

Chapter 17:04
National Social Security Authority
(Accident Prevention & Workers' Compensation Scheme)
(Prescribed Matters) Notice, 1990.

Statutory Instrument 68 of 1990

Amended by S.I's 287/91; 132/96;77/99;289/01;300/02,309/02;157/03;59/11,146/2011; and 62/2013.

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The Minister of Labour, Manpower Planning and Social Welfare, in terms of section 3 of the [National Security Authority Act, \[Chapter 17:04 \]](#), hereby makes the following notice: -

PART I PRELIMINARY

Title

1 This notice may be cited as the National Social Security Authority (**Accident Prevention and Workers' Compensation Scheme**)(**Prescribed Matters**) Notice, 1990.

Editor's Note : The citation changed on the **13th May, 2011** when section 11 of SI 59/2011 repealed earlier related Instruments , and thus by implication amended the title of this Instrument to the above by adding "(**Prescribed Matters**) "

Establishment of Scheme

2 There is hereby established the Accident Prevention and Workers' Compensation Scheme for the provision to workers of such compensation in respect of injury arising from their employment as is specified in this notice, and for the promotion of occupational health and safety.

3 In this notice—

"**accident**" means an unlooked for mishap or untoward event arising out of and in the course of a worker's employment, which was not expected or designed by the worker and which results in injury to him;

[amended by SI 287/91 with effect from the 4th October,1991]

"**appointed date**" means the **1st April, 1969**;

"**2nd appointed date**" means the **1st January, 1973**;

"**3rd appointed date**" means the **1st August, 1977**;

"**4th appointed date**" means the **13th April, 1984**;

[Definition inserted by SI 287/91 gazetted on the 4th October,1991]

"**5th appointed date**" means the **1st April, 1987**;

[Definition inserted by SI 287/91 gazetted on the 4th October,1991]

"**6th appointed date**" means the **1st April, 1995**;

[Definition inserted by SI 132/96 gazetted on the 12th July,1996]

"**18th appointed date**" means the **1st September, 2008**;

[Definition inserted by SI 59/11 gazetted on the 13th May,2011]

"**20th appointed date**" means the **1st April, 2009**;

[Definition inserted by SI 59/11 gazetted on the 13th May,2011]

"**21st appointed date**" means the **1st January, 2011**;

[Definition inserted by SI 59/11 gazetted on the 13th May,2011]

"**22nd appointed date**" means the **1st August, 2013**.

[Definition inserted by SI 62/13 gazetted on the 10th May,2013]

"**assessment**" means an assessment or a provisional assessment or any installment of an assessment made in terms of Part X;

"**business**" means any industry, undertaking, trade or occupation or any activity in which any worker is employed;

"**child**" means an unmarried son or daughter **under the age of 19 years** and includes an illegitimate child, posthumous child, step-child and an adopted child if the general manager is satisfied that the child was in fact adopted prior to the accident, but does not include a person who is supporting and maintaining himself or herself;

"**children's allowance**" means the monthly allowance payable in respect of a child or children of a disabled or deceased worker in terms of Part V;

"**code**" means any code specified in the 1st column of the *Sixth Schedule* to the Scheme which identifies the particular undertaking, industry, trade or occupation specified opposite thereto in the 2nd column;

[Definition inserted by SI 59/11 with effect from the 13th May,2011]

"**compensation**" means compensation under this Scheme and includes medical aid and any benefit of any nature to which a worker or his dependants may be entitled under this Scheme;

"**dependant**" means a person defined as a dependant in section *five*;

"**disablement**" means disablement for employment or permanent injury or disfigurement;

"**earnings**" means the remuneration of a worker at the time of the accident calculated in the manner set out in section *forty-one*;

"**employer**", for the purposes of this Scheme, means a person defined as an employer in section *six*, and includes a principal;

"**employer individually liable**" means an employer to whom exemption has been granted in terms of section *seventy-six*;

"**financial year**" means the period as determined by the Minister;

"**form**" means a form prescribed in the *First Schedule*;

"**Fund**" means the Workers' Compensation Insurance Fund referred to in section *sixty-six*;

"general manager" means the general manager of the National Social Security Authority referred to in section 2 of the Act;

"injury" means a personal injury and includes the contraction of a disease;

"marriage" includes a marriage contracted according to customary law, notwithstanding that it is not a valid marriage in terms of the Marriage Act [*Chapter 5:11*] or the *Customary Marriages Act [*Chapter 5:07*];

[Editor's Note- Before the 1996 Revised Edition this *Act was titled the African Marriages Act [*Chapter 238*]]

"Master" means the Master of the High Court or the Assistant Master of the High Court at Bulawayo;

"medical aid" means any or all of the benefits specified in paragraphs (a) to (e) inclusive of subsection (1) of section *fifty-eight*;

"medical practitioner", in relation to medical treatment which is—

- (a) within Zimbabwe, means a person entitled to practise as such within Zimbabwe;
- (b) outside Zimbabwe, means a person entitled to practise as such within Zimbabwe, the Republic of South Africa, Eire or any territory within the Commonwealth;

"non-accident occupational injury " means an injury incurred by a worker—

- (a) that is not a scheduled disease or the result of an accident; but
- (b) which is certified by a medical practitioner to be caused by exposure to any risk related to the worker's employment.

[Definition inserted by SI 287/91 with effect from the 4th October, 1991]

"pension" mean the monthly payments of compensation referred to in Part V, but does not include any children's allowance or periodical payments;

"periodical payment" means a periodical payment of compensation in terms of section *thirty-three*;

"person under disability" means a minor, a lunatic or a person who by law is subject to curatorship or tutorship;

"principal" means a person referred to as a principal in section *twelve*;

"repealed Act" means the Workers' Compensation Act [*Chapter 269*];

[This Act was repealed by SI 75A/1990 with effect from the **1st May, 1990** - Editor]

"representative" means the executor or other person lawfully appointed to take charge of the estate of a deceased worker, and, if there is no such person so appointed, means any person specially appointed by the Master under this Scheme to make an application on behalf of the deceased worker's dependants for compensation, and in other respects to act as his representative for the purposes of this Scheme;

"scheduled disease" means any disease specified in the *Second Schedule*;

"Scheme" means the Accident Prevention and Workers' Compensation Scheme established in terms of section *two*;

"serious and wilful misconduct" means—

- (a) drunkenness; or
- (b) a contravention of any law or statutory regulation made, or lawful order given by or on behalf of an employer, for the purpose of ensuring the safety or health of workers or of preventing accidents to workers, if the contravention was committed deliberately or with a reckless disregard of the terms of such law, regulation, or order; or
- (c) any other act or omission which the Board or any court on appeal may, having regard to all the circumstances of an accident, declare to be serious and wilful misconduct; or

(d) any other act or omission which the Minister may by a *Schedule* to this Notice prescribe as serious and wilful misconduct;

"**technical assessor**" means a person appointed in terms of section *twenty-one*;

"**temporary disablement**", in relation to a worker, means a condition of a temporary nature caused by an accident which results in the loss or diminution of wage-earning capacity in the work at which such worker was employed at the time of the accident;

"**widow**" or "**widower**" includes any person with whom the worker was, in the opinion of the general manager, living as man and wife at the time of the accident.

4 (1) In this Scheme, the expression "**worker**", subject to the exceptions hereinafter mentioned—

(a) means any person who has entered into, or works under, a contract of employment or of apprenticeship or of learnership with an employer, whether the contract is expressed or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind; and

(b) means any person undergoing rehabilitative treatment or training in terms of this Scheme; and

(c) includes any person whose occupation is conveying for gain persons or goods by means of any vehicle, vessel or aircraft, the use of which he has obtained under any contract (**other than** a purchase or hire-purchase agreement) whether or not the remuneration of such person under such contract is partly an agreed sum and partly a share in the takings, but does not include any such person whose remuneration is fixed solely by a share in the takings.

[para (c) amended by SI 287/91 with effect from the 4th October,1991]

(2) If in any claim for compensation under this Scheme it appears to the general manager that the contract of employment or apprenticeship or learnership under which the injured worker was working at the time when the accident causing the injury happened was invalid for any reason whatever, the general manager may deal with the matter as if such contract had at the time been valid.

(3) The following persons shall **not** be regarded for the purposes of this Scheme as workers—

(a) any person who by the nature of his work is deemed to be **an employer** as defined in the Act;

(b) any person employed **casually** by an employer and not in connection with the employer's trade or business or any person employed casually for the purposes of any game or recreation unless so employed by a club or association of persons;

(c) any **outworker**, that is to say, any person to whom articles or materials are given out by an employer to be made up, cleaned, washed, ornamented, finished or repaired or adapted for sale on premises not under the control of the employer;

(d) any person employed outside Zimbabwe save as provided in section *thirteen*;

(e) any person who is employed in **domestic service** in a private household.

[para (e) inserted by SI 287/91 with effect from the 4th October,1991]

(4) A person shall **not** be regarded for the purposes of this Scheme as having been a worker during any period—

(a) on and after the 1st January, 1960, but before the appointed date when his earnings exceeded zw\$250 per month;

(b) on and after the appointed date but before the 2nd appointed date when his earnings exceeded zw\$333,33 per month;

(c) on and after the 2nd appointed date but before the 3rd appointed date when his earnings exceeded zw\$500 per month;

(d) on and after the 3rd appointed date but before the 4th appointed date whose earnings exceeded zw\$650 per month;

[para (d) amended by SI 287/91 with effect from the 4th October,1991]

(e) on or before the 4th appointed date but before the 5th appointed date, whose earnings exceeded zw\$1 333,33 per month;

[para (e) substituted by SI 287/91 with effect from the 4th October,1991]

(f) on or before the 5th appointed date but before the date of commencement of this Scheme, whose earnings exceeded zw\$2500 per month;

[para (f) inserted by SI 287/91 with effect from the 4th October,1991]

(5) From the date of commencement of this Scheme a person may, subject to this section, be regarded as a worker notwithstanding that his monthly earnings exceed zw\$2 500.

(6) In the calculation of earnings for the purposes of paragraph (a) of subsection (3) or subsection (4), overtime payments shall be disregarded.

(7) Any reference in this Scheme to a worker who has been injured shall, when the worker is dead or is a person under disability, include a reference to his representative or to his dependants or to any other person to whom or for whose benefit compensation is payable.

(8) The Minister shall not increase any rates in terms of subsection (4) —

(a) unless he is satisfied that there has been an increase in the cost of living or an increase in wages, or both, which merits such increase;

(b) without the approval of the Minister responsible for finance.

5 (1) Subject to this section, in this Scheme "**dependant**" means—

(a) the widow or widower, if married to the worker at the time of the accident;

(b) if there is no widow or widower who, at the time of the accident, was wholly or partly dependent upon the worker for the necessities of life, any person with whom the worker was, in the opinion of the general manager, living as man and wife at the time of the accident;

(c) any child if born before, or **within 10 months after**, the time of the accident;

(d) any parent or step-parent or an adoptive parent who adopted such worker if the general manager is satisfied that the worker was in fact adopted prior to the accident;

(e) any son or daughter (other than a child as defined), brother, sister, half-brother or half-sister or brother of a parent, or any grandparent or grandchild;

(f) any person who at the time of the accident was wholly dependent upon the worker for the necessities of life:

Provided that no person shall be deemed to be a dependant unless, being a person who falls within the provisions of paragraph (a), (b), (c), (d) or (e), he was wholly or partly dependent for support and maintenance on the worker at the time of the accident.

(2) The widow or widower or child of a worker or a person in respect of whom a **declaration** has been made in terms of section *thirty-eight* shall be deemed to be dependent for her or his support and maintenance upon such worker, unless the contrary is proved.

[amended by SI 287/91 with effect from the 4th October,1991]

(3) In the case of a worker who leaves **2 or more widows**, such widows shall be entitled to share between themselves such compensation as would be payable to a single widow of the deceased worker, jointly or in such portions as the general manager, in his discretion, may decide.

6 (1) Subject to this section, and section *twelve*, in this Scheme, "**employer**" means any person or any body of persons, corporate or un-incorporate, having a contract of employment or apprenticeship or learnership with a worker or who employs a worker, and includes any person controlling the business of an employer.

(2) If the services of a worker are **temporarily lent** or let on hire to another person by an employer of such worker, such employer shall be deemed to continue to be the employer of such worker while he is working for that other person.

(3) In respect of a worker whose occupation is **conveying for gain** any person or goods by means of any vehicle, vessel or aircraft, the use of which the worker obtained from some other person under a contract (**other than** a purchase or hire-purchase agreement) such other person shall, for the purposes of this Scheme, be deemed to be the employer.

(4) In respect of a worker employed by a **club**, a cooperative society or other association of persons, the members of the managing committee or the secretary or other responsible officer of the club, co-operative society or association shall be deemed to be the employer.

(5) For the purposes of the giving or receiving of statements, notices or other documents under this Scheme, the term "**employer**" includes the manager, secretary, accountant, treasurer, duly authorized agent or other responsible person employed or appointed by the worker's employer.

7 (1) Subject to subsection (2), this Scheme shall apply in respect of—

- (a) accidents happening; and
- (b) scheduled diseases contracted; and
- (c) non-accident occupational injuries incurred;

on or **after the 1st January, 1960**.

[Subsection(1) substituted by SI 287/91 with effect from the 4th October,1991]

(2) This Scheme shall not bind **the State**.

8 From and after the **1st January, 1960**—

- (a) no action at common law shall lie by a worker or any dependant of a worker against such worker's employer to recover any damages in respect of an injury resulting in the disablement or death of such worker arising out of and in the course of his employment; and
- (b) no liability for compensation shall arise save under and in accordance with this Scheme in respect of such disablement or death; and
- (c) any worker who is entitled to periodical payments under this Scheme shall not be entitled to receive wages in terms of section 14 of the Labour Act [*Chapter 28:01*].

