of, Chief executive officer of a public body;
3. A Seychellois worker performing the functions of an office in respect of which the holder is entitled to at least a basic salary equivalent to entry point 48 in the Public Service.

SUBSIDIARY LEGISLATION: SECTION 40: EMPLOYMENT (CONDITIONS OF EMPLOYMENT) REGULATIONS

[1st May, 1991]

SI. 34 of 1991
SI. 45 of 1991
SI. 58 of 1992
SI. 81 of 1992
SI. 46 of 1998
SI. 3 of 2000
S.I. 9 of 2006
SI. 49 of 2007

Citation

1. These Regulations may be cited as the Employment (Conditions of Employment) Regulations.

Interpretation

2. (1) In these Regulations-

“alternative holiday” means a day off work granted in lieu of a holiday;

“days” when used in relation to leave includes holidays;

“essential service” means-

- (a) a service relating to the generation, supply or distribution of electricity;
- (b) any hospital or medical services;
- (c) a service relating to the supply or distribution of water;
- (d) a service relating to the sewerage service;
- (e) port and marine services;

- (f) a service relating to civil aviation;
- (g) the fire brigade;
- (h) a service relating to telecommunication;
- (i) a service deemed by a notice under the Industrial Relations Act to be an essential service.

“holiday” means Sunday or a public holiday;

“medical certificate” means a certificate by a medical practitioner, or other person authorized by the Minister responsible for Health to issue certificates for the purposes of these Regulations;

“part-time worker” means a worker other than a casual worker who works for the same employer for a period less than 25 hours a week or irrespective of the period of work for a period less than 3 days a week;

“public holiday” does not include Sunday;

“rest period”, in relation to a worker, means a period which is not working time, and does not include a rest break or leave to which the worker is entitled under these Regulations;

“shift-worker” means a worker engaged in an occupation which, by reason of its nature, requires the regular attendance and attention of personnel;

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

“working time”, in relation to a worker, means any period during which the worker is performing his duties or is at the employer’s disposal for performing duties and includes any period during which the worker is undergoing training.

Maximum number of working hours

3. (1) An employer shall not require a worker, other than a watchman, to work for more than-

(a) the number of hours per week or per day which the Minister may, by notice in the Gazette, specify in respect of any occupation;

(b) 60 hours per week or 12 hours per day, whichever is the less.

(2) The hours referred to in subregulation (1) include an aggregate of a half-hour’s break per day but do not include any longer break which may be given for meals or any other purpose.

(3) An employer shall not require a watchman to work for more than 72 hours per week.

Rest period

4. An employer shall grant to his worker at least 24 consecutive hours' rest in any period of 7 days. An employer shall also ensure that there is an interval of at least 8 consecutive hours between the end of a daily shift and the beginning of the next shift, provided that where a daily shift is divided into 2 parts the interval may be reduced proportionately.

Holidays

5. (1) Except in an essential service, an employer shall not require a worker, other than a shift-worker or a watchman, to work on holidays.

(2) A worker, other than a shift-worker or a watchman, who works on a holiday is entitled to double-pay for that day, or to an alternative holiday, at the option of the employer.

(3) A shift-worker or watchman who works on a public holiday is entitled to double pay for that day, or to an alternative holiday, at the option of the employer.

(4) Nothing in the preceding provisions of this regulation shall be construed as preventing an employer who requires any worker to work on a holiday from agreeing to allow double pay for that day or an alternative holiday at the worker's option.

Overtime hours

6. (1) Notwithstanding regulation 3, a worker, other than a watchman-

(a) may agree,

(b) may, in exceptional circumstances, be required by his employer,

to work for up to 60 additional hours per month or an aggregate of 15 hours per day.

(2) Subject to subregulation (3), overtime is payable-

(a) in the case of a worker, other than a shift worker or a watchman, at the rate of-

(i) 1½ hours' pay for 1 hour's work on a week-day;

(ii) 2 hours' pay for 1 hour's work on a holiday;

(b) in the case of a shift-worker, at the rate of-

(i) 1½ hours' pay for 1 hour's work on a week-day or Sunday;

(ii) 3 hours' pay for 1 hour's work on a public holiday,

but the employer may, give the worker time off equivalent to not more than two-thirds of the number of hours worked as overtime in lieu of payment, unless the employer and the worker agree to convert any part or all of the overtime hours worked into cash.

Additional employment prohibited

7. Repealed.

Offences

8. (1) An employer who-

(a) contravenes regulation 3(1), 4, 5(1) or 7(2).

(b) permits a worker to work for additional hours in breach of regulation 6(1);

(c) fails to pay double pay or overtime pay or to grant alternative holidays or time-off in lieu as required under regulation 5(2) or 5(3) or 6(2),

is guilty of an offence.

(2) A worker who contravenes regulation 6(1) or 7(1) is guilty of an offence.

Annual leave

9. (1) A worker, other than a casual or part-time worker, is entitled to 21 days' paid annual leave or, where the employment is for less than a year, to 1.75 days for each month of employment, the aggregate number of days being rounded up upon addition to the highest integer.

(2) Subject to this regulation, the annual leave entitlement is taken each year by mutual arrangement between employer and worker but the employer shall ensure that a worker, engaged by him under a contract of continuous employment or under a contract for a fixed term which lasts for a year or more, takes a minimum period of 14 consecutive days' leave in a year, unless the worker has, under the mutual arrangement agreed to accumulate his leave entitlement.

