

# WORKERS' COMPENSATION ORDINANCES 1941.<sup>(1)</sup>

## An Ordinance relating to Compensation to Workers for Injuries suffered in the course of their Em- ployment, and for other purposes.

**B**E it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Workers' Compensation Ordinances 1941*.<sup>(1)</sup>

Short title.  
Amended by  
No. 3 of 1934,  
s. 50.
  
2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.<sup>(1)</sup>

Commencement.
  
3. In this Ordinance, unless the contrary intention appears—
 

Definitions.

  - “Asiatic” means any person, other than a native, of Asiatic origin or descent; and includes any person, other than a native, who is an aboriginal native of any island of the Pacific Ocean or of any of the East Indian islands or who is descended from any aboriginal native aforesaid;
  - “dependants” means such of the members of the worker's family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or who would, but for the incapacity due to the accident, have been so dependent, and includes a person so dependent

(1) The *Workers' Compensation Ordinances 1941* comprises the *Workers' Compensation Ordinance 1941*, as amended by the other Ordinance referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Governor-General in Council.	Date on which came into operation.
<i>Workers' Compensation Ordinance 1941</i> (No. 4 of 1941)	22.4.1941	31.7.1941	1.11.1941 ( <i>N.G. Gaz.</i> of 4.9.1941)
<i>Workers' Compensation Ordinance</i> (No. 2) 1941 (No. 15 of 1941)	8.7.1941	30.9.1941	The whole except Secs. 4, 5 and 6 on 8.7.1941 ( <i>Laws of T.N.G.</i> , Vol. XV., p. 157). Secs. 4, 5 and 6 on 1.11.1941 (Sec. 3, <i>Workers' Compensation Ordinance</i> (No. 2) 1941)

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to whom the worker stands *in loco parentis* or a person so dependent who stands *in loco parentis* to the worker; and where the worker—

(a) being the parent or grandparent of an ex-nuptial child, leaves the child so dependent upon his earnings; or

(b) being an ex-nuptial child, leaves a parent or grandparent so dependent upon his earnings, includes such an ex-nuptial child and parent or grandparent respectively:

Provided that in the event of the death or incapacity of an Asiatic worker, any such person so dependent (other than a wife, husband, son, or daughter) who does not ordinarily reside within the Territory, shall not be deemed to be a dependant unless he was born in the Territory;

“District Court” means a District Court holden in a town appointed by the Administrator by notice<sup>(2)</sup> and constituted by a Stipendiary Magistrate, or by a District Officer authorized by the Administrator by notice to constitute a District Court for the purposes of this Ordinance;

“employer” includes the Administration, any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer; and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Ordinance, be deemed to continue to be the employer of the worker while he is working for that other person;

“ex-nuptial child” means a child not born in lawful wedlock;

“member of a family” means wife, husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, and adopted child;

“outworker” means a person to whom articles or materials are given out to be treated or manufactured in his own home or on other premises not under the control or management of the person who gave out the articles or materials;

(2) Pursuant to Section 3, the Administrator, by notice dated 24th October, 1941, and published in *N.G. Gaz.* of 31st October, 1941, appointed the towns of Kavieng, Kieta, Lorengau, Madang, Rabaul, Wau, and Wewak to be towns in which a District Court might be holden for the purposes of this Ordinance.

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“Regulations” means regulations made under this Ordinance;

“seaman” includes master, officer, apprentice, or other person employed or engaged in any capacity on board a ship;

“ship” includes every vessel used in navigation not ordinarily propelled by oars;

“vessel” means any ship, boat, or other description of vessel used for any purpose on the sea or in navigation;

“worker” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing, but does not include—

(a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business;

(b) a person whose remuneration exceeds Six hundred and fifty pounds per annum;

(c) an outworker;

(d) a member of the employer's family dwelling in his home;

(e) an “employee” as defined by the *Administration Employees' Compensation Ordinance 1939*; and

(f) a native,

and any reference to a worker who has been injured shall, where the worker is dead, include a reference to his legal personal representative or to his dependants, or other person, to whom or for whose benefit compensation is payable.

4.—(1.) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall, subject to this Ordinance, be liable to pay compensation in accordance with the First Schedule to this Ordinance:

Compensation  
for personal  
injuries to  
workers.

