

SHOP AND OFFICE EMPLOYEES [REGULATION OF EMPLOYMENT AND REMUNERATION] ACT

Acts

Nos. 19 of 1954,
60 of 1957,
28 of 1962,
5 of 1966,
26 of 1966,

Law

No. 7 of 1975.

Acts

Nos. 12 of 1978,
53 of 1981,
36 of 1982,
32 of 1984,
44 of 1985.

AN ACT TO PROVIDE FOR THE REGULATION OF EMPLOYMENT, HOURS OF WORK AND REMUNERATION OF PERSONS IN SHOP AND OFFICES, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[9th August, 1954]

Short title.

1. This Act may be cited as the Shop and Office Employees (Regulation of Employment and Remuneration) Act.

PART I

REGULATION OF HOURS OF EMPLOYMENT IN SHOPS AND OFFICES AND HEALTH AND COMFORT OF EMPLOYEES

Application of
Part I of this
Act.

2. (1) The Minister may by Order declare that the provisions of this Part shall apply-

(a) to shops or to offices in such area or areas as may be specified in the Order,

or

(b) to all shops or to all offices in Sri Lanka.

(2) Every Order made under sub-section (1) shall be brought before Parliament for approval. Every Order which is so approved shall be published in the *Gazette* and shall come into force on the date of such publication or on such later date as may be specified in such Order.

(3) Notwithstanding anything in any of the succeeding provisions of this Part, nothing in any such provision shall apply in relation to any shop or office situated in any area or to persons employed in any such shop or office, unless an Order is made as herein before provided applying the provisions of this Part to shops in that area, or, as the case may be, to offices in that area.

Restriction of
hours of
employment.
[§ 2, Law 7 of 1975.]

3. (1) Subject to the provisions of any regulation referred to in subsection (3) and subject to the provisions of subsection (5), the normal period during which any person may be employed in or about the business of any shop or office -

(a) on any one day shall not exceed eight hours, and

(b) in any one week shall not exceed forty five hours.

* Part I declared applicable to all shops and offices in Sri Lanka - *Gazette* No.10,724 of 15th October, 1954 (Supplement)

The period referred to in this subsection shall not include any interval allowed for rest or for a meal under any provisions of this Act or any interruption permitted by any regulation referred to in subsection (3).

(2) Subject to the provisions of any regulation referred to in subsection (3), the period during which any person is employed in or about the business of any shop or office shall consist of one continuous period without any interruption other than such interval as may be allowed for rest or for a meal under any provision of this Act.

(3) Regulations may be made -

- (a) prescribing the periods for which persons may be employed overtime in or about the business of any shop or office;
- (b) varying any period mentioned in subsection (1) or prescribed under paragraph (a) of this subsection, as regards persons employed in or about the business of different classes of shops or offices or persons above or below a specified age or as regards different classes of such persons;
- (c) prescribing the conditions subject to which persons may be employed overtime in or about the business of a shop or office;
- (cc) prescribing the cases and circumstances in which any employee who has been on leave or on holiday on any day in any week shall be deemed, for the purpose of computing overtime, to have worked for the normal period for which he would have worked if he had not been on such leave or holiday;
- (d) prescribing the cases and the circumstances in which, and the conditions and restrictions subject to which, the continuity of the period mentioned in subsection (2) may be interrupted, otherwise than by, and in addition to, any interval for rest or a meal:

[§ 2,60 of 1957.]

Provided, however, that no regulation shall be made authorising on permitting more than twelve hours to elapse between the time which any person commences work on any day and the time at which he ceases work on that day.

In computing, for the purposes of the preceding proviso, the number of hours that have elapsed between the time at which any person commences work on any day and the time at which he ceases work on that day, no account shall be taken of any period of overtime work.

(4) No person shall be employed in or about the business of any shop or office in contravention of any provision of this section or of any regulation referred to therein which applies to that shop or office or to shops or offices of that class.

[§ 2, Law 7 of 1975.]

(5) The provisions of subsection (1) shall not apply to any person who holds an executive or managerial position in a public institution and who is in receipt of a consolidated salary the initial of the scale of which is not less than Rs.6,720 per annum. Where any question arises as to whether any person holds an executive or managerial position, such question shall be decided by the Commissioner and his decision shall be final and conclusive.

In this subsection "public institution" shall have the same meaning as in section 24 of the Finance Act, No.38 of 1971.

Other employment to be taken into account.

4. No person who has, to the knowledge of any employer, been previously employed on any day in or about the business of the shop or office of any other employer or in a factory, shall be employed in or about the business of the shop or office of the firstmentioned employer on that day for a period longer than will, together with the time during which he has been so previously employed on that day, complete the number of hours provided by or prescribed under section 3 as the maximum period during which that person shall be employed on any one day.

Weekly holidays.
[§ 11, 17 of 1965.]

5. (1) Every person employed in or about the business of any shop or office shall, in respect of each week, be allowed one whole holiday and one half-holiday. Such holidays shall be so allowed with full remuneration if such person has worked for not less than twenty-eight hours, exclusive of any period of overtime work, during that week :

Provided that regulations may be made modifying the preceding provisions of this subsection in their application to persons employed in work of any specified class or description, by the substitution, for the period of twenty-eight hours, of some shorter or longer period.

*[§ 9, 29 of 19 71.]

(2) The holidays due under subsection (1) in respect of any week shall be allowed either in that week or in the week immediately succeeding :

Provided that the holidays so due in respect of any four consecutive weeks in any month may instead be, with the prior written sanction of the Commissioner, allowed in accumulation at any time in that month (one full holiday being so allowed in lieu of two half holidays so due) :

Provided further that the Commissioner shall not grant such sanction unless he is satisfied that it is necessary so to do by reason of the nature of the business or of unforeseen circumstances.

[§ 3,60 of 1957.]

(3) In respect of each day in any week on which a person has been on leave or on holiday with full remuneration allowed to him by the employer (whether in accordance with the requirements of section 6 or section 7 or Part 1A or in excess of such requirements), that employee shall be deemed, for the purposes of subsection (1) of this section, to have worked for the normal period for which he would have worked if he had not been on such leave or holiday.

Annual Holiday
& leave.

6. (1) (a) In respect of the first year of employment during which any person has been continuously in employment in or about the business of any shop or office, that person shall be entitled to take and shall take -

- (i) where his employment commences on or after the first day of January but before the first day of April, a holiday of fourteen days with full remuneration;
- (ii) where his employment commences on or after the first day of April but before the first day of July, a holiday of ten days with full remuneration;
- (iii) where his employment commences on or after the first day of July but before the first day of October, a holiday of seven days with full remuneration; and
- (iv) where his employment commences on or after the first day of October a holiday of four days with full remuneration, and the employer shall allow such holiday and be liable to pay such remuneration,

and the employer shall allow such holiday and be liable to pay such remuneration,

(b) In respect of the second or any subsequent year of employment during which any person has been continuously in employment in or about the business of any shop or office, that person shall be entitled to take and shall take a holiday of fourteen days with full remuneration, of which not less than seven days shall be consecutive days, and the employer shall allow such holiday and be liable to pay such remuneration.

(2) The holidays referred to in subsection (1) in respect of any year of employment shall be taken in the year immediately succeeding on days to be agreed upon by the employer and the employee.

(3) In respect of each year of employment during which any person has been continuously in employment in or about the business of any shop or office, that person shall, subject to the provisions of subsection (4) and to such conditions as may be prescribed, be entitled to take on account of private business, ill health or other reasonable cause, leave with full remuneration for a period or an aggregate of periods not exceeding seven days, and the employer shall allow such leave and be liable to pay such remuneration.

* Holiday Act, No. 29 of 1971.

(4) (a) The leave to which a person is entitled under subsection (3) in respect of the first year of his employment may be taken in that year and shall be computed on the basis of one day for each complete period of two month's service.

(b) The leave to which a person is entitled under subsection (3) in respect of the second or any subsequent year of his employment may be taken in such year of employment.

(5) For the purposes of this section, the continuity of the employment of any person shall be deemed not to have been interrupted by reason of the absence of that person from work -

[§ 4, 60 of 1957.]

(a) on holiday or on leave, with full remuneration, in accordance with the provisions of this Act or of any other written law; or

(b) with the permission or subsequent consent of the employer, whether with or without remuneration.

(6) Where the employment of any person employed in or about the business of a shop or office is terminated, such person shall be entitled to take and shall take before the date of such termination-

(a) the holiday with full remuneration, if any, to which he may be entitled in respect of the year of employment preceding that in which the termination occurs; and

(b) in respect of the period during which he has been continuously employed in the year of employment in which the termination occurs-

(i) a holiday, with full remuneration, of one day in respect of each complete month, if such period is less than ten months, and

(ii) a holiday of fourteen days with full remuneration, if such period is not less than ten months,

and such employer shall allow such holiday and be liable to pay such remuneration:

Provided, however, that where such holiday cannot be allowed by reason that the period of notice of termination of employment is insufficient or the employment is terminated without notice, the employer shall pay full remuneration to such person in respect of each day on which a holiday should otherwise have been allowed.

(7) The fact that notice of termination of employment has been given by an employer or a person employed shall not prejudice the right of such person to take before the date of the termination of his service any leave to which such person may be entitled under the preceding subsections.

[§ 4, 60 of 1957.]

(7A) The Commissioner may, by notification published in the *Gazette* and in a Sinhala newspaper, a Tamil newspaper and an English newspaper circulating in Sri Lanka fix, in respect of any class of shops or offices, a date to be the date of commencement of the year of employment for the purposes of this section.

[§ 4, 60 of 1957.]

(8) In this section, the expression "year of employment" with reference to any shop or office, shall -

(a) where that shop or office belongs to any class of shops or offices in respect of which the Commissioner has fixed a date under subsection (7A), mean the period of twelve months reckoned from that date, and

(b) in any other case, mean the period of twelve months reckoned from the first day of January of each year.