(3) Leave not taken in a year may be accumulated.

(4) Where it is mutually agreed between an employer and worker, the leave entitlement of the worker in any year may be converted into cash payable in that year.

(5) Under a contract for a fixed term or under a contract for employment on an outer island, the whole of the leave earned and not taken may be converted into cash upon termination of the contract.

(6) A part-time worker is entitled to leave under sub regulation (1) in the proportion which the number of hours worked by him bears to the number of hours which a full-time worker in the same occupation would have worked.

(7) A casual worker who has worked for the same employer for 5 consecutive days is entitled in respect of every such 5 days to half of his day's pay in lieu of leave.

(8) (a) Subject to paragraph (b), the following formula shall apply for the purpose of converting accumulated leave into cash:

Salary per year x Number of days entitled

Number of days per year

(b) Where an employer allows a worker to accumulate the worker's leave and the number of days leave so accumulated exceeds 42, the worker shall be entitled to one and a half times the normal pay for each day in excess.

(8) With effect from 1st January 2006, Saturdays, Sundays and Public Holidays shall be excluded in calculating a period of annual leave earned after that date under this regulation.*

Note: SI 3 of 2000 inserted subregulation 8; SI 9 of 2006 brought in an additional subregulation 8 without repealing the previous subregulation 8.

Compassionate leave

10. (1) Wherever a worker loses a very close relative or there are other compassionate reasons which require the presence or attendance of the worker, he shall be entitled to compassionate leave.

(2) Where leave taken under subregulation (1) is in excess of 4 days in a period of 12 months the excess may either be unpaid or, at the discretion of the employer, may be deducted from the worker's entitlement to annual leave.

(3) A worker shall be allowed reasonable time off-work, with or without pay at the discretion of the employer, to attend the matters which cannot normally be attended to except during the worker's working hours.

Education leave

11. (1) Where there is a training programme, approved by the Minister responsible for Human Resources Development, directed towards persons of a particular occupation, a worker in that occupation, who has not previously attended such, or a similar programme, is entitled to education leave for the purpose of attending the programme.

(2) The employer is responsible to the worker for payment of his wages while absent on education leave-

(a) for a period of 6 months, where the training programme referred to in subregulation (1) is a full-time one;

(b) for the duration of the programme, where it is part-time only.

(3) Repealed.

(4) The employer may, in its discretion and for reasons which it deems to be exceptional, pay to a worker who is attending a full-time training programme which lasts for more than 6 months, an allowance equal to the worker's salary during the period of the training programme.

(5) Payment of the allowance referred to in sub-regulation (4) shall be conditional on

the worker complying with any agreement entered into between the worker and the employer relating to the training programme.

(6) A worker, who applies to his employer for leave under subregulation (1) and is refused, may initiate the grievance procedure.

(7) Where education leave extends to a period beyond 12 consecutive months, the provisions relating to annual leave shall not apply to the worker during that period.

Sick leave

12. (1) Subject to this regulation a worker, other than a casual or part-time worker, is entitled to sick leave in any period of 12 months as follows-

(a) an aggregate maximum of 30 days' paid sick leave;

(b) when a worker is required by a medical practitioner to be confined to a hospital or similar institution if-

(i) the worker has not exhausted his 30 days' paid sick leave referred to in paragraph (a), and

(ii) the worker is confined at the hospital or similar institution or at home for a continuous period which extends beyond the unexhausted part of the 30 days' paid sick leave.

the worker shall be entitled to a further maximum 30 days' paid sick leave during that continuous period;

(c) an aggregate maximum of 60 days' unpaid sick leave after the exhaustion of paid sick leave under this regulation.

(2) Entitlement to sick leave under subregulation (1) arises where-

(a) a medical certificate of unfitness for work or confinement, as the case may be, is produced;

(b) in the case of subregulation (1)(a) or (c), a workers' child under 12 years of age is medically certified sick and a medical practitioner or official authorized by the Minister of Health recommends that the worker attends the child;

(c) in the case of subregulation (1)(a) or (c), a workers' dependent other than a child under 12 years of age is medically certified sick and a social worker certifies that the sick person requires the attendance of the worker.

(3) Where a worker is under a contract for a fixed term and the duration of the contract is of less than 12 months, the eligibility to sick leave under subregulation (1) is of a number of days bearing the same proportion to the term of the contract as the periods of sick leave referred to in subregulation (1) bear to 12 months, but in any case ends upon the date of expiry of the contract.

(4) Where following the full period of paid sick leave, a medical practitioner certifies that the worker will not recover and be fit for work the contract is deemed to be frustrated.

(5) Where a worker for reasons attributable to sickness fails to report for work after a full period of unpaid sick leave, the contract is deemed to be frustrated.

(6) Where a worker for reasons not attributable to sickness fails to report for work after the full period of unpaid sick leave, the contract is deemed to have been terminated by the worker.

(7) Whenever a worker is, for reasons attributable to sickness, unable to report for work, the worker shall so inform the employer within 24 hours if practicable, or as soon as possible thereafter.

Unfitness for particular duties

13. (1) Where a medical certificate is produced to the effect that a worker is unfit for the particular duties for which he was engaged but may perform alternative duties and no alternative duties are available, the worker is entitled to sick leave under regulation 12.