9 (1) Notwithstanding anything to the contrary contained in this Scheme if a worker meets with an accident which is due—

(a) to the negligence—

- (i) of his employer; or
 - (ii) of a person entrusted by his employer with the management or in charge of such employer's trade or business or any branch or department thereof;
- or
- (iii) of a person having the right to engage or discharge workers on behalf of his employer;

or

(b) to a patent defect in the condition of the premises, works, plant or machinery used in such trade or business, which defect his employer or any person referred to in paragraph (a) has knowingly or negligently failed to remedy or caused;

the worker or, in the case of his death as a result of such accident, his representative, may, **within 3 years of such accident**, proceed by action in a court of law against his employer, where the employer concerned is an employer individually liable, or otherwise against his employer and the

general manager, jointly, for further compensation in addition to the compensation ordinarily payable under this Scheme.

[Subsection(1) amended by SI 287/91 with effect from the 4th October,1991]

Provided that in the case of an action in which the employer and the general manager are joined, nothing in this section shall be construed to mean that any compensation awarded under this section is payable by the employer.

(2) If the court is satisfied that the accident was due to any such **negligence** or defect as is referred to in subsection (1), it shall award the applicant such **additional** compensation as it would deem equitable to award as damages in an action at common law.

(3) In making any award under this section the court shall have regard to the amount of compensation which has been paid or in the court's opinion will be paid under the other provisions of this Scheme.

(4) For the purposes of this section—

"**compensation**" includes, in the case of a continuing liability the capitalized value, as determined by the court, of the pension, periodical payment or allowance, as the case may be, which constitutes the liability.

(5) In any proceedings under this section the court may make such order as to costs as it may deem just:

Provided that, in the case of any action in which the employer and the general manager are joined, any costs payable by the employer, except such costs as in the opinion of the court are attributable to a frivolous or vexatious presentation of the case on the part of such employer, shall, after having been taxed by a taxing officer of the court, be borne by the general manager.

(6) In any action brought under this section on behalf of the dependants of a deceased worker in respect of an accident of which negligence on the part of the worker was a contributory cause, such negligence shall be no defence to such action.

10 (1) Where an accident in respect of which compensation is payable was caused in circumstances creating a legal liability in some person other than the employer (hereinafter referred to as '**the 3rd party**') to pay damages to the worker in respect thereof—

(a) the worker may both claim compensation under this Scheme and take proceedings against the 3rd party in a court of law to recover damages:

Provided that where any such proceedings are instituted the court shall, in awarding damages, have regard to the amount which, by virtue of paragraph (b), is likely to become payable to the general manager or the employer individually liable, as the case may be, by the 3rd party; and

(b) the general manager or the employer individually liable by whom compensation is payable shall have a right of action against the 3rd party for the recovery of the compensation he is obliged to pay under this Scheme as the result of the accident, and may exercise such right either by intervening in proceedings instituted by the worker against the 3rd party or by instituting separate proceedings:

Provided that—

(i) in the case of a worker who has **not died** the amount recoverable in terms of this paragraph shall not exceed the amount of damages, if any, which in the opinion of the court would have been awarded to the worker, but for this Scheme;

(ii) in the case of a worker who **had died** the amount recoverable in terms of this paragraph shall not exceed the total amount of damages, if any, which, in the opinion of the court, but for this Scheme, would have been awarded to all the dependants of the worker notwithstanding that they may have had separate or distinct claims in respect of such damages.

(2) A worker shall, before instituting proceedings under subsection (1), in writing notify the general manager or the employer individually liable, as the case may be, of his intention to do so and shall likewise notify the general manager or the employer if he decides to abandon such proceedings or to

relinquish or settle his claim for damages, and shall in connection with any such notification furnish such particulars as the general manager may require.

No proceedings in a court of law to recover damages against any person referred to in subsection (1) may be taken by a worker until he has so notified the general manager of his intention to take such proceedings and unless he has lodged a claim for compensation.

(3) For the purposes of this section—

"**compensation**" includes, in the case of a continuing liability, the capitalized value, as determined by the court, of the pension, periodical payment or allowance, as the case may be, which constitutes the liability.

(4) It shall not be lawful for a worker on or after the appointed date to waive his right referred to in paragraph (a) of subsection (1) to take proceedings against a 3rd party for damages and any purported waiver on or after the appointed date of such right shall be of no force and effect.

11 (1) Payment of compensation in terms of this Scheme shall be refused in respect of an injury to or the death of worker, which injury or death is referred to in the War Victims Compensation Act [*Chapter 11:16*], until a claim for compensation in respect of such injury or death has been made and disposed of in terms of that Act.

(2) There shall be deducted from the amount of any compensation payable in terms of this Scheme in respect of injury or death referred to in subsection (1) the amount of any compensation awarded in respect of such injury or death in terms of the War Victims Compensation Act [*Chapter 11:16*].

12 (1) Where any person (in this section referred to as "**the principal**") in the course or for the purposes of his trade or business, contracts with any other person (in this section referred to as "**the contractor**") for the execution by or under the supervision of the contractor of the whole or any part of any work undertaken by the principal, any worker engaged on such work shall be deemed to be the worker of the principal unless and until such contractor in respect of such work has been assessed as an employer and has paid all assessments due by him to the Fund for the current year, and any reference in this Scheme to the employer shall be deemed to be a reference to the principal:

Provided that if compensation becomes payable to the worker under this Scheme, the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed.

(2) Where the principal has paid an assessment or compensation which, but for subsection (1), he would not have been liable to pay, he shall be entitled to reimbursement by the contractor to such extent as the general manager, on written application made to the general manager by the principal, finds that such contractor would have been liable had he been deemed under this Scheme to be the employer of the worker.

(3) It shall be the duty of the principal to ensure that any assessment for which the contractor is liable is paid, and if such principal fails to do so he shall be personally liable to pay such assessment to the general manager and the provisions of this Scheme with regard to enforcing assessments shall apply to him. The principal shall be entitled to reimbursement by the contractor of any sum paid out under this subsection.

(4) Where a principal in terms of subsection (2) or (3) has paid to the general manager any assessment or compensation, he shall, unless he has been reimbursed by the contractor, be entitled to deduct an amount determined in accordance with subsection (2) from any moneys due by him to the contractor.

(5) Notwithstanding anything contained in this section, the general manager may recover compensation from the contractor instead of the principal, and in the event of failure to recover fully from one of them, may recover the balance from the other of them.

(6) This section shall not be construed so as to impose any liability on the principal in respect of any accident which occurs elsewhere than on, in or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

13 (1) Where an employer carried on business chiefly within Zimbabwe and the usual place of employment of his worker is in Zimbabwe and an accident happens to his worker while the worker is

temporarily employed by him out of Zimbabwe, the worker shall be entitled to compensation in the same manner as if the accident had happened in Zimbabwe:

Provided that this subsection shall cease to apply to a worker after he has been employed out of Zimbabwe for a **continuous period of 12 months**, unless the general manager has, before the end of this period, agreed with the worker and the employer concerned that those provisions should, subject to such conditions as the general manager may determine, continue to apply.

(2) Where an employer carries on business chiefly **outside Zimbabwe** and an accident happens to his worker ordinarily employed outside but temporarily employed by him in Zimbabwe at the time of the accident, such worker shall **not be entitled** to compensation out of the Fund unless the employer has previously agreed with the general manager that such worker shall be entitled to compensation and has paid any assessment:

Provided that any such worker so employed in Zimbabwe for a continuous period of **more than 12 months** shall be deemed to be ordinarily employed by such employer in Zimbabwe.

(3) Where by the law of the country in which an accident happens a worker in the circumstances described in subsection (1) is entitled to compensation in respect of such accident, or where an accident happens to a worker in Zimbabwe and he would be entitled to compensation under the law of any other country as well as under this Scheme, he shall, by notice to the general manager, elect to claim compensation either under this Scheme or under the law of the other country.

Provided that

(i) if he elects to claim compensation under this Scheme he shall—

A. present a claim under this Scheme; and

B. cede to the general manager or the employer individually liable, as the case may be, his claim under the law of the other country, and if the amount recoverable under such other law exceeds the amount of the compensation under this Scheme, the cession shall be effective in respect of so much of the claim as equals the amount of such compensation;

(ii) if he elects to claim compensation under the law of the other country—

A. where the amount so recoverable is less than the compensation which would have been payable under this Scheme, the general manager or the employer individually liable, as the case may be, shall grant compensation not exceeding the amount of such difference; and

A. where the amount so recoverable is less than the compensation which would have been payable under this Scheme, the general manager or the employer individually liable, as the case may be, shall grant compensation not exceeding the amount of such difference; and

B. where the claim lies against an employer who has paid assessments, the general manager shall reimburse such employer to the extent of the compensation payable under this Scheme.

PART III

ADMINISTRATION OF SCHEME

14 (1) The General Manager of the Authority shall administer the Scheme.

(2) The General Manager may, subject to any conditions imposed by the Board, delegate any of his functions under this Scheme to any person employed by the Authority.

15 (1) Subject to this scheme, the general manager shall—

(a) receive notices of accidents and claims for compensation;

(b) inquire into or cause inquiry to be made into accidents;

- (c) adjudicate upon all claims and other matters coming before him for decision;
- (d) determine whether any person is a worker, employer, principal or contractor for the purposes of this Scheme;
- (e) pay compensation payable from the Fund in terms of this Scheme;
- (f) decide any question relating to—
 - (i) the right to compensation;
 - (ii) the submission, consideration and determination of claims for compensation;
 - (iii) computation of earnings;
 - (iv) the degree of disablement of any worker;
 - (v) the amount and method of payment of any compensation;
 - (vi) the withholding, revision, discontinuance or suspension of any compensation;
- (g) determine whether any person is a dependant under this Scheme and, if so, the degree of dependence and whether there is more than 1 dependant who shall receive compensation and the allocation of compensation among them;
- (h) ensure compliance by employers with any legislation relating to work safety and accident prevention, including the Factories and Works Act [*Chapter 14:08*] and the Pneumoconiosis Act [*Chapter 15:08*];
- (i) determine any question arising in respect of the necessity for, or the character or the sufficiency of, any medical aid;
- (j) determine any question relating to the rendering of statements of wages, liability for assessment, rates of assessment, amount of assessment and method of payment of assessment;
- (k) administer the Fund, as provided in Part IX;
- (l) after the conclusion of each financial year, report to the Board upon the administration of this Scheme during that year;
- (m) collect, compile and maintain such statistics and information relating to the occurrence or cause of accidents and scheduled diseases and the grant of benefits to persons under this Scheme as he may deem necessary or as may be required by the Board;
- (n) investigate whether any disease should be included in or deleted from the *Second Schedule* and make recommendations in regard thereto;
- (o) make any investigations and perform such other functions and duties as may have been assigned to him or as he deems necessary for the administration of this Scheme.

(2) The general manager may, subject to the approval of the Board, promote, establish and subsidize out of the Fund any organization or scheme the objects of which consist of or include 1 or more of the following—

- (a) the prevention of accidents or of any diseases which are due to the nature of any occupation;
- (b) the promotion of the health or safety of workers;
- (c) the provision of facilities designed to assist injured workers to return to work or to reduce or remove any handicap resulting from their injuries;
- (d) the award of a gratuity to any person who displays initiative or bravery which prevents an accident or which results in the avoidance or death or disablement or in minimizing the degree of disablement of a worker.

(2) The general manager may, subject to the approval of the Board, authorize an employer to provide facilities for or otherwise to assist an injured worker to return to work or to reduce or remove any

handicap resulting from his injuries and may pay from the Fund the whole or any part of the cost incurred thereby.

(3) The general manager may authorize the payment from the Fund of any expenditure reasonably incurred by a worker in connection with the undergoing of rehabilitative treatment.

(4) For the purpose of accident prevention, the general manager shall ensure that the provisions of the *Third Schedule* are complied with.

16 (1) Any person affected by a decision of the general manager on any matter referred to in paragraph (c) or (d), subparagraph (i), (ii), (iii), (v) or (vi) of paragraph (f) or paragraph (g) of section *fifteen* or, subject to subsection (6), on any matter directly arising out of proceedings under this Scheme may, **within 60 days** of such decision, lodge with the general manager an objection against such decision, in form **No. 1**.

(2) An objection may similarly be lodged by a trade union of employers' organization registered under the Labour Act [*Chapter 28:01*] of which the person in respect of whom such decision was given was, at the relevant time, a member.

(3) If the objection is made by an employer individually liable it shall be accompanied by a statement whether he admits his liability to pay compensation or denies such liability and whether the admission or denial is total or partial, and, if he admits or denies liability, a statement of the extent to which he admits or denies liability.

In the case of a denial of liability the grounds shall be stated.

(4) Any person affected by a decision of the general manager as to the extent, nature or duration of any injuries to a worker or as to the degree of disablement of a worker or as to any other medical, dental or surgical question in dispute may appeal against that decision to the Board, as provided in section *fifty-two*.

17 (1) If an objection arises out a claim for compensation in respect of a worker's death, the objection made on behalf of the dependants shall be made by the representative of the deceased worker or, if there is no such representative, by a person specially appointed by the Master to make such objection and in other respects to act as representative of the deceased worker for the purposes of this Scheme, and the Master is hereby authorized to make such an appointment.

For the purposes of this subsection, the expression "**dependants**" includes persons who claim or may be entitled to claim to be dependants.

(2) A representative shall comply with section *sixteen* as to the lodging of an objection accompanied by particulars.

18 (1) The general manager shall, **within 30 days** of an objection in the prescribed form being lodged with him, write to the objector to confirm, vary or set aside the decision objected to.

(2) Where the general manager wholly or partly rejects an objection he shall in his reply referred to in subsection (1) state reasons for his rejection.

[subsection (2) inserted by SI 287/91 with effect from the 4th October, 1991]

19 (1) An objector may, **within 21 days** of the general manager's reply being received by him in terms of section *eighteen*, appeal to the Board against the general manager's decision.

(2) An appeal shall be in form **No. 2** and accompanied by a copy of the objection and the general manager's reply thereto.

(3) Upon receiving notice of an appeal in terms of subsection (2), the Board shall—

(a) fix a time for hearing the appeal **not more than 30 days** from the date of the receipt of the notice of appeal; and

(b) notify the general manager and, by form **No. 3**, the objector, of the time and place for the hearing of the appeal.