Grant of holidays on public holidays. [§ 5,60 of 1957.]	<p>7 (1) Every person employed in or about the business of a shop or office shall be allowed a holiday with full remuneration on each of such days, being public holidays within the meaning of the Holidays Act, as are declared by the Minister, by Order published in the <i>Gazette</i>, to be holidays for the purposes of this section, so however, that the number of days so declared shall not exceed nine.</p>
[§ 5, 60 of 1957.]	<p>(2) A person to whom the provisions of subsection (1) apply may, notwithstanding these provisions, be with the prior sanction of the Commissioner, employed for a normal period employment on any day declared to be a holiday for the purposes of this section, but in any such case that person shall instead be allowed a holiday with full remuneration on or before the thirty-first day of December next succeeding, or be paid remuneration for his employment on the day so declared to be a holiday at a rate which is double the rate at which such person is ordinarily remunerated for such employment on any day:</p> <p>Provided, however, that the Commissioner shall not grant such sanction in relation to any person unless he is satisfied that a holiday cannot, without prejudice to the business in which he is employed, be allowed to him on the day so declared.</p>
Grant of holidays on Full Moon Poya day. *[§ 9, 29 of 1971.]	<p>7A. Every person employed in or about the business of a shop or office shall be granted a holiday on a Full Moon Poya Day:</p> <p>Provided, however, that in a case where a Full Moon Poya Day falls on a holiday allowed under section 7 of this Act or on a weekly holiday or on a weekly half holiday, no additional holiday shall be allowed to the employee in lieu of that Full Moon Poya Day.</p>
Employment on Full Moon Poya day. *[§ 9, 29 of 1971.]	<p>7B. Notwithstanding the provisions of section 7A, a person employed in or about the business of a shop or office may be employed on a Full Moon Poya Day for a normal period of employment subject to the condition that he shall be paid not less than one and a half times his normal daily rate of remuneration.</p>
Special provisions for persons employed during the period which includes midnight.	<p>8. For the purposes of the application of the provisions of this Act in any case where a person is normally employed in or about the business of any shop or office for a period which continues from any time before mid night to any time after midnight -</p> <p>(a) “day” where it occurs in sections 3 and 4 and in the definition of “whole holiday”, shall be deemed to be the period of twenty-four hours reckoned from the time at which the period of the employment of that person normally commences;</p> <p>(b) “half holiday” means a day (as herein before defined) on which that person is not employed for more than five hours, exclusive of any interval allowed for rest or a meal and any interruption permitted by any regulation referred to in section 3(3).</p>
Intervals for meals.	<p>9. (1) Every person employed in or about the business of any shop or office shall be allowed intervals for meals in accordance with the regulations in the Schedule.</p> <p>(2) Regulations may be made varying all or any of the provisions in the Schedule as regards different classes of persons employed in or about the business of shops or offices or as regards persons employed in or about the business of different classes of shops or offices.</p>
[§ 6,60 of 1957.]	<p>(3) Nothing in subsection (1) or subsection (2) or in the Schedule shall apply to any person employed in or about the business of a shop or office on any day on which the total period during which he is so employed does not exceed five continuous hours.</p>
Provisions relating to employment of woman and persons under eighteen.	<p>10. (1) A person who has not attained the age of fourteen years shall not be employed in or about the business of a shop or office.</p>

* Holiday Act, No. 29 of 1971.

- (2) A person who has attained the age of fourteen years and who-
- (a) being a male, has not attained the age of eighteen years, or
 - (b) is a female,

shall not be employed in or about the business of a shop or office before 6 a.m. or after 6 p.m. on any day:

Provided, however, that -

- (i) any female who has attained the age of eighteen years may be employed in or about the business of a hotel or restaurant for the period, or any part of the period between 6 p.m. and 10 p.m.;
- (ii) any female who has attained the age of eighteen years may be employed in or about any prescribed work in a residential hotel before 6 a.m. or after 6 p.m. on any day; and
- (iii) any female who has attained the age of eighteen years may be employed in or about the business of a shop or office for the period, or for any part of the period, between 6 p.m. and 8 p.m. and
- (iv) any male who has attained the age of sixteen years may be employed in or about the business of a hotel, restaurant or place of entertainment for the period, or for any part of the period, between 6 p.m. and 10 p.m.

[§ 9,32 of 1984.]

(3) Where in any prosecution for any alleged contravention of any provision of this section it is alleged that a person employed in or about the business of a shop or office was under any specified age, and he appears to the court to be a person who, at the date of the commission of the alleged contravention, was under the specified age, he shall, unless the contrary is proved, be presumed for the purposes of this Act to have been under that age at that date.

Provision of lighting and ventilation.

11. In every part of the premises of a shop or office in which persons are employed about the business of the shop or office, suitable and sufficient means of lighting and ventilation shall be provided and maintained by the employer.

Provisions relating to residence and taking of meals.

12. (1) No person employed in or about the business of any shop or office shall be permitted or required by the employer to live or reside in the premises thereof:

Provided, however that the preceding provisions of this section shall not apply -

- (a) in the case of any person who is a member of the family of the employer and is maintained by him, or of any other person in respect of whom a permit in the prescribed form authorising such residence has been issued by the prescribed officer; or
- (b) in the case of any person employed in or about the business of a residential hotel.

(2) Where any persons employed in or about the business of any shop or office takes any meals in the premises of that shop or office, suitable and sufficient facilities for the taking of such meals shall be provided and maintained by the employer.

Provisions of sanitary conveniences and washing facilities.

13. Save and except to the extent to which a certificate issued under section 14 is in force in respect of any shop or office, there shall be provided and maintained in the premises of every shop or office by the employer suitable and sufficient sanitary conveniences and washing facilities for the use of all persons employed in or about the business of that shop or office:

Provided that where persons of both sexes are so employed, separate conveniences and facilities as aforesaid shall be provided and maintained for the exclusive use of female employees.

Procedure for exemption of shops or offices from provisions of section 13.

14. (1) If any employer by whom persons are employed in or about the business of any shop or office furnishes to the satisfaction of the prescribed officer proof of -

- (a) the fact that suitable and sufficient sanitary conveniences and washing facilities are available, within the prescribed distance from that shop or office, for the use of such persons; and
- (b) such other circumstances or facts as may be prescribed,

such officer shall issue to such employer a certificate in the prescribed form exempting that shop or office from any or all of the provisions of section 13.

(2) Where the prescribed officer refuses to grant a certificate under this section, the refusal shall be communicated to the employer by notice in writing served on him.

(3) Every certificate issued under this section shall remain in force unless and until it is withdrawn under subsection (4), and where any such certificate is modified under that subsection, the certificate shall continue in force as so modified until it is so withdrawn.

(4) The prescribed officer may at any time by notice in writing served on any employer, and with effect from a date to be specified in such notice (which date shall not be less than three months from the date of service of the notice), withdraw any certificate issued under this section, or modify any such certificate in any manner specified by him in the notice.

(5) Any employer who is aggrieved by the refusal of the prescribed officer to issue a certificate under this section in respect of any shop or office or by the withdrawal or modification of any such certificate may appeal against such refusal, withdrawal or modification to the Magistrate's Court having jurisdiction over the place in which the shop or office is situated.

(6) Where any employer desires to appeal to the Magistrate's Court under the provisions of subsection (5), he shall, within ten days of the receipt by him of the notice refusing, withdrawing or modifying the certificate, file in such court a written statement of appeal setting out the grounds on which he is dissatisfied with such refusal, withdrawal or modification, and shall transmit a copy of such statement by registered post to the officer who refused, withdrew or modified the certificate; and the court shall, after giving the prescribed notice of the date of hearing to such officer, proceed to hear and determine the appeal and make such order thereon as to it may seem just and equitable in all circumstances of the case.

(7) Any employer, or the officer who refused, withdrew or modified the certificate, may, if dissatisfied with any order made by a Magistrate's Court under this section, appeal against such order to the Court of Appeal in like manner as if such order were a judgement or final order pronounced by a Magistrate's Court in a criminal case or matter, and the relevant provisions of Chapter XXVIII of the Code of Criminal Procedure Act shall apply accordingly to every appeal preferred to the Court of Appeal under this section.

Special provisions relating to prosecutions for breaches of section 13.

15. No prosecution against any employer for the breach of any requirement of this Act relating to the provisions of sanitary conveniences or washing facilities in any shop or office, shall be instituted in any court unless such employer -

- (a) has been served with a notice, issued by the prescribed officer, calling on him to take such action as may be specified in the notice for the purpose of securing compliance with the requirement; and
- (b) has failed to comply with such notice within a period of three months from the date of the service on him of such notice.

Provision of seats for female shop assistants.

16. (1) In every room in which female persons are employed in the serving of customers in any shop, there shall be provided for the use of such persons seats behind the counter, or in such other position as may be suitable for the purpose, in the proportion of not less than one seat to every three female persons employed in that room.

(2) In every shop in which seats are provided under subsection (1) the employer shall permit the female persons employed in that shop to make use of such seats whenever the use thereof does not interfere with their work, and shall also exhibit a notice in the prescribed manner and form informing such persons that they are entitled to make use of the seats as aforesaid.

Employer to furnish particulars of employment.

17. Every employer by whom any person is employed in or about the business of any shop or office shall furnish such person on the date of his employment with such particulars as may be prescribed relating to the conditions of his employment.

Records, & c., to be kept or exhibited.

18. In the premises of every shop or office the employer shall-

- (a) keep in such manner as may be prescribed a notice in the prescribed form containing a list of persons employed in or about the business of that shop or office;
- (b) maintain in the prescribed form and manner, a record of the hours actually worked by each such person, including particulars of all overtime work, and of all holidays and leave allowed to or taken by each such person;
- (c) if a minimum rate of remuneration has been determined in relation to any persons employed in or about the business of that shop or office, under Part III of this Act keep in a conspicuous place therein, a notice specifying such rate; and
- (d) maintain a record of such other particulars as may be prescribed.

[§ 7, 60 of 1957.]

PART IA

[§ 2, 5 of 1966.]

MATERNITY BENEFITS

Application of this Part
[§ 7, 60 of 1957.]

18 A. This Part shall apply to every female person employed in or about the business of a shop or office.

Leave in consequence of pregnancy and confinement.
[§ 7, 60 of 1957.]
[§ 2, 53 of 1981.]
[§ 2, 44 of 1985.]