(2) Where, consequent upon the production of a certificate under subregulation (1), alternative duties are available, the worker shall be temporarily redeployed to those duties but the wages for his normal duties are maintained.

(3) Where a worker temporarily redeployed under sub-regulation (2) is still unfit for his previous duties after 60 days, he may, subject to section 49 of the Act, be permanently redeployed to his new duties in which case the terms and conditions attaching to the new duties shall apply.

(4) Where a permanent redeployment pursuant to subregulation (3) is not available, the worker shall, subject to regulation 12(3), be entitled to 60 days' unpaid sick leave unless a medical certificate is produced under regulation 12(4) in which case the contract of employment is deemed to be frustrated.

Part-time workers

14. A part-time worker is entitled to paid sick leave when he absents himself on grounds of sickness and produces a medical certificate or certificate of confinement, as the case may be, but such entitlement is limited to a number of working days' absence which bears the same proportion to the period of paid sick leave referred to in regulation 12(1) as the number of days worked by the part-time worker in a week bears to 5 days.

Employee entitled to sickness benefit

15. An employer who pays sick leave under regulation 13 or maternity leave under regulation 16 to a worker is subrogated in the rights of the worker to any sickness or maternity benefit to which the worker is entitled under the Social Security Act.

Maternity leave

16. (1) A female worker under a contract of continuous employment or, subject to subregulation (3), under a contract for a fixed term or a part-time female worker is entitled to

14 weeks' paid maternity leave of which not less than 12 weeks' unpaid maternity leave to be taken either before or after paid maternity leave.

(2) Where, whether before or after the period of paid maternity leave under subregulation (1), a female worker is medically certified as unfit for work on grounds of illness, or of disability arising out of pregnancy or confinement, she is entitled to sick leave under regulation 12.

(3) Where a female worker is under a contract for a fixed term her eligibility to maternity leave under this regulation ends upon the date of expiry of the contract.

Notice to employer

17. A pregnant worker shall give to her employer at least 3 months' notice of her expected date of confinement.

Maternity leave compulsory

18. A female worker entitled to paid maternity leave shall not return to work before the end of her entitlement leave and an employer who permits or induces a female worker so to return is guilty of an offence.

Contract expiring

19. Where a female worker fails to return to work after the full period of maternity leave allowed under regulation 16(1) then, unless she produces a medical certificate under regulation 16(2), the contract of employment is deemed to have been terminated by her.

Leave for Civic duties

20. A worker shall be entitled to an aggregate maximum of 14 days' paid leave in any period of 12 months for the purpose of fulfilling or in connection with any civic duties approved by the Minister.

Minimum employment age

21. A person shall not have in that person's employ another of less than 15 years of age.

Prohibited employment of young persons

22. (1) A person shall not employ another under the age of 18 years in a hotel, guest-house, boarding-house, any place where tourists are accommodated, restaurant, shop, bar, nightclub, dance-hall, discotheque or similar place of entertainment or on a ship or aircraft.

Provided that the foregoing prohibition shall not apply to any employment under a training scheme approved by the Minister in writing.

(2) A person shall not employ another under the age of 18 years between the hours of 10 p.m. and 5 a.m.

(3) A person shall not employ another under the age of 21 years in a gaming-house or casino.

(4) Notwithstanding subregulations (1) and (2) the competent officer may, exceptionally, grant special written permission for the employment of any aged 15 to 17 years in a place listed in subregulation (1) or between the hours of 10 p.m. and 5 a.m.

Maternity protection

23. (1) A female worker, from the time she is 6 months' pregnant and up to 3 months after her confinement, shall not be employed on overtime work or at night between the hours of 10 p.m. and 5 a.m.

(2) Where, at any time during pregnancy and up to 3 months after confinement, a female worker produces a medical certificate that a change in the nature of her work or duties is necessary in the interest of her health or that of her child, she has the right to be transferred to other work or duties appropriate to her condition without loss of wages.

(3) Where a transfer is not possible pursuant to sub-regulation (2) the female worker is entitled to sick leave under regulation 12.

Calculation of wages and compensation

24. (1) The following formula shall apply for the purpose of calculating the wages of a worker whose wage is calculated on an hourly basis-

Salary per year

52 x weekly working hours

(2) The following formula shall apply for the purpose of calculating compensation payable to a worker under section 47(2) of the Act-

A x B x C

52 x D

A stands for salary per year;

B stands for working hours per day;

C stands for number of days entitled under section 47 2(b)(i) of the Act;

D stands for number of working hours per week.

(3) Compensation payable to a part time worker shall be the amount which a full time worker in the same occupation would have received under these Regulations reduced in the proportion that the number of hours which the full-time worker would have worked bears to the number of hours which the part-time worker has worked.

Offences

25. An employer who contravenes regulation 21, 22(1), (2) or (3) or 23(1) is guilty of an offence.

Employment without contract prohibited

26. An employer, or a manager or representative of an employer, on an outer island who employs a worker on an outer island without there being a contract of employment with that worker in accordance with section 22 of the Act is guilty of an offence and liable to a fine of R.20,000.

Advances to worker entering into contract

27. (1) An employer on entering into a contract of employment with a worker under section 19 of the Act may give to the worker an advance of wages not exceeding the equivalent of 2 months' wages.

