



ST CHRISTOPHER AND NEVIS

CHAPTER 18.27

PROTECTION OF EMPLOYMENT ACT

and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2002

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Protection of Employment Act

Act 6 of 1986 in force 1st September, 1986

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Act 24 of 2001

**Protection of Employment (Written Terms and Conditions of Employment)
Regulations – Section 46 – SRO 22 of 1986**

**Protection of Employment (Severance Payments) Regulations – Section 46 –
SRO 22A of 1986**

Amended by SRO 5 of 1991

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CHAPTER 18.27

PROTECTION OF EMPLOYMENT ACT

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CHAPTER 18.27

PROTECTION OF EMPLOYMENT ACT

AN ACT to make certain provisions in respect of termination of employment, to provide for the establishment of a Severance Payments Fund; and to provide for severance payments to employees; and to provide for related or incidental matters.

PART I – PRELIMINARY

1. **Short title.**

This Act may be cited as the Protection of Employment Act.

2. **Interpretation.**

In this Act, unless the context otherwise requires,

“casual worker” means any person whose employment is a chance employment based on no contract to employ, even though there could be reasonable expectation of being employed;

[Substituted by Act 24/2001]

“Commissioner” means the person for the time being holding the office of Labour Commissioner;

“contribution” means a contribution payable to the Fund pursuant to this Act;

“contribution period” means the prescribed period in respect of which a contribution is payable;

“employee” means any person who works with an employer under a contract of service in any capacity whether such contract is expressed or implied, oral or in writing;

“employer” means any person who employs or on whose behalf any other person employs any employee and includes a body of employers (whether such body is a firm, company, statutory corporation or trade union) or any person who, on behalf of any other person, employs any employee but does not include any person acting as agent for a disclosed principal;

“Fund” means the Severance Payments Fund established by subsection (1) of section 12;

“Minister” means the Minister for the time being charged with the responsibility of Labour;

“normal wages” includes any salary or money contracted to be paid or required by law to be paid or given as a recompense, reward or remuneration for any services, work or labour done or to be done;

“prescribed” means prescribed by Regulation under this Act;

“probationary period” means a period not exceeding four weeks in the case of household employment or three months in the case of other employment;

“seasonal employment” means any employment provided by an employer during a specific part (commencing at approximately the same time each year) of each of three or more consecutive years and “season” shall be construed accordingly;

“serious misconduct” includes fraud, dishonesty or any other conduct of such a nature that it is unreasonable to require the employer to continue employment during the notice period;

“temporary worker” means any person whose period of employment does not exceed the probationary period;

“trade dispute” means a trade dispute as defined under the Trade Unions Act, Cap. 18.36.

3. **Application of Act.**

This Act shall not apply

- (a) to employees of the Crown and of statutory corporations in respect of whom special provisions apply both as regards termination notice and retiring benefits;
- (b) to a director of a company incorporated, registered or conducting business under the laws of Saint Christopher and Nevis or to any member of a partnership agreement;
- (c) to an employee who is either husband, wife, father, mother, brother, sister or child of the employer living in the employer’s household;
- (d) to a master or a member of a fishing vessel, if payment is made in respect of the employment by way of a share in the profit of that vessel;
- (e) to a temporary worker, except in respect of maternity leave qualification; and
- (f) to a casual worker, except in respect of maternity leave qualification:

Provided however that notwithstanding the provisions of this section, this Act shall apply in all cases except where the benefits to be derived by the employee are more favourable than those provided in the Act, whether or not the more favourable benefits accrue or will accrue by law, custom, contract or any other arrangement.

4. **Terms and conditions of employment to be in writing on request.**

(1) The terms and conditions of employment shall be provided in writing by an employer to an employee within fourteen days of a request from the employee.

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(2) The Minister shall, by Regulations made under this Act, provide a specimen form indicating the terms and conditions of employment which must be provided in writing pursuant to the preceding subsection.

PART II – TERMINATION OF EMPLOYMENT

5. Termination of employment.

(1) Except under paragraph (f) of this section, employment may be terminated in writing by the employer in the following circumstances:

- (a) without notice during the probationary period of the employee except as may otherwise be provided in writing in a contract of employment;
- (b) without notice where the employee is guilty of serious misconduct in or in relation to his or her employment;
- (c) without notice where the employee is guilty of misconduct in or in relation to his or her employment or the employee is no longer performing his or her duties satisfactorily;
- (d) where a medical practitioner certifies that an employee is suffering from infirmity of the mind or body which is likely to be permanent, provided such infirmity has lasted for a period of at least three (3) months;
- (e) where the employee has become redundant for the reason that
 - (i) the employer has discontinued or ceased to carry on all or part of his or her business,
 - (ii) the employer has modernised, automated or mechanised all or part of his or her business,
 - (iii) the employer has reorganised his or her business to improve efficiency,
 - (iv) the employer finds that it is impossible for him or her to carry on his or her business at the usual rate or level due to shortage of material or a mechanical breakdown or for any cause beyond his or her control;
 - (v) the employer is forced to reduce his or her business due to lack of or change in markets;
- (f) where the employer dies and his or her business ceases to operate; or
- (g) where the business is liquidated by bankruptcy or otherwise.