18 B. (1) Subject to the provisions of subsection (3), a female employee to whom this Part applies shall, upon giving notice to her employer that she expects to be confined within fourteen days from the date specified in the notice, be entitled to leave for the period commencing on that date and ending on the day immediately preceding the date of her confinement, and her employer shall allow such leave.

(2) A female employee to whom this Part applies, shall, if she is confined, be entitled to take and shall take leave for a period of -

- (a) seventy days commencing on the date of her confinement, if the confinement results in the issue of a live child, and such employee has, at the date of such confinement, no child or has one child; and
- (b) twenty-eight days commencing on the date of her confinement -
 - (i) if the confinement results in the issue of a live child and such employee has at the date of such confinement two or more than two children ;
 - (ii) if the confinement does not result in the issue of a live child, and the employer shall allow such such leave.

[§ 2, 53 of 1981.]
[§ 2, 44 of 1985.]

(3) Where a female employee to whom this Part applies has worked for her employer on any number of days during the period of fourteen days referred to in subsection (1), she shall be entitled to take leave, for such number of days after her confinement, commencing on the day immediately after the date on which the period of leave referred to in paragraph (a) or paragraph (b) of subsection (2) ends and the employer shall allow such leave.

[§ 2, 44 of 1985.]

(4) For the purpose of ascertaining the entitlement of leave under subsection (2), every female employee shall specify in the notice sent to the employer under subsection (1) the number of children she has on the date on which she will be confined.

Remuneration
for period of
leave in
consequence of
pregnancy or
confinement
[§ 7, 60 of 1957.]

18C. (1) Where a female employee to whom this Part applies takes leave in accordance with subsection (1) of section 18B, she shall be paid full remuneration for the entire period of the leave if that period does not exceed fourteen days or for fourteen days of that period if that period exceeds fourteen days.

(2) A female employee to whom this Part applies shall be paid full remuneration for the entire period of the leave which she is required by subsection (2) of section 18B to take.

Work which is
prohibited during
and after pregnancy
[§ 7, 60 of 1957.]

18D. (1) Where a female employee to whom this Part applies gives notice to her employer that she expects to be confined within such period (not exceeding three months), from the date specified in the notice, as may be so specified, she shall not be employed, or be caused or permitted to be employed, during the period commencing on that date and ending on the date immediately preceding the date of her confinement, on any such work as may be injurious to her or her child.

(2) A female employee referred to in subsection (1) who is confined shall not be employed, or be caused or permitted to be employed, during the period of three months commencing on the date of her confinement, on any work referred to in that subsection.

Employment
not to be
terminated
because of
pregnancy or
confinement or
of illness in
consequence
thereof.
[§ 7, 60 of 1957.]

18E. (1) The employment of any female employee to whom this Part applies shall not be terminated by reason only of her pregnancy or confinement or of any illness consequent on her pregnancy or confinement.

(2) Where an employer is prosecuted for the offence of acting in contravention of the provisions of subsection (1), the burden of proving that the employment of the female employee was terminated by reason of some fact other than her pregnancy or confinement or any illness consequent on her pregnancy or confinement shall be upon the employer.

No notice of
dismissal to be
given to female
employee when
she is on leave
under this
Part.
[§ 7, 60 of 1957.]

18F. When a female employee to whom this Part applies is absent on leave in accordance with the provisions of this Part, her employer shall not give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

Meanings of
“confinement”,
“confined”
and “viable foetus”
[§ 2, 50 of 1966.]

18G. In this Part-

- (a) the expression “confinement” means labour resulting in the issue of a child whether alive or dead, or the issue of a viable foetus, and the expression “confined” shall be construed accordingly; and
- (b) the expression “viable foetus” means a foetus of at least twenty-eight weeks’ gestation and, in the event of there being any doubt, one of the following conditions shall be satisfied for a foetus to be considered twenty-eight weeks old-
 - (a) the length of the foetus shall be at least twelve inches; or
 - (b) the weight of the foetus shall be at least two pounds.

Leave under this Part to be in addition to any holiday or leave under any other Part.
[§7, 60 of 1957.]

18H. The leave to which a female employee is entitled under this Part shall be in addition to any holiday or leave to which she is entitled under any other Part.

PART II PAYMENT OF REMUNERATION

Time and manner of payment of remuneration.

19. (1) The employer shall comply with the following provisions of this section regarding the payment of remuneration to each person employed in or about the business of his shop or office:

- (a) He shall, subject as hereinafter provided, pay such remuneration in legal tender directly to such person without any deduction other than an authorised deduction, as hereinafter defined, made with the consent of such person;

Provided that the aggregate of the deductions made at any one time shall not exceed sixty *per centum* of the remuneration due;

Provided, further, that nothing in the preceding provisions of this paragraph shall affect or be deemed to affect -

[§ 56, 18 of 1965.]

- (i) any deduction authorised to be made from such remuneration by the Income Tax Ordinance or the Land Revenue Act, No 4 of 1963, or the Inland Revenue Act No. 28 of 1979, whichever is applicable, or any other written law; or
- (ii) any retention or payment of the whole or any part of such remuneration made in pursuance of, or in compliance with, any order, process or decree, made or issued by any court of law.

For the purposes of this paragraph a payment which, immediately after remuneration is paid to any person, is made out of the remuneration by such person to his employer or to an agent of his employer shall be deemed to be a deduction from the remuneration.

In this paragraph, “authorized deduction” means a deduction made in such manner and subject to such conditions as may be prescribed in respect of-

- (i) any advance of money made to a person by his employer,
 - (ii) any payment, which at the instance of a person, is made out of his remuneration by his employer to any person other than the employer or an agent of the employer in order to discharge any obligation of the person employed or for any other purposes, or
 - (iii) any other prescribed matter.
- (b) Subject to the provisions of section 31(4), the employer shall fix the period (not exceeding one month) in respect of which remuneration is payable to each person employed in or about the business of his shop or office, and shall pay the remuneration for that period to that person -
- (i) where that period does not exceed one week, within three days after the expiry of that period, or
 - (ii) where that period exceeds one week but does not exceed two weeks, within five days after the expiry of that period, or
 - (iii) where that period exceeds two weeks, within ten days after the expiry of that period.

Nothing in this paragraph shall in any way affect the period of notice or warning necessary under any provision of written law other than this Act for the termination of any contract.

[§ 8, 60 of 1957.]

- (c) If on any date the employer terminates the employment of any employee or any employee terminates his employment, the employer shall, before the expiry of the second working day after that date, pay the remuneration due to that employee.

Where, owing to his absence or any other cause deemed to be unavoidable by the Commissioner, it is not possible to pay any person's remuneration under paragraph (b) of this subsection within the time specified in that paragraph or to pay his remuneration under paragraph (c) of this subsection within the time specified in that paragraph, his employer may retain the remuneration and shall thereafter pay the remuneration to him at the earliest possible opportunity, notwithstanding anything contained to the contrary in the preceding provisions of this subsection.

(2) The provision of subsection (1) of this section shall apply to the payment of remuneration in any case, whether or not a determination under Part III of this Act is in force, specifying the minimum rate of remuneration payable in that case.

PART III REGULATION OF REMUNERATION

Definition of employee.

20. In this Part, "employee" means a person employed in or about the business of a shop or office.

(A) DETERMINATION WITH CONSENT

Minister to direct Commissioner to endeavour to make a determination as to the minimum rate of remuneration for employees with consent of employers and employees.

21. (1) Where the Minister considers it expedient that the remuneration -

- (a) of the employees of any specified shop or office or of the shops or offices of any specified description, or of shops or offices (whether of a specified description or not) situated in a specified area, or
- (b) of any particular class or category of employees referred to in paragraph (a),

should be regulated under this Act, he may by Order direct the Commissioner to endeavour to determine the minimum rate of remuneration for such persons with consent as hereinafter provided.

(2) An order under subsection (1) may be made by the Minister of his own motion or on application made substantially in the prescribed form by -

- (a) a prescribed number of employees, or by the employer or employers of such prescribed number of employees; or
- (b) a trade union or trade unions consisting of or including such employees or their employers.

Commissioner's determination as to the minimum rate of remuneration for employees.

22. (1) Upon an Order being made under section 21 in relation to any employees, it shall be the duty of the Commissioner, after making such inquiries as he may consider necessary, to endeavour to obtain the consent of such employees and of their employers to a determination as to the minimum rate of remuneration for such employees, and where such consent is given, he shall cause the determination to be reduced into writing and shall himself sign the determination and also cause it to be signed by or on behalf of the persons consenting thereto.

(2) A determination by the Commissioner shall not be made applicable to any shop or office unless the consent of the employees of that shop or office who will be affected by the determination, and the consent of the employer of such employees has been obtained to that determination.

(3) Notwithstanding that the consent required by subsection (2) has not been obtained in the case of every shop or office mentioned or referred to in an Order under section 21, a determination may be made by the Commissioner to be applicable only to each such shop or office in the case of which the requisite consent has been obtained.

(4) Subject to the provisions of subsection (2), different determinations under this section may be made by the Commissioner applicable to different shops or offices or to employees of different classes or categories.

(5) Regulations may be made providing for the representation of employers and employees (whether by individuals or trade unions) at inquiries held by the Commissioner under this section and authorizing consent to be given by such representatives on behalf of employers and employees to determinations proposed by the Commissioner and any such regulations may provide that, where consent has been so given on behalf of a prescribed percentage of the employees in a shop or office who will be affected by a proposed determination, consent thereto shall be deemed to have been given by all such employees in that shop or office.

(6) Every determination made by the Commissioner under this Part shall contain a declaration specifying the shop or office or each of the shops or offices to which the determination is applicable and stating whether it is so applicable in relation to all the employees in such shop or office or only to any specified class or category of such employees.

Date on which
Commissioner's
determination shall
come into force.

23. A copy of every determination made by the Commissioner under the preceding provisions of this Part (hereinafter referred to as a "determination with consent"), shall be transmitted to the Minister and published in the *Gazette* and shall come into force on the date of such publication or on such later date as may be specified in that behalf in the determination, and shall continue in force unless and until it is repudiated as hereinafter provided.