Provided that—

(a) the worker shall not be entitled to recover compensation from the employer or any person or to receive from the employer any payment in respect of the accident, or in respect of the illness or incapacity arising from the accident, both independently of and also under this Ordinance; but, subject to this paragraph, this Ordinance shall not affect any civil liability of the employer under any other law;

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- (b) if it is proved that the injury to a worker is attributable to his serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent incapacity, be disallowed;
- (c) compensation shall not be payable on account of any injury to or death of a worker caused by an intentional self-inflicted injury;
- (d) in the case of the death of a worker leaving no dependants, no compensation shall be payable under this Ordinance other than for funeral expenses;
- (e) if it appears that the claimant has a claim against the employer or any person for compensation or for any payment in respect of the injury under any other law in force in the Territory or any other place, compensation under this Ordinance shall only be allowed upon the claimant undertaking in writing not to claim compensation for the injury under any such law;
- (f) where the worker continues in the service of the employer after the injury, any pay (not including allowances paid in respect of children of the worker) received by him from the employer shall be deducted from any compensation payable under this Ordinance in respect of the same period;
- (g) where the liability of the employer is redeemed by the payment of a lump sum, that sum shall be reduced by the amount of any weekly payments received by the worker under the First Schedule to this Ordinance during any period of the incapacity from the injury; and
- (h) the employer shall not be liable under this Ordinance in respect of any injury which does not incapacitate a worker for a period of at least seven days from earning full wages at the work at which he was employed. But if he is incapacitated for that period, the compensation shall date from his receiving the injury.

(2.) If any question arises, in any proceedings under this Ordinance, as to the liability to pay compensation under this Ordinance (including any question as to whether the person injured is a worker to whom this Ordinance applies) or as to the amount or duration of compensation under this Ordinance, the question shall, subject to the provisions of the First Schedule to this Ordinance, be settled by arbitration in accordance with the provisions of the Second Schedule to this Ordinance.

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(3.) Any undertaking given in pursuance of paragraph (e) of the proviso to sub-section (1.) of this section shall have effect as a contract between the claimant and the employer or person, as the case requires, from whom the compensation or payment is claimed.

(4.) This Ordinance shall apply notwithstanding any contract to the contrary, whether made before or after the commencement of this Ordinance.

5. Where a worker sustains, by accident arising out of and in the course of his employment, any of the injuries specified in the first column of the Third Schedule to this Ordinance, the compensation payable under this Ordinance shall, when the injury results in total or partial incapacity, be the amount specified in the second column of that Schedule opposite the injury so sustained, less any amount received by the worker under the First Schedule to this Ordinance during any period of his total or partial incapacity arising from his injury:

Compensation for certain injuries.

Provided that where the worker is an Asiatic the compensation payable shall be two-thirds of the amount specified in the second column of the Third Schedule to this Ordinance opposite the injury so sustained, less any amount received by the worker under the First Schedule to this Ordinance during any period of his total or partial incapacity arising from his injury.

6. In addition to any compensation payable by an employer under this Ordinance to, or with respect to, a worker, the employer shall pay the cost, not exceeding in any case the sum of Twenty-five pounds, of such medical, surgical, dental, and hospital treatment as is reasonably necessary in relation to the injury. The amount payable under this section shall, in the absence of agreement, be settled by arbitration in accordance with the Second Schedule to this Ordinance.

Medical benefits

6A.—(1.) In respect of any war injury sustained in time of war by any person, no such compensation or other moneys shall be payable, whether to the person injured or to any other person, as apart from the provisions of this section would be payable under this Ordinance.

Relief from liability to pay compensation, &c., in respect of war injuries. Section 6A inserted by No. 15 of 1941, s. 4.

(2.) In this section "war injury" means personal injury—  
(a) caused by—

- (i) the discharge of any missile (including liquids and gas); or
- (ii) the use of any weapon, explosive, or other noxious thing; or
- (iii) the doing of any other injurious act, either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

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- (b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of or for the benefit of, His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.

Maximum compensation.

7. Notwithstanding anything contained in this Ordinance, a worker shall not, with respect to any one accident, be entitled to receive as compensation under this Ordinance an amount exceeding Seven hundred and fifty pounds in addition to such expenses as are awarded to him under the last preceding section:

Provided that where the worker is an Asiatic he shall not, with respect to any one accident, be entitled to receive as compensation under this Ordinance an amount exceeding Five hundred pounds in addition to such expenses as are awarded to him under the last preceding section.

Time for taking proceedings.

8.—(1.) Proceedings for the recovery under this Ordinance of compensation for an injury shall not be maintainable unless notice in writing of the accident has been given as soon as practicable after it has happened, and before the worker has voluntarily left the employment in which he was injured, and unless the claim for compensation has been made—

- (a) within six months after the occurrence of the accident; or  
(b) in case of death, within six months after news of the death has been received by the claimant:

Provided that—

- (c) the want of, or any defect or inaccuracy in, the notice shall not be a bar to the maintenance of the proceedings if it is found, in the proceedings for settling the claim, that the employer is not or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake or other reasonable cause; and  
(d) the failure to make a claim within the prescribed period shall not be a bar to the maintenance of the proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of any injury to which this Ordinance applies shall contain the name and address of the person injured and a statement in ordinary language of the cause of the injury and the date at which the accident happened, and shall be served upon the employer, or, if there is more than one employer, upon one of the employers.