(2) Subsection (c) of section 5(1) shall apply only when the employer has warned the employee in writing on at least two occasions within the six months preceding the termination of employment, indicating the nature of the misconduct or unsatisfactory performance of duties and in the case of the last warning, the intention of the employer to terminate the services of the employee if similar misconduct is repeated or the unsatisfactory performance of duty persists.

[Inserted by Act 24/2001]

6. Sale of business not to affect rights of employee.

(1) The sale or other disposition of a business or part of it shall not affect the rights of an employee and the obligations accruing to any employee at the time of the sale or disposition shall be met by the buyer or the person acquiring the business.

(2) The rights of the employees and the obligations accruing to each employee shall be recorded at the time of the sale or disposition of the business with the Commissioner.

7. Notice of termination of employment.

(1) Subject to the provisions of section 5 of this Act, an employer shall give an employee notice of termination of services of the employee on the following basis:

- (a) an employee with three months, but less than one year's continuous service, one week;
- (b) an employee with one year, but less than three years continuous service, two weeks;
- (c) an employee with three years, but less than five years continuous service, three weeks;
- (d) an employee with five years, but less than seven years continuous service, four weeks;
- (e) an employee with seven years, but less than ten years continuous service, five weeks;
- (f) an employee with ten years, but less than fifteen years continuous service, six weeks;
- (g) an employee with fifteen years and over continuous service, ten weeks;
- (h) an employee paid on a monthly basis who has completed three months, but less than five years continuous service, one month;
- (i) an employee paid on a monthly basis who has completed five years, but less than ten years continuous service, two months;
- (j) an employee paid on a monthly basis who has completed ten years and over continuous service, three months.

[Substituted by Act 24/2001]

(2) In lieu of notice, the employer may provide the employee wages and other benefits to which the employee is entitled during the period of notice.

(3) Where an employer contemplates laying off or terminating the employment of ten or more employees or 10% or more employees (whichever is less) on any of the grounds specified under section 5(1)(e) at the same time, the employer shall, not less than one month before any proposed lay off or termination, notify the Labour Commissioner in writing of

- (a) the reasons for the lay off or terminations;
- (b) the number and categories of employees affected;

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- (c) the period over which the terminations are intended to be carried out; and
- (d) a summary of the results of any consultations with any trade union representing the employees.

[Inserted by Act 24/2001]

8. Employee to give Notice of termination of employment.

(1) An employee shall give his or her employer notice of termination of employment equivalent to the period such employee is entitled to receive from his or her employer under section 7 for the termination of his or her employment.

(2) Where the contract of employment is not in writing the period of notice of termination of employment by the employee shall not exceed four weeks.

(3) An employee may terminate his or her services without notice if the conduct of his or her employer is of such a nature that the employee cannot reasonably be expected to continue his or her employment and any such termination shall be deemed to be termination by the employer.

(4) The burden of proof in any termination under subsection (3) shall be on the employer.

9. Labour Commissioner to be notified.

An employer shall not give an employee pay in lieu of notice where the employee's services are terminated for mental or physical incapacity or infirmity without prior notification to the Labour Commissioner.

10. Continuity of employment not interrupted.

The cessation of employment of an employee for the following reasons shall not constitute a break in continuity of a contract of employment:

- (a) a trade dispute;
- (b) accident, sickness, injury or for absence during maternity period as certified by a medical practitioner;
- (c) operation of any other law;
- (d) an Act of God;
- (e) any agreement with the employer;
- (f) absence permitted or condoned by the employer;
- (g) suspension or temporary lay-off where there is no severance payment to which an employee would normally be entitled as a result.

11. Prohibition against termination of employment.

An employer shall not terminate the contract of an employee on any of the following grounds:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

- (b) seeking office as, or acting or having acted in the capacity of a worker's representative;
- (c) making a complaint or participating in proceedings against an employer involving an alleged violation of laws or regulations;
- (d) race, place of origin, birth out of wedlock, political opinions or affiliations, colour, sex or creed, marital status or family responsibilities;
- (e) absence from work during maternity period as certified by a medical practitioner;
- (f) temporary absence from work due to injury or illness as certified by a medical practitioner and provided that the employee submits the certificate to his employer within 48 hours of his or her absence;
- (g) absence from work in the performance of Jury service as required under the Jury Act, Cap. 3.15;
- (h) absence from work to attend a court hearing in response to a summons, provided prior notice has been given to the employer.

[Inserted by Act 24/2001]

PART III – SEVERANCE PAYMENT

12. Severance Payments Fund.

- (1) For the purpose of this Act there shall be established under the control and management of the Commissioner a fund called "The Severance Payments Fund".
- (2) There shall be paid into the Fund
 - (a) all contributions;
 - (b) all sums recovered for the Fund under the Act; and
 - (c) all sums properly accruing to the Fund under this Act including, without prejudice to the generality of the foregoing, the repayment of benefit or assistance.
- (3) There shall be paid or met out of the Fund
 - (a) all claims for benefits or assistance;
 - (b) all refunds of contributions paid in error;
 - (c) all expenses properly incurred in the administration of this Act.
- (4) Regulations shall provide for the form and conduct of the accounts and for the deposit with the Accountant General of all sums collected.
- (5) The Director of Audit shall annually conduct an audit of the Fund and his or her annual Report shall be laid before the National Assembly.