Repudiation of
determination
with consent.

24. (1) A determination with consent -

- (a) may be repudiated in its entirety by all the employees in relation to whom it has been declared to be applicable, or by the employer or employers, as the case may be, of all such employees;
- (b) may be repudiated by the employees of any shop or office or by their employer, only in so far as it is applicable to that shop or office;
- (c) may be repudiated by employees of any shop or office or two or more shops or offices who are of the same class or category or by their employer or employers only in so far as it is applicable to employees of that class or category.

(2) A determination with consent may be repudiated under subsection (1) only by means of written notice given to the Commissioner substantially in the prescribed form.

(3) Regulations may be made authorizing notice of repudiation of any such determination to be given on behalf of employers and employees by representatives (whether individuals or trade unions) and any such regulations may provide that, where notice of repudiation is given on behalf of a prescribed percentage of the employees in a shop or office or of such employees of any class or category, notice of repudiation shall be deemed to have been given by all such employees in that shop or office, or all such employees of that class or category as the case may be.

(4) Where a valid notice of repudiation given under the preceding provisions of this section is received by the Commissioner -

- (a) the Commissioner shall cause the notice of repudiation to be published in the *Gazette*; and
- (b) the repudiation shall have effect on the last day of the month succeeding the month in which the notice is received by the Commissioner.

(5) A determination which is repudiated in its entirety shall cease to be in force on the date on which the repudiation takes effect.

(6) A determination which is repudiated only in so far as it relates to one or some only (but not all) of the shops or offices to which it is applicable shall, on the date on which the repudiation takes effect, cease to be applicable to each shop or office in the case of which it is repudiated, but shall otherwise continue in force.

(7) A determination which is repudiated only in so far as it relates to any class or category of employees shall, on the date on which the repudiation takes effect, cease to be applicable to employees in the case of whom it is repudiated, but shall otherwise continue in force.

(B) DETERMINATIONS BY TRIBUNALS

Constitution of
remuneration
tribunal &c.

25. (1) For the purposes of this Part, there shall be appointed a panel, consisting of -
- (a) the Commissioner,
 - (b) not less than seven representatives of employers in respect of shops or offices, appointed by the Minister,
 - (c) not less than seven representatives of employees in shops or offices, appointed by the Minister, and
 - (d) not less than seven persons (hereinafter in this section referred to as "nominated members") appointed by the Minister out of persons who are not connected with any trade union of such employers or employees,

from which remuneration tribunals shall be constituted as hereinafter provided.

(2) The Minister may remove from the panel any person appointed thereto.

(3) Where a person appointed under subsection (1) vacates his office by reason of death, resignation, removal from office under subsection (2), absence abroad or illness, the Minister may appoint a person in place of, or to act for, the first-mentioned person, as the case may be.

(4) Every person appointed to the panel shall, unless he earlier vacates his office, hold office for three years:

Provided, however, that -

- (a) a person appointed in place of a person who has died, resigned or been removed from office under subsection (2), shall hold office for the unexpired portion of the term of office of the last mentioned person; and
- (b) a person appointed to act for a person who is absent abroad or is ill, shall hold office for the period of absence or illness of the last mentioned person.

(5) A person vacating office by effluxion of time shall be eligible for reappointment.

(6) The Commissioner shall be the chairman of the panel.

(7) In any case where a draft determination is authorized under section 26 to be made, the chairman shall select from the panel, not less than four persons, one of whom shall be himself and the others shall consist of an equal number of representatives of employers and employees and an odd number of nominated members.

(8) Where a person appointed to a remuneration tribunal to represent employers or employees or as a nominated member vacates his office for any reason whatsoever, the chairman shall fill that vacancy by appointing another representative of the employers or another representative of the employees or another nominated member, as the case may be.

(9) The Commissioner shall be the chairman of every remuneration tribunal. Where the Commissioner is absent from any meeting of a remuneration tribunal, a Deputy Commissioner of Labour or an Assistant Commissioner of Labour may, notwithstanding that he is not a member of the panel, preside at that meeting on behalf of the Commissioner. The person presiding at any such meeting shall not be entitled to vote on any question before that meeting.

[§ 9, 60 of 1957.]

(9A) Where, in the attendance of the members of a remuneration tribunal for the purpose of holding any meeting of that tribunal, the number of members representing employers is greater or less than the number of members representing employees, the members representing employers or the members representing employees, which ever are in the majority, shall, before the meeting commences, choose from among themselves the member or members who shall refrain from voting at that meeting in order to ensure that the number of members representing employers who shall be entitled to vote at that meeting and the number of members representing employees who shall be so entitled shall be equal:

Provided, however, that where the representative members who are in the majority are unable to agree among themselves as to which of them shall so refrain from voting, the member or members who shall refrain from voting at that meeting shall be chosen by lot to be drawn in the presence and under the directions of the person presiding at that meeting.

[§ 9, 60 of 1957]

(9B) A representative member of a remuneration tribunal who has been chosen in accordance with the provisions of subsection (9A) to refrain from voting at any meeting of the tribunal shall not be entitled to vote at that meeting but shall be entitled to be present and to participate in any discussion at that meeting :

Provided, however, that such representative member shall be entitled to vote if, as a result of an increase in the attendance of members at any time during such meeting, the number of members present who represent employers is equal to the number of members present who represent employees.

[§ 9, 60 of 1957]

(10) Whenever there is a difference of opinion between members of a remuneration tribunal on any matter, the opinion on that matter of the majority of members of the tribunal present and entitled to vote at the meeting of the tribunal shall prevail.

(11) Whenever there is a vacancy in a remuneration tribunal, the tribunal may act notwithstanding such vacancy.

(12) No act, proceeding or determination of a remuneration tribunal shall be called in question or invalidated by reason of any vacancy in the tribunal

Circumstances in which the Minister will authorize a remuneration tribunal to make a determination.

26. (1) The Minister may authorize a draft determination under this Part to be made by a remuneration tribunal in relation to any employees in any case where the Commissioner has not been able, in pursuance of an Order under section 21, to make a determination with consent in relation to such employees, or where the Minister considers it expedient so to do.

(2) In any case where a determination with consent is repudiated as herein before provided, the Minister may authorize a draft determination to be made by a remuneration tribunal specifying a minimum rate of remuneration for the employees or any employees in relation to whom the determination with consent has ceased to be applicable by reason of such repudiation.

(3) In any case where the Minister considers it expedient that a determination with consent should be extended so as to be applicable to any employees to whom it is not already applicable, the Minister may authorize a draft determination, for the extension to such employees of the determination with consent, to be made by a remuneration tribunal.

(4) The Minister may of his own motion, and shall on application made to him in the prescribed manner, authorize a draft determination to be made by a remuneration tribunal rescinding, varying or replacing a determination previously-made by a remuneration tribunal:

Provided, however, that the Minister shall not authorize such draft determination to be made on such application unless a period of at least one year has elapsed from the date on which such previously-made determination came into force.

(5) In any case referred to in the preceding provisions of this section a remuneration tribunal shall be constituted in the manner set out in section 25, and for the purposes of the application to any such case of the succeeding provisions of this Part every reference to a tribunal shall be construed as a reference to the remuneration tribunal so constituted.

Duties and powers
of a tribunal.

27. (1) Where authority in that behalf has been given by the Minister under section 26, a tribunal shall, after holding such inquiries as it may consider necessary, make a draft determination in terms of the authority so given:

Provided, however, that the tribunal may, for reasons which shall be stated in a report to be made to the Minister in that behalf -

- (a) decide not to make a draft determination, or
- (b) make a draft determination to be applicable to some only but not all of the employees in relation to whom it is authorized to make a draft determination.

(2) Every draft determination made under the preceding provisions of this section shall contain a declaration specifying the shop or office or each of the shops or offices to which the determination is applicable and stating whether it is so applicable in relation to all the employees in such shop or office or only to any specified class or category of such employees.

Publication of
draft determination
by tribunals.

28. (1) A tribunal that makes any draft determination shall cause a copy of that determination to be published in the *Gazette* together with a notice specifying the date on or before which objections to the draft determination will be received by the tribunal.

(2) Every objection preferred in consequence of a notice under subsection (1) shall be made in writing and shall contain a statement of the grounds upon which the objection is taken to the draft determination.

(3) The tribunal shall consider all objections made to a draft determination in consequence of a notice under subsection (1) and may confirm that determination with or without any amendments.

(4) Where a tribunal decides not to confirm a draft determination, the tribunal shall make a written report to the Minister specifying its reasons for the decision.

Procedure for
approval of
determination of
tribunals by Minister.

29. (1) Every determination made by a tribunal and confirmed under section 28 shall -

- (a) be signed and dated by the Commissioner, and
- (b) be transmitted to the Minister, through the Commissioner, with any report which he or the tribunal may desire to make on any matter to which the determination relates.

(2) The Minister may refer back to the tribunal for reconsideration any determination transmitted to him under subsection (1), and in every such case the tribunal shall reconsider the determination and after such amendment thereof as it may consider desirable, return the determination to the Minister.

(3) No determination transmitted to the Minister under subsection (1) or returned to him under subsection (2) shall have effect unless it has been approved by the Minister. Every determination which has been approved by the Minister shall, together with a notification of such approval be published in the *Gazette*.

(4) Any determination which is approved by the Minister shall come into force on the first day of the month succeeding the month in which the notification of such approval is published in the *Gazette* and where such determination extends an existing determination to other employees, the existing determination shall apply and come into force in relation to those other employees on the aforesaid date.

Liability of employer to pay minimum remuneration.

30. Where any determination with consent, or any determination of a tribunal, specifying a minimum rate of remuneration for any employees is in force, the employer of each such employee shall pay to the employee remuneration calculated at not less than the aforesaid minimum rate:

Provided, however, that where as respects any employee the date on which such determination comes into force does not correspond with the beginning of a period, determination under section 31(3) of this Act, for which remuneration is payable to such employee by that employer the rates determined in that determination shall, in respect of that employee, become effective as from the beginning of the next period of the aforesaid description following the said date.

Employer liable to pay remuneration notwithstanding the change of the name and ownership of business.
[§ 2,12 of 1978.]