20 (1) At the hearing of an appeal in terms of section *nineteen*, a party to such appeal may appear—

- (a) **in person**; or
- (b) by a legal practitioner; or
- (c) in the case of the **general manager**, by a person to whom he has delegated power so as to appear in terms of subsection (2) of section *fourteen*;
- (d) in the case of a **worker**—
 - (i) by a member of his family; or
 - (ii) by an officer of a trade union registered under the Labour Act [*Chapter 28:01*];
- (e) in the case of an **employer**, by a person in the regular employment of such employer;
- (f) in the case of a **corporate body**, by an officer thereof;
- (g) by leave of the Board, by **any** other person.

(2) On the failure of either party to appear at the time and place fixed for the hearing of an appeal in terms of section *nineteen*, the Board may proceed with the hearing and make such determination on the appeal as it deems just and expedient.

(3) The Board may, by subpoena in form **No. 4** summon witnesses to attend at the hearing of the appeal in terms of section *nineteen*, and require the production of any book, record document or thing.

(4) No person **other than** a legal or medical practitioner shall be entitled for so appearing to recover any fee or reward except necessary out-of-pocket disbursements and expenses.

[amended by SI 287/91 with effect from the 4th October, 1991]

21 (1) At a hearing of an appeal the Board may appoint as an assessor any person skilled in technical questions other than medical, dental or surgical questions to sit with the Board and to act in an advisory capacity in the hearing of any objection under this Scheme :

Provided that any person so appointed by the Board shall not be an employee of, or associated in any pecuniary way with, the employer by whom the worker was employed.

(2) A person shall not be appointed, nominated or selected, or, if appointed, nominated or selected, shall not sit or act as an assessor if he has, in connection with the injury or death out of which the objection arises, given professional assistance or advice in regard to the accident or question in dispute to any party to the objection or to any person who may become liable for the payment of compensation under this Scheme to that worker.

(3) There shall be paid out to the Fund to an assessor whilst engaged in any sitting or work of the Board in terms of this section the same remuneration and reasonable expenses for travelling and subsistence as are payable to assessors in the Administrative Court.

22 At the conclusion of a hearing of an appeal in terms of section *nineteen* the Board shall deliver its decision in writing to the appellant, stating the reasons for its decision.

[substituted by SI 287/91 with effect from the 4th October, 1991]

23 Any person who is aggrieved by a decision of the Board in terms of this Part may, **within 21 days** of the date of such determination, appeal against such decision to the Administrative Court, and the provisions of the Administrative Court (**Miscellaneous Appeals**) Rules, 1980, SI 122/1980 shall apply to such an appeal.

24 (1) If an accident to a worker arising out of and in the course of his employment happens **after the 1st January, 1960**, and results in such worker's disablement or death, he, or if he dies, his dependants, shall become entitled to compensation in accordance with this Scheme.

(2) Notwithstanding subsection (1), no compensation under this section shall be payable—

- (a) if the accident is attributable to the serious and wilful misconduct of the worker, unless the accident results in serious disablement, or the worker has died in consequence of the accident, leaving as his dependant his widow or a child or any dependant wholly dependent

upon him, in which case the general manager may reject the claim for compensation or apportion the liability as he sees fit, taking into account the degree of disablement and the nature of the misconduct;

(b) in respect of his **death**, if the worker dies **more than 12 months after** the accident, unless it is proved that the accident directly caused the death or was the principal contributory cause of death.

(3) For the purposes of this Scheme, an accident resulting in the disablement or death of a worker shall be deemed to arise out of and in the course of his employment notwithstanding that the worker at the time when the accident happened was acting in contravention of any law applicable to his employment or of any instructions issued by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the worker for the purpose of, and in connection with, his employer's trade or business :

Provided that if the worker's act constitutes serious and wilful misconduct, notwithstanding that such act was done by him for the purposes of, and in connection with, his employer's trade or business, the provisions of paragraph (a) of subsection (2) shall apply.

(4) For the purposes of this section, an accident shall only be deemed to result in serious disablement if the worker suffers a degree of **permanent disablement of 30% or more**.

25 When a worker meets with an accident—

(a) in, at or about any mine, works or premises while, with the consent of his employer, being trained in first aid, ambulance or rescue work or engaged in any competition in connection therewith;

(b) in, at or about any mine, works or premises other than his employer's while, with the consent of his employer, engaged in any first aid, ambulance or rescue work; or

(c) in, at or about his employer's mine, works or premises while engaged in any first aid, ambulance or rescue work;

whereby such worker sustains injury resulting in disablement or death, the injury shall, for the purposes of this scheme, be deemed to arise out of and in the course of his employment.

26 (1) If a worker or any of his dependants who is entitled to compensation under this Scheme has received or will receive in respect of an accident any pension or gratuity from the employer of the worker, then, in determining the amount of such compensation, no reduction may be made in respect of any amount paid or to be paid by the employer by way of such pension or gratuity.

(2) If a worker or any of his dependants who is entitled to compensation under this Scheme has received or will receive in respect of an accident any pension or gratuity from a pension, superannuation or provident fund to which the employer has contributed, then, in determining the amount of such compensation, no reduction may be made in respect of the amount which has been received or will be received by the worker or any of his dependants from that fund.

27 (1) Subject to section *twenty-six*, the general manager may in his discretion, in awarding or refusing the award of any compensation to a worker in respect of permanent disablement or to his dependants, have regard to—

(a) in the case of **worker**, any compensation for permanent disablement previously awarded to the worker under this Scheme or the repealed laws, whether as the result of 1 or more than 1 accident or paid by 1 or more than 1 employer, or any benefit granted to the worker under any law on account of permanent disablement;

(b) in the case of **dependants**, any benefits or settlements granted to them under any law on account of the death of the worker.

(2) The compensation payable to a worker, whether in respect of 1 or more than 1 accident, shall not, in any case, exceed the compensation payable in respect of **100% disablement**.

(3) Whenever a worker has received compensation for permanent disablement under this Scheme and subsequently meets with an accident resulting in further disablement in respect of which compensation is payable under this Scheme, the general manager may, if the worker shows to the

satisfaction of the general manager that it would be to his advantage to do so, calculate his compensation in respect of the further permanent disablement on the earnings he was receiving when he met with any previous accident in respect of which compensation was paid.

28 (1) Save as is specially provided in this Scheme in respect of agreements, any provision in a contract existing at the **1st January, 1960**, or thereafter entered into, whereby a worker or his dependants relinquish any right to compensation, whether for the worker or for any dependant, shall be null and void.

(2) Notwithstanding anything in this Scheme contained, where the general manager is satisfied that, by reason of old age or serious physical defect or infirmity or any previous injury, a person, if employed as a worker, is specially liable to meet with an accident, or if he meets with an accident, is specially liable to sustain injury, he may, in connection with any contract for such employment, authorize the worker and the employer or the employer individually liable to enter into an agreement in writing in form **No. 6** that the worker shall receive less than the amount payable under this Scheme in respect of the disablement or death of that person:

Provided that—

- (i) such agreement shall be of force only when the old age or serious physical defect or infirmity or previous injury has caused or contributed to the accident;
- (ii) no such agreement shall be valid and effectual unless the amount agreed to be paid in respect of the disablement or death is at least one-half of the amount that would otherwise be payable as compensation under this Scheme and has been approved by the general manager.

(3) The employer individually liable shall submit the agreement referred to in subsection (2) in duplicate to the general manager **not later than 7 days** after the making of such agreement.

(4) Upon receipt of an agreement in terms of subsection (3) and a medical certificate in form **No. 7**, duly completed by a medical practitioner approved by the general manager, the general manager shall—

- (a) if he approves the terms thereof, sign the original agreement and the duplicate copy thereof and return the original agreement to the employer individually liable; or
- (b) if he considers that the agreement is inequitable having regard to the nature of the disability of the worker in relation to the work upon which he is employed, or if he requires additional information, cause such further inquiries to be made as he may deem necessary; and
- (c) after such further inquiries have been made, either approve or refuse to approve the agreement as submitted or notify the employer concerned and the worker of the proportional amount payable which he is prepared to approve in such agreement.

(5) Any agreement approved by the general manager under this section shall become operative on the date on which the general manager finally approved the agreement and such agreement shall remain in full force and effect during the period that the contract of service subsists between the contracting parties.

29 (1) Any employer who deducts from the earnings of any of his workers any part of any sum which the employer is or may become liable to pay as compensation or assessment under this Scheme or who requires or permits any of his workers to contribute towards the cost of any liability which he was incurred or may incur under this Scheme, shall be guilty of an offence.

(2) Any court convicting an employer under subsection (1) may, in addition to imposing any lawful criminal penalty upon him, order that he shall pay to the worker any sum which he has unlawfully required or permitted the worker to contribute and such order shall have the effect of a civil judgment of the court:

Provided that no order shall be made in terms of this subsection unless and until the employer has been afforded an opportunity to show cause why the order should not be made against him.

30 (1) No compensation shall be payable under this Scheme in respect of any disablement or death if the death is caused or, if and so far as disablement is caused, continued or increased in extent, by any unreasonable refusal or wilful neglect to submit to medical or surgical treatment.

(2) No compensation shall be payable under this Scheme in respect of any disablement or death resulting from an injury if the worker has at any time represented in writing to the employer that he was not suffering or had not previously suffered from that or a similar injury, knowing that the representation was false.

(3) No compensation shall be payable under this Scheme in respect of any disablement or death resulting from an accident which occurred on or **after the 1st January, 1971**, if the disablement or death would not have resulted but for a—

- (a) prior injury; or
- (b) physical defect or infirmity; or
- (c) pre-existing diseased condition;

the existence of which was known to the worker but unknown to the employer.

(4) For the purposes of subsection (3), a worker shall be presumed to have known of any prior injury, physical defect or infirmity or pre-existing diseased condition unless the contrary is proved.

(5) Notwithstanding the other provisions of this section, the general manager may award such compensation as he deems fit in respect of an accident if, in his opinion, the accident materially increased the extent of the disablement or materially accelerated the death of a worker or was the sole cause of such disablement or death.

31 Save as is provided under this Scheme, there shall be no abatement of the amount of compensation which the general manager or the employer individually liable has to pay under this Scheme by reason of the fact that, in consequence of the accident causing disablement or death, money has become due to the worker or his dependants under an accident or life insurance policy effected by himself or by any other person.

32 Compensation shall be paid by either—

- (a) the employer individually liable;
- or
- (b) the general manager.

33 (1) For the purpose of this section compensation in the case of temporary disablement happening **on or after the 18th appointed date** shall be **100%** of the worker's monthly earnings during his or her **first 30 days** of absence from work and thereafter periodical payments equal to the aggregate of the following—

- (a) in respect of the first portion of 15% of his or her monthly earnings, **80%** of that portion of his or her monthly earnings;
- (b) in respect of the next portion in excess of 15% of his or her monthly earnings, up to and including 30%, **60%** of that portion of his or her monthly earnings;
- (c) in respect of the next portion in excess of 30% of his or her monthly earnings, up to and including 50%, **50%** of that portion of his or her monthly earnings;
- (d) in respect of the next portion in excess of 50% of his or her monthly earnings, up to and including 100%, **40%** of that portion of his or her monthly earnings;

Provided that the injured worker's monthly earnings who suffered an injury on or before the 20th appointed date shall be deemed to be US\$ 100,00 for purposes of calculating benefits in terms of this section.

[subsection (1) substituted by SI 289/01 with effect from the 14th September, 1991 until repealed and substituted further by SI 59/11 with effect from the 13th May, 2011]

(2) If the periodical payments due to any worker for any 1 month plus any wages, salary or other remuneration earned by such worker in any employment during that month (hereinafter in this subsection called " **the monthly receipt** ") exceed the monthly earnings of such worker at the time of the accident, the periodical payments to such worker for such month shall be reduced by the amount by which the monthly receipt exceeds the monthly earnings of the worker at the time of the accident.

(3) When a worker has received periodical payments for a period or periods **totaling 18 months** he shall be deemed to have suffered permanent disablement unless the contrary is proved:

Provided that, in the case of an accident which happens on or after the appointed date, the general manager may, after consultation with a medical board, direct that periodical payments shall continue to be made to the worker concerned for such further period or periods as he may determine and such worker shall not be deemed to be permanently disabled.

(4) Periodical payments shall be made once a month:

Provided that by agreement such payments may be made weekly, subject, in such cases, to a proportionate reduction in the amount of such payments.

(5) The right to periodical payments shall cease—

- (a) upon the termination of temporary disablement; or
- (b) when the worker resumes work upon which he was employed at the time of the accident; or
- (c) when the worker resumes any work at the same or greater earnings; or
- (d) when the worker is awarded compensation for permanent disablement;

whichever event occurs earlier:

Provided that, when an injury sustained in any accident recurs after compensation for temporary disablement has ceased, such periodical payments may, subject to subsection (4), be resumed in lieu of any award of compensation for permanent disablement and may continue until the temporary disablement ceases and a fresh assessment of permanent disablement, if any, is made.

(6) A worker who suffers permanent disablement shall be entitled to—

- (a) periodical payments until the time that the degree of his permanent disablement has been determined;
- (b) compensation for permanent disablement when he ceases to be entitled to periodical payments.

(7) If a worker without lawful excuse—

- (a) refuses or wilfully neglects to submit himself to medical examination or in any way wilfully obstructs or unnecessarily delays such examination; or
- (b) absents himself in such a manner that any notice under this Scheme cannot be served upon him;

his right to periodical payments or the continuance of such payments shall, *ipso facto*, be suspended during the period that the circumstances exist which gave rise to such suspension, and no payments shall be payable by the general manager or an employer individually liable in respect of the period of suspension:

Provided that the general manager may, on good cause shown, condone the action of the worker and make, or order to be made, such payment, or partial payment of a periodical payment to the worker in respect of the period of suspension as in the circumstances he deems just.

(8) Monthly earnings, in relation to a worker, shall be computed on the basis specified under section *forty-one*.

(9) The periodical payments due to a worker during the whole or part of **the first 30 days of his absence** from work shall be payable by his employer, who shall be entitled to obtain a refund of such payment from the general manager.

(10) The Minister shall not increase any rates in terms of subsection (1) —

(a) unless he is satisfied that there has been an increase in the cost of living or an increase in wages, or both, which merits such increase; and

(b) without the approval of the Minister responsible for finance.