(2) Where an advance is given under subregulation (1), the manner of its repayment shall, without prejudice to section 33(1) (e) of the Act, be stipulated in the contract.

(3) Where a worker takes an advance of wages under subregulation (1) and subsequently fails to embark on the vessel or board the aircraft provided to take him to the place of employment, his failure so to embark or board shall, if he is charged with an offence under section 297 of the Penal Code, be prima facie evidence that he entered into the contract without intending to perform his obligations thereunder.

Free transport and food

28. (1) Subject to regulation 30, a worker under a contract of employment for work on an outer island, proceeding to or returning from work on the outer island is entitled to free passage and food during the passage for himself and members of his family accompanying him.

(2) The entitlement to a free return passage and free food during passage for members of a workers' family is available to them or any of them whether or not they accompany the worker but so long as they avail themselves of the entitlement within 6 months after the date of departure of the worker unless delayed beyond that period for reasons of pregnancy or illness.

Medical examination of worker and family

29. (1) A worker or any member of his family benefiting from an entitlement under regulation 28 shall not proceed to outer island where the worker is to be employed unless he has been medically examined and certified fit by a medical practitioner registered under the Medical Practitioners and Dentists Act.

(2) A medical examination under subregulation (1) shall be held within 7 days prior to the departure of the worker or of the member of his family.

Breach of contract by worker

30. (1) Where a worker returns to his home island in breach of his contract of employment on an outer island, then, unless he had at the time of his departure completed $\frac{3}{4}$ ths of his period of service, he shall bear the cost of his repatriation and of that of the members of his family in an amount not exceeding 25% of his monthly wages.

(2) Notwithstanding subregulation (1), where consequent upon the grievance procedure, if any, instituted under section 61 of the Act the competent officer determines that the worker was justified in terminating his contract, the repatriation expenses are fully borne by the employer.

Shop on outer island

31. (1) Section 34(2) of the Act does not apply in relation to employment on outer island.

(2) An employer who employs workers on an outer island shall keep on that island a shop for the sale to his workers and their families of foodstuffs and basic necessities of life and shall retain in stock there at any time at least a month's supply of such foodstuffs and necessities.

(3) A shop referred to in subregulation (1) shall be open at such time as to be readily accessible to workers and their families and its opening hours shall be posted on a notice board on the outside of the shop.

(4) The price at which goods may be sold to a worker or member of his family under this regulation shall not exceed by more than such percentage as the Principal Secretary to the Minister may determine by notice in the Gazette (and different percentages may be determined for different goods and for different outer islands)-

(a) the price of the same or similar goods in Mahe; or

(b) in the case of price controlled goods, the maximum price of those goods,

and shall be posted up on a board which shall be displayed in a conspicuous place in the shop.

(5) A shop kept under this regulation is subject to the Licences Act.

(6) In any dispute as to what constitutes a basic necessity of life the determination of the competent officer to that effect prevails.

Directions by competent officer

32. The competent officer may give to an employer keeping a shop under regulation 31(2) directions-

(a) specifying the foodstuffs and basic necessities to be made available in the shop;

(b) prohibiting the storage or sale of certain goods;

(c) as to the manner in which sales are to be effected in order to ensure as equitable a distribution of supply as possible to workers taking into account the number of persons in their households.

Invoices upon purchases

33. (1) Whenever a worker or member of his family makes a credit purchase in a shop on the outer island where the worker is employed, the person in charge of the shop-

(a) shall make out an invoice, showing the date of the purchase, in duplicate in relation to the purchase; and

(b) shall deliver a copy of the invoice to the purchaser.

(2) Subject to subregulation (3), an employer of a worker on an outer island may deduct from the worker's wages the amount of credit purchases made by the worker or member of his family from the outer island shop.

(3) A credit purchase which is not supported by an invoice made at the time and on the date of the purchase is deemed not to have been made and no deduction by the employer from the worker's wages is allowed in respect of that purchase.

Housing and water supply

34. (1) During the period of a worker's contract of employment on an outer island the employer shall provide the worker and his family with housing of a good standard.

(2) Every employer of a worker on an outer island shall arrange for a sufficient supply of wholesome water for the worker and his family and shall observe any reasonable directions which may be given to him by the competent officer in respect of such water supply.

Medical facilities and care

35. (1) Every employer of a worker on an outer island shall keep and provide for the use of the worker and his families such first-aid equipment and medicines and such general health facilities as satisfy the requirements of the Ministry of Health.

(2) Repealed

(3) Where a worker on an outer island is ill and facilities for his treatment are not available on the island or where a female worker or wife or concubine of a worker is pregnant, the employer shall, at his expense, arrange for the repatriation of the sick worker or of the pregnant woman to Mahe or to a hospital or health centre where adequate care and treatment are available.

Death of worker

36. Where a worker dies during his period of employment on an outer island, the employer shall as soon as possible give notice thereof to the competent officer together with a written report of the circumstances in which the worker died, and shall pay all wages due and deliver all property belonging to the deceased worker to the competent officer for distribution

in accordance with the law.

Manner of payment of wages and pay-slips

37. (1) Section 32(2) of the Act does not apply in relation to employers of workers on an outer island and the payment of wages of a worker there employed may be made-

(a) by remittances to persons in Mahe nominated by the worker to receive the same;

(b) by settlement of accounts at the end of the contract and payment to the worker in Mahe.