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(3.) The notice may be served by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person upon whom it is to be served.

(4.) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it at, or sending it by post in a registered letter addressed to the employer at, the office or, if there is more than one office, any of the offices of the body.

9.—(1.) Where any person (in this section referred to as the principal), in the course of, or for the purposes of, his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by, or under, the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under this Ordinance which he would have been liable to pay if that worker had been immediately employed by him; and where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Ordinance, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed:

Sub-contracting.

Provided that, where the contract relates to threshing, ploughing, or other agricultural work and the contractor provides and uses machinery driven by mechanical power for the purposes of that work, he and he alone shall be liable under this Ordinance to pay compensation to any worker employed by him on that work.

(2.) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section, and all questions as to the right to, and amount of, any such indemnity shall in default of agreement be settled by arbitration in accordance with the provisions of the Second Schedule to this Ordinance.

(3.) Nothing in this section shall be construed as preventing a worker recovering compensation under this Ordinance from the contractor instead of the principal.

(4.) This section shall not apply in any case where the accident occurred elsewhere than on, in, or about premises on which the principal has undertaken to execute the work or which otherwise are under his control and management.

10. Where the injury for which compensation is payable under this Ordinance was caused under circumstances creating a legal

Remedies both against the employer and a stranger.

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liability in some person other than the employer to pay damages in respect thereof—

- (a) the worker may take proceedings against that person to recover damages and may also make a claim against any person liable to pay compensation under this Ordinance for such compensation, but shall not be entitled to recover both damages and compensation; and
- (b) if the worker has received compensation under this Ordinance, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under section nine of this Ordinance, shall be indemnified by the person so liable to pay damages, and all questions as to the right to, and amount of, any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration in accordance with the provisions of the Second Schedule to this Ordinance.

Application of  
Ordinance to  
Industrial  
diseases.

### 11.—(1.) Where—

- (a) a worker is suffering from a disease mentioned in the Fourth Schedule to this Ordinance and is thereby incapacitated from earning full wages at the work at which he was employed; or
- (b) a worker is, in pursuance of any law, suspended from his usual employment on account of having contracted any such disease; or
- (c) the death of a worker is caused by any such disease, and the disease is due to the nature of any employment in which the worker was employed at any time within the twelve months immediately preceding the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Ordinance as if the disease or the suspension were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—
  - (d) The disablement or suspension shall be treated as the happening of the accident;
  - (e) If it is proved that the worker has, at the time of entering the employment, wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable; and
  - (f) The compensation shall be recoverable from the employer who last employed the worker during that



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period of twelve months in the employment to the nature of which the disease was due:

Provided that—

- (i) the worker or his dependants, if so required, shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during that period of twelve months as he or they possess, and, if that information is not furnished, or is not sufficient to enable that employer to take proceedings under paragraph (ii) of this proviso, that employer, upon proving that the disease was not contracted while the worker was in his employment, shall not be liable to pay compensation;
  - (ii) if that employer alleges that the disease was in fact contracted while the worker was in the employment of some other employer, and not while in his employment, he may join that other employer as a party to the arbitration, and if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable; and
  - (iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who, during that period of twelve months, employed the worker in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, are settled in the arbitration in accordance with the provisions of the Second Schedule to this Ordinance for settling the amount of the compensation;
- (g) The amount of the compensation shall be calculated with reference to the earnings of the worker under the employer from whom compensation is recoverable; and
- (h) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the worker during that period of twelve months in the employment to the nature of

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which the disease was due, and the notice may be given notwithstanding that the worker has voluntarily left his employment.

(2.) If the worker, at or immediately before the date of the disablement or suspension, was employed in any process mentioned in the second column of the Fourth Schedule to this Ordinance, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where a medical referee certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3.) For the purposes of this section the date of disablement shall be such date as the medical referee certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given:

Provided that where a worker dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(4.) Nothing in this section shall affect the rights of a worker to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Ordinance.

(5.) The provisions of the First Schedule to this Ordinance shall, subject to this Ordinance, be deemed to apply to, or in respect of, any claim for compensation made in pursuance of this section.

Appointment of  
medical  
referees.

12. The Administrator may appoint any duly qualified medical practitioners residing in or out of the Territory to be medical referees for the purposes of this Ordinance.

Returns as to  
compensation.

13. Every employer in any industry to which the Administrator directs that this section shall apply, shall, on or before such day in every year as the Administrator directs, send to the Administrator a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Ordinance during the previous year and the amount of the compensation and such other particulars as to the compensation as the Administrator directs.

Penalty: Ten pounds.

Compulsory  
insurance.