(11) Any employer who fails to comply with the provisions of this section shall be guilty of an offence.

(12) For the purposes of this section—

"**medical board**" means a medical board established by the general manager and consisting of 1 or more medical practitioners appointed by the general manager.

(Section 34 is missing)

35 (1) Where a worker dies as a result of an accident, compensation shall, subject to subsection (3) of section *five*, be determined as follows—

(a) if the worker leaves as a dependant a widow or widower and **no children**, there shall be paid to such widow or widower a monthly pension equal to **2/3rds** of the monthly pension which the deceased worker had been receiving under paragraph (a) of subsection (1) or subsection (2), (3) or (4) as the case may be, of section *thirty-four* or would have received if he had been entitled to a monthly pension in terms of any of those provisions in respect of the accident;

(b) if the worker leaves as dependants a **widow or widower and 1 or more children**, there shall be paid to such widow or widower the monthly pension mentioned in paragraph (a) plus a monthly allowance for children in accordance with the *Fourth Schedule*:

Provided that the monthly pension and children's allowance shall not exceed the monthly earnings of the worker;

(c) if the worker leaves **no dependent spouse** but 1 or more children as dependants, or if the widow or widower referred to in paragraph (b) dies leaving dependent children of the worker, there shall be paid—

(i) where the death of the worker was a result of an accident which happened before the appointed date, a monthly allowance in respect of the children in accordance with the *Fourth Schedule*;

(ii) where the death of the worker was as a result of an accident which happened on or after the appointed date, a monthly allowance in respect of each such child equal to 1/5th of the monthly pension which the deceased worker had been receiving under subsection (2), (3) or (4), as the case may be, of section *thirty-four*, or would have received if he had been entitled to a monthly pension in terms of either of those provisions:

Provided that, where there are **more than 5 such children**, a monthly allowance of an amount equal to the said monthly pension shall be payable and shall be shared equally between the children;

(d) if the worker **dies** leaving no dependants of any class referred to in paragraph (a), (b) or (c) but **2 or more other dependants wholly** dependent upon him, such dependants shall share equally between them a monthly pension equal to 1/3 of the monthly pension referred to in paragraph (a), but if there is left only one such dependant wholly dependent upon him such dependant shall receive a monthly pension equal to—

(i) where the death of the worker occurred as a result of an accident which happened **before** the appointed date, $\frac{1}{4}$; or

(ii) where the death of the worker occurred as a result of an accident which happened on or **after** the appointed date, $\frac{1}{8}$;

of the monthly pension referred to in paragraph (a);

(e) if the worker dies leaving no dependants of any class referred to in paragraph (a), (b) or (c) but **1 or more dependants partly dependent** on him, the monthly pension or pensions which would have been paid to such dependant or dependants, in terms of paragraph (d), if such dependant or dependants had been wholly dependent upon him, shall be reduced so as to bear the same proportion to the pension or pensions which would have been paid as the degree of dependence bears to **100 %** and such reduced monthly pension shall be then paid to such dependant or dependants;

(f) if the worker does not leave as dependant a widow or widower but leaves as dependants **1 or more children** to whom an allowance is payable in terms of paragraph (c) and other dependants, in addition to the monthly allowance payable to the child or children, there shall be paid—

(i) where the death **before** the appointed date in respect of the dependants, the balance of the monthly pension or pensions payable in terms of paragraph (d) and (e) remaining after the deduction therefrom of the monthly allowance payable to the child or children;

(ii) where the death of a worker was as a result of an accident which happened on or **after** the appointed date and such other dependants were at the time of his death **wholly dependent** upon him, a monthly pension of $\frac{1}{4}$ of the monthly pension which the deceased worker had been receiving under subsection (2) or (3), as the case may be, of section *thirty-four* or would have received if he had been entitled to a monthly pension in terms of either of those provisions in respect of such dependant or in such proportion and in respect of such dependants as the general manager may direct who assume responsibility for 1 or more of the children.

(2) The Minister shall not increase the amount of compensation in terms of subsection (1) —

(a) unless he is satisfied that there has been an increase in the cost of living or an increase in wages, or both, which merits such increase; and

(b) without the approval of the Minister responsible for finance.

(3) Save as is provided in section *twenty-seven*, no deduction shall be made from the compensation awarded under this section in respect of any compensation awarded to the worker for the same accident.

(4) The right to any pension or allowance in respect of a deceased worker shall vest on the date of his death and the amount of such pension or allowance shall be calculated from such date:

Provided that the right to a pension payable in terms of subparagraph (ii) of paragraph (f) of subsection (1) to a dependant who assumes responsibility for any child or children shall vest on, and the amount thereof shall be calculated from, the date of assumption of that responsibility.

(5) Where a worker dies as a result of an accident, the general manager may authorize the payment of an amount fixed by the Minister by notice in a *statutory instrument* towards the funeral expenses of such worker.

[amended by SI 157/03 with effect from the 25th July,2003]

(6) The amount fixed for the purpose of subsection (5), being the maximum amount which the general manager may authorise to be paid towards the funeral expenses of a worker who dies as a result of an accident, shall be **US\$300,00**.

[subsection (6) inserted by SI 59/11 gazetted on the 13th May, 2011. Amount increased from US\$200 by SI 62/13 with effect from the 1st August, 2013]

36 (1) If a worker who is in receipt of a pension under section *thirty-four* or who would have been entitled to a pension under that section but for his death **dies not as a result of the accident** in respect of which he was receiving such pension, the widow or widower of such deceased worker, if married to such worker at the time of the accident in respect of which he was receiving a pension, shall be paid a monthly pension equal to $\frac{3}{4}$ of the monthly pension calculated in accordance with section *thirty-four* payable to the worker at the time of his death **plus a monthly allowance for any children** of such deceased worker who were born before, or **within 10 months** after the time of, the accident.

The amount of the allowance for children shall be the amount which was or would have been payable to the worker under that section as a children's allowance :

Provided that the monthly pension and children's allowances shall not exceed the monthly earnings of the worker.

(2) If a worker who is in receipt of a pension under section *thirty-four* or who would have been entitled to a pension under that section but for his death dies not as a result of the accident in respect of which he was receiving such pension and leaves no widow or widower entitled to a pension in terms of this section, but leaves 1 or more children born before, or **within 10 months** after the time of, the accident, there shall be paid for the benefit of such child or children a monthly allowance which shall be the amount which was or would have been payable to the worker under section *thirty-four* as a children's allowance.

(3) If a widow or widower who is in receipt of a pension in terms of this section dies and leaves children of the worker born before, or **within 10 months** after the time of, the accident, there shall be paid for the benefit of such children the allowance prescribed under subsection (2).

37 If owing to age, marriage, or death or because he or she is supporting and maintaining himself or herself any child ceases to fall within the definition of the term " **child** ", the allowance for children prescribed in this Part shall, subject to subsection (3) of section *thirty-eight*, be diminished accordingly.

38 (1) If a worker who is receiving compensation on the basis of being a married worker ceases to be a married worker, his right to compensation as a married worker shall cease and he shall be entitled to compensation as an unmarried worker.

(2) If an unmarried worker who is receiving compensation on the basis of having children of his own ceases to be entitled to be regarded as an unmarried worker with children of his own owing to all those children having ceased to fall within the definition of the term " **child** ", his right to compensation on that basis shall cease and he shall thereafter be entitled to compensation as an unmarried worker with no children.

(3) Where a worker who, as a result of an accident, dies or has a degree of disablement of more than **30%**, has a son or daughter, including an adopted son or daughter, who—

(a) does not fall within the definition of "child" in section *three*; and

(b) in the opinion of the general manager is unable, by reason of mental or physical disability, to earn sufficient income for his or her own support;

the general manager may, on the application of any interested person, declare that such son or daughter shall be deemed to be a child for the purpose of being paid the allowance for a child in terms of this Part for such period as the general manager may from time to time declare and, for the purpose of determining such period, the general manager shall have regard to the period for which the worker might reasonably be expected to have contributed or to contribute, as the case may be, towards the support of that son or daughter.

39 (1) The Board, on application made to it by the general manager or an employer individually liable, may at any time, after notice to the party concerned and giving him an opportunity to be heard, review the compensation granted on any of the following grounds—

(a) that the worker has not submitted himself for medical examination when required to do so;

(b) that the disablement which gave rise to the award has been aggravated by the unreasonable refusal or wilful neglect of the worker to submit himself to medical or surgical treatment;

(c) that the worker has absented himself in such manner that no notice can be served upon him or that his whereabouts are unknown;

(d) that the award was based on a mistake or misrepresentation of fact or that a different award might have been made if the evidence presently available but which was not available when the general manager made the award had been produced;

and may make an order confirming, discontinuing, suspending, reducing or increasing such compensation.

(2) The Board may, on application made to it by or on behalf of any person to whom compensation has been granted in the form of a lump sum, review such compensation on the ground that it is or has become grossly inadequate and may make an order confirming, reducing or increasing such compensation.

(3) The general manager may, after notice to the worker concerned and the employer individually liable, where applicable, and after giving him or them, as the case may be, an opportunity to be heard and after consultation with a medical board, discontinue or reduce the periodical payment or the pension granted or payable to a worker on the ground that—

(a) the periodical payments are or the pension is either excessive or unnecessary to meet the circumstances of the case; or

(b) the degree of disablement of the worker has diminished; or

(c) the worker is no longer permanently disabled.

(4) A worker or an employer individually liable who is aggrieved by a decision of the general manager in terms of subsection (3) may, **within 21 days** of the date of the decision, appeal against that decision to the Board.

(5) For the purposes of this section—

"medical board" means a medical board established by the general manager and consisting of 1 or more medical practitioner or dental surgeons appointed by the general manager.

40 If a widow or widower who is receiving a pension in terms of this Scheme as a dependant marries—

(a) the pension payable to that person shall cease with effect from the date of the marriage; and

(b) that person shall be paid a lump sum equal to 24 times the amount of monthly pension payable to her or him immediately before the date of marriage.

41 (1) For the purposes of the provisions of this Scheme relating to earnings and monthly earnings of a worker, the earnings of the worker shall, subject to this section, be computed in such manner as is best calculated to give the rate per month at which the worker was being remunerated by his employer at the time of the accident, and shall include—

(a) the value of any food and quarters or food or quarters supplied by the employer to the worker;

(b) any overtime payments or other special remuneration if of a constant character or for work habitually performed;

(c) any cost of living and local allowances;

but shall not include casual payments of a non-recurrent nature, or any sums paid by an employer to a worker to cover any special expenses entailed to the worker by the nature of the work or an *ex gratia* payment, whether given by the employer or any other person.

(2) Where the worker's remuneration is fixed at a rate calculated upon work performed or is subject to fluctuation by reason of the terms or nature of the employment, his earnings shall be taken to be his average monthly remuneration for similar work upon the same terms of remuneration for as long a period as possible before the accident but **not exceeding 12 months**.

Where, by reason of the shortness of time during which a worker has been in the employment of his employer, it is impracticable to arrive at a fair computation of his average monthly earnings in such employment, the earnings shall be computed, if possible, upon the basis of the amount which the worker earned at work on the same terms of remuneration with another employer during the 12 months immediately preceding the accident, or upon the basis of the amount which, during the 12 months immediately preceding the accident, has been earned by other workers with the worker's employer at a similar employment on the same terms of remuneration or would have been earned by the worker during such preceding 12 months had he been so employed.

(3) In the case of an accident which happens to a worker on or after the appointed date subsection (2) shall apply with regard to the calculation of remuneration as though any reference to a period of 12 months therein were a reference to a period of 36 months.

(4) Where the worker has entered into concurrent contracts of employment **with 2 or more employers**, and has worked under those contracts at 1 time for 1 employer and at another time for another employer, his earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

(5) Nothing in this section shall be construed so as to prevent the computation of earnings on a weekly basis.

Where earnings are so computed, the monthly earnings shall be calculated as equal to $4\frac{1}{4} \times$ the amount of such weekly earnings.

(6) For the purposes of any computation or calculation of earnings in terms of this section, a worker's earnings shall not be calculated at a level below that prescribed by or in terms of the Labour Act [Chapter 28:01], as the minimum wage for the class of work performed by the worker at the time of the accident, unless the worker concerned was lawfully receiving a wage below the minimum prescribed in terms of any exemption or other dispensation granted to his employer.

(7) Every employer shall maintain a wage register in which shall be recorded the name of every worker employed by him and the amount of earnings of each such worker, and such register shall at all reasonable times be produced to an inspector on demand.

42 (1) Where a worker who has suffered permanent disablement was, at the date of the accident, under 21 years of age, or was employed under a contract of apprenticeship or learnership, the amount of his compensation shall be based on the earnings which, had he not met with the accident, he would, in the opinion of the general manager, probably have been receiving **at the end of 3 years after the accident**, or as a journeyman or operator upon completion of his apprenticeship or learnership, whichever calculation is more favourable to the worker.

(2) Where a worker who, on or **after the 2nd appointed date**, has suffered permanent disablement was, at the date of the accident, under 21 years of age or was employed under a contract of apprenticeship or learnership, the amount of his compensation shall be based on the earnings which, had he not met with the accident, he would, in the opinion of the general manager, probably have been receiving upon the 21st anniversary of his birthday or at the end of 3 years after the accident or upon completion of his apprenticeship or learnership, whichever calculation is more favourable to the worker.

(3) Where a worker who has suffered temporary disablement was, at the date of the accident, under 21 years of age or was employed under a contract of apprenticeship or learnership and he suffers a recurrence of the temporary disablement after attaining the age of 21 years or 3 years after the accident or after completion of his apprenticeship or learnership, the amount of his compensation shall be based on the earnings which he received upon the 21st anniversary of his birthday or at the end of 3 years after the accident or upon completion of his apprenticeship or learnership, whichever event may be applicable:

Provided that, if 2 or more such events are applicable, the calculation which is most favourable to the worker shall be adopted.

(4) Subsection (6) of section *forty-one* shall, *mutatis mutandis*, apply to this section.