(2) Without prejudice to sections 35 and 36 of the Act, every employer of a worker employed on an outer island shall produce to the worker at the end of each month a pay-slip specifying-

(a) the worker's normal wages plus earning arising from overtime work, work on holidays, payment in lieu of holidays or otherwise;

(b) the deductions made for social security, shop account, remittances pursuant to subregulation (1)(a) and otherwise; and

(c) the amount remaining due to the worker,

and such pay-slip shall be prima facie evidence as against the employer of the amount due.

(3) No deduction is to be made under subregulation (2)(b) for any remittance unless the employer has received from the worker a written authority to that effect.

(4) Section 33(2) of the Act in so far as it limits the amount which may be deducted from a worker's wages does not apply to a worker employed on an outer island.

Task work on outer island

38. An employer may assign task work to a worker employed by him on an outer island but such task work shall not exceed the amount of work capable of being performed in an ordinary day of 8 hours.

Visits of competent officer

39. (1) An employer of a worker employed on an outer island shall provide the competent officer traveling to the island in the exercise of his duties under the Act with transport, food and accommodation facilities to the island and with food and accommodation on the island but the cost thereof shall be met by the competent officer.

(2) When a competent officer requests from an employer referred to in subregulation (1) transport shall be made available as soon as possible and in any case, not later than a month after the date of the request.

Registration of grievances

40. Where a worker on an outer island is empowered by the Act to initiate the grievance procedure and it is impracticable for him to register the grievance within the time limit set out in paragraph 2(1) of Part II of Schedule 1 to the Act, he may register the grievance within 14 days after his return from the outer island.

Definition

41. In regulations 28, 29, 31 and 33 to 35 references to “members of a worker’s family”, “members of his family” or “family” are construed as references to the person cohabiting with the worker and to the worker’s or their children normally living with the worker.

Housing

42. (1) Subject to section 42 of the Act and to subregulation (2), an employer who provides proper housing for his worker may deduct a maximum of R1500 a month from the worker’s wages, unless the competent officer authorizes the deduction of a higher amount.

(2) An employer shall not make a deduction under subregulation (1)-

(a) in respect of housing provided to a worker on an outer island; or

(b) wherever a worker is compelled, by reason of a transfer or other circumstances of his employment, to move from the house he owns or occupies rent-free in Seychelles to quarters provided by the employer.

Transport and uniform

43. Where transport or uniforms are provided, no deduction shall be allowed therefore, if such deduction would result in the worker receiving less than the national minimum wage.

Union activities

44. Repealed

Record card

45. (1) A record card of a worker kept under section 68 of the Employment Act, 1995 shall be in form I set out in the Schedule except where the competent officer has approved an alternative form which contains all required information.

(2) The other forms set out in the Schedule shall be used for the purposes specified in each such form.

Period of training

46. (1) The period of training on an employer’s training scheme for persons employed as trainees shall not exceed 2 years or such longer period as may be authorized by the competent officer.

(2) A training course for untrained workers in occupations shall not exceed 2 years or

such longer period as may be authorized by the competent officer.

Trainee's allowance

47. (1) Subject to subregulations (2) and (3), a trainee shall be paid an allowance equivalent-

(a) in the 1st year of training, to 70% of the salary payable to a worker engaged in the work for which the training is being undertaken;

(b) in the 2nd year of training, to 80% of the salary payable to a worker referred to in paragraph (a).

(2) Where a training scheme or training course is for a period not exceeding one year, a trainee shall be paid an allowance equivalent to 80% of the salary payable to a worker engaged in the work for which the training is being undertaken.

(3) Where the allowance payable under subregulation (1) or subregulations (2) to a trainee falling within section 24(b) of the Act is less than the national minimum wage, the allowance payable to that trainee shall be equivalent, in the 1st year of training, to the national minimum wage and in the 2nd year of training, if the training is for a period in excess of one year, to that wage increased by the increment payable to a worker engaged in the work for which the training is being undertaken.

Young worker's allowance

48. (1) A trainee referred to in section 27 shall be paid an allowance of-

(a) R1100 per month in respect of the first year of training;

(b) R1300 per month in respect of any subsequent year of training;

(2) An employer-

(a) who pays a trainee an allowance of R1100 shall be entitled to claim from the training fund 60% of such allowance;

(b) who pays a trainee an allowance of R1300 shall be entitled to claim from the training fund 40% of such allowance;

(c) who employs a trainee as a worker at the end of the training period shall be entitled to claim from the training fund a sum equivalent to 25% of the total allowance paid to such trainee:

Provided that an employer shall not terminate the contract of employment of a trainee referred to in this paragraph within a period of two years except for a serious disciplinary offence or any other just reason as determined by the competent officer.

Interest

48A. The rate of interest for the purpose of section 63A of the Act shall be the maximum lending rate of interest prescribed by the Central Bank of Seychelles prevailing on the day

that compensation becomes payable under that section.

Offences

49. An employer in breach of a regulation for which no offence is specified under these Regulations is guilty of an offence.

Penalties

50. A person guilty of an offence under these Regulations is liable, where no other penalty is provided, to a fine of not less than R.1000 and not more than R.10,000, and in the case of a continuing offence, to an additional penalty of R200 in respect of each day that the regulation is contravened.