14.—(1.) Every employer, other than the Administration, shall obtain, from an insurer approved<sup>(3)</sup> by the Administrator for the purposes of this Ordinance, a policy of insurance or indemnity for the full amount of his liability under this Ordinance to all workers employed by him and shall maintain such policy in force:

(3) Pursuant to Section 14, the Administrator, by notice published in *N.G. Gaz.* of 29th November, 1941, approved of the following Companies as insurers:—Queensland Insurance Company Ltd., Bankers and Traders Insurance Co. Limited, Union Assurance Society Limited, Southern Pacific Insurance Co. Ltd. and Lloyds Underwriters-Harvey, Trinder (N.S.W.) Proprietary Limited.

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Provided that the Administrator may by notice authorize any employer to undertake the liability to pay compensation to his own workers. The Administrator may at any time, upon notice to the employer concerned and consideration of such evidence as he desires to submit, review and continue, suspend, or terminate any such authority as he thinks expedient.

(2.) An insurer shall not, except with the consent in writing of the Administrator given after due inquiry into the circumstances, refuse to issue such a policy of insurance or indemnity to any employer who has complied with the conditions determined by the Administrator.

(3.) Every policy of insurance or indemnity indemnifying an employer against his liability under this Ordinance shall contain only such provisions relating thereto as are determined by the Administrator, but may contain such other provisions relating to liability under any other law of the Territory as are appropriate to any particular case.

Any contravention of this provision shall not annul such policy or diminish or affect the liability of the insurer to the person insured under such policy.

Every such policy shall provide that the insurer shall, as well as the employer, be directly liable to any worker insured under such policy and, in the event of his death, to his dependants, to pay the compensation for which an employer is liable, and that the insurer shall be bound by, and subject to, any order, decision, or award made against the employer of such worker under the provisions of this Ordinance.

(4.) Every employer or insurer who fails to comply with any provision of this section shall be liable to a penalty not exceeding Two hundred pounds, and after the date of conviction of any such failure to comply he shall from time to time be liable to further penalties not exceeding Twenty pounds for every week during which he continues to fail to comply with any such provision.

(5.) It shall be sufficient defence on any prosecution under this section instituted within twelve months from the commencement of this Ordinance, if the person charged proves that he is insured, by an insurance company carrying on business in the Territory and approved by the Administrator, against the full amount of his liability to pay compensation under this Ordinance to all workers employed by him.

(6.) Where several persons may become liable to pay compensation in respect of the same worker, it shall be sufficient to obtain a joint policy of insurance or indemnity in respect of such liability. The premium chargeable in respect of such policy shall not exceed the current rates for insurance of an employer's liability in respect of workers engaged in the same trade, occupation, calling, or industry.

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(7.) Every employer applying to an insurer to issue or renew a policy of insurance or indemnity against liability under this Ordinance shall supply to the insurer a full and correct statement of all wages paid to workers in his employment during the period relevant to the determination of the premium payable by him for such policy of insurance.

Penalty: Two hundred and fifty pounds.

(8.) Where an insurer approved by the Administrator fails to comply with any provision of this section, the Administrator may revoke the approval; but the revocation of the approval shall not annul any policy of insurance or indemnity issued before the revocation, or diminish or affect the liability of the insurer to the person insured under the policy of insurance or indemnity.

Inspection of policies.

**15.**—(1.) The Administrator, or an officer authorized by the Administrator in that behalf, may, by notice in writing, require an employer—

(a) to produce for inspection any policy of insurance or indemnity indemnifying him against his liability under this Ordinance; and

(b) to furnish such particulars in relation thereto as the Administrator or officer deems necessary.

(2.) Any employer who fails to comply with any such requirement within the time and in the manner stated in the notice shall be guilty of an offence.

Penalty: One hundred pounds.

Worker's right to information.

**16.**—(1.) A worker shall be entitled to inquire of his employer the name and address of the insurer from whom the employer has obtained a policy of insurance or indemnity against his liability under this Ordinance, or, if the employer is a self insurer, to be so informed.

(2.) Any employer, or person acting for an employer in the management of the business, who refuses to supply such particulars or who in reply to an inquiry under this section gives any false or misleading information, shall be guilty of an offence.

Penalty: Twenty pounds.

Application of Ordinance to seamen.

**17.**—(1.) This Ordinance shall apply to a worker who is a seaman employed on a Territory ship or a ship whose first port of clearance and whose destination are in the Territory.

(2.) In this section the term "Territory ship" means any ship which is—

(a) registered in the Territory; or

(b) owned by a body corporate established under the laws of the Territory or having its principal office or place of business in the Territory, or is in the possession of any such body corporate by virtue of a charter; or

Paragraph (b) amended by No. 15 of 1941, s. 5.