43 (1) Notwithstanding anything contained in this Scheme, where the amount of a monthly pension payable under this Scheme is such that the worker or any dependant of his is receiving an amount

per month equal to or less than the amount fixed by the Minister by *statutory instrument*, the general manager may, if he thinks fit, pay or order the payment in lieu of—

[amended by SI 77/99, w.e.f. 12th March, 1999; further by SI 289/01 w.e.f. 14th September, 2001, and further by SI 157/03 with effect from the 25th July, 2003]

(a) the pension or portion of the pension, of a **lump sum** equal to **70x** the amount of monthly pension or portion of the monthly pension, as the case may be;

(b) the **children's allowance** or portion of the children's allowance of a **lump sum** equal to **70x** the amount of the children's allowance or portion of the children's allowance, as the case may be.

[proviso hereto repealed by SI 309/02 with effect from the 29th November, 2002]

(2) Where an employer individually liable proposes to make a commutation in terms of subsection (1), he shall apply in writing to the general manager for approval of the commutation, giving details of the proposed commutation.

(3) Nothing in this section shall be deemed to authorize the commutation of any pension payable to a widow or widower.

(4) The Minister shall not increase the amount of compensation in terms of subsection (1) —

(a) unless he is satisfied that there has been an increase in the cost of living or an increase in wages, or both, which merits such increase;

(b) without the approval of the Minister responsible for finance;

(5 –replaced below) The monthly amount fixed for the purpose of subsection (1) with effect from the **21st appointed date** shall be —

(a) worker—**US\$30,00**;

(b) widow/widower—**US\$20,00**;

(c) children—**US\$10,00**;

(d) dependants—**US\$10,00**.

All pensions in payment of this Scheme shall be increased by **50%** with effect from the 21st appointed date and any pensions that are lower than minimums stated in this section after applying **the 50% increase**, shall be increased to the minimum set for the category in terms of that section.

[subsection (5) inserted by SI 59/11 gazetted on the 13th May, 2011]

(5) The monthly amount fixed for the purpose of subsection (1) with effect from the **22nd appointed date** shall be —

(a) worker—**US\$45,00**;

(b) widow/widower—**US\$30,00**;

(c) children—**US\$15,00**;

(d) dependants—**US\$15,00**.

All pensions in payment of this Scheme shall be increased by **20%** with effect from the 22nd appointed date and any pensions that are lower than minimums stated in this section after applying **the 20% increase**, shall be increased to the minimum set for the category in terms of that section.

[subsection (5) **replaced** by SI 62/13 gazetted on the 10th May, 2013]

44 (1) Where the injury of which compensation is payable causes disablement of such a nature that the worker is unable to perform the essential actions of life without the constant help of another person, the general manager may from time to time, in his discretion, grant an allowance in addition to any other benefits under this Scheme, or require an employer individually liable to pay an allowance, towards the cost of such help as may be required for a specified period.

(2) The general manager may, upon the application of the worker or of the employer liable to pay such allowance and on good cause shown by the applicant, revise any order made in terms of subsection (1).

(3) The constant attendance allowance payable shall with effect from **the 22nd appointed date**, be **80%** of the minimum workers's pension.

[subsection (3- allocated by the Editor) inserted by SI 59/11 gazetted on the 13th May, 2011; and amended by SI 62/13 which replaced the 21st appointed date with the above date.]

45 (1) Where compensation is payable in the form of a lump sum by an employer individually liable, such sum shall, unless the general manager otherwise directs, be paid to the general manager to be dealt with by him in the manner provided in this section and the receipt of the general manager shall be sufficient discharge in respect of the amount paid.

(2) Any compensation payable in the form a lump sum to a worker or dependant may, in the discretion of the general manager and for reasons deemed by him to be sufficient, be—

(a) paid to the worker or dependant in the form of a lump sum or in installments, or to or on behalf of persons dependent for maintenance on such worker or dependant;

(b) invested or applied from time to time as the general manager may deem to be to the advantage of the worker or dependant or those dependent on either of them for maintenance;

(c) paid to the Master or a trustee or other persons to be used subject to such conditions as may be imposed by the general manager;

(d) dealt with partly in 1 and partly in another or in more than 1 of the ways mentioned in paragraphs (a), (b) and (c), as the general manager may determine.

(3) Any **children's allowance** payable in terms of this Scheme shall be paid to the Master, parent, step-parent, adoptive parent or such other person on behalf of or for the benefit of the child as the general manager may determine. Where a children's allowance is payable in respect of both legitimate and illegitimate children, the general manager shall determine how such allowance shall be apportioned.

(4) Where a **worker dies leaving dependants** and there remains unpaid to him any amount due under this Scheme, section *eighty-three* shall apply and the general manager shall distribute the amount among the dependants of such deceased worker in such proportions as he may deem fit.

The general manager may pay the funeral expenses of the deceased worker from such unpaid amount.

(5) Where a **dependant dies** there remains unpaid to him any amount due to such dependant under this Scheme, such amount shall not form part of the estate of the deceased dependant but shall be paid to the general manager for distribution or shall be distributed by him amongst such other dependants in such proportions as he may deem fit.

The general manager may pay the funeral expenses of the deceased dependant from such unpaid amount and, where there are no such dependants, any unpaid amount remaining after the payment of the funeral expenses, if any, shall, in the case of an amount paid to him by an employer individually liable, be repaid by the general manager to the employer individually liable.

46 In anticipation of the award of compensation, the general manager may, where in his opinion the interests or pressing need of the worker or of a dependant warrants it, makes an advance not exceeding the amount fixed by the Minister by *statutory instrument*, to or on behalf of the worker or a dependant on such conditions as the general manager may determine;

[amended by SI 289/01 w.e.f.14th September,2001, and further by SI 157/03 with effect from the 25th July,2003]

Provided that any moneys so advanced shall be recovered, in such installments and in such manner as the general manager may decide, from any amount awarded as compensation to the worker or his dependants.

47 (1) In order that compensation may be obtained under this Scheme—

(a) written notice of the accident causing disablement or death of a worker shall be given by or on behalf of the worker as soon as reasonably possible after the happening of the accident to the employer, and such notice shall constitute a claim for compensation;

(b) save as is otherwise provided in this Scheme, a claim for compensation shall, in the case of disablement, be made **within 12 months** after the date of the accident or, in the case of death, within 12 months after the date of the death :

Provided that where a worker has been receiving **periodical payments**, a claim for compensation for permanent disablement in respect of the same accidents, shall be made within 12 months after the date on which such periodical payments finally cease to be payable.

(2) Paragraph (b) of subsection (1) shall not be construed as enabling a claim to be made for compensation in respect of a death which occurred more than 12 months after an accident causing injury if no claim for compensation has been made by the worker within 12 months after the date of the accident.

(3) Notwithstanding anything contained in this section—

(a) failure to give such notice shall not bar the right to compensation if it be proved that the employer had knowledge of the accident from any other source at or about the time of the accident and failed to report the accident to the general manager;

(b) failure to give such notice or to give notice within the period of 12 months mentioned in this section or any defect or inaccuracy therein shall not bar the right to compensation if, in the opinion of the general manager—

(i) the Fund or the employer is not or would not be, if notice or an amended notice were then given, seriously prejudiced by such failure, defect or inaccuracy; or

(ii) such failure, defect or inaccuracy was occasioned by a mistake, absence from Zimbabwe or other reasonable cause.

(4) Save as is provided in subsection (3), no claim for compensation under this Scheme shall be considered unless it is lodged with the employer individually liable or the general manager in the manner prescribed **within 12 months** after the date of the accident or, in the case of death, within 12 months after the death.

48 Every employer shall, **within 3 working days** of the happening of an accident in which a worker is disabled, or is so injured that the worker may be certified as unfit to work **for 1 day or more**, make a record of—

(a) the name and address of the worker;

(b) the date and time of the accident;

(c) the nature of the accident;

(d) the place where the accident happened;

(e) the worker's earnings at the time of the accident;

(f) such further particulars concerning the accident or claim to compensation as may be relevant.

(2) An employer shall notify the general manager of any accident and particulars thereof referred to in subsection (1) **not more than 14 days** from the date of the happening of the accident.

(3) A notice referred to in subsection (2) shall be in writing and the employer shall furnish a copy of it to the worker concerned.

(4) The general manager shall acknowledge in writing the receipt of a notice in terms of subsection (2).

(5) Any employer who fails to comply with subsection (1) or (2) shall be guilty of an offence and, in addition to the penalty provided for in the Act, pay the general manager a **surcharge of US\$10 per**

day for each day beyond the maximum notification period that the accident remains unreported, up to a **maximum of US\$2 000**.

[The surcharge was increased from zw\$ by SI 59/11 gazetted on the 13th May, 2011]

(6) The onus of proving that due notification was made in terms of subsection (2) shall rest with the employer.

(7) For the purposes of this section—

“**accident**” includes any **personal injuries** sustained by a worker and reported by him to his employer if, in making the report, the worker alleges that such injury arose out of and in the course of his employment.

[subsection (7) definition inserted by SI 287/91 with effect from the 4th October, 1991]

49 (1) The worker shall supply such further particulars of the accident and the injury as his employer, the employer individually liable, general manager, Board or Administrative Court may require.

(2) The employer shall supply such further particulars as the general manager, Board or Administrative Court may require of the accident to the worker, his injuries, his earnings and such other matters as are within his knowledge concerning the worker and the accident.

(3) A worker or employer who fails to comply with this section shall be guilty of an offence.

50 (1) A worker who claims compensation shall, when submitting his claim, furnish a certificate from a medical practitioner or dental surgeon, according to the nature of the injury, showing the nature and extent of the worker's injury or illness, whether or not he is fit for work and the reason for such unfitness, if any, and the period of likely temporary disablement.

(2) If an injured worker is unable to return to work after a period of more than 1 month from the date of the injury, he shall, at the end of that month and thereafter at the end of every period of 30 days of his temporary disablement during which he is so unable to return to work, furnish to the general manager or to the employer individually liable, as the case may be, a certificate from a medical practitioner or dental surgeon, according to the nature of the injury, showing that he is unfit so to return.

(3) When the period of temporary disablement of a worker has ended and he is suffering disablement, he shall forward to the general manager or employer individually liable, as the case may be, a certificate from a medical practitioner or dental surgeon, according to the nature of the injury, stating that fact and the degree of disablement which, in the opinion of that medical practitioner or dental surgeon, the worker is suffering.

(4) Where any such certificate is forwarded to an employer he shall forthwith forward such certificate to the general manager.

(5) In the case of the death of a worker as a result of an accident or where any person who is in receipt of compensation dies, the general manager may call for such evidence of the death of such worker or person as he may require for the purposes of this Scheme.

52 (1) Upon receipt of any claim for compensation the general manager shall determine such claim.

(2) Where it appears to the general manager from any certificate submitted to him in terms of section *fifty* or otherwise that the worker has suffered permanent disablement, the general manager shall determine the degree of disablement of such worker in relation to all the circumstances of the case.

(3) The general manager shall, as soon as he has made a determination under this section, by notice in writing, inform the claimant and the employer individually liable, if such employer is concerned, of the result of the determination.

(4) In the case where the general manager has determined the degree of disablement of a worker under subsection (2) the worker or employer individually liable may, **within 14 days**, make representations in writing to the general manager for a reconsideration of his determination and the general manager shall thereupon reconsider his determination and inform the parties concerned of his final decision.

(5) If the worker or employer individually liable is dissatisfied with the final decision of the general manager under subsection (4) he may **within 21 days** of the date of the decision appeal in **form No.**

8 against that decision to the Board, and the provisions of section nineteen shall, *mutatis mutandis*, apply to such appeal.

53 (1) A worker who claims compensation or to whom compensation has been paid or is payable shall, when so required by the general manager, and after reasonable notice, submit himself at the time and place notified, if such time and place are reasonable, for examination by a medical board consisting of not more than 3 medical practitioners or dental surgeons nominated by the general manager.

(2) Where a worker has been temporarily disabled for a period of 3 months from the date of the accident, the general manager shall, unless he is satisfied that it is unnecessary to do so, require the worker to submit himself for examination by a medical board in accordance with subsection (1), and such medical board may—

- (a) recommend that such worker should undergo a further or different course of treatment;
- (b) certify that such worker is fit to return to work or to similar work or indicate what work he is fit to perform;
- (c) certify that the period of temporary disablement should end but the worker is permanently disabled and indicate to the general manager the degree of disablement. which it considers the worker has suffered.

(3) Upon the certificate of any medical practitioner certifying that worker is not in a fit state to attend on the medical board, the general manager may require the worker to submit himself to examination by the medical board at some other reasonable time and place agreed upon.

(4) The worker shall be entitled, at his own expense, to have a medical practitioner or dental surgeon nominated by him present at any such medical examination.

54 (1) Whenever any compensation or other pecuniary benefit must, in terms of any provision of this Scheme, be paid to a worker by any person other than the general manager, the general manager may make an order in form **No. 9** and such order shall, upon being filed with the clerk of the Magistrates Court of the area in which the person liable to pay such compensation or benefit resides or has his place of business, have all the effects of, and may be executed as if it were, a civil judgment lawfully given in that court in favour of the general manager :

Provided that the general manager shall, before filing any such order with the clerk of the Magistrates Court, by notice in writing, inform the person liable to pay such compensation or benefit that he has made such order, and if **within a period of 14 days** of the notice having been given the person so liable lodges an appeal against such order, the general manager shall not file the order with the clerk of the Magistrates Court until the appeal in respect thereof has been finally dismissed by the Board and, if further appealed, the Administrative Court.

(2) Any amount recovered by the general manager in terms of any order so executed shall be paid into the Fund, and the provisions of section *forty-five* shall, *mutatis mutandis*, apply in respect of any such amount which is payable in the form of a lump sum.

55 Notwithstanding anything contained in this Scheme, the general manager may authorize an employer individually liable, subject to such conditions as the general manager may determine, to make provisional settlements of claims for compensation with his workers :

Provided that such employer shall report such provisional settlements to the general manager with such particulars and at such intervals as the general manager may determine, and the general manager shall either confirm any such provisional settlement or proceed to determine such claim in the manner provided in this Part as if such provisional settlement had not been made.

56 (1) An employer shall provide and maintain (1) such appliances and services for the rendering of first aid to his workers in case of any accidents to them as may be prescribed in respect of the trade or business in which he is engaged.