SCHEDULE: (reg. 45)

| | | | | |
|---------------------------|------------------------|--------------------------|----------------|---------|
| Form I | | | | |
| REPUBLIC OF SEYCHELLES | | | | |
| PERSONNEL RECORD CARD | | | | |
| 1. Organisation | | | | |
| Personal details | Sex | Date of Birth | Marital Status | |
| Surname | | | | |
| First Names | Nationality | National Identity Number | | |
| | | | | |
| Maiden/Previous Name | Overseas Address | | | |
| Residential Address | (If Expatriate) | | | |
| 3. Education | Level | Subject (If Appropriate) | Institution | Remarks |

| 6. Conditions of Employment Date | Wages | Other Benefits |
|---|--------|-------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| 7. Discipline/Commendation Record Date | Action | Reason or Other Remarks |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| 8. Accident Record Date | Action | Reason or other Remarks |
| | | |

Form II

Section 11(2) of Employment Act, 1995

Particulars submitted by the employer within 15 days of filling of vacancy:

Employment Services Bureau

Unity House

Palm Street

P.O. Box 190

Victoria

Name of Employer:

Industry:

Employer's Social

Security No:/...../...../...../...../...../...../...../...../...../.....

Address:

Vacancy:

Nature of Contract:

Date Filled:/...../.....

Signature: Date:
...../...../.....

Designation:

Form III

JOB CARD

Section 17 of the Employment Act, 1995

Serial No:

National Identity No:/...../...../...../...../...../...../...../...../...../.....

Surname:

Other Names:

.....
Date of Birth:/...../.....

Address:

Employment Status:

Date Issued:/...../.....

Expiry Date:/...../...../...../...../...../.....

Issuing Officer:

Form IV

Section 17 of the Employment Act, 1995

Vacancy Notification

Employer's Social

Security No:

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

Name of Organisation:

Nature of Business:

Address:

..... Tel No:

| | | | | | |
|--|--|--|--|--|--|
| | | | | | |
|--|--|--|--|--|--|

Contact Person: Post:

Vacancy Information

Job Title/Occupation:

| |
|------------------------|
| Contract of Employment |
|------------------------|

| | | | |
|--|------------|--|------------|
| | | | |
| | Continuous | | Casual |
| | Part-time | | Fixed-term |

Number of Posts

| New | Replacement | Total |
|-----|-------------|-------|
| | | |

Starting date:

Location of Employment:

.....

Basic Working Conditions

Working Hours:.....

Salary of the Post: Other Benefits:

| |
|--------------------------------------|
| <p>Summary of Main Duties</p> |
| |
| |

Position Requirements

Education Level

| Education Level | | Course/Field | E/D |
|-------------------------|--|--------------|-----|
| P1-P6 | | | |
| S1-S5 | | | |
| Polytechnic | | | |
| | | | |
| <u>Post Polytechnic</u> | | | |
| Certificate | | | |
| Diploma | | | |
| Degree | | | |
| | | | |
| Other (Specify) | | | |

Notes: E/D = Essential/Desirable

Experience/Special Knowledge and Skills:

| Occupation | Yrs | Special Knowledge & Skills | E/D |
|-------------------|------------|---------------------------------------|------------|
| | | | |
| | | | |
| | | | |
| | | | |

Form V

Section 69 of Employment Act, 1995

Certificate of Employment

Name of employer: Tel. No:

Postal address:

Certificate issued on: By:
(Name)

(Designation)

Details of employee

Surname: First Name:

N.I.N: Address:

Date employed: End of contract date:

Last monthly salary (gross):

Positions Held: (Last Job First)

| Occupation/Job Title | From | To | Occupation/Job Title | From | To |
|-----------------------------|-------------|-----------|-----------------------------|-------------|-----------|
| | | | | | |

| | | | | | |
|--|--|--|--|--|--|
| | | | | | |
| | | | | | |
| | | | | | |

Training acquired during the period

.....

Conduct.

.....

.....

.....

Employer/Authorised Signatory

SUBSIDIARY LEGISLATION: SECTION 74: EMPLOYMENT (FEES) REGULATIONS

[22nd February, 1993]

SI. 15 of 1993
 SI. 36 of 1994
 SI. 6 of 2000
 SI. 94 of 2008

1. These Regulations may be cited as the Employment (Fees) Regulation.
2. Where a contract of employment is required under the Act to be attested by a competent officer, there shall, in relation to that contract, be paid by the employer of the worker an attestation fee as follows-
 - (i) in the case of a contract entered into by a minor a fee of R150;
 - (ii) in the case of a fixed term contract entered into by a non-Seychellois worker a fee of R750.
3. (1) There shall, subject to subregulation (2), be paid in respect of an appeal or an application for review under section 65 of the Act a fee of-
 - (i) R50, in the case of an application for review under subsection (1) of that section;

(ii) R300, in the case of an appeal under sub-section (2) of that section;

(iii) R300, in case of an application for review under subsection (3) of that section.

(2) Where appeals or applications for review are made by several employers or several workers on the same issue and on the same grounds, such appeals and applications shall be deemed to be a single appeal or a single application for review, as the case may be, for the purposes of subregulation (1).

4. There shall be paid for the initiation of a grievance procedure a fee of R50.

5. An employer shall pay a processing fee of R300 in the case of initiation of negotiation procedure under section 47, 48 or 51.

6. A person who takes a trade test shall pay a processing fee of R200.

7. There shall be paid a processing fee of R200 in respect of an application made by a person for approval for employment after that person's retirement age.