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13. Source of funds.

(1) For the purpose of providing the funds required for the payment of severance payment benefits and for making any other payments which under this Act are to be made out of the Fund, contributions shall be payable by employers.

(2) The contributions payable by an employer in respect of an employee shall be at the rate of one per centum of the normal wages of the employee.

(3) Regulations made under the preceding subsection may provide for exempting any employer from liability to pay contribution or reducing or varying any rate of contribution for periods when the employer has over any prescribed period not terminated the employment of any employee under circumstances requiring payment of severance pay in accordance with the provisions of this Act.

14. Payment of severance payment contribution.

(1) The contribution payable under this Act by any employer in respect of any employee shall be paid by the employer to the Commissioner at the end of every month.

(2) The employer shall pay the contribution within such period as may be prescribed.

(3) Any employer paying a contribution shall furnish to the Commissioner at the time of such payment, a statement stating the wages of every employee in his or her employment and the amount paid in respect of severance payment contribution.

15. Social Security Board to administer and collect severance payment contribution on behalf of the Commissioner.

The Social Security Board is hereby vested with the responsibility of the administration and collection of the contribution on behalf of the Commissioner and such contribution shall be payable at the office of the Social Security Board.

16. Penalties.

Where the payment of the contribution is in default, the defaulting employer shall become liable to pay, in addition to such contribution

- (a) a penalty of a sum equivalent to ten per centum of such contribution; and
- (b) where such contribution is not paid to the Commissioner after a period of thirty days after such contribution has been in default, a penalty of a sum equivalent to one per centum of the contribution in respect of each further period of thirty days:

Provided that a defaulting employer shall not be required to pay the penalty under this section

- (a) if the defaulting employer proves to the satisfaction of the Commissioner that the failure of payment was due to circumstances beyond his or her control; and

- (b) if the defaulting employer furnishes to the Commissioner a correct return of the emoluments and pays the amount in default.

17. Recovery of Severance Payment Contribution.

(1) Subject to sub-section (2) of this section, the provisions dealing with the recovery of income tax as provided in sections 70 to 75 in the Income Tax Act shall apply mutatis mutandis to the recovery of any contribution under this Act.

(2) Every reference to the word “collector” and the word “tax” in sections 70 to 75 of the Income Tax Act, Cap. 20.22 shall be read as a reference to the word “Commissioner” and to the word “contribution” respectively for purposes of this Act.

[Inserted by Act 3/1987]

18. Power of Commissioner to call for information.

The Commissioner shall have the power

- (a) by notice in writing to require any employer to furnish within the period specified in the notice, such information as the Commissioner may by notice require for the purposes of this Act;
- (b) to require any employer to produce for examination within a specified time any book, document, register or record which is under his or her control or in his or her possession and which, in the opinion of the Commissioner contains information useful for the purposes of this Act.

19. Power of Commissioner to make any decision or determination.

The Commissioner may, upon good cause adduced by the Social Security Board or of his or her own motion, make any decision or determination in respect of the contribution payable by any employer.

20. Appeals.

(1) An employer, if he or she is dissatisfied with any decision or determination made in respect of him or her by the Commissioner under this Act, may appeal against the decision or determination to the Commissioners appointed under the Income Tax Act, Cap.20.22 within the time prescribed for such appeal.

(2) Notwithstanding the provisions of subsection (1) until the determination of any appeal the employer shall pay the contribution amount required to be paid by him or her by reason of any variation, decision or determination by the Commissioner.

(3) The Commissioners shall, before making their decision or determination on any appeal made under subsection (1), give the employer or his or her authorised representative an opportunity to present his or her case to the Commissioners.

(4) Any employer who is aggrieved by the decision of the Commissioners in respect of any appeal made to them under subsection (1) may further appeal against that decision to the High Court.

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21. Contribution to be a deductible expense under the Income Tax Act.

For the purpose of ascertaining the assessable income of a company under section 9 of the Income Tax Act, Cap. 20.22 the amount of the contribution which a company is liable to pay shall be deemed to be an expense incurred in the production of the income.

22. Refunds.

If it is proved to the satisfaction of the Commissioner, by claim to him or her in writing, that any employer has paid in respect of the contribution under this Act an amount in excess of the amount due from him or her, the employer shall be entitled to a refund of the amount paid in excess.

23. Forms.

The Minister may from time to time prescribe the forms to be issued and used for the purposes of this Act and may vary and amend such forms from time to time.

24. Payment into Fund.

(1) All sums paid to or recovered by the Commissioner by way of the Social Security Board shall be paid into the Severance Payments Fund.

(2) All sums received by the Commissioner by way of penalties under this Act shall be paid by him or her into the Severance Payments Fund.

25. Expenses of Social Security Board.

There shall be paid to the Social Security Board at such times and at such rate as may be determined by the Minister after consultation with the Minister responsible for Social Security and the Social Security Board, such sums as may be estimated to be the amount of the expenses of the Social Security Board in the administration of this Act.