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(c) owned by any person or body corporate whose chief office or place of business in respect of the management of the ship is in the Territory, or is in the possession of any such person or body corporate by virtue of a charter.

(3.) The application of this Ordinance to seamen, as provided by this section, shall be subject to the following modifications:—

(a) The notice of accident and the claim for compensation may, except where the person injured is a master, be given to the master of the ship as if he were the employer; but where the accident happened, or the incapacity commenced, on board the ship, it shall not be necessary to give notice of the accident;

(b) In the case of the death of a seaman, the claim for compensation shall be made within six months after news of the death has been received by the claimant;

(c) Where an injured seaman is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury taken by a judge or magistrate in the British possession, or by any British consular officer in the foreign country, shall, in any proceedings for enforcing the claim, be admissible in evidence if authenticated by the signature of such judge, magistrate, or consular officer, without proof of the signature or official character of the person appearing to have signed such deposition;

(d) In the case of the death of a seaman leaving no dependants, no compensation shall be payable if the owner of the ship is, under any law in force in the Territory, liable to pay the expenses of burial;

(e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force in the Territory, liable to defray the expenses of maintenance of an injured seaman;

(f) Any sum payable by way of compensation shall be paid in full notwithstanding any limitation of liability in any other law;

Paragraph (f)  
amended by  
No. 15 of 1941,  
s. 5.

(g) In any proceeding for the recovery of compensation, if it is shown that the ship has, twelve months or upwards before the institution of the proceeding, left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost with

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all hands on board either immediately after the time she was last heard of or at such later time as the Supreme Court or arbitrator thinks probable;

- (h) Any duplicate agreement or list of the crew made out or statement of change of the crew delivered to a public officer at the time of the last departure of the ship from a port, or a certificate purporting to be a certificate from a consular or other public officer at any port, stating that certain seamen were shipped in the ship from the port, shall, if produced or purporting to be produced from the proper custody, be, in the absence of proof to the contrary, sufficient proof that the seamen therein named as belonging to the ship were on board at the time of the loss;
- (i) In the case of a ship lost with all hands, proceedings for the recovery of compensation shall be maintainable if the claim is made within eighteen months of the date at which the ship is deemed under paragraph (g) of this sub-section to have been lost with all hands.

### Appeal to Supreme Court.

**18.**—(1.) Where a District Court gives a decision or makes an order or award with respect to any matter which may or is required to be settled by arbitration under this Ordinance, either party to the arbitration may appeal from the decision, order, or award, on a question of law or fact or both, to the Supreme Court, within the time and in accordance with the conditions prescribed by Rules<sup>(4)</sup> of the Supreme Court, and the appeal may be in the nature of a rehearing.

(2.) The Supreme Court shall decide the matter of the appeal and may either affirm, quash, or vary the decision, order, or award appealed from, or substitute or make any decision, order, or award which ought to have been made in the first instance, and may make such order as to the costs of the appeal or of the proceedings before the District Court, or both, as it thinks proper.

### Regulations.

**19.** The Administrator in Council may make regulations,<sup>(5)</sup> not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to—

- (a) the procedure in regard to the medical examination of injured workers;
- (b) the duties and fees of medical referees appointed under this Ordinance;

(4) See the *Supreme Court, Workers' Compensation Rules*, printed on p. 477.

(5) See the *Workers' Compensation Regulations*, printed on p. 485.

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- (c) the fees and expenses to be paid for medical examinations and medical attendance;
- (d) the forms to be used in connection with this Ordinance;
- (e) the procedure and practice in regard to arbitration under this Ordinance;
- (f) the matters in which fees shall be paid and the fees to be paid;
- (g) the manner of doing or performing anything by this Ordinance required to be done or performed; and
- (h) the imposition of penalties not exceeding Fifty pounds for breaches of regulations made under this section.

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THE FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

1. Subject to the provisions of section seven of this Ordinance, the amount of compensation under this Ordinance shall be—

(a) where death results from the injury—

- (i) if the worker leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years immediately preceding the injury, or the sum of Four hundred pounds, whichever of those sums is the larger, but not exceeding in any case Seven hundred pounds:

Provided that the amount of any weekly payments made under this Ordinance and any lump sum paid in redemption thereof shall be deducted from that sum:

Provided further that if the period of the worker's employment under that employer has been less than those three years, then the amount of his earnings during those three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under that employer;

- (ii) if the worker does not leave any dependants wholly dependent upon his earnings at the time of his death, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as is reasonable and proportionate to the injury to the dependants; or
- (iii) if the worker leaves no dependants, the reasonable expenses of his funeral not exceeding Twenty-five pounds;