(2) An employer who fails to comply with subsection (1) shall be guilty of an offence.

57 (1) Where an accident happens to a worker which necessitates his removal to hospital or his residence, the employer of such worker shall forthwith provide the necessary conveyance for such removal or arrange for such removal.

(2) The general manager or the employer individually liable, as the case may be, shall defray any expenses reasonably and necessarily incurred by the employer or any other person in respect of such removal.

(3) An employer who fails to comply with subsection (1) shall be liable for the reasonable cost of the removal of the worker to a hospital or his residence and, if the failure is due to the wilful or negligent default of the employer or of anyone in charge of the work in which the worker was employed at the time of the accident, the employer or any such person shall be guilty of an offence.

58 (1) Subject to this section, the general manager or the employer individually liable, as the case may be, shall defray any expenses reasonably and necessarily incurred by a worker as the result of an accident arising out of and in the course of his employment in respect of the following matters, that is to say—

(a) dental, medical, surgical or hospital treatment;

(b) skilled nursing services;

(c) the supply of medicines and surgical dressings;

(d) travelling and subsistence in connection with the worker's journey to and treatment in a place either within or outside Zimbabwe where he was directed by his medical practitioner to go for treatment;

(e) the supply, maintenance, repair and replacement of dentures, spectacles, hearing aids, artificial limbs, crutches and other appliances and apparatus used by persons who are physically disabled.

(2) The liability of the general manager or the employer individually liable, as the case may be, shall be limited to **zw\$2 000**;

[Editor's Note: This limit has not yet been increased]

Provided that, if the general manager is satisfied on a medical certificate that the injury to the worker was of a serious nature, the general manager shall determine that such additional amount as he considers just in the circumstances shall be paid by him or the employer individually liable, as the case may be.

(3) The general manager or the employer individually liable shall only be liable in respect of travelling and subsistence expenses in connection with a worker's journey to and treatment in a place outside Zimbabwe if the general manager has approved of such journey.

(4) For the purposes of subsection (1), any damage to anything mentioned in paragraph (e) of that subsection shall be deemed to be an injury.

59 All disputes as to liability for or the necessity for or the character or sufficiency of any medical aid provided or to be provided in terms of this Part shall be determined by the general manager.

60 The fees and charges for medical aid to workers shall be in accordance with the scale determined by the Minister from time to time after consultation with such associations or bodies representing medical practitioners and dental surgeons entitled to practise within Zimbabwe as the Minister may think fit, and no claim for an amount in excess of a fee in accordance with that scale shall lie against any worker, the general manager or the employer individually liable in respect of any such medical aid.

61 If an employer has or makes an arrangement for furnishing medical aid to his workers injured by an accident which, in the opinion of the general manager, is adequate, the general manager may approve such an arrangement, and, in that event, an employer may claim a reduction in the assessment payable by him relative to the amount of medical aid so provided.

62 (1) Where a medical practitioner grants a certificate—

(a) that a worker is suffering from a scheduled disease causing disablement or that the death of a worker was caused by a scheduled disease; and

(b) that such disease was due to the nature of the worker's employment;

the worker, or, if he is deceased, his dependants, shall be entitled to claim compensation under this Scheme as if such disablement or death had been caused by an accident and the provisions of this Scheme shall, subject to this Part, mutatis mutandis, apply unless at the time of entering into the employment the worker wilfully and falsely represented in writing in reply to a specific question that he had not previously suffered from the disease:

Provided that—

(i) where the worker was not, at the date of the disablement or death, employed in the occupation to the nature of which the disease is due, the earnings of the worker shall be calculated on the basis of his earnings when he was last employed in such occupation.

(ii) in no case shall the worker or his dependants be entitled to compensation in respect of any causation or aggravation of the disease which was due to employment outside Zimbabwe except in the case of a worker ordinarily resident in Zimbabwe employed outside Zimbabwe by his employer within Zimbabwe.

(2) If the general manager is satisfied that the allegations in the certificate are correct, the worker or his dependants, as the case may be, shall be entitled to compensation under this Scheme as if the contracting of the disease were an injury by accident arising out of and in the course of the worker's employment.

(3) Notwithstanding subsection (1), in the case of a worker who is suffering from pneumoconiosis or whose death was caused by pneumoconiosis, compensation may only be claimed under this Scheme if the certificate referred to in subsection (1) has been granted by the Medical Bureau in terms of the Pneumoconiosis Act [*Chapter 15:08*] certifying that the worker is suffering from or had suffered from pneumoconiosis and, in relation to a worker who is so certified to be suffering from pneumoconiosis—

(a) in the **1st stage**, his degree of disablement for the purposes of this Scheme shall be regarded as being not less than 10% but **not more than 20%**;

(b) in the **2nd stage**, his degree of disablement for the purposes of this Scheme shall be regarded as being not less than 20% but **not more than 50%**;

(c) in the **3rd stage**, his degree of disablement for the purposes of this Scheme shall be regarded as being not less than 50% but **not more than 75%**;

(d) in the **4th stage** or in any stage with tuberculosis, his degree of disablement for the purposes of this Scheme shall be regarded as not less than **75%**.

(4) In the case of a person referred to in subsection (3) who is receiving or is entitled to receive benefits for pneumoconiosis under the law of any other country, any compensation payable to him under this Scheme shall be reduced by the amount of the benefits he is receiving or is entitled to receive under that law.

63 Nothing in this Part shall be deemed to affect the right of a worker to compensation in respect of a disease other than a scheduled disease if the contracting of that disease entitles him to compensation under any other provision of this Scheme.

64 For the purposes of this Part, the date of the happening of the accident shall be—

(a) in the case of a scheduled disease causing disablement, the date of the certificate mentioned in section *sixty-two*;

(b) in the case of death from a disease, the date of the death of the worker.

65 If a worker who becomes disabled by or dies of any disease mentioned in the *Second Schedule* was, before disablement or death, employed in any occupation mentioned in that *Schedule* opposite such disease, it shall be presumed, unless or until the contrary is proved, that the disease was due to the nature of such employment.

66 (1) The Workers' Compensation Fund established in terms of subsection (1) of section 89 of the repealed Act shall, on and after **the fixed date**, continue in existence and, subject to this Scheme, be vested in the Authority.

(2) The Fund shall consist of—

- (a) the assessment paid by employers under this Scheme;
- (b) any moneys paid by employers to the general manager under this Scheme;
- (c) any moneys paid as penalties imposed under this Scheme other than penalties imposed by a court of law;
- (d) interest from investments of the Fund;
- (e) any moneys transferred in terms of paragraph (c) of section *eighty-six*;
- (f) any sums advanced to the Fund in terms of section *sixty-nine*;
- (g) any payments made to the general manager by employers individually liable in terms of this Part;
- (h) any other sums to which the Fund may become entitled.

67 (1) The moneys of the Fund shall be applied by the general manager to—

- (a) the payment of compensation, medical aid or other pecuniary benefits to or on behalf of or in respect of workers or dependants under this Scheme wherever no other person is made liable for such payment;
- (b) the repayment of advances made to the Fund in terms of section *sixty-nine* and any interest on such advances;
- (c) the repayment of moneys borrowed in terms of section *sixty-eight* and any interest on such borrowings;
- (d) the payment of expenditure connected with the reinsurance of the Fund;
- (e) the payment of expenditure properly incurred by the general manager in carrying out his functions under this Scheme;
- (f) any charges necessary for or in connection with the medical examination of worker;
- (g) any losses incurred in the realization of any assets of the Fund;
- (h) any other expenditure lawfully appertaining to the Fund.

(2) Any surplus in the Fund may be applied in the reduction of future assessments made in terms of section *seventy-three* or may be transferred to reserves or may be allowed to remain in the Fund and any deficiency in the Fund may be made good by an increase in the amount of any future assessment on employers under this Scheme.

(3) There may be established within the Fund such reserve funds as the Board considers necessary for the purposes of this Scheme.

68 Subject to the approval of the Board, in consultation with the Minister responsible for finance, the general manager may—

- (a) borrow money within Zimbabwe if, in his opinion, it is necessary to do so in order to meet any unforeseen contingency or expenditure incurred by him in connection with the administration of this Scheme or to meet any liquid deficiencies in the Fund, at a rate of interest and on terms approved by the Minister responsible for finance;
- (b) purchase or otherwise acquire property required wholly or partly for the purposes of this Scheme and alienate any property so acquired. All properties so acquired shall be held in the name of the Authority in trust for the Fund;
- (c) pledge such portion of the assets of the Fund as may be necessary to provide security for loans received.

69 (1) The Minister responsible for finance may, out of moneys appropriated by the Legislature for the purpose, advance to the Fund moneys sufficient to meet any liquid deficiencies in the Fund.

(2) Interest on such advances shall be payable at a rate fixed by the Minister responsible for finance and shall be a charge on the Fund.

70 (1) All moneys received by the general manager on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn therefrom except by means of cheques signed by such persons as may be specially authorized by the Board.

(2) A proportion of the Fund shall be held in liquid form and such proportion may be determined and varied from time to time by the general manager, having regard to the due execution of the provision of this Scheme. Such liquid portion of the Fund may be held in a banking account or on deposit with banks or registered building societies or in Zimbabwe Government Treasury bills.

(3) The general manager shall hold the remainder of the Fund in investments approved by the Board and by the Minister responsible for finance,

71 The general manager shall cause to be kept proper books of accounts and other books and records in relation thereto, in which he shall record all the financial transactions of the Fund.

72 (1) Every employer liable to assessment shall on a date to be notified each year by the general manager or, if the employer becomes liable to be assessed after that date, **within 1 month** after having become so liable, transmit to the general manager a statement, certified by him as true, showing—

(a) the amount of earnings of his workers during the past assessment year;

(b) such other information as may be prescribed or as the general manager may require him in respect of his workers or their earnings.

(2) For the purposes of subsection (1)—

"assessment year" means the period of 12 months ending on the **31st December**.

[period extended from 31st March by SI 77/99 with effect from the 12th March, 1999]

(3) Where an employer carries on business in more than 1 place or carried on more than 1 class of business, the general manager may require from him a separate statement in respect of each such place or class of business.

(4) If in any statement submitted, to the general manager in terms of subsection (1) the amount of wages alleged to have been due and paid during any period is less than the amount actually due and paid the general manager may impose upon the employer who transmitted the statement, **as a penalty**, such proportion of the difference between the amount stated and the correct amount, **not exceeding 10%**, as the general manager may determine.

(5) If in any such statement submitted to the general manager in terms of paragraph (b) of subsection (1) the estimate of earnings for which the employer expects to become liable during any period is, in the opinion of the general manager, too low, the general manager may himself estimate the earnings for which the employer will probably become liable during that period and inform the employer of such estimate.

(6) An employer who fails to comply with this section or with any requirement of the general manager under subsection (1) shall be guilty of an offence.

73 (1) In this section—

"current assessment year" means the latest assessment year, ending on the 31st December, in respect of which assessments are being made;

[period extended from 31st March by SI 77/99 with effect from the 12th March, 1999]

"unfavourable accident record", in relation to a specific period of business operations, means a record whereby the total compensation claimed in relation to the workers of an employer during that period, together with the total costs of administration incurred by the, Fund in relation, to the relevant

compensation claims, exceed the total amount of assessment payable by that employer in respect of the period concerned.

(2) The general manager shall, as soon as practicable after the prescribed date referred to in subsection (1) of section *seventy-two*, or, in the case of an employer becoming liable to be assessed after that date, after the receipt of the statement referred to in that section, assess every employer, other than an employer exempted from assessment in terms of section *seventy-six*, on the basis of the rates fixed in terms of this section, shall submit to the employer the assessment.

(3) Subject to this section, the general manager shall calculate the total assessment payable by each employer in accordance with the following formula—

A x R

100

in which—

A represents the total amount of earnings of the employer's workers during the assessment year; and

R represents the rate of assessment, per every unit of \$100 or part thereof, that is specified in subsection (4) in relation to the current assessment year.

(4) The rate of assessment of employers engaged in the undertaking, industry, trade or occupation specified in the 2nd column of ***Part II** of the *Sixth Schedule* which is identified by the code opposite thereto in the 1st column shall be the rate specified for the relevant code by the Minister by notice in a *statutory instrument*.

[subsection (4) substituted by SI 289/01 w e.f. the 14th September,2001]

[containing the *errors referred to in the note below subsection (4A);]

[and amended by SI 157/03 with effect from the 25th July,2003.]

[The Editor has inserted ***Part II** for the reason in his note below.]

(4A) For the purpose of subsection (4) the rate of assessment of employers engaged in the undertaking, industry trade or occupation identified by the code specified in the 1st column of ***Part II** of the *Sixth Schedule* shall be the rate specified opposite hereto in the 2nd column.

[subsection (4A) inserted by SI 59/11 gazetted on the 13th May,2011.]

[Editor's Note: the column specifying the code and the rate are not consistent with the enabling subsection (4)- which should now be switched around to correspond with ***Part II** of the 6th Schedule also substituted by SI 59/11].]

***(5)** The minimum amount of assessment payable in respect of the current assessment year or part thereof shall, where the rate prescribed in Part II of the *Sixth Schedule* —

[Editor's Note These two Subsections ***(5)** and ***(6)** appear to be erroneously duplicated on pages 311 and 312 of this SI .]

[It is suggested they be ignored until the Law Reviser clarifies the anomaly.]

(a) is zw\$ 15 or less than zw\$ 15 ,be the amount of zw\$15;

(b) exceeds zw\$15, be an amount equivalent to the amount so calculated, computed up to the nearest 10 cents, the sum of 5 cents being reckoned as 10 cents.

***(6)** Notwithstanding subsection (3), the total amount of assessment payable by an employer who had an unfavourable accident record in the assessment year immediately preceding the current assessment year may be increased by—

[Editor's Note These two Subsections ***(5)** and ***(6)** appear to be erroneously duplicated on pages 311 and 312 of this SI .]

[It is suggested they be ignored until the Law Reviser clarifies the anomaly.]