26. Right to severance payment.

(1) Where an employee has been continuously employed for a period of not less than one year and the employer terminates the services of that employee on any grounds specified in paragraph (d), (e), (f) or (g) of section 5(1), or the employee has terminated his or her services in pursuance of section 8 (3), the employee shall be entitled to severance payment.

[Inserted by Act 24/2001]

(2) An employee who has worked for the same employer on a seasonal basis for the three seasons immediately preceding the termination of his or her employment shall be deemed to qualify for severance payment if he or she has worked for the same employer for three-fourths of the number of working days in each season in each of the reckonable years.

(3) An employee entitled to severance payment may claim payment in such manner as may be prescribed.

27. No right to severance pay.

Where there is a change of ownership or operation of the business or where the employer dies or where the employee is made redundant under paragraph (e) of section 5, the employee shall not be entitled to severance payment if the contract of employment continues or if he or she is offered a new contract of employment by the new owners or operators of the business or the personal representatives of the deceased employer or the same employer, as the case may be, on terms and conditions of employment and at a place of employment no less favourable than in his or her earlier contract.

28. Laid off or suspended employee to claim severance payment.

Where an employer lays off an employee or suspends an employee for a period of at least twelve weeks, the employee may request his or her employer to treat his or her employment as terminated and the employee shall then be entitled to severance payment if he or she has worked for the same employer for at least one year and would be entitled to severance payment under section 26.

29. Employment may be treated as terminated.

The services of an employee shall be deemed to be terminated under the preceding section unless the employer is able to offer employment to that employee within twelve weeks from the time of lay-off or suspension and such employment is substantially the same in relation to terms, conditions and place of employment for a period of not less than thirteen weeks.

30. Rate of severance payment.

(1) The rate of severance payment shall be two weeks for each year of continuous service for a period of up to five years service, three weeks for a period of five years to 10 years service and four weeks for any period of service in excess of ten years calculated backwards from the date of the termination of employment, except in the case of seasonal workers, where the rate shall be one week's pay for each period that such employee qualifies under subsection (2) of section 26.

(2) In the computation of severance payment, a period of a half of a year or more shall be counted as a full year and a period less than half of a year shall be ignored.

(3) In the computation of severance payment, no employee shall be entitled to more than fifty-two weeks' severance payment.

31. Determination of claim.

(1) It shall be the duty of the Commissioner to determine, where necessary in consultation with the employer and the employee, the claim of any employee in respect of his or her severance payment.

(2) Where any person disputes the determination or decision of the Commissioner he may appeal that determination or decision to the Commissioners appointed under the Income Tax Act, Cap. 20.22.

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32. Computation of week's pay.

For the purposes of section 31, a week's pay,

- (a) in the case of an employee not paid on a piece work basis, is equivalent to the aggregate of the employee's normal wages for the fifty-two weeks immediately preceding the termination of employment divided by the number of weeks worked;
- (b) in the case of an employee paid on a piece work basis, is equivalent to the normal wages for a period of fifty-two weeks immediately preceding the termination of employment divided by the number of weeks worked;
- (c) in the case of a seasonal worker, is equivalent to the total of his or her normal wages in the last three seasons preceding the termination of employment divided by the number of days worked and multiplied by the number of days constituting the working week.

33. Seasonal workers.

The services of a seasonal worker shall be deemed to have been terminated if he or she offers his or her services and is not re-employed by the same employer within the first four weeks at the beginning of the next season.

34. Recovery of severance payment and notice of payment.

(1) An employee may recover by civil proceedings in a court of competent jurisdiction the notice payment and severance payment to which he or she is entitled under this Act.

(2) In the event of bankruptcy or liquidation of the business of the employer, or on any other closure of business the amount owing to an employee as payment in lieu of notice shall be deemed to be a priority debt under the provisions of the relevant enactments.

35. Transitional provision.

(1) Notwithstanding anything contained in this Act, where any employee has worked for an employer for more than ten years and within five years from the commencement of this Act, his or her services are terminated in accordance with the provisions of paragraph (e), (f) or (g) of section 5 of this Act the employee shall in addition to any benefits payable under this Act, be entitled to receive severance payment from his or her employer in respect of the termination.

(2) For the purpose of the calculation of severance payment required under subsection (1), a period of five years shall be deemed to be the period in respect of which payment by an employer shall be made.

PART IV – MATERNITY LEAVE**36. Period for which maternity leave must be granted.**

(1) An employee shall be entitled to thirteen weeks' maternity leave, that is to say, at least two weeks up to and including the date of her expected confinement and at least six weeks immediately from that date.

(2) In the case of illness medically certified as arising out of the pregnancy or out of confinement, she shall be entitled to an additional period of leave not exceeding three months.

(3) The benefits to be paid to an employee during maternity leave shall be in accordance with the provisions of the Social Security Act, Cap. 22.10.

(4) Where no benefit is payable under the Social Security Act for any period of maternity leave to which an employee is entitled under subsection (1) of this section, the employer shall pay the employee benefits in respect of that period of maternity leave at the rate payable under the Social Security Act, Cap. 22.10.

37. Qualifying period of employment for maternity leave.

(1) No employee shall be entitled to maternity leave unless she has worked for the employer from whom she claims such benefit for not less than one hundred and fifty days within the period of one year immediately preceding the date of her confinement.