(b) where total or partial incapacity for work results from the injury—

- (i) a weekly payment during the incapacity not exceeding two-thirds of the injured worker's average weekly earnings during the twelve months immediately preceding the accident, if he has been so long employed, but, if not, then for any less period during which he has been in the employment of the same employer, but the weekly payment shall not exceed Three pounds, and the total liability in respect thereof shall not exceed Seven hundred and fifty pounds:

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Provided that in no case shall a worker who is the sole or main support of a wife, husband, parent, brother, or sister receive during total incapacity a less sum per week than those average weekly earnings or the sum of Three pounds, whichever is the smaller amount:

Provided further that in no case shall a worker receive during total incapacity a less sum per week than One pound; and

- (ii) for each child under fifteen years of age and totally or mainly dependent upon the earnings of the injured worker at the date of the accident, a weekly payment amounting to Eight shillings and six pence per week where the injured worker is not an Asiatic and Five shillings and eight pence per week where the injured worker is an Asiatic, which shall be payable during the disablement of the worker, or until a lump sum settlement has been made with the worker in respect of the accident, or until the age of fifteen years is reached, whichever first happens:

Provided that the total amount payable per week in respect of all such children shall not exceed the sum of One pound ten shillings where the injured worker is not an Asiatic and the sum of One pound where the injured worker is an Asiatic.

The total weekly amount payable under clauses (i) and (ii) of this sub-paragraph to the injured worker shall not exceed a sum equal to the weekly pay of the worker, computed as for one full week of constant employment at the date of the accident, or the sum of Four pounds ten shillings, whichever is the smaller amount, in the aggregate, or the sum of Seven hundred and fifty pounds in all.

2. For the purposes of the provisions of this Schedule relating to "earnings" and "average weekly earnings" of a worker, the following rules shall be observed:—

- (a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated;
- (b) In computing average weekly earnings there may be taken into consideration amounts paid by way of overtime, but not any sums which the employer has been accustomed to pay to the worker to cover any special expenses entailed on him by the nature of his employment;
- (c) Where by reason of the shortness of time during which the worker has been in the employment of his employer, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard shall be had to the average weekly amount which, during the twelve months immediately preceding the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment by some other employer;
- (d) Where the worker had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he is working at the date of the accident.

3. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the worker may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between



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the amount of the average weekly earnings of the worker before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as in the circumstances of the case appears proper.

4. Where a worker has given notice of an accident or an industrial disease specified in the Fourth Schedule to this Ordinance, he shall, if required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to the examination, or in any way obstructs it, his right to compensation and to take or prosecute any proceeding under this Ordinance in relation to compensation, shall be suspended until the examination has taken place.

5. The payment in the case of death shall, unless otherwise provided by this Schedule or by the Regulations, be paid to the Treasurer, and any sum so paid to the Treasurer shall, subject to the Regulations and the provisions of this Schedule, be invested, applied, or otherwise dealt with by the Treasurer, in such manner as a District Court orders, for the benefit of the persons entitled thereto under this Ordinance, and the receipt of the Treasurer shall be a sufficient discharge in respect of the amount paid in:

Provided that, if a District Court so orders, the payment in the case of death shall, if the worker leaves no dependants, be made to his legal personal representative or, if he has no such representative, to the persons to whom the expenses for medical, surgical, dental, and hospital treatment and funeral expenses are due.

6. Where a weekly payment is payable under this Ordinance to a person under any legal disability, a District Court may, on application being made in accordance with the Regulations, order that the weekly payment be paid during the disability to the Treasurer, and the provisions of this Schedule with respect to sums required by this Schedule to be paid to the Treasurer shall apply to sums paid to the Treasurer in pursuance of any such order.

7. Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Ordinance, and the amount payable to each dependant shall be settled by arbitration under this Ordinance. Where there are both total and partial dependants, nothing in this Schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

8. Where, on application being made in accordance with the Regulations, it appears to a District Court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order or award of a District Court as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the District Court may make such order for the variation of the former order or award as in the circumstances of the case it thinks just.

9. Any worker receiving weekly payments under this Ordinance shall, if required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the worker refuses to submit himself to the examination, or in any way obstructs it, his right to the weekly payments shall be suspended until the examination has taken place.

10. A worker shall not be required to submit himself for examination by a duly qualified medical practitioner otherwise than in accordance with this Ordinance and the Regulations, or at more frequent intervals than are prescribed,

Paragraph 10  
amended by  
No. 15 of 1941,  
s. 6.

Where a worker has submitted himself for examination by a duly qualified medical practitioner, or has been examined by a duly qualified medical practitioner selected by himself, and the employer or the worker, as the case may be, has within six days after the examination furnished the other with a copy of the report of that duly qualified medical practitioner as to the worker's condition, then, in the event of no agreement being come to

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between the employer and the worker as to the worker's condition or fitness for employment, a Clerk of a District Court, on application being made to him by both parties, may, on payment by the applicants of the prescribed fee, refer the matter to a medical referee.