- (a) 15% of the amount by which the compensation claimed in relation to the workers of the employer in the current assessment year exceeds the total amount of assessment which was payable by him in respect of the preceding assessment year; or
- (b) 50% of the employer's total amount of assessment which was payable by him in respect of the preceding assessment year;

whichever is the lesser amount :

Provided that—

- (i) where the amount calculated in terms of paragraph (a) exceeds zw\$50 while the amount calculated in terms of paragraph (b) is less than zw\$50, the amount of the increased assessment for such employer shall be zw\$50;
- (ii) an employer shall not be liable for an increased assessment where the total compensation claimed in relation to the workers of that employer during the preceding 3 assessment years, or such lesser period as the employer concerned has been carrying on his business, does not, in the aggregate, result in an unfavourable accident record.

(5) The Minister may, on the recommendation of the Board, alter the rates of assessment fixed in Part II of the *Sixth Schedule* according to the estimated risk, cost of compensation payable and cost of administration.

(6) In estimating the rates of assessment deemed to be necessary for the requirements of the Fund, the Authority shall make provision for the capitalised values of pensions and other liabilities due or likely to become due in respect of accidents during the current assessment year.

(7) When wages actually paid by an employer and other earnings during any period have been ascertained, the assessment in respect of that period shall be adjusted accordingly.

(8) If the annual assessment is less than the adjusted assessment, the employer shall pay the difference when called upon to do so, and if the annual assessment is more than the adjusted assessment, the general manager shall refund the difference to the employer or credit him therewith in respect of his following annual assessment.

(9) If an employer has failed to transmit, before the prescribed date, a statement of wages and earnings in terms of section *seventy-two* in respect of any period, the general manager may estimate the amount of wages paid or payable by him and earnings for which he will probably become liable and assess him accordingly:

Provided that the general manager, in estimating the amount of wages paid or payable by the employer, shall not calculate the amount at more than double the amount of wages upon which the previous assessment of the employer was based, and if it is subsequently ascertained that the amount assessed would have been greater had the employer transmitted the statement before the prescribed date, the employer shall in addition pay to the general manager the difference between the amount assessed and the amount which would have been assessed had the statement been available.

(10) If an employer liable to assessment who, in respect of any period, has transmitted to the general manager the statement referred to in subsection (1) of section *seventy-two*, has not been assessed in respect of the period, he shall nevertheless be liable at any time thereafter to be assessed.

(11) An employer shall pay his assessment on or before the date specified in the notice of assessment.

73A (1) In this section—

[Inserted by SI 287/91 with effect from the 4th October, 1991]

"favourable accident record" means a record where the total amount of assessment payable by an employer with reference to a specific period of business operations exceeds the total compensation claimed, if any, in relation to the workers of the employer during that period, together with the total costs incurred by the Fund in administering any such claims;

"gross rebate" means such amounts as the Authority may determine from time to time;

"**special rebate**" means the rebate payable in terms of subsection (3);

"**surplus**" means the excess of the total amount of assessment payable by an employer over the total compensation and total costs of administration, if any, referred to in the definition of "favourable accident record";

"**total surplus**" means the total of all employers' surpluses.

(2) Where an employer has a favourable accident record a special rebate shall, at the discretion of the general manager, either be paid to him or credited to his account and shall be calculated in accordance with the following formula—

Surplus x Gross Rebate

= Special rebate

Total Surplus

(3) Special rebates shall be paid at **intervals of 1 year** or more as the Authority may determine.

(4) No special rebate of an amount **less than US\$2** shall be paid to an employer.

(5) No special rebate shall be paid to an employer who has not paid his assessment.

74 (1) Save where the employer concerned is an employer individually liable, when an award of additional compensation is made under section *nine* the employer shall pay a penalty to the general manager.

(2) Such penalty shall be payable in such amount **not exceeding 50%** of the employer's annual assessment, for such period, **not exceeding 10 years**, and in such manner as the Board may, in its discretion, determine, but shall not in the aggregate exceed the amount of the award of additional compensation.

75 The Board may, in such circumstances and on such basis as may be prescribed, award an employer as a bonus a special rebate on any assessment payable or paid by him.

76 (1) The Board may, by writing under its hand, exempt from the payment of assessments for such period and subject to such conditions as it may specify, any employer who proves to the Board's satisfaction that he has established and made provision for the maintenance of a fund for insurance against any liability which may arise under this Scheme in respect of all workers employed by him, and who has deposited with the general manager sufficient security to meet all claims for compensation which may be due or become due under this Scheme.

Provided that the Board may, after consultation with the Minister responsible for finance, dispense with the obligation of depositing such securities in the case of any local authority or any body incorporated directly by any law.

(2) For the purpose of obtaining an exemption in terms of subsection (1), the employer concerned shall apply to the general manager for a certificate of exemption, furnishing in his application full information with regard to the fund for insurance referred to in subsection (1).

(3) Any employer to whom exemption was granted under section 99 of the repealed Act and whose exemption was in force immediately before the date of commencement of this Scheme, shall be deemed to have been exempted in terms of subsection (1).

(4) Every employer exempted in terms of this section shall transmit to the general manager, upon request, returns in the manner and containing the information required in **form No. 10**, showing all claim payments made by him during each month.

(5) Every employer exempted in terms of this section shall keep an account and record of all payments made by him in respect of workers compensation under the Scheme separate from the records of his other business transactions.

(6) If at any time the Board is satisfied that an employer exempted in terms of this section has failed to comply with any of the provisions of this section or any such conditions as the Board may have specified in terms of subsection (1), the Board may cancel the certificate of exemption granted to such employer.

(7) The general manager may, with the approval of the Board, upon the application of an employer referred to in this section, permit such employer to pay assessments in respect of his workers, and any such employer shall, from a date to be fixed by the general manager, cease to be individually liable to pay compensation except in respect of accidents which occurred before such date.

77 Notwithstanding anything contained in this Scheme, an employer individually liable shall pay annually to the general manager in such manner and at such time as the general manager may determine, such contribution towards the expenses incurred by the general manager in the administration of this Scheme as the Board may deem equitable.

78 (1) Every employer carrying on business in Zimbabwe shall, **within 10 days** of the date on which he commences business, furnish the general manager with the address of his business, and thereafter within the period fixed by the general manager such additional particulars as the general manager may from time to time require for the purposes of this Scheme. Such particulars shall be furnished separately in respect of each business conducted by the employer and every employer shall forthwith inform the general manager of any change in the particulars so furnished.

(2) Every person not resident in Zimbabwe who, and every corporate body not registered under the law relating to companies which, carries on business in Zimbabwe and, in connection therewith, employs a worker, shall notify the general manager **within 30 days** of the address of his or its chief office and of the name of his or its chief officer in Zimbabwe or of any change in the name or address of such chief officer, and such officer shall be deemed to be authorized and required to perform the duties of an employer as provided by this Scheme, which affects such person or body.

(3) Any person who fails to comply with this section shall be guilty of an offence and shall be subject to the provisions, *mutatis mutandis*, of subsection (2) of section *eighty-two*.

79 (1) Every employer shall in respect of all his workers keep records of wages paid, time worked and payment made for piece-work and overtime and of any other particulars prescribed, and he shall at all reasonable times produce such records for inspection on demand by any person authorized thereto under this Scheme.

(2) An employer who fails to comply with subsection (1) or who knowingly makes a false entry in such records shall be guilty of an offence.

80 Any person who by threat or in any other manner whatever compels or attempts to compel any worker to do or omit to do any act, the doing or omission of which deprives or is intended to deprive him or his dependants of any right to compensation, shall be guilty of an offence and liable to a fine not exceeding **zw\$1 000** or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

81 Any person who, in a claim for compensation under this Scheme, or in any notice, report or statement required to be given, made or furnished under this Scheme, knowingly makes or causes to be made a statement which is false in a material particular shall be guilty of an offence.

82 (1) If an assessment or any installment thereof is not paid by an employer at the time when it becomes payable, the defaulting employer shall be liable to pay in addition to the assessment or installment thereof as a penalty for his default such percentage (**not exceeding 50%**) of the amount unpaid as the general manager may determine.

(2) Any employer who fails to pay his assessment shall, in addition to any other penalty, pay to the general manager **a penalty** as determined by the general manager, not exceeding the full amount of the compensation payable in respect of any accident to a worker in his employment during the period of such default.

Provided that the general manager, if satisfied that the default was due to some cause over which the employer had no control, or that the payment of the full amount of the capitalized value would be likely to result in the insolvency or assignment of the estate of such employer, or, where the employer is a company, the in whole or in part or accept payment in installments or otherwise winding up thereof, may waive the provisions of this subsection as the general manager may determine.

(3) Any employer who contravenes any provision of this Scheme in regard to the payment of assessments, penalties or any other moneys payable to the general manager under this Scheme shall be guilty of an offence and upon conviction may, in addition to any other penalty which may be

imposed by the court, be directed by order of the court to pay the assessments, penalties or other moneys to the general manager within such period as the court may fix.

(4) For the purposes of this section—

"**compensation**" includes, in the case of a continuing liability, also the capitalized value, as determined by the general manager, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension), periodical payment or allowance, as the case may be, which constitutes the liability.

83 (1) Compensation recovered or recoverable in respect of the death of a worker shall not form part of the deceased worker's estate for the purposes of the law relating to the administration of estates or the law relating to estate and succession duty.

(2) Where such compensation is payable by any person other than the general manager, it shall, unless the general manager otherwise directs, be paid to the general manager.

(3) Subsections (4) and (5) of section *forty-five* shall, *mutatis mutandis*, apply in respect of any compensation mentioned in subsection (1).

84 If any benefits have been paid which were not due in terms of this Scheme, the general manager may recover that amount by action in any court of competent jurisdiction or by deduction from any benefits to which the worker or any dependant has or may become entitled under this Scheme.

85 Subject to the Maintenance Act [*Chapter 5:09*] and Part V of the Children's Act [*Chapter 5:06*], compensation shall not—

(a) be capable of being assigned or charged;

(b) be attached by the order of any court;

(c) be set off against any debt by the person entitled to such compensation:

Provided that the general manager or the employer individually liable, as the case may be, may, out of any compensation payable to a worker, repay either wholly or partly any amount which, with the approval of the general manager of such employer, has after the occurrence of the accident in respect of which such compensation is payable, been advanced to such worker, subject to repayment out of such compensation.

86 For the purposes of giving effect to any convention with a foreign state or with the government of any part of the Commonwealth or of any part of the Dominions of the Sovereign of the United Kingdom providing for reciprocity in matters relating to compensation to workers for accidents causing disablement or death, the President may make rules by proclamation in the *Gazette*, including rules—

(a) for determining in any case where a worker is entitled to compensation both under this Scheme and under the law of any such country with which the convention is made, under the law of which party to the convention such worker or his dependants shall be entitled to recover compensation;

(b) for conferring on any court powers for the admission of evidence taken in any such country and the procuring and taking of evidence for use in any such country or otherwise for the recovery of compensation under the respective laws of any such country;

(c) whereby compensation awarded in the territory of any such country to persons resident or becoming resident in Zimbabwe may be transferred to and administered by the general manager, and whereby compensation awarded under this Scheme to persons resident or becoming resident in the territory of any such country may be transferred to and administered by a competent authority in that territory.

87 (1) Whenever a general increase in pensions is awarded or is to be awarded to persons who were formerly members of the Public Service the Minister shall, in consultation with the Board, review the level of all pensions and children's allowances which are being paid from the Fund.

(2) An increase in any pension or children's allowance pursuant to a review conducted in terms of subsection (2), shall—

(a) be notified from time to time by the Minister by notice in a *statutory instrument*; and
[amended by SI 289/01 w.e.f.14th September,2001, and further by SI 157/03 with effect from the 25th July,2003]

(b) not take effect before the date from which any increase in pensions of persons who were formerly members of the Public Service, to which the review concerned is related, took effect or is to take effect, as the case may be.

(3) Where any pension or children's allowance is increased in terms of this section, the provisions of this Scheme under which the pension or children's allowance prior to the increase was being paid shall continue to apply in relation to the pension or children's allowance as so increased as though the pension or children's allowance as so increased were payable under those provisions, and any pension or children's allowance which relates to any such increased pension and which becomes payable **after** such increase shall be calculated as though those provisions had provided for such increase.

88 (1) All forms may obtained during normal working hours from any office of the Authority.

(2) If for any reason a form is not available, it may be submitted by the person wishing to use it in the form prescribed by this notice, and in so doing the person concerned may omit any explanatory notes or other irrelevant matter therefrom.

89 The notices and regulations set out in the *Eighth Schedule* are repealed.

FIRST SCHEDULE (Section 3)

FORMS

Form No. 1

ACCIDENT PREVENTION AND WORKER'S COMPENSATION

SCHEME (Section 16 (1))

NOTICE OF OBJECTION

I, the undersigned (*name in block capitals*)

of (*address*).....

hereby lodge an Objection against your decision in the following matter: -

(1)

.....

(2) The relief or order claimed is as follows :-

.....

.....

Full names and address of the objector.....

.....

Full names and address of legal practitioner or representative, of any

.....

Dated this.....day of.....20.....

.....

Signature of objector

Note:

(1) State briefly the decision giving rise to the objection.

(2) State briefly the relief and sought and reasons therefor.

ACCIDENT PREVENTION AND WORKER'S COMPENSATION
SCHEME (Section 19 (2))

NOTICE OF APPEAL FROM DECISION GENERAL MANAGER

Note:

- (1) This notice must be accompanied by a copy of the appellant's objection to the general manager's original decision and the general manager's reply to the applicant's objection.
- (2) No notice of appeal may be lodged **later than 21 days** after the general manager's reply to the appellant's objection.

I, the undersigned (*name in block capitals*)

of (*address*).....

.....

hereby lodge an appeal to the National Social Security Board against the decision of the general manager of the National Social Security Authority concerning my objection, a copy of which, and the general manager's reply thereto, is attached to this notice.

My reasons for appealing are as follows:

Full names and address of legal practitioner or representative, if any

.....

Dated this.....day of.....20.....

.....
Signature of appellant

ACCIDENT PREVENTION AND WORKER'S COMPENSATION
SCHEME (Section 19 (3))

NOTICE OF HEARING OF APPEAL

Appeal No.