(2) For the purposes of reckoning the one hundred and fifty days referred to in subsection (1), an employee shall be deemed to have worked on

- (a) the days on which she was not provided work by her employer by reason of her pregnancy;
- (b) the holidays to which she was entitled under any written law;
- (c) the days of her absence on leave granted by her employer or allowed by any written law;
- (d) the days of her absence due to any injury or illness medically certified arising out of or in the course of her employment; and
- (e) any period of cessation of work falling under the provisions of section 10.

(3) Where a change of employer occurs in any business, ship, estate, factory or other enterprise in which an employee is employed, service rendered by that employee to the previous employer shall be deemed to be service rendered under the new employer for the purpose of computing the period of employment by virtue of which she may be entitled to maternity leave under subsection (1).

38. Notice to employer of confinement or expected confinement.

(1) An employee shall, prior to her confinement give notice to her employer that she expects to be confined within six weeks from the date of such notice.

(2) An employee who has been confined shall, within one week of her confinement, give notice to her employer of the date on which she was confined.

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(3) The employer shall, on receipt of a notice from an employee under subsection (2), permit that employee to absent herself from employment until the expiry of the remainder of the period of maternity leave for which she is eligible under the provisions of subsection (1) of section 36 calculated from the day of her confinement.

39. Employee not to be given notice of dismissal during maternity leave from employment.

If an employee absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

40. Employment not to be terminated because of pregnancy or confinement or illness consequent hereto.

(1) The employment of an employee shall not be terminated by reason only of her pregnancy or confinement or of any illness consequent upon 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 an employee was terminated by reason of a fact other than her pregnancy or confinement or any illness consequent upon her pregnancy or confinement shall be upon the employer.

PART V – MISCELLANEOUS

41. Delegation of functions.

The Commissioner may delegate any function which, by this Act, is to be performed by him or her, to any labour officer of the Department of Labour.

42. Powers of the Commissioner.

The Commissioner shall, in addition to and not in derogation of any power conferred on him or her under any other law, have power

- (a) to enter freely and without previous notice at any reasonable hour of day or night any work place where workers covered by this Act are employed;
- (b) to enter by day any premises which he or she may have reasonable cause to believe that workers covered by this Act are employed;
- (c) to require the production of books, registers or other records as may be necessary for the purposes of this Act;
- (d) to take copies of the whole or any part of such books, registers or other records;
- (e) to interview alone or in the presence of witnesses, the employer, the staff or former employees of any undertaking on any matter for the purpose of this Act;

- (f) to require the employer to provide returns relating to all his or her employees or former employees or any class or description of such employees and any such particulars as he or she may require for the purposes of this Act; and
- (g) to hold such enquiries as he or she may consider necessary for the purposes of this Act.

42. Preference to former employees.

Where an employer terminates the services of an employee owing to a reduction of the work force and subsequently intends within a period of twelve weeks following the date of such termination of employment to employ persons to perform similar duties, the employer shall give preference to the former employee whose services have been terminated.

43. Proceedings before the Commissioner, Minister and Hearing Officer.

(1) Any employer or employee or any person or organisation acting on his or her behalf, as the case may be, may make a complaint to the Commissioner that the provisions of this Act have been contravened by an employer or employee and in any complaint made to the Commissioner in accordance with this subsection, the employee and employer shall have the right to be represented.

(2) Upon receipt of a complaint under the preceding subsection, the Commissioner shall forthwith take appropriate steps in accordance with the provisions of the Labour Act, Cap.18.18 to assist the parties to arrive at a settlement.

(3) If within fourteen days after the receipt of a complaint under this section, the Commissioner has failed to achieve a voluntary adjustment or settlement, he or she shall refer the matter, with a full report thereon, to the Minister.

(4) On referral of a matter to him or her the Minister shall seek to settle or adjust the matter or in any case that he or she considers necessary he or she may refer the matter to an officer hereinafter referred to as a Hearing Officer who shall have and enjoy the same powers conferred on the Commissioner under the Labour Act, Cap. 18.18.

(5) The Minister may, by Order, appoint one or more persons to function as Hearing Officer generally or in relation to one or more cases, or authorise any officer to exercise the powers of a Hearing Officer.

(6) The Hearing Officer shall, after issue of notice to all the interested parties, either

- (a) hold a conference and attempt to narrow down the issues and then adjudicate on the dispute; or
- (b) proceed to hear the matter and make his or her findings on the dispute.

(7) The Hearing Officer shall, within fourteen days of the closing of the hearing, give his or her decision on the matter in writing.

(8) Any employer or employee who is dissatisfied with any recommendations or findings given or made under this section may appeal to a Judge in Chambers who may in addition to any other remedy, order reinstatement of any employee or make any award of compensation.

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45. Offences and burden of proof.

- (1) Any person who
 - (a) makes any false statement knowingly to evade, increase or decrease the payments under this Act;
 - (b) produces or furnishes or knowingly allows to be produced or furnished any document or information which is false in any material respect; or
 - (c) misrepresents or fails to disclose any material fact;

commits an offence and on summary conviction shall be liable to a fine not exceeding three thousand dollars or a term of imprisonment not exceeding six months or to both such fine and imprisonment.