8. There shall be paid a processing fee of 5 per centum of the value of the wages and belongings of a deceased worker in excess of R1000, in respect of the disposal of such wages and belongings. The fee shall be paid by the beneficiary.

SUBSIDIARY LEGISLATION: SECTION 40(1)(a): EMPLOYMENT (NATIONAL MINIMUM WAGE) REGULATIONS

[31st December, 2007]

SI. 55 of 2007
SI. 6 of 2008
SI. 90 of 2008
SI. 11 of 2010
SI. 28 of 2010
SI. 45 of 2010
SI. 102 of 2011
SI. 52 of 2013
SI. 79 of 2013

1. These Regulations may be cited as the Employment (National Minimum Wage) Regulations, 2007, and shall come into operation on 1st January, 2008.

2. In these Regulations-

“wage”:

(a) means the payment made for work done by an employee, as provided by law or in terms of an agreement but not lower than the amount prescribed by law;

(b) does not include:

(i) payment for overtime work or shift allowances:

(ii) benefits provided by employers such as housing, transport and food;

“worker” does not include a trainee.

3. (1) An employer shall pay to-

(a) a worker under a contract of continuous employment;

(b) a worker under a contract for a fixed term; or

(c) a part-time worker,

a national minimum wage of R26.70 for every hour of service.

(2) An employer shall pay to a casual worker a national minimum wage of R30.78 for every hour of service.

Regulation 3 amended by SI 79 of 2013 with effect from 1 January 2014

4. A person shall not derogate from these Regulations by individual or collective agreement.

5. (1) An employer who-

(a) contravenes regulation 3;

(b) victimizes a worker who has not been paid the minimum wage in accordance with these regulations and who has initiated the grievance procedure under the Act for the recovery of such wage.

Commits an offence and is liable on conviction to a fine of not less than R1000 and not more than R10000, and in the case of a continuing offence to an additional penalty of R200 in respect of each day that the regulation is contravened.

6. The Minister may, by order published in the Gazette exempt-

(a) any worker or category of workers;

(b) any sector of the economy,

from the application of these Regulations subject to such conditions as the Minister may think fit.

SUBSIDIARY LEGISLATION: SECTION 6: EMPLOYMENT (NATIONAL MINIMUM WAGE) (EXEMPTION) ORDER [REPEALED]

[31st January, 2008]

1. This Order may be cited as the Employment (National Minimum Wage) (Exemption) Order.
2. A non-Seychellois worker who is employed in the tourism or construction industry is exempt from the application of the provisions of the Employment (National Minimum Wage) Regulations 2007.

Note: This exemption order was repealed by S.I 10 of 2010 with effect from 1st July 2010

SUBSIDIARY LEGISLATION: SECTION 10(c): EMPLOYMENT (TRIBUNAL FEES) REGULATIONS

[1st December, 2008]

SI. 93 of 2008

1. This Regulations may be cited as the Employment (Tribunal Fees) Regulations, and shall be deemed to have come into operation on 1st December, 2008.
2. Where an applicant registers a grievance case before the Tribunal, the applicant shall pay to the Tribunal a fee of R200.

SUBSIDIARY LEGISLATION: SECTION 40(2): EMPLOYMENT (WAGE INCREASE) REGULATIONS

[7th July, 2010]

SI. 46 of 2010
SI. 100 of 2010

1. This Regulations may be cited as the Employment (Wage Increase) Regulations, 2010, and shall come into operation on 1st July, 2011.
2. With effect from 30th June 2010, employers shall pay every worker who is in employment on that date a wage that is increased in accordance with these Regulations.
3. (1) The formula of the increased wage of an employee shall be the gross wage + 20% except in the case of the following categories of employees in respect of which the formula is individually specified-
 - (a) a person employed as a Domestic Worker as defined under the Income and Non-Monetary Benefits Tax Act, 2010: Gross Wage per month + SR50.00;
 - (b) a person employed as a Day Care Worker as defined under the Income and Non-Monetary Benefits Tax Act, 2010 is the lower of:

(i) Gross Wage per month + SR100; or

(ii) Gross Wage per month or part thereof + 10% of such wage or part;

(c) A person employed by a Farming Entity in possession of a Certificate granted under the Agriculture and Fisheries (Incentives) Act, 2005: Gross Wage per month + SR100;

(d) A person employed by a Boat Owner in possession of a Certificate granted under the Agriculture and Fisheries (Incentives) Act, 2005-

Gross Wage per month + SR100

(e) A non-Seychellois employee-

Gross Wage per month + 5.88% thereof.

(2) For the purpose of these Regulations, “Gross Wage” means any cash remuneration received by an employed person.

4. Notwithstanding regulations 3, the increase shall not apply in the case of a person whose wage was exempt from the payment of both the Social Security Fund employer and employee contribution as at 30th June, 2010 and whose emolument continues to be exempted from liability to tax in accordance with Schedule 2 of the Income and Non-Monetary Benefits Tax Act, 2010.

5. An employer who contravenes regulations 2 and 3 commits an offence and is liable on conviction to a fine of not less than SR100 and not more than SR500 in respect of any worker, and in the case of a continuing offence to an additional penalty of SR 200 in respect of each day that the regulation is contravened.