In the matter of the appeal lodged by

appellant, against the decision by the general manager of the National Social Security Authority under section 18/section 52 of the Scheme.

To: (appellant)

(appellant's address)

Take notice that the above matter will be heard by the National Social Security Board at

(place)

at m. (*time*), On the

day of , 20....

Secretary to Board

ACCIDENT PREVENTION AND WORKER'S COMPENSATION
SCHEME (Section 20 (3))

SUMMONS TO WITNESS TO ATTEND

Appeal No.....

In the matter of the appeal lodged by

appellant, against the decision by the general manager of the National Social Security Authority under section 18/section 52 of the Scheme.

To: (1)

You are hereby summoned to appear before the National Social Security Board on the day of , 20 ,

at m (*time*) at (2)

then and there to be examined and to give evidence on this appeal, and then and there to produce (3)

Dated at this day of , 20

Secretary to Board

- (1) **Note:**
- (2) Name and address of witness.
- (3) Place where application to be heard.
- (4) State document or thing to be produced.

Form No. 5

[Form 5 deleted by SI 287/91 with effect from the 4th October, 1991]

Form No. 6

ACCIDENT PREVENTION AND WORKER'S COMPENSATION

SCHEME (*Section 28 (2)*)

SPECIAL LIABILITY AGREEMENT

Memorandum of Agreement made and entered into between (1)

.....

(hereinafter referred to as 'the employer') of the one part, and (2)

.....

(hereinafter referred to as 'the worker') of the other part.

WHEREAS both the employer and the worker declare that they are acquainted with the liabilities, rights, privileges and benefits contained and set out in the Accident Prevention and Workers' Compensation Scheme:

AND WHEREAS the worker is especially liable to meet with an accident, or if he meets with an accident, to sustain serious injury in his

employment as (3)

by reasons of (4)

mentioned in the certificate by the medical practitioner annexed hereto, it is hereby agreed between the worker and the employer that in the event of the worker meeting with an accident whilst in the employ of the employer the rights of the worker or his dependants to compensation under the Accident Prevention and Workers' Compensation Scheme shall be limited to (5) % of the compensation which would otherwise be payable under that scheme.

Signed at this
day of

Witness: *Employer*

.....

Witness: *Worker*

.....

General Manager

Approved under section 28 (2) of the Scheme, this
day of , 20

General Manager

Note:

- (1) Full name of employer.
- (2) Full forenames and surname of worker. If the worker has a national registration certificate, state name shown in certificate, and the registration number.
- (3) State nature of work in which worker engaged.
- (4) State "old age", "serious physical infirmity" or "previous injury", as the case may be.
- (5) State percentage.

Form No. 7

ACCIDENT PREVENTION AND WORKER'S COMPENSATION
SCHEME (*Section 28 (4)*)
**CERTIFICATE OF MEDICAL PRACTITIONER FOR PURPOSES
OF SECTION 28**

IT is hereby certified by me, pursuant to section 48 of the National Social Security Authority (Accident Prevention and Workers' Compensation Scheme) Notice, 1990, that I have this day examined (1)

and that by reason of (2):-

- (a) Old age (state age)
- (b) Serious physical infirmity (state nature of)
- (c) Previous injury (state nature of)

he is specially liable (3) to meet with an accident or to sustain a serious injury if employed as a
and I assess the degree of disability for the employment at
%.

Dated this day of , 20

.....

Medical practitioner

Address.....

Note:

- (1) Full forenames and surname of worker. If the worker has a national registration certificate, state name shown on certificate, and registration number.

(2) Strike out words not applicable.

(3) Medical practitioners should note that the law has used the words "specially liable" and not merely "more liable", and regard should be had, before issuing the certificate, not only to the age, serious physical infirmity or previous injury of the worker, but also to the nature of the work in which he is employed at the time.

Form No. 8

ACCIDENT PREVENTION AND WORKER'S COMPENSATION
SCHEME (Section 58 (5))

NOTICE OF APPEAL FROM DECISION OF GENERAL MANAGER

Note:

(1) This notice must be accompanied by a copy of the general manager's determination and his final decision thereon.

(2) No notice of appeal may be lodged later than 21 days after the general manager's final decision on his determination.

I, the undersigned (*name in block capitals*)

of (*address*).....

hereby lodge an appeal to the National Social Security Board against the final decision of the general manager of the National Social Security Authority on his original determination. Copies of the decision and determination are attached. My reasons for appealing are as follows:

.....

Full names and address of legal practitioner or representative, if any

.....

Dated this day of , 20

.....

Signature of appellant

Form No. 9

ACCIDENT PREVENTION AND WORKER'S COMPENSATION
SCHEME (Section 54 (1))

ORDER FOR PAYMENT OF COMPENSATION

In the matter between

.....

and

.....

It is ordered that (1)

do forthwith pay to (2)

at (3)

the sum of \$ being the amount due, from

the said (1) in respect of a

periodical payment/monthly pension of \$

From the..... day of....20 being the day of the injury to the date of this Order; and do further pay at the same place every..... day from the date of this Order until otherwise ordered or until the expiration of 18 months from the said date of injury (save as otherwise provided in the Scheme) the sum of \$

at.....

.....

General Manager

Note:

- (1) Name of person liable to pay compensation.
- (2) Worker's name.
- (3) Place where payment is to be made.

Form No. 10

To be completed by Exempted Employers

ACCIDENT PREVENTION AND WORKER'S COMPENSATION SCHEME

RETURN OF CLAIM PAYMENTS MADE IN RESPECT OF INJURED WORKER:

DURING THE MONTH OF.....20.....

BY.....

PARTICULARS OF WORKER	
Employer's name and Address	
Employer's business, trade or profession	
Name of worker	
Occupation	
Age	
Sex	
Married or single	
Number of children under 18 years	
Date of accident	
Cause of accident (See Note 2)	
Nature and location of injury (See Note 3)	
Disablement	

(See Note 4)	
Earnings	
PAYMENTS	
Periodical payments	
Lump sum	
Pensions	
Children's allowance	
Medical aid	
Sundries (See Note 5)	
Total	
REMARKS	
State if payment is final or on Account	

Date.....

Signature.....

Address.....

Note:

(1) Claims under which payments have been shown in previous returns should be prefixed by the letter "A" before the claim number and the month stated in which the 1st payment under the claim was made.

(2) State briefly cause of accident, naming the object which was the immediately cause of the accident. For example, "Struck by fall of rock", "Run over by cocopan", "Buried by fall of earth", "Wheel", "Caught in gears of lathe", *etc.*

(3) Nature and location of the injury should be described briefly in such terms as will convey full information, using such phrases as amputations, burns, scalds, cuts, lacerations, strain, sprain, bruises, fractures, *etc.* The exact location of an amputation must be indicated and in cases of all the injuries to a member whether it is a right or left member. For example, "Fracture of tibia, left leg", "Right arm amputated between wrist and elbow", "Amputation 2 phalanges, index finger and 1 phalanx middle finger, left hand", "Foreign body in left eye", "loss of vision, right eye", "Loss of use of right arm", *etc.*

(4) State whether fatal, giving date of death; whether permanent, giving percentage of disablement; or temporary, giving total period of disablement.

(5) This column is to be used to record payments in respect of transportation of injured workers, funeral expenses, constant attention, increased awards (section 9 of the Scheme), *etc.*, and an appropriate entry should be made in the "Remarks" column to indicate the nature of the payment.

SECOND SCHEDULE (Sections 2, 15 (1) (m) and 65)

SCHEDULED DISEASES

PART I

[Editor's note - There is no PART II]

	<i>Description of disease</i>	<i>Description of work</i>
1.	Pneumoconiosis caused by mineral dust, organic dust, inorganic dust or any other occupational dust	All work involving exposure to the risk concerned.
2.	Bronchopulmonary diseases caused by hard-metal dust.	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton dust (byssinosis), of flax, hemp or sisal dust.	All work involving exposure to the risk concerned.
4.	Occupational asthma caused by sensitising agents or irritants both recognized in this regard and inherent in the work process.	All work involving exposure to the risk concerned.
5.	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
6.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
8.	Diseases caused by chromium or its toxic compounds.	All work involving exposure to the risk concerned.
9.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
10.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
11.	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.
12.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
13.	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned.
14.	Diseases caused by carbon disulfide.	All work involving exposure to the risk concerned.
15.	Diseases caused by toxic halogen derivatives of aliphatic or aromatic hydrocarbons.	All work involving exposure to the risk concerned.
16.	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
17.	Diseases caused by toxic nitro- and amino-derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.

18.	Diseases caused by nitroglycerin or other nitric acid esters.	All work involving exposure to the risk concerned.
19.	Diseases caused by alcohols, glycols or ketones.	All work involving exposure to the risk concerned.
20.	Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulfide.	All work involving exposure to the risk concerned.
21.	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.
22.	Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).	All work involving exposure to the risk concerned.
23.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
24.	Diseases caused by ionising radiations.	All work involving exposure to the risk concerned.
25.	Skin diseases caused by physical, chemical or biological agents not included under other items	All work involving exposure to the risk concerned.
26.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
27.	Lung cancer or mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
28.	Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) Health or laboratory work. (b) Veterinary work. (c) Work handling animals, animal carcasses, or merchandise which may have been contaminated by animals, animal carcasses, or parts of such carcasses. (d) Other work carrying a particular risk of contamination.
29.	Poisoning caused by any type of pesticide or chemical agent including their mixtures or toxic derivatives.	All work involving exposure to pesticides, or chemical agents.
30.	Diseases caused by hot or cold work environments.	All work involving exposure to the risk concerned.
31.	Cancer caused by physical, chemical or biological agents.	All work involving exposure to the risk concerned.

32. Any other diseases certified by a medical practitioner as caused by exposure to the risk concerned at work.	All work involving exposure to the risk concerned.
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THIRD SCHEDULE (Section 15 (5))
DUTIES OF EMPLOYERS, WORKERS & OTHER PERSONS
IN RELATION TO ACCIDENT PREVENTION

Duties of employer

1. An employer shall ensure that—

- (a) such equipment, materials and protective devices as may be prescribed for his class of business are provided,
- (b) the equipment, materials and protective devices provided by him for purposes of protecting worker's health or safety are maintained in good condition;
- (c) such health and safety measures and procedures as may be prescribed for his class of business are carried out in the workplace;
- (d) the equipment, materials and protective devices provided by him are used as prescribed;
- (e) such occupational health services for workers as may be prescribed are established;
- (f) the provision and maintenance of occupational health services are in accordance with standards prescribed;
- (g) such accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as may be prescribed are kept;
- (h) records of the exposure of a worker to biological, chemical or physical agents are accurately kept, maintained and made available to affected workers;
- (i) the general manager is notified of the use or introduction into a workplace of such biological, chemical or physical agents as may be prescribed;
- (j) such monitoring and records of the use of biological, chemical or physical agents as may be prescribed be maintained;
- (k) compliance with such standards limiting the exposure of a worker to biological, chemical or physical agents as may be prescribed is enforced;
- (l) where so prescribed, only a worker who has undergone such medical examinations, tests, or X-rays as may be prescribed and who is found to be physically fit to do the work in that workplace be permitted to do that work;
- (m) the worker is provided with instructions on measures and procedures to be taken for the protection against risks to health or safety, and such instructions shall be given in writing or in the manner or language understood by the majority of workers in the workplace;
- (n) occupational health and safety training programmes at the workplace are carried out or that workers be released to attend such training programmes during work times;
- (o) information, instruction and supervision to a worker to protect the health or safety of the worker is provided;
- (p) he prepares and regularly updates a written policy that addresses the health and safety problems at the workplace and develops and maintains a programme for the implementation of that policy;
- (q) the establishment of a safety committee is effected and the necessary assistance and co-operation afforded to the committee in carrying out its functions;

(r) a supervisor or health and safety representative who shall take all necessary measures to ensure the health or safety of the workers is appointed.

General duties of manufacturers, designers and suppliers

2. It shall be the duty of any person—

(a) designing, manufacturing, importing, selling or hiring out any machinery, implement, safety equipment or other technical device to take steps to ensure that it affords adequate security against risks to safety and health. Such equipment when delivered shall be accompanied by the necessary information and instructions concerning its assembly, use and maintenance;

(b) manufacturing, importing and selling a substance liable to cause risks to health or safety to take the measures necessary to prevent or counteract any health and safety hazards resulting from the use, handling and storage of such a substance.

Duties of supervisor or health and safety representative

3. A supervisor or health and safety representative shall ensure that a worker—

(a) works in the manner and with the protective devices, clothing, measures and procedures which ensure the protection of the worker's health and safety;

(b) uses or wears the equipment, protective devices or clothing that employer has provided to be used or worn;

(c) reports and investigates accidents or identifies potential hazards which may affect the health or safety of workers;

(d) is advised of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;

(e) where so prescribed, is provided with instructions in writing or any other manner as to the measures and procedures to be taken for his protection;

(f) takes every precaution necessary in the circumstances for his protection as a worker.

Duties of the worker

4. A worker shall—

(a) report to the employer or supervisor or health and safety representative the absence of or defect in any equipment or protective device of which the worker is aware and which may endanger himself or another worker;

(b) report to the employer or supervisor or health and safety representative any contravention of this Scheme or the existence of any hazards of which the worker is aware.

(c) where so prescribed, have, at the expense of the employer, such medical examinations, tests or X-rays, at such time or times and at such place or places as prescribed;

(d) work in compliance with such requirements as may be prescribed for the protection of the health or safety of the worker;

(e) use or wear the equipment, protective devices or clothing the employer requires to be used or worn;

(f) not remove or make ineffective any protective device prescribed or required by the employer without providing an adequate temporary protective device, and when the need for removing or making ineffective the protective device has ceased, the protective device or clothing shall be replaced immediately;

(g) not use or operate any equipment, machine, device or thing, or otherwise work, in a manner that may endanger himself or any other worker;

(h) not take away from the workplace protective devices or clothing for purposes not connected with the protection of the worker at work.

(4th, 5th and 6th schedules missing)

SEVENTH SCHEDULE (*Section 87(2)(a)*)

[amended by SI 77/99 and repealed by SI 289/01 with effect from the 14th September,2001]

(8th schedule missing)