30 A. The remuneration payable to any employee under section 30 shall be payable to such employee -

- (a) by his employer notwithstanding that there has been a change in the business name of any shop or office,
- (b) by his new employer notwithstanding that there has been a change in the ownership of any shop or office,

and the provisions of section 52 shall apply where there has been a failure to pay any such remuneration.

Method of calculation of minimum remuneration.

31. (1) The Commissioner or a tribunal shall have the power to make any determination under this Part relating to a minimum rate of remuneration by reference to time-work or by reference to piece-work or by reference to such other method of calculation as the Commissioner or the tribunal, as the case may be, may consider fit.

(2) The Commissioner or a tribunal shall, in making any determination under this Part, take into consideration the circumstances obtaining in particular branches of employment or particular areas or affecting particular classes of employees, and may, accordingly, in any such determination, determine different rates of remuneration for employees occupied in different branches of employment or employed in different areas or of different classes, or include therein such other provisions for such circumstances as the Commissioner or the tribunal, as the case may be, may consider expedient.

(3) The Commissioner or a tribunal may, in making any determination in relation to any employees under this Part, determine the period of work (not exceeding one month) in respect of which remuneration shall be paid to those employees, and specify the number of days from the end of such period within which the remuneration shall be so paid.

Nothing in the preceding provisions of this subsection or in any determination shall in any way affect the period of notice or warning necessary under any provision of written law other than this Act for the termination of any contract.

(4) Where a determination under this Part includes provisions under the preceding subsection fixing the period of employment in respect of which remuneration shall be paid to any employees in a shop or office and the number of days after the end of that period within which such remuneration shall be paid to those employees, the provisions of paragraph (b) of section 19(1) shall, with effect from the date on which that determination comes into force, cease to have effect in relation to those employees in so far as they are inconsistent with, or in conflict with, any such provision.

Employee performing two or more classes of employment.

32. Where an employee performs two or more classes of employment and a minimum rate of remuneration has been determined under this Act for each such class, the employer shall pay to that employee in respect of the time occupied in each class of employment remuneration calculated at not less than the minimum rate in force in respect of that class.

Employee performing piece-work.

33. Where an employee is employed on piece-work and a minimum rate of remuneration for time-work (such rate being hereinafter referred to in this Part as a "minimum time-rate") has been determined in relation to that employee under this Part but no rate for piece-work has been determined in relation to that employee under this Part, the employer of that employee shall be deemed to pay remuneration calculated at less than the minimum time-rate, unless he shows that the remuneration, calculated on a piece-work basis, paid to that employee was at least the same amount as the remuneration that would have been paid to that employee had the remuneration been calculated at the minimum time-rate.

Employee waiting for employment on employers premises & c.

34. For the purpose of calculating the amount of the remuneration payable in the case of an employee in relation to whom a minimum rate of remuneration has been determined under this Part, the employee shall be deemed to have been employed during all the time during which he was present on the premises of the employer unless the employer proves that he was so present without the employer's consent expressed or implied or that he was so present for some purpose unconnected with his employment and other than that of awaiting for employment to be given to him to perform; and in the case of an employee employed on piece-work, he shall be deemed during any time during which he was so present and was not doing piece-work to have been employed at the minimum time-rate under this Part for such an employee, and if no such time-rate has been so determined, at a minimum remuneration rate, calculated in such manner as the Commissioner or a tribunal, as the case may be, may consider fit:

Provided that -

- (a) where the employee resides on the premises of the employer, he shall not be deemed to be employed during any time during which he is present on the premises by reason only of the fact that he is so resident; and
- (b) an employee while present during normal meal times in a room or place in which no employment is being done shall be deemed present for a purpose unconnected with his employment.

Remuneration of employee who works for less than the normal working day or does not work at all on any day.

35 (1) Where an employee in a shop or office who is paid remuneration at an hourly or daily rate determined under this Part, is employed on any day, including a holiday on which he is required to be employed, for less than the normal period of employment prescribed by the employer of that shop or office for a day (such period being hereinafter referred to in this section as the "normal working day"), he shall be deemed to have been employed for the full normal working day and his remuneration shall be computed accordingly, unless his failure to work for the normal working day is due to his unwillingness to work or such other circumstances as the Commissioner or the tribunal, as the case may be, may determine and not due to the omission of his employer to provide him with work.

(2) Where an employee in a shop or office who is paid remuneration at a weekly or monthly rate determined under this Part is not employed at all on any day or is employed on any day, including a holiday on which he is required to be employed, for less than the normal working day, he shall be deemed to have been employed for the full normal working day and his remuneration shall be computed accordingly unless his failure to work at all on that day or to work for the full normal working

day is due to his unwillingness to work or such other circumstances as the Commissioner or the tribunal, as the case may be, may determine, and not due to the omission of his employer to provide him with work.

(3) Where, by reason of his illness or his unwillingness to work or such other circumstances as the Commissioner or the tribunal, as the case may be, may determine an employee in a shop or office works on any day for a period which is less than the normal working day, his employer shall pay him as remuneration for such period a sum which bears to the amount of the remuneration payable for the normal working day the same proportion as such period bears to the normal working day.

Non - able-bodied employee.

36. (1) Where the Commissioner is satisfied that any employee in relation to whom a minimum rate of remuneration has been determined under this Act is affected by infirmity or physical injury which renders him incapable of earning that minimum rate, the Commissioner may, if he thinks fit grant to that employee a permit, subject to such conditions as may be prescribed in the permit, authorising his employment by an employer at a rate of remuneration, specified in the permit, which is less than the aforesaid minimum rate.

(2) While any permit, granted under subsection (1), in relation to any employee, is in force his employer shall not be liable to any legal proceedings for paying remuneration to that employee at less than the minimum rate determined under this Act for him, so long as the permit is in force and conditions subject to which the permit was issued are complied with.

(3) Any permit granted under subsection (1) to any employee may at any time be revoked by the Commissioner, after giving notice in the prescribed manner to the employer of that employee.

Non-application of determinations under this Part to persons employed in any trade or work to which Part II of the Wages Boards Ordinance has been applied.

37. No determination under this Part shall apply or be made applicable to any persons employed in any trade or work to which the provisions of Part II of the Wages Boards Ordinance, has been made applicable by Order made under section 6 of that Ordinance.

Interpretation of a determination of a tribunal.

38. If any question arises as to the interpretation of any determination for the time being in force of a tribunal, the Commissioner may refer that question for the decision of a tribunal consisting as far as possible of the persons who constituted the tribunal which made the determination.

Effect of tribunal's decision under section 38.

39. Every decision of a tribunal under section 38 on the interpretation of a determination for the time being in force shall be transmitted to the Commissioner for publication in the *Gazette* and shall be deemed to form part of and shall have the same effect in all respects as such determination.

PART IV CLOSING ORDERS FOR SHOPS

Closing orders.
[§ 11, 17 of 1965.]

40. (1) An order (hereinafter referred to as a "closing order") may be made by the Minister in relation to all shops, or to all shops of any specified class, in all areas of Sri Lanka or in any specified area, if he is of opinion that it is expedient to restrict the hours during which such shops may be or remain open for the serving of customers.

(2) Any closing order may require every shop to which the order applies to be closed for the serving of customers -

[§ 9, 29 of 1971.]

- (a) until a specified hour on each day, or on one or more specified days, in every week;
- (b) at and after a specified hour on each day, or on one or more specified days, in every week; and
- (c) throughout a specified day in every week.

(3) Any closing order may -

- (a) specify different days or different hours for different classes of shops or for shops in different areas; or
- (b) specify different days or different hours for different periods of the year; or
- (c) empower the Commissioner to specify different days or different hours for specified shops; or
- (d) authorize, or empower the Commissioner to authorize, whether at all shops in the area in which the order applies, or at shops situated in any specified part of that area, or at shops of any specified class in the area or any specified part thereof, sales after the closing hour in cases of emergency or in such other circumstances as may be specified in the order; or
- (e) exempt or empower the Commissioner to exempt any particular class of shops from all or any of the provisions of any such order; and
- (f) contain such provisions incidental, supplemental or consequential to the matters referred to in the preceding paragraphs as may appear necessary or expedient.

Approval of Closing Orders.

*42. No closing order shall have effect until it has been approved by Parliament nor until notification of such approval has been published in the *Gazette*. Every closing order so approved shall, upon publication in the *Gazette*, be as valid and effectual as though it were herein contained.

Closing order to prevail in case of conflict with other written law.
[§10, 60 of 1957]

42A. Where the provisions of a closing order made under this Act conflict with the provisions of other written law, the provisions of that order shall prevail.

No shop to be opened in contravention of a closing order.

43. (1) No shop shall be or remain open for the serving of customers in contravention of any provision of any closing order made under this Act.

(2) It shall be the duty of the employer to prevent any customer from entering the shop on any day or at any time when such shop is required by any closing order to be closed for the serving of customers.

Application of closing order to shop where more than one business is carried on.

44. (1) Where different trades or businesses are carried on in the same shop, and any of those trades or businesses is of such a nature that no closing order would be applicable to the shop if that were the only trade or business carried on therein, the shop may, subject to such terms and conditions as may be prescribed, be kept open for the purposes of that trade or business alone notwithstanding anything in any closing order.

(2) Where different trades or businesses, in respect of which different hours for opening and closing are prescribed by any closing order, are carried on in the same shop, such shop shall be opened at the latest of the hours for opening and closed at the earliest of the hours for closing, that are so prescribed :

Provided, however, that where the Commissioner is satisfied that the premises of the shop have been adequately partitioned or divided into distinct parts so as to ensure that each such part can be closed separately and effectively, and a certificate in that behalf has been issued by the Commissioner, the closing Order shall apply in respect of each such part of the shop separately in like manner as though such part were a distinct shop.

Restriction against carrying on trade or business after closing hour for shop.

45. (1) Where, by virtue of any closing order, shops which are situated in any specified area and in which any specified trade or business or a trade or business of any specified class is carried on are required to be closed until any specified hour of any day, or at and after any specified hour of the day or throughout a specified day in every week, no person shall, in contravention of such order carry on that trade or business or any trade or business of that class anywhere in that area :

* Section 41 is repealed by regulation published in *Gazette* Extraordinary 14, 726/12 of 22.12.1966 under section 11 of the Holidays Act, No. 17 of 1965.