(2) Any employer who fails to comply with any of the provisions of this Act other than the offences specified in the above subsection commits an offence and on summary conviction shall be liable to a fine not exceeding two thousand dollars.

(3) The burden of proof in all matters of termination of employment under this Act shall be on the employer.

46. Regulations.

The Minister may make regulations for carrying out the provisions and purposes of this Act.

47. Order by Minister.

Where any difficulty arises in the interpretation of the provisions of this Act, the Minister may make any order, not inconsistent with the purposes of this Act to remove the difficulty.

48. More favourable terms and conditions.

Nothing in this Act is to be interpreted to prevent any employer from providing in respect of any employee terms and conditions more favourable than those required by this Act.

FIRST SCHEDULE

(Section 46)

The protection of employment (written terms and conditions of employment) regulations.

1. Citation.

These Regulations may be cited as the Protection of Employment (Written Terms and Conditions of Employment) Regulations.

2. Terms and Conditions of Employment.

For the purposes of subsection 2 of section 4 of the Act, the terms and conditions of employment which must be provided in writing shall be as follows:

- (a) the name and address of the employer;
- (b) the name and address of the business or establishment at which the employee is to be assigned, (if different from (i));
- (c) the name and address of the employee;
- (d) the commencing date of employment;
- (e) the post or position in which the employee is engaged;
- (f) a brief description of the duties and responsibilities of the post/position;
- (g) the rate of pay and the intervals (not exceeding one month) at which payment will be made;
- (h) the hours of work and the times for completing such hours;
- (i) the rate of overtime and premium pay (if any);
- (j) the duration of any probationary period;
- (k) the length of notice which either party must give to the other to terminate the contract if different from provisions under the Act;
- (l) leave entitlement (sick, vacation, and in the case of a female, maternity) if better than the provisions under the Act.

3. Work Rules.

At the commencement of his or her employment, every employee shall be instructed by his or her employer, in such manner as may be appropriate, in the work rules of the establishment, including the legal and other provisions regarding safety, health and welfare, which the employee will be required to observe in the course of his or her employment.

4. Transitional and Savings Arrangements.

(1) Nothing in these Regulations shall be interpreted as implying or permitting any change in the date of commencement of the employment of any employee whose employment began before the appointed day.

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(2) Any written terms and conditions of employment provided by the employer in contravention of the preceding sub-section shall be invalid and ineffectual.

(3) In this Regulation the term “appointed day” means the day on which, by declaration, the Act is brought into force.

5. Miscellaneous.

(1) Nothing in these Regulations shall be interpreted to prohibit the employer from committing additional terms and conditions of employment to writing.

(2) The written statement of the terms and conditions of employment may be amended from time to time with the consent of the employer and any trade union representing the employee, or where there is no such trade union, with the consent of the employee:

Provided however that nothing in this Regulation shall be interpreted to permit the introduction of any term or condition of employment less favourable than that provided in, or which would be in conflict with the provisions of any law.

SECOND SCHEDULE

(Section 46)

The protection of employment (severance payments) regulations.

PART I – PRELIMINARY

1. Citation.

These Regulations may be cited as the Protection of Employment (Severance Payments) Regulations.

2. Interpretation.

In these Regulations, unless the context otherwise requires,

“Board” means the Social Security Board;

“Commissioner” means the person for the time being holding the office of the Labour Commissioner;

“Contribution Month” means one of the twelve calendar months of the year;

“Director” means Director of Social Security;

“Fund” means the Severance Payments Fund established under section 12 of the principal Act;

”Minister” means the Minister for the time being charged with the responsibility of Labour.

PART II – PAYMENT OF CONTRIBUTIONS**3. Liability for Contribution.**

(1) Subject to the provisions of Section 3 of the principal Act, a contribution for severance payments shall be paid by the employer in respect of every employee and no deduction shall be made by the employer from the wages of the employee on that account.

(2) Any question as to whether an employer is liable to pay contributions in respect of the wages paid or to be paid to any employee employed by him or her shall be determined by the Commissioner.

4. Rate of Contribution.

(1) In respect of each period of one month beginning on the 1st day of September, 1986 for which an employee is paid wages, his or her employer shall pay a contribution equal to one percent of the wages paid or payable to the employee during the month, or such other proportion of the wages of the employee as may from time to time be prescribed.

(2) The wages of an employee for the purposes of paragraph (1) shall consist of the same gross earnings received by such employee for purposes of computing the contribution payable by the employee under the Social Security Act, Cap. 22.10.

5. Calculation of Contribution.

Every employer shall record in such form as may be authorised by the Commissioner the following particulars regarding every payment of wages which he or she makes to every employee, namely,

- (a) the date of commencement of employment;
- (b) the gross amount of wages, determined in accordance with Regulation 4(2);
- (c) the contribution which is payable by the employer in respect of the wages;
- (d) date of termination of employment:

Provided, however, that where the employer submits similar particulars to the Social Security Board in fulfilment of the requirements of the Social Security Act, Cap. 22.10 and the Housing and Social Development Levy Act, Cap. 20.21, the Commissioner, after consultation with the Director, shall take those particulars into account and waive or vary the requirements under this Regulation accordingly.