6. The Minister may, by Order published in the Gazette, exempt any class or category of workers from the application of these Regulations, subject to such conditions as the Minister may specify in the Order.

SUBSIDIARY LEGISLATION: SECTION 72A: EMPLOYMENT (NATIONAL CONSULTATIVE COMMITTEE ON EMPLOYMENT) REGULATIONS

[NOT YET IN FORCE]

SI. 19 of 2010

1. These Regulations may be cited as the Employment (National Consultative Committee on Employment) Regulations.

2. In these Regulations-

“Committee” means the National Consultative Committee on Employment establishment under regulations3;

“member” means a member of the Committee;

“Minister” means the Minister responsible for Employment and Human Resources Development and “Ministry” is construed accordingly;

“Principal Secretary” means the Principal Secretary of the Ministry of Employment and Human Resources Development.

3. There is established a Committee which shall be known as the National Consultative Committee on Employment.

4. The objects of the Committee are-

(a) to provide, in the public interest, a regular and organised means by which representatives of the Government, and employers’ and employees’ organisations may consult on matters of industrial relations and employment of national concern;

(b) to provide views and advice to the Government on matters of industrial relations and employment;

(c) to discuss, and report to the Government on the formulation and implementation of national policies on matters of industrial relations and employment;

(d) to initiate or undertake studies into socioeconomic issues;

(e) to discuss the adoption of international standards of the International Labour Organisation and to provide views and advice to the Government on the adoption of such international standards;

(f) to provide views and advice to the Government on matters to be discussed at an international labour conference of the International Labour Organisation or any other regional or international tripartite body;

(g) to provide views and advice on any specific matter relevant to the objects of the Committee referred to the Committee by the Government.

5. (1) The Committee consists of the following members —

(a) the Minister, who shall be the Chairperson of the Committee;

(b) the Principal Secretary, who shall be the vice-chairperson of the Committee;

(c) 6 representatives of the Government Ministries;

(d) 3 representatives nominated by the most representative employers’ organisation; and

(e) 3 representatives nominated by the most representative employees’ organisation.

(2) The members referred to in subparagraph (c) to (e) shall be appointed by the Minister.

(3) The Minister shall cause a notice of the names of the members to be published in the Gazette.

6. (1) Each member shall hold office for a period of 3 years and be eligible to be re-appointed.

(2) A member referred to in regulation 5(1) (c) to (e) may resign his membership in writing, signed by that member and delivered to the Minister, and such member shall cease to be a member of the Committee from the date that the Minister confirms receipt of such resignation in writing.

(3) A member shall be deemed to have vacated office if that member has been absent without leave of the Committee from 3 consecutive meetings of the Committee.

(4) The Minister shall, at any time, terminate the appointment of a member of the Committee if the member has been guilty of —

(a) any misconduct, default or breach of trust in the discharge of that member's duties; or

(b) an offence of such nature that calls into question the member's professional standing or the reputation of the Committee and warrants that the appointment of such member be terminated.

(5) Where a member resigns, vacates office or has had his or her appointment terminated, then —

(a) if that member is a member referred to in regulation 5(1)(c), the Minister shall appoint a person to hold office for the remaining period of office of that member;

(b) if that member is a member referred to in regulation 5(1)(d), the employers' organization on the nomination of which that member was appointed shall nominate a person to hold office for the remaining period of office of that member;

(c) if that member is a member referred to in regulation 5(1)(e), the employees' organisation on the nomination of which that member was appointed shall nominate a person to hold office for the remaining period of office of that member.

(6) The persons referred to in subregulation (5)(b) and (c) shall be appointed by the Minister.

7. (1) There shall be a meeting of the Committee at least once in every three months of the year.

(2) The Minister shall preside at all meetings of the Committee at which the Minister is present, and in the absence of the Minister from a meeting, the vice-chairperson shall

preside.

(3) At a meeting of the Committee, 4 members of whom one shall be a member appointed under regulation 5(1)(c) and an equal number of members referred to in regulations 5(1) (d) and (1)(e), shall constitute a quorum.

(4) All questions for determination at a meeting of the Committee shall be decided by a majority vote of members present at the meeting and voting thereon and each member shall have one vote.

(5) The Minister shall convene an extraordinary meeting of the Committee whenever requested to do so by not less than 7 members of the Committee.

(6) The members of the Committee shall be paid such allowances as the Minister may determine.

8. The Minister may, in consultation with other members of the Committee, invite experts or advisors to a meeting of the Committee to give their expert views and opinions on matters referred to them by the Committee.

9. (1) The Committee shall at any time cause to be constituted specialised standing or ad-hoc committees to consider and report to the Committee on any matter relevant to the objects of the Committee referred to it by the Committee.

(2) Such specialised standing or ad-hoc committees shall be composed of an equal number of representatives of employers and employees.

(3) A decision of a committee constituted under subregulation (1) shall be acted upon without the approval of the Committee.

10. (1) There shall be a Secretariat of the Committee, to prepare all meetings of the Committee in consultation with its Chairperson and vice chairperson, to keep and maintain records of all its activities and of minutes of meetings and to do all such things as the Committee directs it to do.

(2) There shall be a Secretary appointed by the Minister from among the senior officers of the labour administration of the Ministry to be the head of the Secretariat and Secretary to the Committee.

11. Subject to regulation 7, the Committee and committees thereof shall regulate their own proceedings.

12. These Regulations shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.