Provided that nothing in this section shall be deemed to prohibit -

- (a) a barber or hairdresser from attending to a customer at the customer's residence;
- (b) the holding, in a dwelling house, of an auction sale of household goods belonging to the occupier of the dwelling house;
- (c) the sale of newspapers;
- (d) the sale of any goods by a person who does not carry on any trade or business as a seller of such goods and is not employed by a person carrying on any such trade or business;
- (e) the carrying on of any prescribed trade or business.

(2) Where any person in the presence of a prescribed officer is accused of committing a contravention of subsection (1), that officer may exercise the powers conferred on a peace officer by subsection (1) of section 33 of the Code of Criminal Procedure Act.

PART V GENERAL

Administration
of Act.

46. (1) The Commissioner of Labour shall be the officer in charge of the general administration of this Act.

(2) Subject to any general or special directions of the Commissioner, any Deputy or Assistant Commissioner of Labour may exercise, perform or discharge any power, duty or function of the Commissioner under this Act or under any regulation.

(3) There may be appointed such number of officers and servants as may from time to time be required for the purpose of carrying out or giving effect to the provisions of this Act

[§ 11,60 of 1957.]

(4) The Commissioner may either generally or specially authorize any officer appointed under subsection (3) or any officer of a local authority to exercise, perform or discharge any power, duty or function of the Commissioner under this Act or under any regulation.

Power of
Commissioner to
call for returns & c.

47. (1) The Commissioner may at any time direct any employer to furnish to him before a specified date -

- (a) a return in relation to his shop or office containing such particulars as the Commissioner may require for the purposes of this Act ;
- (b) such information or explanation as the Commissioner may require in respect of any particulars stated in any return so furnished;
- (c) a true copy of any register, record or other document, or any part of a register, record or other document required to be kept under this Act by the employer.

[§ 12,60 of 1957.]

(1A) Where a person has ceased to be the employer with reference to any shop or office, a direction under subsection (1) may be given to him in respect of that shop or office in relation to any period during which he was such employer, if that period is within the two years immediately preceding the date on which the direction is given.

(2) A direction under subsection (1) may be given by letter, or by notice published in the *Gazette* or in two or more newspapers circulating in Sri Lanka.

(3) Any employer furnishing any return, copy, part of a copy or other information under subsection (1) may transmit at the same time a written request that such return, copy, part of a copy or other information so furnished should be treated as confidential and, where such request is made,

the materials to which the request relates shall not be disclosed by any person without the consent previously obtained of the employer who made the request.

(4) Nothing in the preceding provisions of this section shall be deemed to require or permit any person to disclose any information or to produce any document in any case where the disclosure or production by that person of the information or document is prohibited by or under the provisions of any written law other than this Act.

Power of tribunal to
summon witnesses
& c.

48. (1) For the purposes of holding any inquiry under this Act, a remuneration tribunal shall have the same powers as a District Court to enforce the attendance of any person, to examine him on oath and to enforce the production of any relevant document; and the provisions of the Civil Procedure Code relating to the powers of a civil court in respect of the matters aforesaid shall apply accordingly.

(2) Nothing in the preceding provisions of this section shall be deemed to require or permit any person to disclose any information or to produce any document in any case where the disclosure or production by that person of such information or document is prohibited by or under the provisions of any written law other than this Act.

Information given
before a tribunal
to be treated as
confidential in
certain cases.

49. (1) Where in any inquiry held by a remuneration tribunal any information is given or any document produced by any person and a request is made by or on behalf of that person that such information or document or the contents of such document should be treated as confidential, the Chairman of the tribunal shall order that such information or document be treated as confidential.

(2) No member of a remuneration tribunal or other person present at or concerned in any proceedings before the tribunal shall in any way disclose any information or document in respect of which an order has been made under subsection (1), or the contents of any such document, except with the written consent of the party at whose request such order was made.

Powers of entry
inspection, & c.

50. (1) The Commissioner or any prescribed officer shall have power -

- (a) to enter and inspect, at all reasonable hours by day or night, any shop or office or part thereof or any place believed by the Commissioner or such officer, to be used as a shop or office, for the purpose of ascertaining whether the provisions of this Act are being complied with in respect thereof, or of examining any register, record or notice required by or under this Act to be kept or exhibited therein;
- (b) where any such register or record is not available for examination when the Commissioner or such officer is inspecting any such premises or place, to require the production of such register or record on a specified date for examination at such premises or place or at the office of the Commissioner or such officer;
- (c) to take one or more police officers, if the Commissioner or such officer has reasonable cause to apprehend any serious obstruction in the execution of his duty; and
- (d) to require any person found in any shop or office and employed or believed to be employed therein, to furnish his name and address and such information as may be within his knowledge as to the identity of his employer or as to any alleged contravention of, or failure to comply with, the provisions of this Act and in the case of a shop to require any person found therein and believed to be a customer to furnish his name and address and such information as may be within his knowledge in relation to the circumstances of any sale; so however, that no person is required under this paragraph to answer any question or to furnish any information tending to criminate himself.

(2) It shall be the duty of the person in charge of each shop or office, in or about the business of which any person is employed to render such assistance and furnish such facilities as may be required by the Commissioner or any prescribed officer, for the purposes of any entry, inspection or examination which the Commissioner or that officer is empowered to carry out by subsection (1).

Remuneration to be a first charge on assets of the business of a shop or office.
[§ 13,60 1957.]

50A. The liability of an employer to pay under this Act any sum as remuneration to any person employed in or about the business of any shop or office shall be a first charge on the assets of that business, notwithstanding anything in any other law.

Power of Commissioner or registered trade union to recover by suit money due to any employee.
[§ 13,60 of 1957.]

50B. Notwithstanding anything to the contrary in any other written law -

- (a) a suit for the recovery of any sum due under this Act from any employer to any employee may be instituted in any Primary Court in the name of the Commissioner or in the name of a trade union which is registered under the Trade Unions Ordinance and of which that employee is a member;
- (b) any sums due under this Act from an employer to two or more employees may be sued for in a single suit instituted in the name of the Commissioner or in the name of a trade union which is registered under the Trade Unions Ordinance and which those employees are members;
- (c) a suit for the recovery of any sum due under this Act from any employer to any employee shall be maintainable if it is instituted within four years after that sum has become due;
- (d) in any such suit instituted in the name of the Commissioner, he may be represented by any Deputy or Assistant Commissioner of Labour or any Inspector of Labour; and
- (e) in any such suit instituted in the name of a trade union, such union may be represented by any of its officers.

[§ 2,28 of 1962.]

Recovery of remuneration where employer has failed to maintain any register or record.
[§ 3,12 of 1978.]

50C. (1) Where an employer has failed to keep or maintain any register or record necessary for the purposes of the calculation of any remuneration payable to any employee and which register or record is required by or under this Act to be kept or maintained, or fails when required to do so, to produce such register or record for examination or inspection, the Commissioner is hereby empowered to assess any short payment of remuneration payable to such employee on the basis of all the evidence, both oral and documentary, available to him and the provisions of subsection (2) shall apply where default is made in the payment of any such remuneration.

(2) Where an employer makes default in the payment of any sum which he is liable to pay as remuneration under subsection (1) and the Commissioner is of opinion that it is impracticable or inexpedient to recover that sum under any other provision of this Act then, he may issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer to the Magistrate having jurisdiction in the division in which such place is situated. The Magistrate shall thereupon summon such employer before him to show cause why further proceedings for the recovery of the sum due should not be taken against him and in default of sufficient cause being shown the sum in default shall be deemed to be a fine imposed on such employer by such Magistrate, and shall be recovered accordingly. Every sum so recovered shall be paid to the Commissioner.

(3) The correctness of any statement in a certificate issued by the Commissioner for the purpose of this section shall not be called in question or examined by the court in any proceeding under this section, and accordingly nothing in this section shall authorize the court to consider or decide the correctness of any statement in such certificate and the Commissioner's certificate shall be sufficient evidence that the amount due under subsection (1) from the defaulting employer has been duly calculated and that such amount is in default.

OFFENCES

Offences.

[§ 2, 26 of 1966.]

51. (1) In the event of any contravention of or failure to comply with any provision of this Act, other than the provisions of section 30, section 43 or section 45, or of any regulation, relating to any shop or office or to the employment of any person in or about the business thereof, the employer shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

(2) Where any person who has previously on any day been employed in or about the business of any shop or office or in any factory, is subsequently employed on that day in or about the business of any shop or office for a period longer than will, together with the time during which he has so been previously employed on that day, complete the number of hours prescribed by or under section 4 as the maximum period during which that person shall be employed on any one day, such person shall be guilty of an offence and shall be liable to the penalties provided in subsection (1) of this section.

[§ 2, 26 of 1966.]

(3) Every employer who contravenes the provisions of section 43, and every person who contravenes the provisions of section 45, shall be guilty of an offence and shall be liable -

- (a) in the case of a first offence, to a fine not less than one hundred rupees nor exceeding two hundred and fifty rupees;
- (b) in the case of a second offence, to a fine not less than two hundred and fifty rupees nor exceeding five hundred rupees; and
- (c) in the case of a subsequent offence, to a fine not less than five hundred rupees nor exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Panalty for failure to pay remuneration.

[§ 14, 60 of 1957.]

[§ 3, 26 of 1966.]

52. (1) Every employer who fails to pay remuneration to any employee in accordance with the provisions of this Act, shall be guilty of an offence and shall be liable -

- (a) in the case of a first offence, to a fine not less than one hundred rupees nor exceeding two hundred and fifty rupees;
- (b) in the case of a second offence, to a fine not less than two hundred and fifty rupees nor exceeding five hundred rupees; and
- (c) in the case of a subsequent offence, to a fine not less than five hundred rupees nor exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment, and shall in addition be liable to a fine not exceeding fifty rupees for each day on which the offence is continued after conviction.

[§ 2, 36 of 1982.]