6. Payment of Contributions.

(1) At the end of every month in which wages are paid, or within one month thereafter, the employer shall pay, by means acceptable to the Director, the contributions payable by the employer under these Regulations in respect of wages paid by him or her to each employee for that contribution month.

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(2) The payment shall be accompanied by a statement of wages and contributions in such form and showing such particulars as the Director may from time to time require.

(3) After consultation with the Commissioner, the Director may, if he or she thinks fit and subject to such terms and conditions as may be imposed by the Board, approve any arrangement whereby contributions are paid at times and in a manner other than those prescribed by these Regulations, and any such arrangements may include provision for the payment of such fees as may be determined by the Board to represent the estimated additional expense in administration costs to the Board.

(4) As a condition of authorising payment of any contribution on a date later than that upon which the contribution would, apart from any authorisation under paragraph (1), be due to be paid, the Director may require the making of such deposits of money by way of security as the Director may approve.

(5) Paragraphs (3) and (4) shall, subject to the terms and conditions of any such arrangements, apply to any person affected by such arrangements, and any contravention of, or failure to comply with, any requirement of any such arrangements shall be deemed to be a contravention of, or failure to comply with, these Regulations.

(6) All amounts received by the Director by way of contributions or otherwise shall be forwarded by him or her through the Commissioner, to the Accountant General for deposit in the Fund.

7. Employer Failing to pay Contributions Due.

- (1) If, within the time prescribed by regulation 6(1),
- (a) an employer has not paid any contribution which he or she is liable to pay to the Director for that month and the Director is unaware of the amount, if any, which the employer is liable to pay; or
 - (b) the employer has tendered in payment an amount which the Director has reasonable cause to believe is less than the employer is liable to pay in respect of any month;

the Director may give notice to the employer requiring him or her to render within the time specified in the notice (not being less than five days), a written return showing the name of every employed person to whom he or she made any payment of wages in or in respect of whom wages were payable for the period from the preceding first day of January or such other date as the Director may specify, to the last day of the previous month, together with the following particulars regarding such employee:

- (i) every payment of wages made during that period;
- (ii) the total amount of contributions which was payable by the employer,
- (iii) such other details and information as will enable the Director to ascertain the correctness or otherwise of the amounts.

(2) Where an employer fails or neglects to render a written return within the period specified in the Notice, the Director shall, based on the employer's record or from information received from employees, estimate the wages paid or payable in respect of each month for which no return was made.

(3) The Director shall certify the amount of contributions so ascertained under paragraph (2) which the employer is liable to pay in respect of the period in question.

(4) The certificate of the Director under paragraph (3) shall be good and sufficient evidence in any court of law and shall be final and conclusive as to the amount an employer is liable to pay to the Director until the contrary is proved.

8. Nil Returns.

An employer, who does not pay to the Director any contributions on the date due because that employer did not employ any employee or because that employer has ceased to operate a business during that period relevant to that date shall instead send to the Director a statement to that effect.

9. Register of Employers.

For the purpose of these Regulations, the Commissioner, in consultation with the Director, shall compile and maintain a register of employers who are liable to pay a contribution under these Regulations.

10. Refund of Contributions paid in Error.

(1) Contributions paid by an employer under the erroneous belief that the contributions were payable by him or her shall be refunded by the Commissioner if application to that effect is made in writing to the Commissioner within the appropriate time specified in paragraph (2) of this Regulation.

(2) An application for the return of any contribution paid under an erroneous belief as aforesaid shall be made in such form and in such manner as the Commissioner may from time to time determine and any such application shall be made

- (a) if the contribution was paid at the due date, within two years from the date on which that contribution was paid; or
- (b) if the contribution was paid at a later date than the due date, within two years from the due date or within twelve months from the date of actual payment of the contributions, whichever period ends later.

(3) In its application, this Regulation shall have effect subject to the following provisions:

- (a) the time within which the application shall be made by an employer desiring to apply for the return of any such contribution paid under an erroneous belief as aforesaid, shall be two years from the due date or such longer time as the Commissioner may allow if he or she is satisfied the employer had good cause for not applying within those two years; and

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- (b) the provisions of this paragraph shall apply to any part of a contribution as they apply to the contribution.

11. Inspection of Employers Records.

(1) An employer whenever called upon to do so by an Inspector designated under section 35 of the Social Security Act, Cap. 22.10 or by any other authorized officer of the Board shall supply such information with respect to the wages of persons who are or have been employed by that employer as may be requested, and shall produce all wage sheets and other documents and records whatsoever of the wages of such persons in respect of the period specified by the Director or any other authorised officer of the Board in relation to the payment of contributions by the employer in respect of such wages.

(2) The Director, by reference to the information obtained from an inspection of the documents and records produced under paragraph (1), may on the occasion of each inspection, prepare a certificate in accordance with the provisions of Regulation 7(3).

12. Notice or other Documents sent by Post.

Any notice or other document required or authorised to be given or sent to any person under the provisions of these Regulations shall be deemed to have been given or sent if it was sent by post to him or her at his or her ordinary or last known address.

13. Death of Employer.

If an employer dies, anything which he or she would have been liable to do under these Regulations shall be done by his or her personal representatives.

PART III – ACCOUNTING RECORDS

14. Receipts.

Upon receipt of each cheque from the Director, the Commissioner shall issue a receipt for the amount so received and thereafter transmit the amount to the Accountant General.