The medical referee to whom the matter is referred shall, in accordance with the Regulations, give a certificate as to the condition of the worker and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the worker as to whether or to what extent the incapacity of the worker is due to the accident, the provisions of this paragraph shall, subject to the Regulations, apply as if the question were a question as to the condition of the worker.

If a worker, on being required to do so, refuses to submit himself for examination by a medical referee to whom the matter has been referred, or in any way obstructs the medical referee, his right to compensation and to take or prosecute any proceeding under this Ordinance in relation to compensation or, in the case of a worker in receipt of a weekly payment, his right to that weekly payment, shall be suspended until the examination has taken place.

11. Any weekly payment may be reviewed at the request either of the employer or of the worker, and, on the review, may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Ordinance:

Provided that, where the worker was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding two-thirds of the weekly sum which the worker would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding Three pounds.

12. Where, in any case other than one of total or permanent incapacity, any weekly payment has been continued for not less than six months, the liability therefor may, with the consent of the worker on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such amount as may be settled by arbitration under this Ordinance, and the lump sum may be ordered by a District Court to be invested or otherwise applied for the benefit of the person entitled thereto:

Provided that this paragraph shall not apply to any payment under section five of this Ordinance, save that any such payment may, by agreement or by order of a District Court, be invested or otherwise applied for the benefit of the person entitled thereto:

Provided further that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

13. If a worker receiving a weekly payment ceases, without the consent in writing of his employer, to reside in the Territory, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature or that his absence from the Territory is desirable for recuperative purposes. If the employer so consents or if the medical referee so certifies, the worker shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as he proves, in such manner and at such intervals as are prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

14. Any amount paid in compensation under this Ordinance, whether by way of weekly payment or sum paid in redemption thereof, or lump sum payment for specific injury fixed in accordance with the Third Schedule to

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this Ordinance, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against it.

15. Where under this Schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

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### THE SECOND SCHEDULE.

#### ARBITRATION ETC.

1. Any matter which, under this Ordinance, is to be settled by arbitration, shall be settled by the arbitration of a District Court.

2. The *Arbitration Ordinance 1924* shall not apply to any arbitration under this Ordinance, but a District Court may, and, on the application of either party to any arbitration under this Ordinance, shall, in the prescribed manner, submit any question of law for the decision of the Supreme Court, and the decision of the Supreme Court on any question of law shall, subject to the provisions of section twenty-four of the *Judiciary Ordinance 1921-1938*, be final and conclusive.

3. A District Court shall, for the purposes of proceedings under this Ordinance, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were a complaint in a District Court.

4. A District Court may, if it thinks fit, summon a medical referee to sit with it as an assessor.

5. The Regulations may make provision for the appearance in any arbitration under this Ordinance of any party by some other person.

6. The costs of and incidental to the arbitration and proceedings connected therewith shall, subject to the Regulations, be in the discretion of the District Court. The costs shall not exceed the limit prescribed, and shall be taxed in the manner prescribed, and the taxation may be reviewed by the Registrar of the Supreme Court.

7. Where an agreement has been made before ascertainment of compensation between a worker and his employer for payment of a lump sum by way of compromise in satisfaction of all claims, or the amount of compensation under this Ordinance has been ascertained, or any weekly payment varied, or any other matter decided, under this Ordinance, by agreement, a memorandum of the agreement shall be sent, in the prescribed manner, by the employer, and may be sent by any party interested, to the Clerk of a District Court, who shall, subject to the Regulations, on being satisfied as to its genuineness, record the memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as an order or award of a District Court under this Ordinance:

Provided that—

- (a) no such memorandum shall be recorded before fourteen days after the despatch by the Clerk of the District Court of notice to the parties interested;
- (b) where a worker seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Ordinance, and the employer, in accordance with the Regulations, proves that the worker has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of the memorandum, the memorandum shall only be recorded, if at all, on such terms as the District Court, in the circumstances, thinks just;

## COMPENSATION—

- (c) the District Court may at any time rectify the register;
- (d) where it appears to the Clerk of the District Court, on any information which he considers sufficient, that an agreement made before ascertainment of compensation between a worker and his employer for payment of a lump sum by way of compromise in satisfaction of all claims, or an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the District Court, which shall, in accordance with the Regulations, make such order (including an order as to any sum already paid under the agreement) as in the circumstances it thinks just; and
- (e) the District Court may, within six months after a memorandum of an agreement as to compromise of claims or the redemption of a weekly payment by a lump sum or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, remove the record from the register on proof to its satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as in the circumstances it thinks just.