(2) On conviction of an employer under subsection (1), the Court may, in addition to any other sentence, order the employer to pay -

- (a) where an employee has not been paid the amount which ought properly to have been paid to that employee, such sum as may be found by the court to represent the difference between such amount and the amount actually paid and the surcharge referred to in subsection (2A); or
- (b) where no portion of the remuneration due to that employee has been paid, such sum as may be found by the court to represent such remuneration and the surcharge referred to in subsection (2A).

Any sum ordered to be paid under this subsection may be recovered in the same manner as a fine.

(2A) The surcharge payable on any sum referred to in paragraph (a) or paragraph (b) of subsection (2) shall be calculated as follows:-

- (a) where such sum is in arrears for a period exceeding one month but not exceeding three months, a surcharge of twenty *per centum* of such sum;
- (b) where such sum is in arrears for a period exceeding three months but not exceeding six months, a surcharge of thirty *per centum* of such sum;
- (c) where such sum is in arrears for a period exceeding six months but not exceeding twelve months, a surcharge of forty *per centum* of such sum;
- (d) where such sum is in arrears for a period exceeding twelve months, a surcharge of fifty *per centum* of such sum.

(3) The power of the Court to make any order under subsection (2) for the payment of any sum of money shall not be in derogation of any right of the employee to recover the sum by any other proceedings.

(4) On the prosecution of any employer under subsection (1) of this section for the failure to make any payment to any employee, the burden of proving that the payment was made shall lie on the employer.

Recovery of remuneration due to employees under this Act.

[§ 15, 60 of 1957.]

[§ 3, 28 of 1962.]

[§ 15, 60 of 1957.]

[§ 4, 26 of 1966.]

53. (1) Where an employer has been convicted of failing to pay remuneration to any employee in accordance with the provisions of this Act, then, if a notice in the prescribed form of the intention so to do has been served on the employer at any time before the date of commencement of the trial, evidence may be given of any failure on the part of the employer to pay remuneration in accordance with the provisions of this Act to that employee or to any other employee or employees at any time during the four years preceding the date on which complaint under section 136 of the Code of Criminal Procedure Act, was made to court of the offence of which the employer has been so convicted and, on proof of the failure, the court may order the employer to pay such sum as may be found by the court to be due from him to such employee or employees together with a sum equal to ten *per centum* of the sum found by the court to be due to such employee or employees.

Any sum ordered to be paid under this subsection may be recovered in the same manner as a fine.

(2) The power of court to make an order under subsection (1) of this section shall not be in derogation of any right of the employee to recover remuneration by any other proceedings.

[§ 15, 60 of 1957.]

(3) Where an employee has not been paid the whole or a part of the remuneration required by this Act to be paid to him by his employer, the Commissioner may, if he thinks fit so to do, by written notice require the employer to pay such amount or the balance of such amount to the Commissioner within the time specified in the notice so that the Commissioner may remit it to such employee. Where the employer when served with such notice pays such amount or such balance directly to such employees instead of transmitting it to the Commissioner as required by such notice, he shall be deemed not to have paid such amount or such balance to such employee.

Obstruction of officers & c.

54. Every person who wilfully obstructs or delays the Commissioner or any prescribed officer in the exercise of any power conferred on the Commissioner or such officer by section 50, or fails to comply with any direction or requisition given under section 47 or section 50 or to produce any register, notice, document or other information which is required under such section to produce, or wilfully withholds any information so required to be furnished, or prevents or attempts to prevent any person from furnishing any such information shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

Penalty for failure to maintain register, notice or record. [§ 4,12 of 1978.]	<p>54A. Every employer who fails to keep or maintain any register, notice or record required under section 18 to be kept or maintained, or who fails to produce the register or record required to be produced by the Commissioner or any prescribed officer under paragraph (b) of subsection (1) of section 50, shall be guilty of an offence, and shall be liable -</p> <ul style="list-style-type: none"> (a) in the case of a first offence, to a fine not less than one hundred rupees and not exceeding two hundred and fifty rupees; (b) in the case of second offence to a fine not less than two hundred and fifty rupees and not exceeding five hundred rupees; and (c) in the case of a subsequent offence, to a fine not less than five hundred rupees and not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment, and shall in addition, be liable to a fine not exceeding fifty rupees for each day on which the offence is continued after conviction.
Offences in connection with notices or records under the Act.	<p>55. If any person makes or exhibits, or causes or allows to be made or exhibited, in any record or notice required by or under this Act to be kept or exhibited, any entry which is to his knowledge false in any material particular, or wilfully omits or causes or allows to be omitted from any such record or notice any entry required to be made therein, he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.</p>
Disclosure of information in breach of Section 47 (3) or Section 49 (2).	<p>56. Every person who discloses any information or document in contravention of the provisions of section 47(3) or section 49(2) shall be guilty of an offence and shall be liable to a fine not exceeding two hundred rupees or to imprisonment of either description for a period not exceeding three months or to both such fine and imprisonment.</p>
Dismissal of any person for giving information & c. [§ 16, 60 of 1957.]	<p>57. (1) Every employer who terminates the employment of, or otherwise punishes, any person employed by him in or about the business of any shop or office by reason of the fact that such person -</p> <ul style="list-style-type: none"> (a) has given information to any authority with regard to matters under this Act, or (b) is entitled to any benefit by or under this Act, or (c) is a member of the panel from which remuneration tribunals are constituted, <p>shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.</p> <p>(2) In every prosecution of an employer for an offence under subsection (1) the burden of proving that the person was dismissed or otherwise punished by reason of some fact other than a fact mentioned in that subsection shall be on the employer.</p>
Immediate employer being himself in the employment of another person.	<p>58. Where in a shop or office the immediate employer of any person employed in or about the business of that shop or office is himself in the employment of some other person, and the first mentioned person is employed to do any employment in the course of and for the purpose of the business of that other person, that other person shall, for the purposes of this Act, be deemed to be the employer of the first-mentioned person jointly with the immediate employer.</p>
Liability of manager, agent &c., for employer for offences.	<p>59. Where an offence for which any employer is liable under this Act as in fact been committed by some manager, agent, servant or other person, the manager, agent, servant or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with he employer, or before or after the conviction of the employer, and shall be liable to the like penalty as if he were the employer.</p>

Where employer proves that some other person is guilty of the offence.

60. (1) Where any employer is charged with an offence under this Act, he shall, upon complaint duly made by him in accordance with the provisions of section 136 of the Code of Criminal Procedure Act, and on giving to the prosecution not less than three days' notice of his intention, be entitled, subject to the provisions of Chapter XIV of that Act, to have any other person whom he charges as the actual offender brought before the court, and if, after the commission of the offence by such other person has been proved, the employer proves to the satisfaction of the court that he has used due diligence to enforce the provisions of this Act and that such other person has committed the offence without his knowledge, consent, or connivance, then such other person shall be convicted of the offence and the employer shall be exempt from any penalty in respect of the offence.

(2) Where in any case referred to under subsection (1), a complaint is made by any employer against any other person-

- (a) the prosecution against such other person shall be conducted by or on behalf of the employer,
- (b) any witness called by the prosecution in the proceedings against such other person may be cross-examined by any officer authorised in that behalf by the Commissioner, and
- (c) pending the determination of the proceedings against such other person the proceedings in the prosecution against the employer shall be adjourned.

No offence committed by employer in certain cases where customer is served after closing hour.

61. (1) Where, on any day, any person employed in or about the business of a shop is, at the hour at which his employment should under this Act cease on that day, actually engaged in serving any customer, the employer shall not be deemed to be guilty of any offence by reason only of the fact that such person was employed on that day after such hour merely in continuing to serve that customer.

(2) Where, on any day, any customer is in any shop at the hour (hereinafter referred to as the "the closing hour") at and after which that shop should under this Act be closed on that day, the employer shall not be deemed to be guilty of any offence by reason only of the fact that such customer was served on that day at any time within a period of half an hour after the closing hour.

Special provisions as to evidence.

62. (1) Where any entry is required by or under this Act to be made in any register or record-

- (a) any such entry made by or on behalf of the employer shall, as against him, be admissible as evidence of the facts stated therein; and
- (b) the fact that any entry, required with respect to the observance of any provisions of this Act or any provisions of any order or regulation made thereunder, has not been made, shall be admissible as evidence that such provision has not been observed.

(2) Where, in any prosecution for any offence alleged to have been committed by reason of the contravention of any closing order made under this Act, any person is proved to have entered or to have been found in any shop at any time when such shop was required by such order to be closed for the serving of customers, such person shall be presumed, until the contrary is proved, to have been a customer.

Offences under Act to be triable summarily.

63. All offences under this Act may be tried summarily by a Magistrate.

Sanction of prosecutions. [§ 5, 12 of 1978.]

64. No prosecution for any offence under this Act shall be instituted except by or with the written permission of the Commissioner and within six years of the commission of the offence.

Proof of closing orders and determinations under Part III.

65. (1) An extract from the *Gazette* containing any closing order and the notification of approval of such closing order by Parliament and purporting to have been printed by the Government Printer, or a copy of such closing order and notification purporting to have been certified to be a true copy by the Commissioner, may be produced in any court in proof of such closing order and notification.

(2) An extract from the *Gazette* containing a determination with consent and purporting to have been printed by the Government Printer, or a copy of such determination purporting to have been certified to be a true copy by the Commissioner, may be produced in any court in proof of such determination.

(3) An extract from the *Gazette* containing a determination of a remuneration tribunal and the notification of approval of such determination by the Minister and purporting to have been printed by the Government Printer, or a copy of such determination and notification purporting to have been certified to be a true copy by the Commissioner, may be produced in any court in proof of such determination and approval.

Regulations.

66. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the provisions and principles of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of any or all of the following matters:-

- (a) all matters authorized or required by this Act to be prescribed, or in respect of which regulations are by any other provision of this Act authorized or required to be made;
- (b) the registration of shops and offices to which this Act applies, the particulars to be furnished by employers for the purposes of such registration, the returns or other information to be furnished in respect of registered shops and offices, and the circumstances in which such registration shall be cancelled;
- (c) the classification of shops or offices, of employers, and of persons employed in or about the business of shops or offices;
- (d) the manner in which notices under this Act shall be served;
- (e) the periods for which records and registers required to be kept for the purposes of the Act shall be preserved;
- (f) the exemption of particular classes of premises, or of particular classes of trades or businesses, or of particular classes of persons employed in or about the business of shops or offices, from all or any of the provisions of this Act or any regulation or closing order, either with or without conditions or restrictions, and either for specified periods or permanently;
- (g) in respect of the method of computing the remuneration payable for overtime work to persons employed in or about the business of a shop or office whose remuneration for such work has not been determined under Part III of this Act ;
- (h) in respect of the amount of fees payable to persons appointed for the purposes of this Act and to witnesses summoned for such purposes; and
- (i) in respect of all matters necessary for carrying out the provisions of this Act or giving effect to the principles thereof.

(3) No regulation made by the Minister shall have effect until it has been approved by Parliament. Notification of such approval shall be published in the *Gazette*. Every regulation so approved shall be as valid and effectual as though it were herein enacted.

Expenses. 67. Any expenses incurred in carrying out the provisions of this Act, including the payment of all persons appointed for the purposes of this Act, shall be met out of moneys provided by Parliament.

INTERPRETATION &C

Interpretation. 68 (1) In this Act, unless the context otherwise requires -

“appointed date” means the 9th day of August, 1954;

“Commissioner” means the person for the time being holding the office of Commissioner of Labour and includes -

- (a) subject to any direction given by the Commissioner under section 46(2), any Deputy or Assistant Commissioner, and
- (b) in respect of any particular power, duty or function of the Commissioner under this Act or any regulation, any officer authorized by the Commissioner, under section 46 (4) to exercise, perform or discharge that power, duty or function;

“employer” -

- (a) in relation to any shop, means the owner of the business of that shop, and includes any person having the charge or the general management and control of that shop, and
- (b) in relation to any office, means the person carrying on, or for the time being responsible for the management of the business for the purposes of which the office is maintained;

“estate” means any land of which not less than 10 acres are cultivated with any agricultural product;

“factory” means a factory as defined in the Factories Ordinance;

“full remuneration”, in relation to any holiday or leave granted to a person employed in or about the business of a shop or office, means, in the case of any such person whose remuneration is paid at a monthly rate, remuneration at a rate equivalent to the rate at which such person was entitled to be remunerated for a normal period of employment on the day immediately before the holiday or leave, as the case may be, and in the case of any such person whose remuneration is paid otherwise than at a monthly rate, remuneration at a rate determined in the prescribed manner;

“half-holiday” means a day on which a person employed in or about the business of a shop or office is not so employed for more than five hours exclusive of any interval allowed under any provision of this Act for rest or a meal and any interruption permitted by regulation under section 3(3);

[§ 18, 60 of 1957.] “local authority” includes a Municipal Council constituted under the Municipal Councils Ordinance and Urban Council constituted under the Urban Councils Ordinance a *Town Council constituted under the *Town Councils Ordinance or a *Village *Council constituted under the *Village Councils Ordinance;

“Magistrate” and “Magistrate’s Court”, respectively, include a Municipal Magistrate and the court of a Municipal Magistrate;

“mine” shall have the same meaning as in the Mines, Quarries and Minerals Ordinance;

* See Pradeshiya Sabhas Act, No. 15 of 1987, which repealed and replaced both the Town Councils Ordinance and the Village Councils Ordinance.

“office” means any establishment maintained for the purpose of the transaction of the business of any bank, broker, insurance company, shipping company, joint stock or other company, estate agent, advertising agent, commission agent or forwarding or indenting agent, or for the purposes of the practice of the profession of any accountant, and includes-

[§ 18, 60 of 1957.]

(a) the office or clerical department of any shop, factory, estate, mine, hotel, club or other place of entertainment, or of any other industrial, business or commercial undertaking (including the business of transporting persons or goods for fee or reward and any undertaking for the publication of newspapers, books or other literature), and

[§ 18, 60 of 1957.]

(b) such other institutions or establishments as may be declared by regulation to be offices for the purposes of this Act, whether or not they are maintained for the purposes of any profession, trade or business or for the purposes of profit;

“overtime”, in relation to any employment or work, means employment or work in excess of the normal maximum period provided by or under section 3;

“prescribed” means prescribed by regulation;

“regulation” means a regulation made by the Minister under this Act ;

“remuneration” means salary or wages and includes-

(a) any special allowance determined according to the cost of living,

(b) any allowance for overtime work, and

(c) such other allowance as has been prescribed;

“serving of customers”, in reference to any shop, includes-

(a) the exhibition to a customer of any goods kept for sale at such shop,

(b) the answering of questions or furnishing of information or explanations relating to the price, description or quality of any goods (whether or not such goods are kept for sale at such shop) or to any matter incidental to the matters aforesaid,

(c) the acceptance of payment in cash or otherwise for goods sold, whether or not delivery thereof has been or is being made,

(d) the taking of measurements for the purposes of compliance with any order placed by a customer,

(e) the trial or fitting-on of any article of clothing,

(f) the acceptance by telephone of any order for goods, and

(g) the delivery at such shop during any time when such shop is required to be kept closed by any closing order, of goods purchased while such shop is kept open;

“shop” means any premises in which any retail or wholesale business is carried on, and includes a residential hotel and any place where the business of the sale of articles of food or drink or the business of a barber or hairdresser or any other prescribed trade or business is carried on;

“suitable and sufficient”, in relation to any shop or office, or part of a shop or office, means suitable and sufficient to the satisfaction of the Commissioner who, in determining each case, shall have regard to the circumstances and conditions affecting that shop or office or part thereof;

“trade union” means any trade union (whether of employers or of workmen) registered under the Trade Unions Ordinance;

“week” means the period between midnight on any Saturday night and midnight on the succeeding Saturday night;

“whole holiday” means a day on which a person usually employed in or about the business of a shop or office is not so employed during any period whatsoever.

(2) For the purposes of this Act, a person shall be deemed to be employed in or about the business of a shop or office if he is wholly or mainly employed -

(a) in a shop, in connexion with the serving of customers or the receipt of orders or the despatch or delivery of goods, or as the case may be, in an office, in connexion with the business for the purposes of the transaction of which the office is maintained; or

[§ 18,60 of 1957.]

(b) in the service of the employer upon any work, whether in the shop or office or outside it, which is ancillary to the business carried on in that shop or office, and notwithstanding that he receives no reward for his labour; but he shall not be deemed to be so employed if his only employment in the service of the employer is in the capacity of a caretaker or watcher.

(3) For the purposes of this Act -

(a) no person other than an employer, or the spouse or a child of an employer, shall be deemed to be a member of the family of the employer;

(b) a person employed in or about the business of any shop or office shall be deemed to be so employed on any day through out the period during which his services are at the disposal of the employer, exclusive of any interval allowed under any provision of this Act for rest or a meal and any interruption permitted by regulation under section 3(3).

(4) Where in any prosecution for any offence under this Act any person is proved to have been engaged in or in connexion with any work or service referred to in paragraph (a) or paragraph (b) of subsection (2), it shall be presumed until the contrary is proved that he was employed by the employer for the purpose of such work or service.

Exemption
from application
of Act.

69. Nothing in this Act shall apply to -

(a) any bazaar or sale of work for charitable or other purposes from which no private profit is derived, if such a bazaar or sale of work does not continue for longer period than one month from the date of the commencement thereof; or

(b) any business carried on by any undertaker in connexion with funerals; or

(c) any other prescribed trade or business:

Provided that where any bazaar or sale of work referred to in paragraph (a) is continued beyond the period of one month mentioned in that paragraph, the exemption conferred by the preceding provisions of this section may be extended by the Minister by a permit under his hand specifying the further period during which such exemption shall continue in force.

Provisions of
Act to be in addition
to and not in
substitution of
other laws &c.

70. (1) The provisions of this Act shall be in addition to and not in substitution for or derogation of the provisions of any other written law relating to the carrying on of any trade or business, or the employment of any person in any trade or business; and nothing in this Act shall be deemed or construed to permit the carrying on of any business or trade or the employment of any person in contravention of any provision of any such other law.

(2) Where any person employed in a shop or office was immediately prior to the appointed date entitled or becomes entitled on or after that date under or by virtue of any other law or under any contract, agreement, award or custom to any rights, or privileges more favourable than those to which he would be entitled under this Act, nothing in this Act shall be deemed or construed

in any way to authorize or permit the employer to withhold, restrict or terminate such rights or privileges.

[§ 19,60 of 1957.]

(2A) The preceding provisions of this section shall have effect subject to the provisions of section 42A.

(3) Any contract or agreement, whether made before or after the appointed date, whereby any right conferred on any employee by or under this Act is in any way affected or modified to his detriment or whereby any liability imposed on any employer by or under this Act is in any way removed or reduced, shall be null and void in so far as it purports to affect or modify any such right or to remove or reduce any such liability.

[Sec.9.]

SCHEDULE

INTERVALS FOR REST OR A MEAL

1. (a) Where the period between the time at which any person employed in or about the business of a shop or office commences work on any day and the time at which he ceases work for that day includes the hours 11 a.m. to 2 p.m. that person shall be allowed an interval of one hour, commencing between those hours, for rest or a meal.

(b) Where such period includes the hours 4 p.m. to 6 p.m., that person shall be allowed an interval of half an hour, commencing between those hours, for rest or a meal.

(c) Where such period includes the hours 7 p.m. to 10 p.m., that person shall be allowed an interval of one hour, commencing between those hours, for rest or a meal.

2. Subject as hereinafter provided, every person employed in or about the business of a shop or office shall, on each day on which he is so employed, be allowed an interval of half an hour for rest or a meal at the termination of each period of four hours during which he has been continuously so employed:

Provided, that where any such period of four hours terminates between the hours of 11 a.m. and 2 p.m., or of 4 p.m. and 6 p.m. or of 7 p.m. and 10 p.m., the interval provided in paragraph (a) or paragraph (b) or paragraph (c), as the case may be, of regulation 1 of this Schedule shall be allowed in substitution for the intervals under this regulation.