15. Statement of Wages.

(1) Upon receipt of a copy of each statement of wages and contributions from the Director, the Commissioner shall forthwith record in his or her account book the amounts returned by the employer.

(2) The Commissioner shall ascertain the correctness of the contribution based on the statement of wages reported by the employer and any amount unpaid shall be notified to the Director for appropriate action.

16. Financial Year.

The first financial period shall be the first day of September, 1986 to the thirty first day of December, 1986 and thereafter the financial year shall be the first day of January to the thirty first day of December.

17. Books of Accountant General.

The Accountant General shall cause to be shown in the books kept by him or her

- (a) the amount received from the Commissioner;
- (b) the interest credited to the Fund;
- (c) the form in which the investments are held and their rate of yield.

18. Books of Commissioner.

The Commissioner shall show in the books kept by him or her

- (a) the amount received by him or her from the Director for the Fund;
- (b) the amount notified to him or her by the Accountant General in regard to investments and interest earned thereof;
- (c) any amount paid or met out of the Fund.

19. Reconciliation of Accounts.

Within one month of each financial year, the Commissioner shall

- (a) prepare a statement reconciling his or her accounts with that of the Accountant General;
- (b) forward a copy of each of such documents to the Director of Audit.

20. Receipt of Statement.

(1) The Director of Audit shall, within three (3) months of receipt of the statement of the Commissioner submit to the Minister the accounts certified by him or her together with his or her report.

(2) The Minister shall cause a copy of the report of the Director of Audit to be laid before the National Assembly.

PART IV – INVESTMENT OF FUNDS**21. Investment Committee.**

For the purpose of such investment, the Minister shall appoint an Investment Committee consisting of:

- (a) the Permanent Secretary in the Ministry of Finance – *Chairperson*;
- (b) the Accountant General or his or her nominee;
- (c) the Labour Commissioner;
- (d) the Director of Social Security.

22. Quorum.

The attendance of all members shall be required for the transaction of any business by the Committee.

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23. Action by Accountant General.

(1) The investment decisions of the Committee shall be acted upon by the Accountant General.

(2) All interests accruing from such investment are to be paid by the Accountant General into the Fund and notified to the Commissioner in such form and at such intervals as may be agreed.

24. Investment of Funds.

(1) Any Funds not required for the payment of claims may be invested in Fixed Deposits, Treasury Bills, Government Stock or other gilt edge securities on the local or overseas money markets.

(2) The Investment Committee shall not invest in any securities outside the Federation of Saint Christopher and Nevis without the general or special directions of the Minister obtained in consultation with the Minister in charge of the subject of finance.

PART V – CLAIMS AND PAYMENT

25. Claims to be in Writing.

(1) A Claim for severance pay shall be made in writing to the Commissioner in the form provided by the Commissioner or in such other manner, being in writing, as the Commissioner may accept as sufficient in the circumstances of any particular case or class of cases.

(2) Claim Form shall be supplied by the Commissioner without charge.

26. Amendment of Claims.

(1) If a claim is defective when it is received by the Commissioner, the Commissioner may refer the claim to the claimant and if the form is returned properly completed within one month from the date on which it was so referred, the claim shall be treated as if it had been duly made in the first instance.

(2) A claimant who has made a claim in accordance with these Regulations may amend the claim at any time before a decision is given thereon by notice in writing delivered or sent to the Commissioner and any claim so amended shall be treated as if it had been duly made in the first instance.

27. Time for Claiming.

The time for claiming severance payment under these Regulations shall be six months from the date such claim is due.

28. Determination of Claim.

(1) Any claim duly made to the Commissioner shall be determined by him or her within a period not exceeding four weeks from the date of the claim unless the claim presents particular difficulty, in which event it shall be determined as expeditiously as possible within a period not exceeding three months:

Provided, however, that in exceptional circumstances this latter period may be exceeded.

(2) For the purposes of paragraph (1) the date of receipt of the claim at the office of the Commissioner shall be deemed to be the date of the claim.

(3) Where, in respect of any claim under this Act or these Regulations, any employer fails or refuses to sign any form, if the Commissioner determines that such claim for payment is valid, he or she may, with the approval of the Minister, effect such payment.

[Inserted by SRO 5/1991]

29. Manner of Payment.

(1) Subject to the provisions of these Regulations, payment of a claim shall be made by crossed cheque or by serially numbered payment voucher.

(2) Notwithstanding the foregoing, the Commissioner may in any particular case or class of cases, arrange for the payment of the claim otherwise than by the means stipulated in paragraph (1).

30. Time from which Claim Due.

A claimant shall be entitled to severance payment from the date of termination of his or her employment.

PART VI – MISCELLANEOUS

31. Administrative Arrangements.

The Commissioner may provide further administrative directions in regard to accounting records, contributions, investments and claims and payments to supplement details not provided in the Regulations.

32. Penalties.

If any employer fails to comply with any of the provisions of these Regulations or any direction or requirement of the Commissioner, and that failure does not constitute an offence under the principal Act for which a penalty therein is provided, he or she commits an offence and shall be liable, on summary conviction, to a fine not exceeding five hundred dollars.