8. An agreement as to the redemption of a weekly payment by a lump sum, if not registered in accordance with this Ordinance, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

9.—(1.) The duty of a District Court under this Ordinance shall, subject to the Regulations, be part of the duties of a District Court, and the officers of the District Court shall act accordingly.

(2.) An order or award of a District Court under this Ordinance shall for all purposes be enforceable as an order of a District Court under the *District Courts Ordinance 1924-1938*.

10. Except as otherwise prescribed, no court fee shall be payable by any party in respect of any proceedings by or against a worker under this Ordinance in a District Court.

11. Any sum awarded as compensation shall, unless paid to the Treasurer under this Ordinance, be paid on the receipt of the person to whom it is payable under any agreement or award. The solicitor or agent of a person claiming compensation under this Ordinance shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Ordinance, or to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by a District Court on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, and such sum shall be awarded subject to taxation and to the prescribed scale of costs.

12. A District Court may, subject to the Regulations, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

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THE THIRD SCHEDULE.  
COMPENSATION FOR SPECIFIED INJURIES.

Nature of Injury.	Amount Payable.		
	£	s.	d.
Loss of both eyes .. .. .	750	0	0
Loss of an only eye .. .. .			
Loss of both hands .. .. .			
Loss of both feet .. .. .			
Loss of a hand and a foot .. .. .			
Total and incurable loss of mental powers, involving inability to work .. .. .	675	0	0
Total and incurable paralysis of limbs or mental powers .. .. .			
Loss of either arm, or of the greater part thereof .. .. .	600	0	0
Loss of the lower part of either arm, either hand, or five fingers of either hand .. .. .	600	0	0
Loss of a leg .. .. .	600	0	0
Loss of the lower part of a leg .. .. .	562	10	0
Loss of a foot .. .. .	525	0	0
Loss of one eye, with serious diminution of the sight of the other .. .. .	675	0	0
Loss of the sight of one eye (a) .. .. .	375	0	0
Loss of hearing .. .. .	600	0	0
Complete deafness of one ear .. .. .	200	0	0
Loss of a thumb .. .. .	225	0	0
Loss of a joint of a thumb .. .. .	112	10	0
Loss of a forefinger .. .. .	150	0	0
Loss of two joints of a forefinger .. .. .	110	0	0
Loss of little finger, middle finger, or ring finger .. .. .	112	10	0
Loss of two joints of a little finger, middle finger, or ring finger .. .. .	100	0	0
Loss of a great toe .. .. .	100	0	0
Loss of a joint of a great toe .. .. .	80	0	0
Loss of a toe or a joint of a finger .. .. .	90	0	0
Loss of a joint of a toe .. .. .	75	0	0

(a) For the partial loss of the sight of one eye, there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight.

Any reference in this Schedule to the loss of a specified part of the body shall be deemed to include—

- (i) the loss of the use of that part; and
- (ii) the loss of the efficient use of that part in and for the purposes of his employment.

Provided that in that case a percentage of the prescribed amount payable, equal to the percentage of the diminution of the full efficient use as aforesaid, may be awarded in lieu of the full amount.

THE FOURTH SCHEDULE.

Description of Disease.	Description of Process.
Arsenic, phosphorous, lead, mercury, or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds

COMPENSATION—

THE FOURTH SCHEDULE—*continued.*

Description of Disease.	Description of Process.
Anthrax .. .. .	Woolcombing, woolsorting ; handling of hides, skins, wool, hair, bristles, or carcases
Infectious or contagious diseases ..	Persons employed in a hospital or quarantine station, or in an ambulance brigade
Poisoning by benzol or its homologues or their nitro and amido derivatives (dinitro benzol, anilin, and others)	Any process involving the use of benzol or its homologues or their nitro and amido derivatives or their preparations or compounds
Poisoning by carbon bisulphide ..	Any process involving the use of carbon bisulphide or its preparations or compounds
Poisoning by nitrous fumes .. ..	Any process in which nitrous fumes are evolved
Poisoning by cyanogen compounds ..	Any process in which cyanogen compounds are used
Poisoning by carbon monoxide ..	Any process in which carbon monoxide is used or evolved
Chrome ulceration .. .. .	Any process involving the use of chromic acid, or bichromate of ammonium, potassium, or sodium, or their preparations
Dermatitis produced by dust or caustic or corrosive liquids or ulceration of the mucous membranes of the nose or mouth produced by dust	Any industrial process
Pneumoconiosis .. .. .	Quarrying or stone crushing or cutting
Nystagmus .. .. .	
Subcutaneous cellulitis of the hand (beat hand)	
Subcutaneous cellulitis over the patella (miner's beat knee)	
Acute bursitis over the elbow (miner's beat elbow)	} Mining, or quarrying, or stone crushing or cutting
Inflammation of the synovial lining of the wrist joint and tendon sheath	